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SUMMONS.

The State of New Jersey to Lehigh Valley Railroad Company:

(L. S.) You are summoned to answer the annexed complaint of REPUBLIC OF FRANCE, in an action at law in the Supreme Court.

AND TAKE NOTICE that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this twenty-seventh day of July, Nineteen hundred and eighteen.

ENOCH L JOHNSON,
Clerk.

CONGLETON, STALLMAN & HOOVER,
810 Broad St., Newark, N. J.,
Attorneys.

New Jersey State Library

COMPLAINT.

Filed July 29, 1918.

New Jersey Supreme Court

HUDSON COUNTY.

REPUBLIC OF FRANCE, *Plaintiff,* vs. LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Complaint.*

The plaintiff is a sovereign foreign government, at peace with the government of the United States of America.

FIRST COUNT.

1. The defendant, Lehigh Valley Railroad Company, at all times mentioned in the complaint was and still is a corporation organized and existing under the laws of the State of Pennsylvania and engaged in business as a common carrier by railroad of freight in interstate commerce.

2. At all the times mentioned in the complaint the National Storage Company was the owner of a certain tract of land, and storage warehouses, docks, piers and other terminal facilities known as the National Docks, situated on a peninsula commonly called Black Tom Island, extending from the shore of Communipaw, Jersey City, Hudson County, New Jersey, into the waters of New York Bay.

3. On or about June 24, 1913, the National Storage Company leased to the Lehigh Valley Railroad Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey, for a term of ten years from July 1, 1913, at a

fixed annual rental, all the land belonging to the National Storage Company situated at the National Docks, Jersey City, Hudson County, New Jersey, with all the tracks, rails, piers, docks, bulkheads, stores and warehouses of every kind whatsoever erected thereon (excepting and reserving therefrom about 149,500 square feet, together with certain warehouses erected thereon, Pier 6 and shed No. 2 on Pier 7 and an office building located on the premises), together with all the rights of access thereto and warfage rights in connection therewith. The National Storage Company in addition to the property hereinabove mentioned under the terms of the lease reserved certain rights in the premises leased, including the right to the use and control in common with the defendant, Lehigh Valley Railroad Company, of the wharfage rights in said leased premises, and electric light, electric power, steam heat, steam power, water and fire protection. Thereafter, on or about June 17, 1914, the Lehigh Valley Railroad Company of New Jersey leased all the above-described premises to the defendant, Lehigh Valley Railroad Company, subject to all the terms and conditions of the lease of June 24, 1913, hereinabove referred to.

4. Said leases were in full force and effect at all times hereinabove mentioned, and at all said times the defendant, Lehigh Valley Railroad Company, possessed, used, occupied, controlled the property leased as aforesaid subject to the reservations in favor of the National Storage Company, hereinabove referred to, in its business of common carrier as a railroad yard in which freight was received and dispatched. The said premises were known as Black Tom Yards.

5. On July 29th and 30th, 1916, the plaintiff was rightfully and lawfully the owner of certain picric acid, cannon powder, rifle powder and monochlorbenzol, which had been shipped in packages in certain freight cars, as follows:

Initial	Car Number	Contents	Quantity	Value
		Item #1		
PL	561416	picric acid	500 kegs	
PRR	67263	picric acid	500 kegs	
				$145,783.00

Item #2

NYC	226068	cannon powder	363 boxes	
PM	578	cannon powder	387 boxes	
				105,252.88

Item #3

So. Ry Car	135795	rifle powder	454 boxes	
Erie	90283	rifle powder	500 boxes	
				$105,632.13

Item #4

SLSW	20106	monochlorbenzol	6 drums	
IC	534	monochlorbenzol	6 drums	
PRR	19602	monochlorbenzol	6 drums	
				862.72

All of which material was, at the time of its destruction as hereinafter described, rightfully and lawfully on board a lighter known as the "Rockwell," which was rightfully and lawfully moored at or near the said Black Tom Yard of the defendant.

5-A. The plaintiff was also at the same time, rightfully and lawfully the owner of certain gun cotton and monochlorbenzol contained in packages and shipped in cars as follows:

Item #5

Initial	Car Number	Contents	Quantity	Value
BF	14027	gun cotton	106 cases	
B & O	180332	gun cotton	135 cases	
Wabash	67146	gun cotton	140 cases	
F W & D	6593	gun cotton	150 cases	
N Y C	95537	gun cotton	135 cases	
				$53,733.28

Item #6

CB & Q	99082	monochlorbenzol	50 drums	$9,907.08

		Item #7		
Wabash	67166	gun cotton	184 cases	
CP	128766	gun cotton	186 cases	
PRR	517708	gun cotton	212 cases	48,029.10
		Item #8		
AT & SF	49825	monochlorbenzol	50 drums	9,926.56
		Item #9		
CI & L	2888	monochlorbenzol	50 drums	10,390.49
		Item #10		
St. L I M & S	19657	monochlorbenzol	50 drums	$10,481.71
		Item #11		
OWRRN	10729	monochlorbenzol	50 drums	10,483.23
		Item #12		
NYC	90340	monochlorbenzol	50 drums	9,923.53

All of which cars were held and contained in the delivery yard of said defendant, known as the Black Tom Yard, and nearby yards.

6. For a long time prior to July 29, 1916, the defendant Lehigh Valley Railroad Company had, to the knowledge of defendant, but without the knowledge of the plaintiff, used Black Tom Yards in considerable part for the transportation, storage and transshipment of vast quantities of dangerous explosives, explosive projectiles and ammunition and munitions of war of an explosive and inflammable nature, known to the defendant to be such, and had caused to be stored and kept in said yards large numbers of railroad cars laden with said explosives, ammunition and munitions, together with other cars laden with general merchandise, including inflammable chemicals, known to the defendant to be such.

7. On the night of July 29th and the early morning of July 30th, 1916, defendant Lehigh Valley Railroad Company had caused to be accumulated in said Black Tom Yards, as a transfer

station or interchange point, a large number of cars containing a great quantity of explosives, explosive projectiles, ammunition and munitions of war of an explosive and inflammable nature, which were being, or had been, transported by railroad in interstate commerce, and were destined to a point beyond the line of the defendant railroad company. Said explosives were known to the defendant to be contained in said cars, and were known to it to be highly dangerous and liable in the event of fire or concussion to explode with great danger to human life, and with calamitous effect upon surrounding property.

8. In addition to the said cars of explosives, the defendant railroad company had on the night of July 29th and the early morning of July 30th and for some time prior thereto stored and allowed to remain in said Black Tom Yards, a large number of cars laden with general merchandise, including highly inflammable chemicals known to the defendant to be such.

9. Among the said explosives, explosive projectiles, ammunition and munitions of war hereinabove referred to as being on the night of July 29th and the early morning of July 30th on the defendant's said premises, were vast quantities of trinitrotoluol, smokeless powder, black powder, picric acid, gun cotton and nitrocellulose and also a large quantity of detonating and other fuses. Said explosives were carried both in bulk and in shrapnel or other projectiles, cartridges and munitions of war.

10. On the early morning of July 30th defendant permitted a fire to break out in said Black Tom Yards, which fire, by reason of the negligence of the defendant, resulted in the explosion of a great portion of the accumulation of explosives and munitions in and near said yards. The explosion of said explosives and munitions caused injuries to a great number of persons, the loss of several lives and enormous damage to property over a great area; and together with the fire which was spread thereby to all parts of Black Tom Island completely destroyed a number of piers, warehouses and other structures on said Black Tom Island.

11. As a result of said fire and explosion of said explosives and munitions, and by reason of the negligence and misconduct of the defendant in the respects hereinafter mentioned, the said barge or lighter "Rockwell," together with all the foregoing described property of the plaintiff which was on board of her, were completely destroyed.

12. Before and at the time of said explosion of munitions and fire, it became and was the duty of the defendant in connection with the management and control of said Black Tom Yards and the property adjacent thereto and the custody of handling of said explosives, explosive projectiles, ammunition and munitions of war, to exercise due care to prevent the accumulation in and near the Black Tom Yards without adequate protection of such a quantity of said explosives that the combustion or detonation thereof would result in injury to persons in the vicinity, loss of life and damage to adjacent property; to exercise a degree of care commensurate with the risk of the situation hereinabove described, for the purpose of preventing, discovering, controlling and extinguishing fires on said premises, and preventing and limiting the damage from any explosion of a part of the explosives kept thereon; to exercise the same degree of care to prevent the access of unauthorized persons to said explosives, and especially in view of the existence of the European war and the common knowledge and report of depredations committed by evilly disposed persons in connection with munitions of war, to take all reasonable precautions to prevent said depredations being committed on the premises owned or controlled and operated by the defendant.

13. Said fire and explosion or explosions and the damage to the plaintiff resulting therefrom were not caused or contributed to by any negligence on the part of the plaintiff, but were caused solely by the negligence and misconduct of the defendant in the following particulars, among others:

(a) In collecting freight cars containing explosives, explosive projectiles, ammunitions and munitions of war subject to detonation by fire or concussion and permitting them to accu-

mulate in the said Black Tom Yards, without adequate protection, to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with greater danger to human life and damage to surrounding property.

(b) In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals without adequate protection in said Black Tom Yards and in the vicinity thereof.

(c) In failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patrolling, policing and guarding said yards and other premises in the vicinity thereof under the control of the defendant, and the cars and their contents stored therein and for the purpose of discovering and extinguishing fires; and in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein.

(d) In neglecting to take due care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon.

(e) In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosions occurred.

(f) In failing to provide sufficient and competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred.

(g) In failing properly to instruct its employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire.

(h) In failing to provide adequate facilities and to take proper measures and precautions both before and after the fire started for removing or insulating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered.

Complaint.

(i) In failing to store, handle and dispose of said explosives, explosive projectiles and ammunition and munitions and the cars containing them so as to enable the defendant to prevent or control the communication of fire or concussion from one part of the mass of explosives to another.

(j) In failing to install, maintain and keep in repair adequate means for communicating alarms and summoning assistance in case of fire.

(k) In failing to give the alarm of fire and summon assistance promptly.

(l) In failing to prevent the said fire.

(m) In failing promptly to discover the said fire and to take proper measures to extinguish it and to prevent damage therefrom.

SECOND COUNT.

1. Plaintiff re-alleges all of the matters contained in paragraphs 1 to 12 (inclusive) of the first count of this complaint.

2. The regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles by freight and express, issued January 15, 1910, as amended and revised July 2, 1914, promulgated by authority of the Act of Congress of March 4, 1909, and sections 15 of the Act to Regulate Commerce as amended June 18, 1910, provided in part as follows:

"1428. Before any shipment of dangerous explosives as named in paragraph 1661 destined to a point beyond the lines of the initial carrier is accepted from a shipper, the initial carrier must ascertain that the shipment can go forward via the route designated.

"1643. (a) Careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire.

"Suitable provisions must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within 48 hours after notice of arrival at destination, it must be disposed of by return to the shipper, or by storage at the expense of the owner, or by sale, or when necessary to safety by destruction under supervision of a competent person.

"(b) Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier.

"1682. Every possible effort must be made to expedite the movement of cars containing explosives and no unnecessary delay must occur at initial, interchange or transfer stations.

"1689. * * * Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire."

The regulations hereinabove referred to were in force and effect prior to and at the time of the fire and explosion hereinabove described, and they have the force and effect of law, and it was the duty of the Lehigh Valley Railroad Company strictly to observe them with respect to said explosives, explosive projectiles, ammunition and munitions of war.

3. The said fire and explosion of munitions and the damage to the plaintiff resulting therefrom were caused by the negligence and default of the defendant Lehigh Valley Railroad Company in the following particulars:

(a) In that in violation of Section 1428 of the regulations of the Interstate Commerce Commission for the transportation of explosives it did not ascertain from the shipper or preceding carrier before accepting the shipments of explosives which were

accumulated in the Black Tom Yards in the early morning of July 30th, 1916, whether said shipments could go forward by the route designated.

(b) In that in violation of Section 1643 of the said regulations of the Interstate Commerce Commission it did not take all possible precautions against fire, nor make suitable provision for the safe storage of said explosives, nor make every effort possible to reduce the time of such storage, and in that when such shipments were not removed within forty-eight hours after notice of arrival at destination they were not disposed of by return to the shipper or by storage at the expense of the owner or by sale or by destruction under supervision of a competent person.

(c) In that in violation of Section 1643 of said regulations of the Interstate Commerce Commission it permitted unauthorized persons to have access to said explosives while said articles were in its custody.

(d) In that in violation of Section 1682 of said regulations of the Interstate Commerce Commission it did not make every possible effort to expedite the movement of cars containing explosives, and unnecessary delay was permitted to occur at interchange and transfer stations.

(e) In that in violation of Section 1689 of said regulations it did not remove the cars containing explosives from all danger of fire.

THIRD COUNT.

1. Plaintiff re-alleges all of the matters contained in paragraphs 1 to 12 inclusive, of the first count of this complaint.

2. As to the shipments identified as Item No. 6 and Item No. 12, as described in the 5th paragraph of the First Count, the said defendant was in possession of said shipments as a common carrier thereof, and while so in possession of the same carelessly and negligently caused and permitted said shipments to be burned or otherwise destroyed so that the same were wholly lost to the plaintiff, whereby the plaintiff has sustained damage with respect

to said shipment identified as Item No. 6 in the sum of $9,907.08 and with respect to the shipment identified as Item No. 12 in the sum of $9,923.53.

FOURTH COUNT.

1. Plaintiff re-alleges all of the matters set forth in paragraphs 1 to 12 of the First Count.

2. With respect to the shipments identified as Items No. 7, No. 8, No. 9, No. 10 and No. 11 in paragraph 5 of the First Count, said shipments were in the custody, control and possession of said defendant as a warehouseman.

3. While in possession of said shipments as a warehouseman the defendant negligently and carelessly permitted the same to be burned or otherwise destroyed, so that the same were wholly lost to the plaintiff, whereby the plaintiff has sustained damages as to Item No. 7 in the sum of $48,029.10; as to Item No. 8 in the sum of $9,926.56; as to Item No. 9 in the sum of $10,390.49; as to Item No. 10 in the sum of $10,481.71, and as to Item No. 11 in the sum of $10,483.23.

Plaintiff demands as damages on the First Count the sum of $520,447.69.

Plaintiff demands as damages on the Second Count the sum of $520,447.69.

Plaintiff demands as damages on the Third Count the sum of $19,830.61.

Plaintiff demands as damages on the Fourth Count the sum of $89,311.09.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

ANSWER.

Filed September 20, 1918.

New Jersey Supreme Court

REPUBLIC OF FRANCE,
Plaintiff,
vs.
LEHIGH VALLEY RAILROAD COMPANY,
Defendant.
} *Answer.*

LEHIGH VALLEY RAILROAD COMPANY, a corporation of the State of Pennsylvania, having its principal office in New Jersey at 243 Washington Street, Jersey City, says that:

FIRST DEFENSE TO FIRST COUNT.

1. It admits the allegations of paragraph 1.

2. It has no knowledge nor information thereof sufficient to form a belief as to the allegations of paragraph 2.

3. It admits the allegations of paragraph 3.

4. It admits the allegations of paragraph 4, except that it says that it possessed, used, occupied and controlled the said premises solely in connection with its business of a common carrier of freight, and did not use the said premises or any part thereof in connection with its business of a common carrier of passengers.

5. It denies that on the night of July 29, 1916 and the morning of July 30, 1916 the barge or lighter mentioned in paragraph 5 of the complaint, was rightfully and lawfully moored in the waters of New York Bay at or near the said Black Tom Yard; it further says that if the said barge or lighter was so moored on the night of July 29, 1916 and the morning of July 30, 1916, with quantities of such articles on board thereof,

as alleged in said paragraph, the said barge or lighter was unlawfully so moored at said place, for the reason that the said mooring was in violation of the Rules and Regulations relating to the anchorage of vessels in the Port of New York, issued by the Bureau of Navigation of the Department of Commerce and Labor, and approved by the Secretary of War, of the United States which were in effect on said dates and which provided at that time that vessels carrying gunpowder or other explosives might anchor only as follows:

"First. On the shoal ground to the eastward of Rikers Island, East River, from one-fourth to five-eighths of a mile from this island.

"Second. On the New Jersey Flats between a line drawn parallel to and 1500 feet to the south of the Black Tom dredge channel and a line drawn parallel to and 1500 feet north of the Greenville dredged channel, and to the westward of a line from Bedloes Island to Robbins Reef, provided that they do not anchor within 1000 yards of Bedloes Island, or within 500 yards of any pier.

"Third. Vessels (carrying explosives) of too great draft to use the above anchorages may anchor only in Gravesend Bay, on a line drawn from Fort Hamilton to the western tip of Nortons Point, Coney Island, but not within 1000 yards of the shore. All vessels laden with explosives while within the port will display at all times a red flag of at least 16 square feet surface at the masthead. Vessels so laden and without masts will display the flag at least 10 feet above the uppermost deck. All such vessels must be at all times in charge of competent persons and must comply with the navigation laws in regard to lights and fog signals."

It has no knowledge nor information thereof sufficient to form a belief as to the remaining allegations of paragraph 5 and 5 a.

6. It denies the allegations of paragraph 6, except that it says that for a short time prior to July 29, 1916, it used said Black Tom Yard (but only in small part) for the handling and

Answer.

holding (but only to the extent and in the manner hereinafter mentioned) of carload lots of certain ammunitions and explosives, as hereinafter described, and it says that said yard was used as a general freight terminal for the delivery of all kinds of merchandise transported by the defendant as a common carrier of freight, of which merchandise, explosives, explosive projectiles and ammunitions and munitions of war were only a small proportion; it further say that the said yard was not used generally for the transportation and transshipment of explosives, explosive projectiles and ammunitions and munitions of war, but only a small part of said yard was used for that purpose, to wit, the northerly portion of said yard and a certain pier located near thereto known as the North Pier; it further says that said portion of said yard and the said pier were used in part for the purpose of making delivery to the consignees of carload lots of shell, shrapnel, and other ammunitions and munitions of war, and for the transferring of the same by the consignees thereof from cars to barges or lighters, or transshipment to steamers for export; and it further says that there was no handling or holding of the cars containing the same, except such as was lawfully incidental to the transportation and delivery thereof in the course of interstate commerce and commerce with foreign countries; and it further says that all of the materials so held or handled were in the course of interstate or foreign commerce at the time set forth in the complaint; it further says that there was no storage of any shells, shrapnel or other ammunitions and munitions of war, and that there was no transshipment thereof by this defendant.

7. It admits that on the night of July 29th and the early morning of July 30th there were certain explosives at Black Tom Yard, which were in course of transportation in interstate or foreign commerce and were destined to points beyond its line; it denies the remaining allegations of paragraph 7.

8. It denies the allegations of paragraph 8, except that it says that on the night of July 29th and the early morning of

July 30th, there was a small number of cars in said Black Tom Yard containing general merchandise.

9. It admits that on the night of July 29, 1916 and the early morning of July 30, 1916 there were on said premises certain carloads of shells, shrapnel and other ammunitions and munitions of war, including trinitrotoluol, but not including smokeless powder, black powder, picric acid, gun cotton, nitrocellulose or detonating or other fuses.

10. It denies the allegations of paragraph 10, except that it admits that in the early morning of July 30th there were one or more fires and explosions in or near said Black Tom Yard, and that by reason thereof several persons were injured or killed and certain property was damaged or destroyed.

11. It has no knowledge nor information thereof sufficient to form a belief as to whether as a result of said fires or explosions, or any of them, the said barge or lighter mentioned in the complaint, together with all or any of the plaintiff's property on board thereof, or any other property of the plaintiff, was completely destroyed; it says that if the said barge or lighter, or if any of the said property of the plaintiff, was destroyed, in whole or in part, the destruction thereof was not the result of any negligence or misconduct on the part of this defendant.

12. It denies the allegations of paragraph 12.

13. It denies the allegations of paragraph 13.

SECOND DEFENSE TO FIRST COUNT.

1. On July 30, 1916, and for many days prior thereto, the defendant was a common carrier engaged in interstate and foreign commerce, and therein transporting by land ammunitions and munitions of war, including explosives.

2. As such common carrier defendant was compelled by law to receive, carry, convey and transport the said ammunitions and munitions of war, including explosives, in the course of interstate and foreign commerce, provided the same were packed, marked, loaded and handled, and when offered for transporta-

tion were in proper condition to transport in accordance with and pursuant to the Act of Congress of the United States entitled "An Act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation," approved March 4, 1909, and the Act of said Congress entitled "An Act to regulate commerce," as amended June 18, 1910, and the regulations prescribed by the Interstate Commerce Commission by authority of said Acts.

3. The ammunition and munitions of war and explosives that exploded on July 30, 1916, were packed, marked, loaded and handled, and when offered for transportation were and until and at the time of said explosion continued to be, in proper condition to transport in accordance with said Acts of Congress of the United States and the regulations prescribed by the Interstate Commerce Commission by virtue thereof, and were carried, conveyed and transported and held by the defendant in the course of interstate and foreign commerce lawfully and strictly in accordance with said Acts and regulations.

THIRD DEFENSE TO FIRST COUNT.

1. The presence of such explosives as were on July 30, 1916, on the premises of the defendant did not constitute a nuisance.

2. The explosion mentioned in the complaint was due to a fire caused by incendiarism, of which defendant had no knowledge or suspicion.

3. Said fire occured notwithstanding due diligence by the defendant to prevent incendiarism.

FIRST DEFENSE TO SECOND COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 12 inclusive of its First Defense to First Count.

2. It admits the allegations of paragraph 2, except that it prays reference to the original regulations of the Interstate

Commerce Commission for certainty as to the exact provisions thereof; and except that it says that said regulations did not impose upon this defendant the absolute duty of strictly observing the same with respect to the acceptance, custody and care of such explosives, explosive projectiles, ammunition and munitions of war.

3. It denies the allegations of paragraph 3.

SECOND DEFENSE TO SECOND COUNT.

It repeats and makes part hereof the allegations of the Second Defense to First Count.

THIRD DEFENSE TO SECOND COUNT.

It repeats and makes part hereof the allegations of the Third Defense to First Count.

FIRST DEFENSE TO THIRD COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 12 inclusive of its First Defense to First Count.

2. It denies the allegations of paragraph 2.

3. It denies the allegations of paragraph 3.

SECOND DEFENSE TO THIRD COUNT.

It repeats and makes part hereof the allegations of the Second Defense to First Count.

THIRD DEFENSE TO THIRD COUNT.

It repeats and makes part hereof the allegations of the Third Defense to First Count.

FIRST DEFENSE TO FOURTH COUNT.

1. Defendant repeats and makes part hereof the allegations contained in paragraphs 1 to 12 inclusive of its First Defense to First Count.

Answer.

2. It admits the allegations of paragraph 2.

3. It admits that while the shipments described in paragraph 3 were in its possession as a warehouseman the same were burned or otherwise destroyed; it denies that it negligently and carelessly permitted the same to be burned or otherwise destroyed; it has no knowledge nor information thereof sufficient to form a belief as to the remaining allegations of said paragraph.

SECOND DEFENSE TO FOURTH COUNT.

It repeats and makes part hereof the allegations of the Second Defense to First Count.

THIRD DEFENSE TO FOURTH COUNT.

It repeats and makes part hereof the allegations of the Third Defense to First Count.

COLLINS & CORBIN,
Attorneys of Defendant.

REPLY.

Filed.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

REPUBLIC OF FRANCE, *Plaintiff,*	*Action at Law.*
vs.	*Reply.*
LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	

FIRST DEFENSE TO FIRST COUNT.

The plaintiff denies the special defenses set forth in Paragraph Five of the first defense to the first count.

SECOND DEFENSE TO SECOND COUNT.

1. Plaintiff admits Paragraph One.
2. Plaintiff denies Paragraph Two.
3. Plaintiff denies Paragraph Three.

THIRD DEFENSE TO FIRST COUNT.

Plaintiff denies each and every part thereof.

FIRST DEFENSE TO SECOND COUNT.

1. Replying to Paragraph One, plaintiff repeats and makes a part hereof the allegations contained in Paragraphs One and Two of this reply to the first defense to the first count.

2. It denies the special defenses set forth in Paragraph Two.

SECOND DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply contained in the second defense to the second count.

Reply.

THIRD DEFENSE TO SECOND COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in this reply to the third defense to the first count.

FIRST DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations contained in Paragraphs One and Two of this reply to the first defense to the first count.

SECOND DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO THIRD COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the third defense to the first count.

FIRST DEFENSE TO FOURTH COUNT.

1. Plaintiff repeats and makes a part hereof the allegations contained in Paragraphs One and Two of this reply to the first defense to the first count.

2. Replying to Paragraph Three, the plaintiff denies the special defenses therein set forth.

SECOND DEFENSE TO FOURTH COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the second defense to the first count.

THIRD DEFENSE TO FOURTH COUNT.

Plaintiff repeats and makes a part hereof the allegations of this reply to the third defense to the first count.

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff.

POSTEA.

Filed June 25, 1920.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

REPUBLIC OF FRANCE, *Plaintiff,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant.*	*Action at Law.* *Postea.*

This action was tried before William H. Speer, Circuit Court Judge, and a jury on the 7th, 8th, 9th, 10th and 11th days of June, Nineteen Hundred and Twenty.

Items four and six of the complaint were by consent of counsel for the plaintiff and defendant, withdrawn from the complaint and not submitted to the jury.

The issues with respect to the other items were submitted to the jury and the jury returned a verdict in favor of the plaintiff and against the defendant with respect to items seven, eight, nine, ten, eleven and twelve of the complaint in the sum of Ninety-nine Thousand Six Hundred Forty-seven Dollars and Forty-one Cents ($99,647.41) damages, and Twenty-two Thousand Nine Hundred Eighteen Dollars and Eighty-one Cents ($22,918.81) interest; total One Hundred Twenty-two Thousand Five Hundred Sixty-six Dollars and Twenty-two Cents ($122,-566.22).

With respect to items one, two, three and five, the jury returned a verdict in favor of the defendant and against the plaintiff.

WILLIAM H. SPEER,
Circuit Court Judge.

Judgment.

JUDGMENT.

NEW JERSEY SUPREME COURT.

REPUBLIC OF FRANCE,
Plaintiff,

vs.

LEHIGH VALLEY RAILROAD COMPANY,
Defendant.

Plaintiff's Damages $122,566.22.

Whereupon it is adjudged that the plaintiff recover of the defendant with respect to items seven, eight, nine, ten, eleven and twelve of the complaint the sum of one hundred twenty-two thousand, five hundred sixty-six dollars and twenty-two cents damages; and it is further adjudged that the complaint of the plaintiff be dismissed as to items one, two, three and five of said complaint.

Judgment entered June 29, 1920.

WM. S. GUMMERE,
C. J.

Notice of Appeal.

NOTICE AND GROUNDS OF APPEAL.

Filed October 18, 1920.

NEW JERSEY SUPREME COURT.

REPUBLIC OF FRANCE, *Plaintiff and Respondent,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant and Appellant.*	*Notice and Grounds of Appeal.*

To:

CONGLETON, STALLMAN & HOOVER,
Attorneys of Plaintiff-Respondent.

TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals on the grounds hereinafter stated, from so much of the judgment entered in this cause as adjudges that the plaintiff is entitled to judgment in its favor and against the defendant for the following items and amounts, and each of them.

Item No.	Car Initial and Number	Amount.
7	Wab. 67166 C. P. 128766 P. R. R. 517708	$49,043.21
8	A. T. & S. F. 49825	9,828.00
9	C. I. & L. 2888	10,289.60
10	St. L. J. M. & S. 19657	10,379.80
11	C. W. R. R. & W. 10729	10,381.20
12	N. Y. C. 90340	9,825.60
		$99,647.41

Thus making the sum of Ninety Nine Thousand, Six Hundred Forty Seven Dollars and Forty One Cents ($99,647.41) damages, together with the sum of Twenty Two Thousand Nine Hundred Eighteen Dollars and Eighty One Cents ($22,918,81) as interest—a total judgment for the sum of One Hundred Twenty Two Thousand, Five Hundred Sixty Six Dollars and Twenty Two Cents ($122,566.22).

The appellant states the following grounds of appeal:

I.

Defendant's motion for a non-suit as to each of the items and cars above referred to (except the item described in the complaint as item No. 12, being N. Y. C. car 90340), should have been granted for one or more of the following reasons:

1. Plaintiff has failed to prove facts sufficient to state a cause of action.

2. Congress having taken jurisdiction of the subject matter, and having enacted statutes thereon to provide for the safe transportation of explosives in interstate commerce on land, and the Interstate Commerce Commission, in accordance with the directions of said statutes, having made rules and regulations governing the subject matter, and the explosives in question in this suit having been in the course of transportation on land in interstate commerce, the plaintiff can only succeed if it has proven a violation of said statutes or the rules and regulations of the Interstate Commerce Commission, above referred to, and this it has failed to do.

3. Assuming that there may have been some other duty to which the defendant was subject, which is not covered by the statutes of the United States and the rules and regulations of the Interstate Commerce Commission above referred to, there is no proof of any violation of any such other duty, if any existed.

4. Plaintiff has failed to prove any negligence on the part of the defendant in respect of the starting of the

fire, and the facts do not permit the Court to allow the case to go to the jury upon the doctrine of *res ipsa loquitur.*

5. Since there is no proof from which any inference could be drawn of negligence on the part of the defendant in respect of the starting of the fire, and since the facts do not permit the application of *res ipsa loquitur,* if it is sought to hold the defendant responsible because of the conduct of its employees after the fire started, then the plaintiff may not succeed, on this theory, because the evidence shows that the fire when discovered was in a car, and that such car was either a car containing ammunition or explosives, or was in the immediate vicinity of cars containing ammunition or explosives, and the only inference which the jury could be permitted to draw is that any one going near such fire would be in great danger and therefore the defendant could not be held responsible even if its employees under these circumstances of emergency made any error of judgment in their conduct.

6. There is no proof that the omission of any duty set forth in the complaint or complaints, with which the defendant was legally chargeable, was the proximate cause of the injury to the plaintiff.

7. There is no proof that the performance of any duty set forth in the complaint, or complaints, with which the defendant was legally chargeable, would have prevented the injury of which the plaintiff complains.

8. The defendant may not be held legally liable upon the assumption that the failure of its employees to procure water and to put out the fire was the proximate cause of the injury to the plaintiff, because the proofs show that the Jersey City Fire Department was promptly notified and came to the scene of the fire without means for pumping water, and any failure in this respect was the failure of the Jersey City Fire Department, and of its duty as a public agency, and is not attributable to the defendant.

9. Since there is no proof that the fire was started by human agency directly applied at the origin of the fire, there is no proper legal inference that the presence of any number of watchmen would have prevented the outbreak of the fire, and there is no proper ground to attribute negligence to the defendant in respect to the number of watchmen furnished by it, and if the plaintiff seeks to hold the defendant responsible with respect to the starting of the fire as the proximate cause of the injuries complained of, it may not do so legally under the proofs.

10. Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients of the materials composing the shells was capable of spontaneous combustion, the jury may not legally infer that the fire was started by human agency applied at the place of the commencement of the fire.

11. Plaintiff may not have a verdict upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant with respect to the starting of the fire, because the evidence is consistent with the non-existence of negligence in that respect.

12. Plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant in respect of the spreading or non-extinguishment of the fire, because the evidence in the case is consistent with the non-existence of any negligence in that respect.

13. By suffering their explosives to come and remain at the terminal in the manner described in the proofs, the plaintiff voluntarily took the risk of their destruction except by the willful negligence of the defendant, and no such negligence is pleaded or shown by the evidence.

14. By suffering the high explosives to come and remain at the terminal in the manner described by the proofs, the plaintiff contributed to the injury complained of.

II.

Motion to Direct Verdict.

Defendant's motion for a direction of verdict in its favor should have been granted for one or more of the reasons set forth in the motion for non-suit as hereinabove recited.

III.

Requests to Charge.

The Trial Judge refused to charge one or more of the following requests submitted in behalf of the defendant (the numbers in brackets correspond to the numbers of requests as submitted):

15. (1)

The law imposed upon the defendant the duty of transporting the explosives and inflammables in the cars as testified in this case, and at the time of the explosion they were still in the course of such transportation in interstate or foreign commerce by land.

16. (2)

The sole duty of the defendant to the plaintiffs in regard to the explosives and inflammables received by the defendant for interstate transportation by land, and still in the course thereof, was to comply with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the same; and the plaintiff is not entitled to recover unless the jury shall find that the defendant failed to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiff.

17. (4) *Sec. 1428.*

There is no proof of any violation of Section 1428, reading as follows:

"1428. Before any shipment of dangerous explosives as named in paragraph 1661 destined to a point beyond the lines of the initial carrier is accepted from a shipper, the initial carrier must ascertain that the shipment can go forward via the route designated."

18. (5) *Sec. 1428.*

There is no proof that the violation, if any, of said section 1428, above quoted, was the proximate cause of the fire or explosion by which the property of the plaintiffs was damaged.

19. (6) *Sec. 1433.*

There is no proof of any violation of Section 1433, reading as follows:

"1433. Carriers must forward shipments of explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carrier's property within 48 hours after notice of arrival at destination. Sundays and holidays not included."

20. (7) *Sec. 1433.*

There is no proof that the violation, if any, of said Section 1433, above quoted, was the proximate cause of the fire or explosion by which the property of the plaintiffs was damaged.

21. (8) *Sec. 1643 (a).*

Since the proofs in the case are uncontradicted that the carloads of explosives in defendant's yard were from points outside of the State of New Jersey and were in carload lots, and that it was the practice of the consignee or owner thereof to unload the said explosives from the cars, therefore, paragraph 1643 (a) of the Interstate Commerce regulations providing that "careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire", applies to the consignee or owner in unloading the explosives from the cars and does not apply to the defendant herein, and any alleged negligence in this respect is not chargeable to the defendant.

22. (9) *Sec. 1643 (a).*

The provisions of paragraph 1643 (a) of the Interstate Commerce regulations that "suitable provision must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage", do not apply to the defendant under the evidence in this case, and, therefore, no verdict against the defendant can be based upon any alleged violation of such provisions.

23. (10) *Sec. 1643 (a).*

If the provisions of Section 1643 (a) recited in Requests Nos. 8 and 9, are held to apply to the defendant under the evidence in this case, there is no proof of any violation of such provisions or that any such alleged violation was the proximate cause of damage to the plaintiffs.

24. (11) *Sec. 1643 (b).*

The language of paragraph 1643 (b) of the Interstate Commerce regulations, prescribing that "unauthorized persons must not have access to explosives * * * at any time while such articles are in the custody of the carrier", means that before the cars are sealed and after the cars are unsealed, the carrier must not permit unauthorized persons to have access to the explosives in the cars. It does not refer to cars in which explosives are contained while such cars are under seal.

25. (12) *Sec. 1643 (b).*

There is no evidence in this case that the defendant permitted any unauthorized persons to have access to the explosives while such articles were in its custody.

26. (13) *Sec. 1643 (b).*

If the jury finds that unauthorized persons had access to the explosives on the night of July 29 and 30, 1916, while such articles were the custody of the defendant, there is no evidence that the access of any such persons was the approximate cause of the injury complained of.

27. (14) *Sec. 1682.*

There is no proof of any violation of Section 1682, reading as follows:

"1682. Every possible effort must be made to expedite the movement of cars containing explosives and no unnecessary delay must occur at initial, interchange or transfer stations."

28. (15) *Sec. 1682.*

There is no proof that the violation, if any of said Section 1682, above quoted, was the proximate cause of the fire or explosion by which the property of the plaintiffs was damaged.

29. (16) *Sec. 1689.*

The language in paragraph 1689 of the Interstate Commerce regulations referring to the handling of cars containing explosives and providing "they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire" means that in the operation of the railroad company's yard or its sidings, the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them.

30. (17) *Sec. 1689.*

There is no evidence from which the jury can legally infer that under paragraph 1689 of the Interstate Commerce regulations, the cars containing explosives in the Black Tom Yard at the time of the fire had not been removed from whatever danger of fire might reasonably have been expected by the defendant.

31. (18) *Sec. 1666.*

The "Explosive" placard required by Section 1666 of the Interstate Commerce regulations to be attached to certain cars, as specified in the regulations, is not itself a regulation of the Interstate Commerce Commission.

32. (19) *Sec. 1666.*

The proper construction to be placed upon the placard required to be put upon cars containing explosives by paragraph 1666 of the Interstate Commerce regulations, is that the words, "Keep Fire Away" mean do not bring fire near. They do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary action of a person in regard to the bring-

ing of fire to or near the cars. There is no evidence that the defendant disregarded this injunction.

33. (20) *Sec. 1666.*

In the condensed rules on the so-called "Explosive" placard, Section 7, which reads: "Avoid placing it near a possible source of fire", means not to put the car near a place where fire might reasonably be expected to be. There is no evidence that this injunction was disregarded by the defendant.

34. (21) *Sec. 1667.*

The "Inflammable" placard required by Section 1667 of the Interstate Commerce regulations to be attached to certain cars, as specified in the regulations is not itself a regulation of the Interstate Commerce regulations.

35. (22) *Sec. 1667.*

The proper construction to be placed upon the placard required to be put upon cars containing inflammables by paragraph 1667, is that the words "Keep Lights and Fires Away", mean do not bring lights or fires near. They do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary action of a person in regard to the bringing of fire or lights to or near the cars. There is no evidence that the defendant disregarded the injunction.

36. (23) *Sec. 1667.*

The proper construction to be placed upon the placard required to be attached to cars containing inflammables is that the words, "This car must not be next to a car containing Explosives" do not apply to cars containing inflammables or explosives while the same are standing in a railroad yard, but only while they are actually being moved in the course of transportation.

37. (24) *Sec. 1667.*

There is no evidence in this case that the defendant violated any of the provisions of paragraph 1667 of the Interstate Commerce regulations.

38. (25) *Sec. 1667.*

Even if the jury should find that there was a violation on the part of the defendant of any of the provisions of Section 1667 of the Interstate Commerce regulations, there is no evidence that any such violation was the proximate cause of damage to the plaintiff.

39. (26)

There is no evidence in this case but that the explosives in defendant's custody were in all respects carried, conveyed, transported, handled and held by the defendant in compliance with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the safe transportation of explosives in interstate commerce by land.

40. (27)

There is no proof that the origin of the fire was the result of any failure of duty imposed upon the defendant by the regulations of the Interstate Commerce Commission relative to the safe transportation of explosives in interstate commerce by land, and, therefore, the jury cannot infer that the defendant was guilty of any violation of said regulations up to and including the time of the origin of the fire.

41. (28)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the neg-

ligence and misconduct of the defendant in the following particular, to wit:

(a) In collecting freight cars containing explosives, explosive projectiles, ammunition and munitions of war subject to detonation by fire or concussion and permitting them to accumulate in the said Black Tom Yards to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with greater damage to human life and damage to surrounding property;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

42. (29)

So far as relates to the plaintiffs' claim that the damage to them and to each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(b) In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals in said Black Tom Yards and in the vicinity thereof;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

43. (30)

So far as relates to the plaintiffs' claim that the damage to them and to each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(c-1) In failing to provide an adequate system and sufficient competent men and proper facilities for the

purpose of patrolling, policing and guarding said yard and other premises in the vicinity thereof under the control of the defendant, and the cars and their contents stored therein and for the purpose of discovering and extinguishing fires;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

44. (31)

As far as relates to the plaintiffs' claim that the damage to them and to each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(c-2) In failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

45. (32)

So far as relates to the plaintiffs' claim that the damages to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(d) In neglecting to take care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

46. (33)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(e) In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosion occurred;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

47. (34)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(f-1) In failing to provide sufficient men, adequate fire drills and proper facilities for fire protections and prevention on and in the vicinity of the premises where the fire occurred;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

48. (35)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particulars, to wit:

(f-2) In failing to provide competent men, adequate fire drills and proper facilities for fire protection and

prevention on and in the vicinity of the premises where the fire occurred;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

49. (36)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(g) In failing properly to instruct its employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

50. (37)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(h-1) In failing to provide adequate facilities and to take proper measures and precautions *before* the fire started for removing or insulating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

51. (38)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(h-2) In failing to provide adequate facilities and to take proper measures and precautions after the fire started for removing or insulating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

52. (39)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(i) In failing to store, handle and dispose of said explosives, explosive projectiles, and ammunition and munitions and the cars containing them so as to enable the defendant to prevent or control the communication of fire or concussion from one part of the mass of explosives to another;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

53. (40)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the neg-

ligence and misconduct of the defendant in the following particular, to wit:

(j) In failing to install, maintain and keep in repair adequate means for communicating alarms and summoning assistance in case of fire;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to plaintiffs or any or either of them.

54. (41)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(k) In failing to give the alarm of fire and summon assistance promptly;

There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

55. (42)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(l) In failing to prevent the said fire;

There was no proof of any negligence or misconduct, in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

56. (43)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(m-1) In failing promptly to discover the said fire; There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

57. (44)

So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(m-2) In failing to take proper measures to extinguish the fire and to prevent damage therefrom; There was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

58. (45)

The mere fact that there was a considerable number of freight cars in defendant's yard, containing explosives, explosive projectiles, ammunition, munitions of war and inflammable materials, as shown by the evidence in the case, is not sufficient to charge the defendant with negligence.

59. (46)

So far as relates to the plaintiffs' claim of negligence against the defendant because of its alleged failure to provide competent men for the purpose of patrolling, policing and guarding the Black Tom Terminal, it is the

law that the duty of the defendant, so far as relates to the selection of men for such purposes, was to take reasonable care to employ competent men, and there is no proof that the defendant failed to use the degree of care required of it by law in the selection of its said men.

60. (48)

Since there is no proof that the fire on the defendant's premises was started by human agency directly applied at the point of the origin of the fire, the jury cannot conclude that the presence of more Lehigh Valley watchmen in the yard than in fact were there would have prevented the starting of the fire, and therefore the jury cannot find negligence on the part of the defendant in that respect.

61. (49)

So far as relates to the fire protection in that part of the Black Tom Yard which was located to the east of Store R and the 100,000-gallon gravity tank, there is no evidence that the defendant did not observe the usual custom of railroads as it existed on July 29th and 30th, 1916; and, hence, the jury cannot find negligence against the defendant merely by reason of the fact that no fire hydrants were located in that part of the yard on the occasion of the fire and explosion.

62. (50)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish fire hydrants in addition to those furnished by the City of Jersey City, the said terminal being within the limits of said municipality.

63. (51)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish its own fire protection in addition to that furnished by the City of Jersey City, the said terminal being within the the limits of that municipality.

64. (52)

There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish men and equipment to extinguish fires, in addition to the men and equipment of the municipality of Jersey City, within the limits of which the said Black Tom Terminal is.

65. (53)

The proofs show that the witness Burns was the first person on the premises to discover the fire, and that he was in a position promptly to discover the fire and did so, and, therefore, the jury may not infer that if there had been more Lehigh Valley watchmen present the fire would have been discovered any earlier than it was.

66. (54)

If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was in a car of ammunition, then a condition of emergency existed by reason of which the defendant cannot be held responsible for errors of judgment on the part of its employees, or any of them, in respect of what they did or failed to do concerning the putting out of the fire.

67. (55)

If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was in a car of ammunition, then the jury must

consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of emergency then it cannot find the defendant legally responsible for the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire.

68. (56)

Since there is no testimony that the fire was started by human agency at the place where it commenced, and, there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury cannot find a verdict against the defendant on the ground that the fire was started by human agency applied at the place of the commencement of the fire as the result of defendant's negligence.

69. (58)

If the jury finds that the fire which was discovered upon the premises of the defendant on July 30th, 1916, was started by spontaneous combustion and that the starting of such fire was the sole proximate cause of the injury to the plaintiffs, then the defendant cannot be held legally responsible for any damage suffered by the plaintiff.

70. (59)

If the jury finds that the spreading of the fire caused the injury to the plaintiff and that such spreading could have been prevented in time to have avoided damage to the plaintiff by the throwing of water upon the fire, and that the proximate cause of the spreading was the failure to throw water upon the fire, then the jury must consider that the Jersey City Fire Department, came without their fire engines and they testified that for the lack of such fire engines they were unable to throw water upon the fire,

and the jury may therefore consider whether that was not the sole proximate cause of the spreading of the fire which caused the damage to the plaintiff, and if it so concludes, should find for the defendant.

71. (60)

The undisputed evidence is that Johnson Barge No. 17, with 1,005 cases of TNT and 417 cases of detonators (all obtained elsewhere) was moored at the North Pier at Black Tom on July 30th, 1916, and there is no evidence that the defendant had any knowledge whatever of the materials thus loaded on said Johnson 17 at that time; and the jury must find under the law as contained in the Anchorage Regulations of the United States Government, that a boat thus located should not have been moored at Black Tom Pier, but should have proceeded to the anchorage grounds as designated in the said United States Regulations, and that the act of mooring her thus loaded at the North Pier at Black Tom was an unlawful act; and therefore defendant cannot be held responsible for any damage occasioned by reason of the explosion thereon.

72. (61)

If the jury finds that the Johnson 17 containing 1,005 cases of TNT and 417 cases of detonators (all obtained elsewhere) was unlawfully moored at Black Tom Pier, and that the TNT thereon subsequently exploded on the night of July 30th, 1916, and caused or contributed to the damage complained of by the plaintiff, the jury cannot legally find the defendant responsible for such damage.

73. (62)

There is no evidence from which the jury may determine how much of the damage to the plaintiff was caused by fire and how much was caused by explosion; there is

evidence that some damage to plaintiff was caused by explosion; and as the defendant cannot be held responsible for the explosion on the Johnson 17 and any damage caused thereby, the jury are instructed that if they find a verdict for the plaintiff, the amount of such verdict must be limited to six cents.

74. (64)

The jury is not at liberty to allow the plaintiff any interest in respect of any sum found to be due it.

75. (65)

The jury is not at liberty to allow the plaintiffs, or any or either of them, any interest in respect of any sum found to be due them, or any or either of them, unless the jury reach the conclusion that the refusal of the defendant to pay the demands of the plaintiffs, was unreasonable, and that the defendant was not justified in attempting to protect itself against said demands.

76. (67)

By Section 1433 of the Interstate Commerce Regulations it is provided with respect to shipments of explosives that "consignee must remove such shipments from the carrier's property within 48 hours after notice of arrival, at destination (Sundays and holidays not included)." In respect of said seven cars described in request No. 66 it appeared that the consignee, or its agent or representative, did not remove such shipments from the carrier's property within forty-eight hours after notice of arrival at destination (Sundays and holidays not included), and plaintiff, the Republic of France, is not entitled to a verdict for the loss of any of the goods in said seven cars because under those circumstances the said plaintiff voluntarily assumed the risk of damage to the goods in said seven cars.

77. (68)

With respect to the contents of said seven cars described in Request No. 66, the defendant cannot be held liable even if the jury finds that there was negligence, for the reason that the loss to the plaintiff, the Republic of France, of the contents of said seven cars was due to its contributory negligence in not removing the same as required by the provisions of the Interstate Commerce Regulations.

IV.

Exceptions to Charge.

The Trial Judge erroneously charged the jury in one or more of the following respects:

78. "And then another matter to which attention needs be directed is this: There are claims in each of these cases for interest upon the alleged value of the destroyed property. Now interest is not allowed as a matter of right in all cases; interest is allowed by way of damages, and it rests with the jury to determine whether the interest in any given case shall be allowed; and I have been requested to charge, and do charge as requested by the defendant in this case, that the jury is not at liberty to allow the plaintiffs, or any or either of them, any interest in respect of any sum found to be due them, or any or either of them, unless the jury reach the conclusion that the refusal of the defendant to pay the demands of the plaintiffs was unreasonable, and that the defendant was not justified in attempting to protect itself against such demands.

So, if you conclude that the duty of the defendant in this case, or in these cases, was to pay, and they did not pay, you would be justified in allowing interest upon the claims made by the plaintiffs in the suit, and if the value

is found by you to be the sums I mentioned and that you took down, it would be interest on those sums and would amount to the sums that I have given you and which you now have. If the sums found by you are lesser sums, it would be interest upon those sums.

79. (a) "Then the plaintiff goes on to charge that said fire and explosion, or explosions, and the damage to the plaintiffs were not caused or contributed to by any negligence on the part of the plaintiff, but were caused solely by the negligence and misconduct of the defendant in the following particulars, among others:

(b) "First, in collecting freight cars containing explosives, explosive projectiles, ammunitions and munitions of war, subject to detonation by fire or concussion, and permitting them to accumulate in the said Black Tom Yards without adequate protection to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with greater danger to human life and damage to surrounding property."

* * * * * * * * *

(c) "Those are the charges of negligence which have been made by the plaintiffs in these three respective suits, and the plaintiffs are obliged to make out by the greater weight of the evidence—and the burden rests upon them so to make it out—that one or more of these causes of the fire existed and was the proximate cause of the destruction of the plaintiffs' property, before the plaintiffs would have a right to a verdict in the case.

And I charge you that that does not mean they are obliged to make out all those specifications of negligence which I have read to you, for if they make out any one of those specifications of negligence or make out more of them, by the greater weight of the evidence, and show by the greater weight of the evidence that one specification or two or more specifications of neg-

ligence was the proximate cause of the loss, and that that existed on the part of the defendant company, that would give them a right of recovery, unless a defense were made out by the defendant by the greater weight of the evidence—concerning which phase of the case I will speak later."

80. After charging the jury in the language set forth in sub-head (a) Ground of Appeal No. 79, the Trial Judge then charged as follows:

"Two: In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals, without adequate protection, in such Black Tom Yards and in the vicinity thereof."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff, if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

81. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

"Three: In failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patrolling, policing and guarding said yards and said premises in the vicinity thereof under the control of the defendant, and the cars and their contents stored therein, and for the purpose of discovering and extinguishing fires and in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein.

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff, if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

82. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

> "Four: In neglecting to take due care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

83. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

> "Five: In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosion occurred."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

84. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

> "Sixth: In failing to provide sufficient and competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff

had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

85. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

> "Seventh: In failing properly to instruct its employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

86. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

> "Eighth: In failing to provide adequate facilities and to take proper measures and precautions both before and after the fire started for removing or isolating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

87. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

> "Ninth: In failing to store, handle and dispose of said explosives, explosive projectiles and ammunition and mu-

nitions and cars containing them so as to enable the defendant to prevent or control the communication of fire or concussion from one part of the mass of explosives to another."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

88. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

"Tenth: In failing to install, maintain and keep in repair adequate means for communicating alarms and summon assistance in case of fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

89. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

"Eleventh: In failing to give the alarm of fire and summon assistance promptly."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

90. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

"Twelve: In failing to prevent the said fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

91. After charging the jury in the language set forth in sub-head (a) of Ground of Appeal No. 79, the Trial Judge then charged as follows:

"Thirteen: In failing promptly to discover the said fire and to take proper measures to extinguish it and to prevent damage therefrom."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of Ground of Appeal 79.

92. "Then the plaintiff goes on to charge that said fire and explosion, or explosions, and the damage to plaintiffs, were not caused or contributed to by any negligence on the part of the plaintiff, but were caused solely by the negligence and misconduct of the defendant in the following particulars, among others:

First, in collecting freight cars containing explosives, explosive projectiles, ammunitions and munitions of war, subject to detonation by fire or concussion, and permitting them to accumulate in the said Black Tom Yards without adequate protection to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with greater danger to human life and damage to surrounding property.

Two: In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals, without adequate protection, in such Black Tom Yards and in the vicinity thereof.

Three: In failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patrolling, policing and guarding said yards and said premises in the vicinity thereof under the control of the defendant, and the cars and their contents stored therein, and for the purpose of discovering and extinguishing fire, and in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein.

Fourth: In neglecting to take due care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon.

Five: In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosion occurred.

Sixth: In failing to provide sufficient and competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred.

Seventh: In failing properly to instruct its employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire.

Eighth: In failing to provide adequate facilities and to take proper measures and precautions both before and after the fire started for removing or isolating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered.

Ninth: In failing to store, handle and dispose of said explosives, explosive projectiles and ammunition and munitions and cars containing them so as to enable the defendant to prevent or control the communication of fire

or concussion from one part of the mass of explosives to another.

Tenth: In failing to install, maintain and keep in repair adequate means for communicating alarms and summon assistance in case of fire.

Eleventh: In failing to give the alarm of fire and summon assistance promptly.

Twelfth: In failing to prevent said fire.

Thirteenth: In failing promptly to discover the said fire and to take proper measures to extinguish it and to prevent damage therefrom.

Those are the charges of negligence which have been made by the plaintiffs in these three respective suits, and the plaintiffs are obliged to make out by the greater weight of the evidence—and the burden rests upon them so to make it out—that one or more of these causes of the fire existed and was the proximate cause of the destruction of the plaintiff's property, before the plaintiff would have a right to a verdict in the case.

And I charge you that that does not mean they are obliged to make out all those specifications of negligence which I have read to you, for if they make out any one of those specifications of negligence or make out more of them, by the greater weight of the evidence, and show by the greater weight of the evidence that one specification or two or more specifications of negligence was the proximate cause of the loss, and that that existed on the part of the defendant company, that would give them a right of recovery, unless a defense were made out by the defendant by the greater weight of the evidence, concerning which phase of the case I will speak later.

93. "Now, counsel in summing up have directed your attention to the fact that the Interstate Commerce Commission of the United States had adopted, under appropriate legal authority for that purpose, certain regulations

for the transportation and handling and so on of munitions—explosives—inflammable things—and the United States Government under the Constitution of the United States which provides that the control of interstate commerce shall be in the Federal Government if it acts and provides regulations, either by the act of Congress itself, or by the act of some body, in other words, such as the Interstate Commerce Commission, authorized by act of Congress to provide such regulations,—I say, if those regulations are provided, those regulations, within the domain which they cover, are exclusive, and if the carrier complies in that domain with those regulations, the carrier has done all that is required to do within that domain."

94. "Now, the law says that the burden rests upon the plaintiff to make out by the greater weight of the evidence that the negligence which he has charged in his written complaint against the defendant existed and was the proximate cause of the loss of which the plaintiffs complain and for which in these suits they seek to have a recovery in damages. That does not mean that they are obliged to make out all of those specifications of negligence which I have read to you, but if they make out any of those specifications of negligence, or of two or more of them, by the greater weight of the evidence and show by the greater weight of the evidence that that one specification, or two or more specifications of negligence, were the proximate cause of the loss, and that that existed on the part of the defendant-company, that would give them a right to have a recovery and to have you assess their damages at such sum as they have proven by the greater weight of the evidence their loss amounted to."

95. "Let me read to you some pertinent portion of those regulations, because they have a distinct bearing upon many phases of this case. Section 1401 provides that as the use of explosives is essential to various business ac-

tivities throughout the country, it is the duty of interstate railroad carriers to accept and transport such explosives under these regulations; when local conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions as provided by paragraph 1429 herein may be imposed.

Now, what are these regulations that may be imposed? section 1429 provides that all carriers must report to the chief inspector of the Bureau of Explosives for compilation and publication full information as to restrictions which may be imposed as provided in 1401-a against the acceptance, delivery or transportation of explosives over any portion of their lines. So that you see the carrier is not obliged to accept everything that is offered to it and transport it willy-nilly, but the carrier may avail himself of section 1401, which provides that when local conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions may be imposed."

96. "Now section 1643 of these regulations provides that careful men must be chosen to handle explosives; the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. That sentence which I have just read has no application to the cases which we are trying, because that section has to do with the handling of explosives. The rest of the section, however, proceeds as follows:

"Suitable provision must be made, outside of the station, when practicable, for the safe storage of explosives and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within forty-eight hours after notice of arrival at destination, it must be disposed of by a return to the shipper or by storage at the expense of the owner, or by sale, or, when necessary to safety, by destruction under supervision of a competent person. Unauthorized persons must not have access to explosives or other dangerous articles

at any time while such articles are in the custody of the carrier.

97. "Section 1666 provides, under the title, Explosive Placard—a certified car for the dangerous explosives specified in paragraph 1661 must be protected by attaching to each outside end and side door, the lower edge not less than four and one half feet above the car floor, a standard placard 12 by 14 inches, on which appears in conspicuous red and black printing on strong tagboard, the following notice:

"Explosives"—underneath that, to be printed in red—"Handle Carefully" "Keep Fire Away," underneath that, it says, to be printed in red. And then follows this wording: Condensed Rules for handling this car:

1. This car must not be placed in a passenger train, or in a mixed train, if avoidable.

2. Cars containing explosives must be near center of train and may be together if desired; must be at least fifteen cars from engine and ten cars from caboose, when length of train will permit.

3. This car must not be placed next to cars bearing the inflammable or the acid placard, or cars containing lighted heaters. Whenever it is possible to avoid so doing, it must not be placed next to tank or flat cars or next to carloads of lumber, poles, iron, or other articles liable to break through end of car from rough handling.

4. The air and hand brakes on this car must be in service.

5. In shifting, have a car between this car and engine whenever possible, and do not cut this car off while in motion.

6. Avoid all shocks to this car and couple carefully.

7. Avoid placing it near a possible source of fire.

8. Engines on parallel track must not be allowed to stand opposite or near this car when it can be avoided.

9. This placard must be removed from car when explosives are unloaded."

98. "1667 under title, 'Inflammable Placard,' provides: A placard of diamond shape, printed on strong tagboard, measuring 10¾ inches on each side, and bearing in red and black letters the inscription prescribed by paragraph 1913, must be placed on each outside end and side door of a car containing any quantity of smokeless powder for cannon or smokeless powder for small arms, or ammunition for cannon with empty projectiles, or ammunition for cannon with sand loaded projectiles, or ammunition for cannon with solid projectiles, or ammunition for cannon without projectiles or fireworks."

99. "Section 1681 provides that under no circumstances must a car known to require the explosive placard be taken from a station, including transfer stations or interchange points, a siding or yard, unless it is properly placarded as per paragraphs 1665-1666, nor unless the car is in proper condition. The carrier must see that its representative in charge of a freight train makes a thorough check of cars bearing inflammable, acid and explosive placards, with the billing to see that all placards required are attached, and those not required are removed."

100. "Section 1682 provides that every possible effort must be made to expedite the moving of cars containing explosives; no unnecessary delay must occur at initial, interchange or transfer stations."

101. "Section 1684 provides that such cars must be frequently inspected to see that the placards and car certificates are intact. Whenever any of these become detached or, lost in transit, they must be replaced on arrival at the next division terminal yard, if in through freight train, or at first station stop if in local freight train."

102. "And section 1689 provides: They must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. They must not be placed on tracks under bridges, and, when avoidable, engines on parallel tracks must not be allowed to stand opposite or near them."

103. "The inflammable placard mentioned in section 1913 is a placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars, containing an inflammable liquid, and on strong tagboard for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars or tank cars, measuring 10¾ inches on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end and to each side door of a car containing one or more packages protected by the red or the yellow diamond label: Blank railroad company. "INFLAMMABLE (printed in red). Keep lights and fires away. Handle carefully. Blank station, blank nineteen. 1. This car must not be next to a car containing explosives. 2. Do not enter with exposed flame, nor with lighted lantern, until car has been ventilated and vapors allowed to escape. 3. When lading requiring this placard is unloaded from box or flat cars, agent, yardmasters and conductors must remove the placards. Tank cars must retain placards until cleaned (par. 1903)."

104. "The Court says these regulations were formulated to govern the packers and shippers of high explosives, and to govern the transportation companies and their servants in the handling and transportation of such dangerous combustibles, and it is to be fairly gathered, from the very nature of the regulations, that they were not intended to absolve transportation companies from care

commensurate with the risk of danger which might arise from concentrating a large quantity of highly explosive matter in close proximity in densely populated cities, and at a terminal exposed to and unprotected against intruders and incendiaries, and without proper facilities to promptly meet the outbreak of a fire or any other danger reasonably to be apprehended."

"In other words, what that statute means is that in the handling of explosives, while it is true that the Interstate Commerce regulations are exclusive within the domain which they cover, where those directions do not reach, care commensurate with the risk must be exercised by the transportation company in the handling and transportation of these munitions and, therefore, it is for you to determine in this case whether or not it has been established by the greater weight of the evidence that in any one or more of the particulars of negligence specified in the written complaints of these several plaintiffs in these suits, the defendant has been shown to have been negligent in that it did not exercise care commensurate with the risk of danger involved in the handling or transportation of these commodities. If that has been made out by the greater weight of the evidence and it is shown also by the greater weight of the evidence that that negligence on their part was the proximate cause of these injuries to these plaintiffs, the plaintiffs have a right of recovery and to have you assess their damages unless it also appears by the greater weight of the evidence, and the burden rests upon the defendant so to make it appear, that either the plaintiffs assumed the risk of injury or that there was contributory negligence on the part of the plaintiffs or their representatives in these actions."

105. "And while we are upon this subject, some point was made that the Johnson 17 if it exploded afterwards and did damage was such an interruption of the original negligence, if there were original negligence on the part

of the defendant, that you could not say how much damage was due to the Johnson 17 and how much to the act of the defendant; but you ascertain, gentlemen, whether the original negligence, if there were original negligence, persisted throughout the whole situation, and was responsible as an efficient cause for setting in operation the other result. If it were, the fact that the Johnson 17 was in the line of explosion and took fire and exploded and did damage would not defeat the right of the plaintiffs to recover against the defendant. One of the great cases in the common law of this country has perfectly settled the doctrine, which I illustrated by the facts of that case itself. If some one throws a lighted squib into a market place and some one sees it fall at his feet, sees that it is dangerous, and picks it up and hurls it from himself for safety, and it falls near some one else, and the other person picks it up and hurls it from himself to protect himself, and it at last explodes and injures somebody way off, who is to blame? the first man, because he set it in motion, and he might reasonably have anticipated that anybody who saw that thing coming toward him with its freight of danger would realize that the thing to do was to get it away from him, and therefore the man who first started it in motion would be responsible for all the natural and proximate consequences that flowed from the original act. And so you ask yourselves, is there unbroken continuity of connection between the original negligent act, if there were original negligent acts, or did some culpable intervening agency come in and destroy the continuity? If it did, why, of course, the end of the liability of the defendant would be the entry of the intervening culpable agency. If it did not, the end of the responsibility of the defendant would be the end of the destruction wrought by the chain of consequences that followed the original wrongful act, if there were one."

106. "I charge you that the law imposed upon the defendant the duty of transporting explosives and inflam-

mables in the cars as testified in the case, and at the time of the explosion they were still in the course of such transportation in interstate or foreign commerce.

That, of course, is to be taken subject to the matter which I read to you from section 1401a where it says that when local conditions make the acceptance, transportation or delivery unusually hazardous local restrictions as provided by paragraph 1429 herein may be imposed.''

107. ''I charge you that if the jury finds that the defendant was not negligent in respect to the starting of the fire, and that the said fire was in a car of ammunition, then the jury must consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of emergency, it cannot find the defendant legally responsible for the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire.''

''I charge you with the respect to that, however, that the doctrine of emergency strictly so called, has absolutely no place in this case, and that statement of the rule which I have read to you, while it directs your attention to a subject matter, is without any legal foundation whatever. What counsel meant, I think, to request me to charge, was this, that if the defendant's agents found themselves without negligence on the part of the defendant or its agents in a situation which was so imminent and urgent and dangerous that no man of ordinary firmness and courage would have taken upon himself to endeavor to interfere for the extinguishment of the fire, then they were not negligent if they did not endeavor to interfere for the extinguishment of the fire; but you will observe that in this case you must consider all of the circumstances and ascertain what was the size of the fire when it was first observed. How long was it, if any time at all, after the first discovery, before it appeared to be

dangerous? And if time intervenes between discovery and the appearance of danger such as would daunt a reasonably firm and cautious man, and a reasonably couragous man, and afford time for the exercise of time and thought and judgment on his part, then such a man was bound to exercise such thought and judgment as a reasonably prudent and cautious man would have exercised under the circumstances, and bound to take such action as a reasonably prudent and cautious man would have taken under the circumstances, if any. That is what the doctrine in this case is as I understand it, and I charge you that that is the law on the subject."

108. "If after the fire had been started, even if it were started by spontaneous combustion, negligence intervened on the part of the defendant, the defendant was responsible for that negligence, whether it was responsible for the starting of the fire or not."

109. "I charge you that under the terms of the bill of lading under which three carloads of wet nitrocellulose, item Number 7, and four carloads of benzol, items Nos. 8, 9, 10 and 11, were shipped over the line of the defendant company, it is provided that the carrier shall not be liable for loss or damage by fire occurring after forty-eight hours, exclusive of legal holidays, after notice of arrival of the property at destination, or at port of export, if intended for export, has been duly sent or given, and the carrier's liability shall be that of a warehouseman only. As to each of the said seven cars the notice of arrival at destination or at port of export had been duly sent or given; and as the loss or damage was caused by fire occurring after said notice had been duly sent or given, the defendant, at the time of the loss or damage to the contents of the said cars was not liable to the Republic of France as a common carrier, but only as a ware-

houseman; and as warehouseman its duty in the premises was to exercise reasonable care under the circumstances. And reasonable care under the circumstances, gentlemen, would be a high degree of care."

COLLINS & CORBIN,
Attorneys of Defendant.

Motion to Consolidate Actions.

FIRST DAY.

NEW JERSEY SUPREME COURT.

KING OF GREAT BRITAIN, etc.,

vs.

LEHIGH VALLEY RAILROAD CO.

REPUBLIC OF FRANCE,

vs.

LEHIGH VALLEY RAILROAD CO.

AETNA EXPLOSIVES COMPANY, INCORPORATED,

vs.

LEHIGH VALLEY RAILROAD CO.

Three cases tried together June 7, 1920, before SPEER, *J.*, and a jury.

Mr. Stallman, Mr. Smith and Mr. Brogan, for the plaintiffs.

Collins & Corbin (Mr. Hobart), and Rockwood & Lark, for the defendants.

The Court. Are these cases to be tried together? Very well, I will consider that.

Mr. Stallman. I think we ought to formally move that—it was arranged with the other side—to try these three cases together, because they all grow out of the same accident, the Black Tom explosion. I make such motion.

Mr. Hobart. On behalf of the defendant in each case, we object to the motion on the ground that to require the defendant to try in this one case by consolidating more than one accident, the

rights of the defendant are violated, because there is no law of the State of New Jersey to justify it, and it is a violation of both the Constitution of the State of New Jersey, and of the Federal Constitution, and particularly, the Fourteenth Amendment, in that it deprives the defendant of his property without due process of law.

The Court. What is the precise point about there being no law of New Jersey to warrant it?

Mr. Hobart. We think the Practice Act is not applicable to this kind of a case.

The Court. But the Court of Appeals of the State in a definitive decision has held that it is.

Mr. Hobart. We hope to have an opportunity to persuade them to the contrary, if it should become necessary.

The Court. All right. You do not wish to elaborate the motion by indicating anything in these three cases of a nature which would render it improper or unfair to try them together.

Mr. Hobart. That is a different proposition. I now make the objection on the ground that—I appeal to your Honor's discretion—that the three cases ought not to be tried together because there are different issues involved. In one of these cases, to wit, the action brought by the King of England, all of the goods that were damaged or destroyed, were located on certain barges or lighters which the defendant claims were illegally at or near its property at the time of the explosion. In the French Government case, all of the goods, with the exception of certain goods which I will mention in a moment, were on barges or lighters where the same point is involved as in the English Government case. In the French case, there were also certain cars which were located on a property half a mile or so away, property of the Jersey Central Railroad, wherein it is claimed that we are liable because that property was destroyed by embers, or something that was carried over by the explosion, so we apprehend a very different question arises as to those cars. And, in addition, in the French case, there were certain cars which were on the premises of the defendant company on track 16 and some on

track 13, and we apprehend a different question will arise as to those cars, and in addition to that, in the French case, there is one car—I am not certain of what the plaintiff's attitude will be on this, but I gather from the pleading, that there is at least one car where the question will be involved as to the defendant's duty as a common carrier. Then the third case, which is the Aetna Explosives case, is in the same category as the British Government, namely, all the goods were on the barge; so that the point which I urge on the question of confusion of issues does not apply to the Aetna case, but it does apply to any combination of either case with the French Government case.

Mr. Stallman. Your Honor will perceive, from what Mr. Hobart has said, that all of these three cases involve the destruction of guncotton and gunpowder on board the barges. In the French case, there is in addition to that feature, a few other cars that were not on the barges. There seems to me, that if we were to try the French case alone, we would have the situation of munitions on barges and munitions in cars on the land, and the mere fact that in the other two cases all of the munitions were on barges, does not seem to me to inject into the case any confusion whatever, because we would have the right to try the French case, in all of its features, as an entire case, so the other cases involve exactly the same proposition as involved in the English case.

The Court. Well, I do not see anything that has suggested any such great confusion in the issues as would if they were properly presented to the jury prevent the jury from arriving at a conclusion of it without any great difficulty, so under the circumstances I think I would rather let the cases be consolidated, and you may have an objection in the nature of an exception entered on the record to that ruling.

Mr. Hobart. All right. May I have the pleasure of introducing Judge Nash Rockwood to your Honor? He will assist us in the trial of this case. And also Mr. Lark, whom your Honor also knows.

The Court. Yes, they will both be admitted, *pro hac vice.*

Discussion.

Mr. Stallman. In the case of the British case, in drawing up the complaint, Mr. Hobart assures me that we have certain car numbers—certain cars designated as being on the barge "Paulina," which should have been on the barge "Thompson." The complaint set forth the barges on which the different cars were located. Because I am in error as to certain cars being on certain barges, and I desire to amend the complaint setting forth the correct barges on which these various cars were located.

The Court. That amendment will be permitted.

Mr. Hobart. No objection to it. While we are on the subject of pleadings, I desire to move to amend the answer in each of the three cases by striking out the special defense, which I believe is known as the third defense in each case, setting up a claim of incendiarism. I desire to have that struck out from the record. I have already given informal notice to Mr. Stallman, and I believe there is no objection to it.

The Court. That order will be made.

Mr. Stallman. In the case of the Aetna Explosives Company, Incorporated, the action was brought in the name of that corporation. There has been no question raised by pleadings or otherwise, but Mr. Hobart telephoned me the other day that he wanted me to produce a copy of an order made in the United States District Court for the Southern District of New York in an equity receivership, in which Judge Holt and Governor Odell were appointed receivers of the corporation at a time before this action, I think, was brought. The action, however, was brought in the name of the Aetna Explosives Company, Incorporated—in its corporate name—on the authority of an order entitled in this equity suit, made by Judge Augustus N. Hand, in the Southern District, in which he orders on application of the receivers that George C. Holt and Benjamin B. Odell, receivers of the Aetna Company, be, and they hereby are authorized, if it may be deemed advisable, to institute and prosecute a suit or suits at law against the Lehigh Valley Railroad Company, and so forth, and further ordered, that the Aetna Explosives Company, Incorporated, be and they are hereby authorized, if it shall be

deemed advisable, also to prosecute a suit or suits at law in any court of the State of New Jersey against said Lehigh Valley Railroad Company and the National Storage Company, and either of them, for the relief set forth in the aforesaid petition, and for such and other further relief as may be proper in the premises. Acting upon the authority of the Court, in which the receivership proceedings were pending, this action was brought in the name of the Aetna Explosives Company, Incorporated.

Now, I do not know what Mr. Hobart's notion is in asking me to produce these papers, but if there is any question as to the right of the Court to proceed to try this case in the name of the Aetna Explosives Company, Incorporated, in view of this order, a certified copy of which I here offer as an exhibit—any way that may be necessary to prove it properly before the Court—if there is any question about it, I want to move to amend by substituting the receivers as plaintiffs in this case.

The Court. Why don't you amend by putting it in the alternative?

Mr. Stallman. Yes, that is a good idea. Yes, that is a good idea—or in the alternative.

Mr. Hobart. I do not know that this is the time for me to make the argument on that point or not, the papers not being formally offered.

The Court. What Mr. Stallman is doing, I think, is laying up his motion against the future and is trying to have it understood by the defense in the case, that if it becomes necessary to make a motion of that kind later on, the defense will not be surprised when the motion is made.

Mr. Hobart. We would not be surprised anyhow, because he has already told us he might do such a thing. I do not know if your Honor cares to hear the argument at this time. We have some authority that is very conclusive.

The Court. You would—I would just as soon hear it now.

Mr. Hobart. Our point in regard to a suit by the present plaintiff, the Aetna Explosives Company, is that it being admitted, as I understand it is, that at the time the suit was brought that

company was in the hands of a receiver under the law, both of New York and of New Jersey, the title to whatever property the company had at the time of the appointment, vests in the receivers, and the action must be brought by the receivers. The cases are quite clear on it.

The Court. If the action was brought by the receivers, then you have no objection to make to the action, I understand.

Mr. Hobart. Except that there is no permission either of this Court or any other Court of New Jersey, or of the Court by which the receivers were appointed, giving the receivers the power to bring the action.

The Court. As I listen to the order, I think it was not only a permission but a direction.

Mr. Hobart. In the name of the company.

Mr. Stallman. No, also by the receivers—the first paragraph of the order.

Mr. Hobart. Oh, the order is to permit both the receivers and the—

Mr. Stallman. The first paragraph permits the receivers to bring it, the second, the company, and the third, either.

Mr. Hobart. Then I do not make any objection, so far as the Court out of which the receivers were appointed, but I object on the ground there is no law in this State to permit such a suit by the receivers in the absence of an order by some Court of this State, and if the action is brought in the alternative, we further object on the ground it is adding parties in the case without having summoned the defendant into court to be sued by those particular parties.

The Court. It is settled in this State, you can substitute one party for another after the suit is commenced, by amendment. So I see no objection whatever, so far as anything has been urged against permitting the amendment and substituting the receivers for the Aetna Explosives Company as plaintiffs in the suit.

Mr. Stallman. I would rather have it, in accordance with your Honor's suggestion, as plaintiffs in the alternative, in view of the nature—

Discussion.

The Court. All right. I will permit that amendment. When it comes to charging the jury as to which one will be called, that probably will be a Court question then.

Mr. Hobart. Your Honor will permit an objection?

The Court. Yes, I will permit an objection to be entered on the record. So far as your suggestion was concerned about there being no order of any Court of this State permitting the suit to be brought here, I think our decisions are quite uniform on the proposition that the Court will permit a suit to be entertained under the rule of comity by the receivers appointed by the Courts of another State. The case of Hurd, receiver, against the City of Elizabeth is one decision directly in point on that subject. So I see no ground upon which any Court here either could or should grant an order of this kind. They are not seeking to sue in any other Court, and as I understand it, there is not any suit pending in any other Court in which those receivers have been appointed, so to ask any other Court than this Court to make the order would seem to me to be a futile and fatuous thing; so I will make the order myself. They may sue in the alternative.

Mr. Hobart. There is one other preliminary matter to be stated on the record. We desire to raise sometime during the progress of the trial, the question of the right of the King of England in his sovereign capacity, and the right of the French Republic in its sovereign capacity, to bring this action. In order to avoid any claim that that point may have been waived from our proceeding with the trial, I would like to raise the question at this time and state that we object to those two cases proceeding on the ground that it does not appear by what right, or that they have any right to bring an action in this Court, and if the suggestion be agreeable to your Honor, that later in the trial we will present what authorities we may be able to assemble on that point. And, I frankly confess, we have had so many other things to do that we have not covered that as fully as we would wish. I simply like to make the motion now so as not to be held to a waiver, and it probably can be determined later in the trial on a motion for non-suit or for a direction of a verdict.

Discussion.

Mr. Stallman. The pleadings are very clear, setting forth the status of the foreign sovereigns. I do not think there is any question of their right to sue.

The Court. I do not think there is, either, but nevertheless, the thing that is interesting me is not that—I have not any doubt, until I am shown authorities to the contrary, that these sovereigns had a right to sue—but I am thinking more of the matter of procedure. If the defendant with full knowledge of the claim made by the plaintiff with respect to his status and his right to sue, proceeds to the trial, it is, in my judgmeent, a waiver of that point. I may be wrong about that, but that is my present impression.

And to permit a direct or special appearance for the purpose of raising the question, then a general appearance for trying the case, with permission that that may be raised at some future stage in the case, in my judgment is bad practice, and I am ready to hear what the point is now and to hear it argued, and to decide it now; and then if the counsel desire to go ahead after that decision, and with that exception embalmed in the record, the question of waiver becomes a question of very much greater clarity for a reviewing court than it would if I permitted a direct swelling procedure to be adopted that we should go ahead with a trial, reserving the point to the finish.

Mr. Hobart. Of course, if there were anything in this point at all, it would go directly to the jurisdiction of the Court. I do not apprehend that we can, even by consent, confer jurisdiction when it may not already exist.

The Court. I do not agree to your proposition that it would go to the jurisdiction of the Court. You rather raise the question, as I see it, that it went to the capacity of the party to sue, and if the defendant admits the capacity of the party to sue, I do not see how it involved the question of the jurisdiction of the Court.

Mr. Hobart. Well, the only point that it does relate to is the jurisdiction of the Court. We do not question the name of the party, the corporate name or sovereign name.

Discussion.

The Court. Of course, you cannot question that, because the Court judicially noticed what it is, and I have no doubt what it is. That does not bother me. I am ready to pass upon the question now definitely, and if I am wrong it will be on the record that I am wrong, and that can be reviewed, and then no question of waiver can arise at all, except waiver because of the procedure after acknowledgment of the fact that your rights have been denied, if they have been, or acknowledgment on the other side that his rights have been denied, if they are denied.

Mr. Hobart. Well, we make the formal objection on the ground that this Court has no jurisdiction to consider the action brought by the British Government or by the French Government, and to be a little more specific, on the ground that any such action, if brought at all in any of the Courts of this country should be brought in the Federal Court.

The Court. In the Federal Court?

Mr. Hobart. Yes.

The Court. That is the precise point that you make?

Mr. Hobart. Yes.

The Court. And that is the only point, as I understand it?

Mr. Hobart. Yes.

The Court. Very well. I overrule that point and you may have an objection entered on the record in the nature of an exception.

Mr. Rockwood. I ask your Honor's ruling as to the number of challenges in each case, if we have six or eighteen?

The Court. There are three separate cases here. I will give you eighteen challenges, and if the present panel is exhausted we will call tales.

Jury called by the clerk.

The Court. Now, gentlemen, I think you may proceed.

PLAINTIFFS' OPENING.

Mr. Stallman. May it please the Court and gentlemen of the jury, we will try three suits, one brought by the Aetna Explosives Company, Incorporated, and one by the Republic of France, and one by the British Government against the Lehigh Valley Railroad, to recover damages for the loss of certain guncotton and gunpowder which were on barges and in cars in the vicinity of the Black Tom Terminal of the Lehigh Valley Railroad, on the 29th and 30th of July, 1916.

We expect to show you the character and quantity and value of each of these carloads of these different kinds of material, and we expect to show you that they were destroyed, burned up and otherwise destroyed in the fire and explosion which occurred down there on that date.

Now, these actions which we have brought are based upon the claim which we make and, of course, which we must prove, that the fire and the explosion which destroyed these goods of our clients was caused by the negligence of the Lehigh Valley Railroad Company; that is, their failure to exercise a reasonable degree of care under all the circumstances in the manner in which they conducted their operations in their Black Tom yard with respect to the handling and the protection of ammunition and munitions of war in their yard. The phases in which we expect to satisfy you gentlemen of the jury that the Lehigh Valley Railroad Company was negligent are particularly these—if you will look at this map which we have put up here for purposes of illustration—I understand we are going to substitute another map for it after a while which will have more detail on than this map has—you will see that the Black Tom Terminal consists of a tongue of land built out to and across Black Tom Island, way out into the bay, extending at this point where I am indicating on the map, being a bulkhead line, the exterior line for solid filling, and from there it extends out into the bay some piers –the upper one is known as North Pier, and the southerly one, which is somewhat shorter, is known as the South Pier. Now, this other area out towards the end of this con-

struction is a yard, containing some twenty odd tracks. I do not know whether the jury can see from where they are, but you will observe that this outward end of Black Tom is much wider through the end than it is through the approach to it; then back further inland and extending into the waters of the bay are some piers for ships, and on the pier side of this peninsula are a large number of warehouses, in three different blocks, the first block being from A to F, and then comes a sort of a driveway, and then the next block is known as G to M, and a driveway, and then N to R, and then it comes to the end of the warehouses. You will also have to bear in mind in considering this action certain buildings which are down—they will appear on the other map—to the west, over towards the land side, towards what would be called Claremont yard, are a couple of grain elevators, which are, I imagine, somewhere in the neighborhood of three-quarters of a mile from the end of this Black Tom structure.

Now, in the year 1916 and part of the year 1915 the Lehigh Valley Railroad Company was engaged in transporting munitions of all sorts for countries which were waging war in Europe. You will recall that was before we got into the war. It was in 1916, and it was the practice of the railroad company to bring the shells, different sized shells, and TNT, that is, trinitrotoluol, a high explosive, and guncotton, and a number of things that we use for making war, were brought down over these tracks in front of the warehouses and put in on a number of these tracks leading out towards the bulkhead. From time to time the contents of these cars were unloaded into barges or lighters which came at these different piers, and they were taken from there down to Gravesend Bay, I think it was that place, where they were loaded on ocean-going steamships.

Now, the evidence shows, gentlemen, that on the 29th day of July the Lehigh Valley Railroad Company had down in the yard awaiting delivery to barges some thirty-five cars, or thereabouts, of explosives of different kinds. When I say explosives, I do not mean only such stuff as guncotton and

gunpowder, but also shells, loaded shells. You will see on this map and also on the map which we will have later these various rectangles in different colors—for instance, I am now pointing to a string of eight cars marked "H". That indicates that they were eight cars of high explosives. They were, in fact, filled with trinitrotoluol. Then there are three cars in a purple rectangle—shown in a purple rectangle—marked "W", which is wet nitrocellulose; and then four cars of substance known as benzol; that on the next track to the one I have been pointing at there were eight cars in yellow triangles on this map marked "A", and those cars contained ammuition, that is to say, shells. Then skipping a track we come to a track which there are eight more cars of shells, and in different parts of these tracks were cars containing other munitions. Now each of those cars was labeled or placarded in accordance with the requirements of the government, with a tag which said that they were explosives, that is that the contents were explosives, and fire should be kept away from them, and the cars were otherwise subject to certain Federal regulations in the manner in which they should be handled; and we will show that the Lehigh Valley Railroad had on that entire—in and around that entire plant, that is, over the area about a mile in length and whatever the width would be, three or four workmen who had various duties to perform; they had to make fire under different boilers, some in the elevator, and some around the storehouses, and that these men after they had taken care of their fires were supposed to go around certain of these buildings and punch a button to register that they had been there and made their rounds; and that it will be shown that these men had all of these buildings to look after, that is, behind or to the west of the large yard including the elevators, some half to three-quarters of a mile in toward the land, and that that is all of the watchmen that were kept in or around this yard where these great explosives were held awaiting delivery.

We will also show you, gentlemen of the jury, that the railroad company did not provide—did not exercise care to provide

any adequate fire protection, so that a fire might be combatted and extinguished in case one should occur. It will be shown to you and urged upon your consideration that there was a very elaborate system of pipes and water plugs and hose and hose carriages for the protection of these storehouses, but the point that I am making to you now is that there was no protection in the way of fire apparatus afforded for the protection of these cars in the yard; there were no hydrants or no hose or anything of that kind down in the yard where these explosives were stored. And we will also show that along about half-past twelve, I think it was, in the morning, Sunday morning, on July the 30th, 1916, a fire broke out in one of the cars down in the yard, somewhere about the middle of the yard. Roughly speaking, it was in the neighborhood of where this thumb tack is in the map—around there somewhere, and that the employees of the Lehigh Valley Railroad were engaged in the performance of the duties assigned to them down in and around the buildings and they did not know that that fire had started and was burning until their attention was called to it by somebody else; and this fire continued to burn from about half-past twelve until after two o'clock, when the fire involved these eight carloads of TNT, and at that time they blew up and created almost an indescribable happening. In the ground where these eight cars had been standing after the explosion occurred there was a hole some three hundred and seventy-five feet in length, and I think it was two hundred and twenty feet wide, and from ten to twelve feet deep, and as the result of that explosion these warehouses were all demolished and an immense amount of red-hot steel and everything else that had been burning and gotten tremendously hot in this conflagration which had been burning for something over an hour and a half was thrown in all directions, so that the cars in the yard, some of which belonged to our client, the French Government, were destroyed, and the explosion was also so great as to throw a large mass of burning matter over to the neighboring yard, the New Jersey Central yard, where we had five cars of guncotton—

wet guncotton—and those cars caught fire and were burned up and our guncotton was destroyed; and these red hot embers or red hot pieces of iron, pieces of cars, brake riggings and brake beams and frames of the freight cars went up in the air and landed on the barges in which our gunpowder and guncotton were placed, and it set those barges on fire and burned that stuff up.

As we go through the case we will call your attention to other failures and omissions, such as the failure of the company to provide water in the water lines which they had there, and we will show that there was a failure on the part of the company to instruct its men what to do in case something of this kind should happen at night, and we will show, in general, show that the railroad company did not exercise any care whatever with particular reference to the custody of these explosives.

We will show you that a railroad company after these explosives began to come in and were kept in their yard, did not add any precautionary measures, any feature of protection that they had not employed at a previous time; that is, before the munitions began to come in; that is to say, when their principal business was the handling of wheat or bricks or cotton or any of the commodities of peace times, they had certain watchmen and certain fire protection, but after the commodities began to be explosives—things that would blow up and blow us all into Kingdom Come, if anything did happen—there was no added protection afforded to anybody, which we claim they should have done in the reasonable exercise of care. So that we claim that our property was destroyed as the result of the carelessness of the company in the conduct of its business and in the operation of its yard under circumstances which confronted it, and if we satisfy you, gentlemen of the jury, it was the negligence of the railroad company which permitted this condition of affairs, and that that condition of affairs destroyed our property, then, of course, we ask you to bring in a verdict in favor of the plaintiffs for the amount of the damages which they have sustained.

DEFENDANT'S OPENING.

Mr. Hobart. If your Honor please, and gentlemen of the jury, I have listened with care to the opening of my friend, Mr. Stallman, for the plaintiff, to see if he would explain to you the principal point in this case, and I failed to hear him give you anything definite on that subject; and so, right at the beginning, I want to call your attention to what we consider to be one of the most vital points, if not the vital point in the entire case, and that is, that by far the larger part of this property for which they seek to hold the railroad liable, indeed all property belonging to the British Government and all of the property belonging to the Aetna Explosives, and a very few cars belonging to the French Government—all of that property, I say, had no business at the point where it was damaged. That property was carried over the line of another railroad, over which we had no concern whatever, over the line of the Jersey Central—whose terminal is half a mile or more away from this so-called Black Tom Terminal. That property, when it reached the Jersey Central terminal, was loaded on to barges acting as the carriers or representatives of these different governments, and the Aetna Explosives Company, and it was the business of those barges to take it to ocean-going vessels, because it was all consigned abroad. Instead of doing that, taking it where it belonged, where it was their duty to take it, and where the very rules of the United States Government requires them to take it, instead of doing that, they stopped at the Black Tom pier on July 29th, without any light, without any permission, without any knowledge on the part of the railroad company or any of its representatives, and while they were there they received this damage, and we say that as to those barges—which covers practically this entire case, with the exception of some few French cars that were in our yard—which were in the New Jersey Central yard, or on the New Jersey Central dock—we say that as to the contents of those cars, the contents of the cars were not loaded on to the barges, the boxes were taken out of the cars and cleared on to the barges, we say they

were trespassers on our property, they had no business there, they did not come there to get any other goods from us, we did not even know they were there; and so, as to those, we say that we are not responsible if anything happened to them while they were on our property, contrary to law. Not only were they trespassers on our property, but they were deliberately and knowingly violating the law of the United States in coming there at all under those circumstances, because there was a law of the United States at that time, which will be offered in evidence before you, which required, as the defendant claims and as his Honor will charge you upon—which requires barges which have various kinds of explosives or ammunitions on board, to return to a certain point in New York Harbor, known as the explosives anchorage grounds, which is about a mile or a half a mile from the Black Tom Terminal; that is where those boats under the law should have gone. That is where their agents—the King of England, the French Government, and the Aetna Explosives, and their representatives in this country, should have compelled their employees to go; but instead of that they allowed them to stop there at Black Tom Terminal. Now, why they allowed them to remain there we do not know. That is up to them to explain. Perhaps, it was more convenient for them; perhaps the boats to take them to Gravesend Bay were not ready for them, but whatever the reason, they had no business on our property.

Now, I have gone a little out of the logical order in the opening of this case because I wanted to have you impressed with this point, which my friend refrained from calling to your attention in his opening. Now, let us go back again and begin at the beginning, so that there may be a truer and better understanding of the situation as it existed at that time.

In the first place, you, of course, will remember that in July of 1916 was a great war in Europe, and at that time, under the directions or proclamations of the President of the United States, strictly in accord with the international law which has prevailed for hundreds of years, any warring nation had the

right to buy from any neutral nation any munitions of war or any other article that it saw fit, that was necessary for warring purposes or for any other purpose; and, in fact, the President of the United States at that time, if you will recall, expressly directed by his proclamations and his speeches, that the citizens of this country should be neutral and that they should exercise whatever rights as neutrals they were privileged under international law to exercise, and so the Government of Great Britain, the Government of France and other governments, if you like, came to this country for the purpose of buying munitions and other articles used in that war. These particular articles were bought by the French Government and by the English Government, except those involved in the case of the Aetna Explosives Company, which is a company of this country, of the State of New York—I believe a particular part of the goods in question have not yet been transferred to the foreign government—they were buying these articles all over the United States, wherever they could get them, and in order that they should be carried to the place where they were to be put to use, it was, of course, necessary to transport them across the Atlantic Ocean, and so a great business grew up among all of the lines of railroads in the transportation of these different articles of war, among others the Lehigh Valley and the Jersey Central, carried a considerable number of such articles, not because they wanted to do it, but because under the law of this country they were obliged to do it. They could not refuse to carry these goods, even though they wanted to, because they were recognized as goods which it was lawful to carry, and under the orders of the President, the manufacturers of this country had the right to manufacture and had the right to sell, and the goods being lawful in that respect the carriers, the railroads, were obliged under the law, which was another law to which attention will be called in a moment—were obliged to carry them, whether they wanted to or not, provided they were packed and marked in a certain way required by an act of Congress some years before this.

Now, I need hardly tell you that a large part of these munitions at that time were delivered on ocean-going vessels in the Port of New York; I need hardly tell you, those who live in this vicinity, that in order to get these goods to the ships that were in the Port of New York, they had to be carried through the various railroad lines that terminated on the Jersey shore, including the Lehigh Valley, the New Jersey Central, and others. Now, the method of handling that business was this: These cars would be started at whatever point the manufacturer might have made the goods, whether it be shells or TNT, or other kinds of explosives. Many of them originated at the Bethlehem Steel Company in Pennsylvania; others originated at the plant of the Aetna Explosives Company, which I believe was Indiana, or some Western state, and they would be carried over the lines of connecting carriers, by the Lehigh Valley, or whatever the case might be; then, when they reached the harbor of New York, the cars themselves were not shipped on to lighters, as a whole or as a body, but the goods were unloaded from the cars on to barges or lighters, which were placed alongside of the piers on which the cars were standing. Then these lighters, after they had received their load, whether it be from the Lehigh Valley or elsewhere, would be towed to the loading point, which at that time was in Gravesend Bay, New York Harbor, and there they would be put on board the ocean-going vessels for France or England, or whatever the case might be. And that was the way this was handled.

Now, an important thing for you to have in mind in that connection is that all of the handling and all of the transferring of these explosives, so far as the Lehigh Valley is concerned—I know nothing about the work of the other roads in that connection—all of that work was done, not for the railroad company at all. The railroad had nothing to do with it, but by the representatives of the owners of the goods, the British Government, for example, or the French Government. They employed the tug boats that were to tow these barges, they employed the towing companies that furnished the barges, and they employed

the men that handled the goods. In other words, the Lehigh Valley had nothing whatever to do with these goods, except to carry them along its line, as required by law. Now, in order that this business might be carried on with as much expedition and as much speed as was possible under the circumstances, the Lehigh Valley had established this system of handling them in the so-called Black Tom yard. Reference has already been made to this map which has been put up for the purpose only of illustration. The other map will be put up during recess, but so far as this is concerned, it is just the same—the other map just gives a little more detail—in order that this business might be handled as quickly as the circumstances permitted the Lehigh Valley had a certain track on the so-called North Pier, to which your attention has already been called, and on the upper part of the north side of that pier these goods that were carried over our line were customarily removed.

Now, in order to get on to the North Pier it was necessary, of course, for the cars to be switched there. They would have to go down to the nearest connecting switch and back them up on the pier, and in order that that movement might be facilitated so that the agents and their governments would know just where these cars were, just what they were, and would have them in such position that they could handle them most conveniently and quickly, it was the practice to place the cars in that part of the yard which was the nearest available point to this North Pier; hence the cars were in the upper or northerly part of the yard, so indicated by these various colored rectangles with letters in them. So, that was the occasion of handling that business in that way.

Now, at that time it happened that there were a certain number of cars of ammunition for cannon, so-called, which was shells, a certain number of cars of TNT—trinitrotoluol—a certain number of cars of fuses; several of these cars, I think eight altogether, were on the track known as track 16; the last track is track 18; that is the one that runs out on the pier; 17 is next to that, and 16 is next to that—right in that vicinity. Now,

those cars had arrived several days prior to this 29th or 30th day of July, and the railroad company, in accordance with its regular custom and in accordance with the regulations of the law, had sent notice to the representatives of every owner of those different goods, that these cars were there containing shells or ammunition, whatever the fact might be, and it was up to them to remove the cars, to furnish the tug boats and to furnish the lighters—we had absolutely nothing there to do whatever. Our work was finished. Our duty as a common carrier was completed within a certain length of time after this notice had been sent; and the notice had been sent as to all those cars on land, with the possible exception of one or two of the French cars, but the French cars did not explode; they burned, I believe; so that that does not affect that point at all. Some of the cars, you will notice on the map, were out on the North Pier, ready to be unloaded, but they had not been unloaded at the time of the explosion. Those cars did not explode; they burned up. Now, in the handling of work of this kind, and in the carriage of commodities described generally as explosives or munitions, it appears that the Congress of the United States some time before this had established certain rules, known as the Interstate Commerce regulations. Those were prepared in accordance with an act of Congress, making it the duty of the Interstate Commerce Commission to provide regulations for what they called the safe carriage of explosives—this particular carriage did not turn out to be safe, but when you consider the vast number, the vast quantities of explosives that were carried during that time and both before and since, I think you will probably reach the conclusion that those regulations were the best that could be adopted at that time in the then state of knowledge as to articles of this sort.

Now, these regulations, as I say, were made. There are various laws. There is a book that will be offered in evidence, nearly 200 pages, covering the regulations for the transportation of explosives. Now, we say that as far as this transportation is concerned, the duty of the defendant, and its only duty, was to comply with those regulations.

Now, there will be another point in this case, and it is right that I should speak about it directly in that connection, and that is the question of whether there was anything in addition to the regulations which the company was required to do, and it is proper for me to say that under the law, as it has been declared by the highest court of this state, those regulations were not the exclusive duty of the company. In addition to the precise and particular duties which those rules required, our courts have held that it was also our duty to exercise what they call generally reasonable care, or degree of care in proportion of the risk of danger. But these rules are important, both because the plaintiffs rely upon them and, indeed, allege specifically that certain of them were violated, and also because the defendant relies upon them. We say we did exactly comply with them; we did everything that those rules required.

Now, then, when we come to the night of July 29th, we have this situation: There were these cars of ammunition and of TNT in the yard, substantially as indicated on the map. The work in the yard had been finished about five or six o'clock that afternoon. In order to be doubly safe, as it were, in the carriage of these articles, the railroad company had a positive rule that no work should be done in that yard at night or after dark; no engines were allowed in the yard after dark. Sparks from engines might have caused accident. No loading of barges after dark. Under the law of the United States any barges that had any goods on, we claim, were obliged by that law to go to the anchorage ground. Well, certain barges were loaded, a certain number of them went away loaded with goods that were carried over the lines of the Lehigh Valley. With those barges we are not concerned in this case. It does not make any difference whether they were there or not, but certain other barges —that brings us back to the point I first made—certain other barges, after our employees had finished their work for the day, after our superintendent, our agent, had left the premises, leaving the watchmen in charge—certain of these barges containing the goods that are in question in this case, known as

the Ackerman barges, came to that North Pier without our knowledge, and were there at the time of the explosion. That is the reason they got hurt. Now, those barges were not even at the North Pier, where they could be loaded in case they should want to be loaded. They did not come there for the purpose of getting any part of the load from our lines. The evidence will show you that these three barges that are in question in this case were not even alongside of the pier. There were other barges or other boats in between them. There were two boats, which incidentally had not any business there, either, out here at the end of the pier, and two of the barges in question in this case in turn fastened to them, and another barge sneaked in after dark and anchored or moored alongside of another boat that had been loaded with salt, right at the south side, which was properly there.

There wasn't any dispute, I think, as to the location of the barges or the fact that they had not any business there. That is the situation that evening before the explosion took place.

Now, then, let us come down to the time when this event happened. That night, shortly after midnight, undoubtedly there was a fire, and undoubtedly there was an explosion. I guess most of you heard it. And, as a matter of fact, there were two explosions. Now, we do not know whether the damage to these plaintiffs was caused by the first big explosion or by the second big explosion. I call them big because in between there was a multitude of popping of shells and perhaps thousands of small explosions that did not do any particular harm, unless a shell happened to hit you and then it must be dangerous. But the two big explosions, as they are called, one of them happened shortly after two o'clock in the morning, and the other about twenty-five or thirty minutes later.

We do not know which of those two explosions, and I do not think the plaintiffs know, which of the two damaged the plaintiffs in this case.

We do know this: That there were two separate explosions, and we do know that one of them was on the land, and we do know that the other one was on the water.

Now, the one on the water, so far as our investigation or our proof has been able to develop, occurred on another barge known as the Johnson 17, and that barge in turn had not any business there. It did not come to our plant for the purpose of getting loaded, or for the purpose of waiting for a load, or anything of that kind. It had been loaded at another place entirely, up on the West Shore or New Haven, and had just come in there without any permission on our part, and was just hanging around or awaiting a convenient opportunity to go down the bay, perhaps waiting for a tug that may have been busy or something else. We do not know why. We only know it was there and it blew up and it was not there the next morning, and that was one of the large explosions. I do not know which was the larger of the two. It does not make very much difference. The point is, so far as that particular barge was concerned, this defendant had nothing whatever to do with it, and if they were damaged by that explosion then their remedy is to sue the man who was responsible for the barge being there, rather than suing the railroad company which had nothing whatever to do with it.

We think you will find from the facts that we desire to present to you that if the plaintiffs were damaged by the first explosion, this company is not in any way responsible for it, for the reason that that first explosion—we think you will be satisfied from the evidence—occurred on the water. We have no concern with that. And as a demonstration of that fact we will produce before you witnesses who were right at the very point where the land explosion occurred, one of them being almost in the middle of this crater that has been referred to, at least, within a few feet of it, when the first explosion occurred they were not blown to splinters as they would have been undoubtedly if that explosion had been on the land. It is practically a demonstration that the first explosion was on the water. So we say that so far as that is concerned the plaintiffs are not entitled to recover if you are satisfied from the evidence that they were dam-

aged by the first explosion and that that explosion was on the water.

Now, then, let us go a step further.

Some time between half-past twelve and one o'clock in the morning—the witnesses differ as to the time—this fire was discovered. It was first discovered—whether it actually started there first or not, nobody knows—but it was first discovered in one of the cars that was standing on track 16, one of the cars of so-called high explosives, according to the classification as fixed by the Interstate Commerce Commission. What it was, in fact, was TNT. That car was discovered, or, rather, there was a fire discovered either in or on top of the cars. It was discovered by a watchman. I believe his name was Burns, a watchman who with certain other watchmen had been stationed there by one of these very plaintiffs, the King of England, for the very purpose of preventing fire, for the very purpose of assisting our watchmen to guard those premises. And now he has the face to come into court and say, "Pay me damages because my watchman did not watch carefully, or did not discover the fire more quickly than he should have done."

That fire was discovered by some men that represented some agency which in turn represented the British Government, for the very purpose of preventing the thing that happened. Well, they found a fire. An alarm was sent in at once, either by this watchman or one of his co-workers, and the fire spread rapidly, of course.

Criticism is made of our men because they did not go down there and attempt to put it out, and it is said that our men were negligent after the fire was discovered because they did not go down with hose as they might have done, and extinguish the fire. Well, now, our men were employed as watchmen. We do not hold them up as heroes or as knight errants or anything of that kind. We do say they were faithful watchmen. We say they were on the job that night; they had made their regular tours of the yard and had observed cars to see whether anything was wrong, and they had not found anything wrong; but we do not say they were heroes. We do not say they were willing to go into a holocaust

and risk their lives under those circumstances, and we say there was no legal duty—because we are trying this case according to legal rules, and not whether a man is a hero or not—we do say that their legal duty did not require them to risk their lives for the purpose of saving property, and the best proof of that fact is found in the evidence which will come before you during this case, to the effect that the Jersey City firemen, whose business it was to fight fire, and if necessary, risk their lives, when they got down there and found these shells popping around, within a very few minutes after the fire was first discovered—when they arrived at the scene of the explosion, with these shells popping, and knew that there were explosives which would be liable to go off in a minute, the captain or the chief of the firemen would not risk the lives of his men by ordering them to go down there with hose or anything else, for the purpose of putting out the fire. I do not blame him very much. But I say if he is not to be blamed, and if the Jersey City firemen are not to be blamed for not risking their lives, certainly our men are not to be blamed for not so doing, and as far as that point in the case is concerned, I think you will agree from the evidence that there was not any carelessness on the part of our men because they did not take that desperate chance.

Now, as it happened, there were some of our employees who did take a desperate chance for the purpose of hauling out as best they could some of those cars containing explosives. In the effort to get them away before any explosion might occur, one of them was killed by the explosion, the chief of police, Mr. Leyden. When the first explosion came he was directing certain of the trainmen in handling the trains, moving the trains, trying to get them out. He risked his life, and the poor fellow lost his life, just, indeed, as did one of the Jersey City police officers who was, I think, killed in the same explosion, or, at any rate, he was killed. The Jersey City firemen, on the other hand, they were not hurt any; they were not killed because they kept away. Some of our other employees, trainmen, were badly injured by the flying shells when they went down in the midst of that volley.

But it is claimed that we did not perform our legal duty in certain respects. There are a great many questions and a great many claims in this respect. I do not know just how many of them will be seriously urged by the plaintiffs; but in view of the fact that they are all set up in their complaint, I think it would perhaps be proper for me to take just a minute or two to state generally what they are and what our answer is.

Now, they say in the first place that we had too many explosives there, what they call an accumulation of explosives. There was not any lack of legal care in that regard, but I want to remind you that under the law as it then existed, and as it is today, for that matter, that there was not any limit as to the quantity of explosives that might be in any one place. You might have as many as you pleased providing you used reasonable care in looking after them. So the mere fact that there happened to be a considerable number of cars has not anything to do with the legal situation as we look at it.

Then they say that we did not remove the cars promptly. Well, it was not our job to remove them. I have already explained that it was the duty of the consignee or their agents to remove them and to dispose of them, and do it promptly. That was not our job. All we had to do under the law was to carry them and give notice to the consignee when they arrived. That is exactly what we did.

But they say we did not have enough watchmen and that they were not properly and sufficiently experienced. The evidence will show there were watchmen, including the captain of the watchmen, who were touring the different parts of the yard, who were obliged to make reports by means of push buttons, showing they were touring the yard and pushing these buttons every once in awhile. I think it was every hour. The evidence will show the watchmen had been around that very section of the yard a short time before the fire was discovered. In addition to that there were four men provided that night, also some others during the day; but four at night, provided by the representatives of the British Government to assist in watching, because there were some goods came over our line for the British Government,

and yet those men did not observe the fire until after it had got well started.

And they say that we did not keep out unauthorized persons. They are quoting that expression from one of the regulations. One of the regulations says the company must keep unauthorized persons from having access to the explosives. On that point we do not believe that there will be any elements before you, as we understand it. For you have men who had gone past the very point where this fire was first discovered, had gone past there five or ten minutes to see there was nobody down there, and there was not anybody down there that had not a right to be there. So we say there is no proof that there was anybody there that was not authorized to be there, and there is no proof that the starting of the fire was caused by somebody that had not any right to be there. I will say right here, so there won't be any misunderstanding about it, the defendant has exhausted every available means to find out what started that fire, and we are just as much in the dark as we were the day after it occurred; but there is one thing absolutely certain, and that is that there is no proof than can be produced by either party to show exactly what started the fire, and certainly there is no proof that any stranger was there or that any stranger set a match to it or anything of that sort. What started it we do not know. There will be various matters which under the evidence it will probably be proper for you to consider; it may have been spontaneous combustion, for example, in one of these cars of shells. It may have been some attempt to destroy the goods that started it. We haven't any evidence of it. I merely mention it as a matter which it will be probably proper for you to consider in view of the impossibility of getting any definite proof one way or the other as to how it did start.

Now, they say we did not have proper hydrants and fire apparatus, and so forth. Some special point was made of that. It is quite true that the fire hydrants did not extend any further down than a point near that big tank, that little blue circle that you see in the middle at the top of the map. But there was not any duty that required us to extend those fire hydrants between

the tracks. Our duty is to follow the usual practice of other companies. It is true there weren't any fire hydrants in the yard because it is dangerous for those fire hydrants to be sticking up between the tracks; it might cause injury or death. But we had an abundant supply of hose and hose carriages ample to reach way to the end of the North Pier, 3,600 feet of hose which might have been used, and the only reason it was not used, as I have already explained to you, was because of the terrible danger and the fact that the men were afraid to risk their lives, and there was no reason why it could not have been run down so far as the length of the hose was concerned. So, so far as running the hose and appliances, we did our duty. We had one system of fire protection; we had our own system of fire protection; we had our own water main. We had a steam pump, by which we could—by which we or the Fire Department of Jersey City, if they wanted to, could have pumped up the whole Atlantic Ocean on that fire. That we will show you was in proper working order that night, but they did not work it. Our men did not work it because they were scared to do it. The Jersey City firemen did not work it for the same reason. In addition to that we had our own water main and our fire hydrants at various points in the yard, more than what would ordinarily be required from a private citizen—that is all this company is—so far as this case is concerned; you do not have to supply your own fire hydrants; you are not even required by law to have a fire extinguisher in the house, although some of us do. This company went far beyond what the law required in furnishing its own fire protection and water supply.

Some point was made about failure to instruct our employees as to their duties. Well, it does not need any course in college or any particular lecture to an employee to tell him that if a fire starts, turn on the hose and put out the fire. That was all there was to this case. The explanation of why they did not do it was because they were afraid to go down into the fireworks.

They say we did not isolate or remove the cars after the fire started. The answer to that is that our men did the very best they could under the circumstances. They got the switch engines

there just as soon as the telephone message came. They did not have them there at night, to be sure, but that was for the reason that we did not want any engines around at night. We wanted to keep it as safe as possible, keep people away from there, keep engines away from there, not do any work down there. In a few minutes they were working under the direction of Fireman Leyden, whom I have already told you was killed in the explosion, and they were in the very act of pulling out some of these cars of explosives when the first explosion went off. Now, what more could they do? It was not their fault that they did not get them all out. They got out as many as they could and did the very best they could under the circumstances.

They make some point about the failure to get rid of the explosives. That was not our job. Our duty was to carry them, give notice, and the fact that they were not taken away is not chargeable to us.

They say we failed to discover the fire promptly. The evidence will show you it was discovered within a very few minutes after it started. If we had a thousand men there it could not have been found any more quickly. So on that point there will be nothing to show any negligence.

They say we did not give the alarm promptly. Well, the Jersey City Fire Department will tell you when they got there. They got there within a few minutes, just as quickly as possible after the fire started. Mr. Burns sent in the alarm. They have an A. D. T. system, as it is called, and the alarm was sent right in immediately, no matter who sent it. So there cannot be any question about that.

I think those are the principal points that have been urged by the plaintiff.

The only other point that might be mentioned is that general statement that we did not comply with certain regulations regarding the manner of handling these goods in taking care of them. As to that, and as to our being liable, there was not any negligence in that regard. We say we did exactly what the law requires in the way of handling them. Bear in mind that these cars were sealed when they started on our line, when they started

either on our line or started upon the lines of other carriers. We did not know what was in them, other than what appeared on the bill of lading and the placard. The car comes to our line all sealed up, and with a proper placard. We haven't any right to break it open and see what is inside of it. We haven't any right; there wasn't any duty to see if there was a time bomb in there or phosphorus or something of that sort. Our duty under the law is to carry it provided it is properly marked, according to the Interstate Commerce regulations, which required us to carry them under these circumstances.

So, to come back to the beginning, this is an entirely different case from the case of what may be termed the innocent bystander, of persons who may have been injured in Jersey City or elsewhere by the different explosions. They are in entirely different situation from persons that have not any right to be there at all, and would not have been hurt at all if they had gone about their business as they should have done, or gone down to the anchorage as the law required them to do. As to that we say we certainly are not responsible unless there is something to show that this company intentionally or maliciously or wantonly injured them. Nobody claims that. We did not have any purpose to cause this explosion, of course, and so as to them we say assuredly we cannot be held liable.

As to the cars that were mentioned, that were on the Jersey Central piers, they could sue the Jersey Central, collect their money from them, if they were on their property; but that, of course, is a matter for further consideration as the case proceeds.

As to the cars that were in our yards, I think there were five cars of benzol that were claimed to be owned by the French Government that were in the yards. That, of course, is somewhat different—entirely different from the stuff that was on these barges, which we say had no right to be there at all, and as to those cars our duty was to exercise reasonable care under the circumstances. We say as to them the French Government and its representatives knew the cars were there; they had received notice of their arrival, with the possible exception of one. I am not sure just what the record will show as to the one car—they

were there. Why didn't they take them away? They had plenty of time to do it. There was no reason why they should leave them there. It was up to them to remove them and they did not remove them, and because of their own fault in that regard they suffered that particular loss. But, of course, that is only a very simple matter compared with the big question in the case, which involves over a million dollars, as to whether or not these goods of the King of England and the Aetna Explosives Company, and a large part of the French Republic's goods, whether we were responsible for them at all in view of the fact that they had not any right to be on the premises, but came there without our permission and in direct violation of the law.

Mr. Stallman. I would like to offer in evidence contracts between the parties to this suit and the sellers of the goods which were destroyed, copies of which I have heretofore furnished to Mr. Hobart for his inspection. I have copies before me, and I am going to ask Mr. Hobart whether or not he will permit these copies to be offered in evidence, because the originals we would like to retain possession of.

The originals are here in court, if you want to look at them.

Mr. Rockwood. These are contracts, we will say, between the Du Pont Company and the King of England; is that it?

Mr. Stallman. Yes, in one case.

Mr. Rockwood. I suppose that is very binding upon us, but I don't know if I object to it.

Mr. Stallman. That is all I want to know.

Mr. Hobart. We do not object to it.

The Court. If there is no objection they will go in then.

Mr. Stallman. The first contract is dated December 16, 1915, between the Republic of France and the Maas & Waldstein Company, and for the purposes of information I want to say cover five cars of guncotton which are mentioned in the complaint of the French Government. That contract is identified as number F-333, P-28.

The next contract is one dated January 18, 1916, between the Republic of France and the Hooker-Electro-Chemical Company, and is identified as number F-351, P-33, and covers five cars of monochlor benzol.

The next contract between the Aetna Explosive Company and the Republic of France, and is identified as number F-340-P-30. That covers three cars of guncotton which were in the Lehigh Valley Company yard where they were destroyed.

The next one is a contract between the Aetna Explosive Company and H. J. Johannet, representative of the French Government, and covers two car loads of picric acid. It is identified as number 359, and is dated March 9, 1915.

The next contract is between E. I. Du Pont de Nemours Company and H. J. Johannet, the representative of the Republic of France—or the Controller of the Administration of the Army of the Republic of France, and is dated March 13, 1915, and is identified as number 386-31.

The next one is a contract between the Aetna Explosive Company, Incorporated, and the Republic of France, and is designated as F-587-P-45, and covers four carloads of smokeless powder. Those are the four cars involved in the suit of the Aetna Explosive Company.

The next is a contract between the Du Pont Company and the British Government, and is dated the 24th of August, 1915, and is identified as B-320-225-W, and covers ten cars of cannon powder.

The next is the contract between the British Government and the Du Ponts, dated November 5th, 1915, identified as number B-532, and covers two cars of powder.

The next is a contract dated the 15th day of July, 1915, between the British Government and the Hercules Powder Company, and covers fifteen cars of powder, technically known as cordite. That contract is identified by the number B-196-155-W.

Mr. Rockwood. Mr. Stallman, are the contracts identical, except as to amounts and the character of material?

Mr. Stallman. Yes, and as to price, of course.

Mr. Rockwood. Yes.

Mr. Stallman. And as to the point of delivery.

Mr. Rockwood. But the general clauses are about the same.

Mr. Stallman. Yes, they are practically made up all alike. They started with the names of the parties and articles, specifications and quantities, and so forth.

Mr. Rockwood. Yes, all right.

Mr. Stallman. Those will be marked.

(Papers marked Exhibits P. 1 to P. 9 inclusive.)

Mr. Stallman. Now, I would like to offer in evidence at this time, in order to keep track of the exhibit numbers, the map of the Black Tom terminal which Mr. Hobart will bring in at noon.

The Court. It is here now.

Mr. Stallman. Yes. We will put it up during the noon recess, and ask to have that marked Exhibit P. 10.

(Map considered marked Exhibit P. 10.)

Mr. Stallman. And if you have an extra copy of—

(Mr. Hobart produces a paper.)

Mr. Stallman. I would like to offer as Exhibit P. 11 a small map of the end of the Black Tom terminal. Its most distinguishing identification mark being "Plate 1." It shows the proximate location of certain of these barges at the time the fire commenced.

(Blue print map marked Exhibit P. 11.)

FREDERICK F. MAGNUS, sworn.

Direct examination by Mr. Stallman.

Q Mr. Magnus, what is your business? A I am the treasurer of the Maas & Waldstein Company of New Jersey, with an office at 92 William street, New York City.

Q And the Maas & Waldstein Company in July, 1916, and months before that, was engaged in what business? A In the general chemical manufacturing business, and in particular the manufacture of guncotton.

Frederick F. Magnus, direct.

Q Referring to Exhibit P. 1, contract between the Maas & Waldstein Company and the Republic of France, covering guncotton, I see that from the contract that this guncotton was charged at a price of 52½ cents per pound dry weight, including packing and delivery as heretofore specified. By dry weight just what was meant? A The guncotton was shipped in a wet state; the amount of moisture was determined, and that was deducted from the gross weight, leaving the dry weight of guncotton to be charged for.

Q What have you to say as to the reasonableness of the price of 52½ cents a pound that was charged under this agreement or agreed to in that contract?

Mr. Rockwood. Objected to as incompetent, irrelevant and immaterial, and not the proper measure of damages. "What have you to say as to the reasonableness?"

The Court. I think perhaps the objection is well founded, Mr. Stallman. The question is what was the market value of the stuff at the time of its destruction, not whether that value was reasonable. It may have been an unreasonable value because of the war, or there are various things that might make it an improper measure to put the reasonableness of the value. Market value is what they would be entitled to because that is what they would be enabled to do, to go out in the market and buy it at that price and restore what they had lost.

Q Mr. Magnus, this contract is dated in I think, December, 1915, and the guncotton in question was shipped in July, 1916. With those dates in your mind can you tell us first whether or not there was a market price for guncotton such as you shipped in the month of July, 1916?

Mr. Rockwood. I object on the ground that the witness has not been shown qualified or competent to answer that question.

The Court. He has not been qualified, Mr. Stallman.

Q You said you were connected with the Maas & Waldstein Company at that time? A As treasurer of the company, and negotiated the particular contract in question.

Q How long have you been connected with the Maas & Waldstein Company? A About six or eight years.

Q As part of your duty did you have anything to do with the selling of the guncotton produced by your company? A Both with the estimate of cost and the selling of the products.

Q Yes; and were you during the year 1916 familiar with the selling prices of such guncotton as your company manufactured? A Yes, sir.

The Court. Now, unless the other side desires to cross examine, the Court is satisfied with his qualifications. If the other side desires to cross examine they may do so.

Mr. Rockwood. Satisfied if your Honor is.

The Court. Very well, you may ask the question now, Mr. Stallman.

Q Mr. Magnus, was there in the month of July, the end of the month of July, 1916, a market and a market price—market value—for the guncotton, that is, such guncotton as your company manufactured? A Only as it applied as between our company and the one buyer that we were furnishing with guncotton.

Q Well, I don't quite understand what you mean by that? A There was no open market on guncotton at the time.

Q There was not. Were there many companies producing guncotton at that time? A Several; I should say about five or six.

Q And were there any large number of buyers of guncotton in quantities? A Only the Allied Governments.

Q Yes; and in supplying those governments, those buyers, how were the prices arrived at?

Mr. Rockwood. I object to it as immaterial and incompetent. The question is the market price.

The Court. Well, this witness has already stated there wasn't any market.

Mr. Rockwood. Yes.

The Court. Where there is not any market you cannot apply the market value.

Mr. Rockwood. Then I submit the question is immaterial as to how the price was arrived at. Probably was a matter of negotiations.

Mr. Stallman. I will admit that.

Mr. Rockwood. Not controlled by a standard.

The Court. Well, if you have your contract with respect to the prices and there wasn't any market, what more do you want, Mr. Stallman?

Mr. Stallman. We merely did it because of Judge Rockwood's objection.

Mr. Rockwood. Did what?

Mr. Stallman. You wanted to know how this price was established. I was just about to ask Mr. Magnus and now you object to it.

Mr. Rockwood. I think you are bound by your contract in that respect, if the Court please.

(Mr. Stallman talks to Mr. Rockwood out of the hearing of the stenographer.)

Mr. Rockwood. If the Court please, Mr. Stallman says that he has lost some records and he desires to make a statement on the record as to the average net weight of the goods.

We have no objection to it, to him making a statement, without asking the witness. If you want to offer that we have no objection.

The Court. All right.

Mr. Rockwood. But we do not want to be bound by any immaterial statements. It is offered to show the net weight. He has an affidavit here to show the net weight with the moisture out. We do not object to that, because he hasn't any record; and he cannot prove it without mak-

ing the admission, but we do not want to be bound by any other statements in the paper.

The Court. Only the statement of the net weight.

Mr. Rockwood. Yes.

Mr. Stallman. He has already testified to the prices.

The Court. If you want, in order to prevent the jury getting any collateral notion from the other statements, Mr. Stallman can read it into the record, the net weight, from the affidavit, and that will keep the affidavit out.

Mr. Rockwood. Then we want the invoices, if you have them.

Mr. Stallman. Yes. I might say to the Court that Mr. Magnus, not anticipating we would require him in court, has made an affidavit as to the shipment of five cars involved in this suit, and what their weight is. That is what the affidavit means.

Mr. Rockwood. I would suggest Mr. Stallman offer the affidavit and state the net weight on the record—I mean offer the invoice and state the net weight on the record.

The Court. All right. We will adjourn at this point until two o'clock.

RECESS.

Cross examination by Mr. Hobart.

Q Calling your attention to the agreement which has been offered in evidence, dated the 16th of December, 1915, is that the only agreement that your company had with the Republic of France? A At the time of the agreement, yes.

Q Were there other agreements made some time afterwards? A Not during 1916, not at the time of the Black Tom disaster—subsequent to that there may have been.

Q I am not interested in those. This is the only one, then, that you had down to— A Down to July, 1916.

Q This is the one under which, of course, you were operating? A It was.

Q Now, calling your attention to certain specific provisions

in this agreement, Iwant to ask one or two questions about them. In the first place, I call your attention to a provision on page 2—that the guncotton shall be suitably packed for export, etc., and shall conform to the Interstate Commerce regulations. That was done, of course, by your company? A Absolutely.

Q And at the time of the shipment, the guncotton was shipped with not less than twenty per cent. of water, as required by the contract, was it not? A Absolutely.

Q And that is the reason why you refer in your testimony or in your affidavit to the so-called dry basis? A Yes, sir.

Q That is to say, the dry basis is arrived at after deducting twenty per cent. of water? A Twenty per cent., or whatever moisture was determined to be actually represented in the particular cases.

Q But not less than twenty per cent.? A Not less than twenty per cent.

Q But the bills of lading, for example, which I presume, were issued at your plant, they would give the total gross weight, would they not, as a rule? A Yes.

Q Without regard to the twenty per cent deduction? A Approximately, the gross weight.

Q Now, what I wanted to get at was, to make sure that the bills of lading, which I understand are to be offered in evidence, do not give the net weight but only the gross weight? A The gross weight.

Q Calling your attention to another provision in the contract, on page 3, providing that the seller—that is to say, your company—shall pay the freight charges for transportation from Newark to point of destination—do you know whether the freight charges on these particular goods that were destroyed were paid by your company? A Yes, they were.

Q And in the same paragraph to which I called your attention, I ask you also to note the provision: "To point of destination, within free lighterage limit of New York Harbor, designated by the buyer—" that is, by the French Republic? A Yes.

Q What point within the free lighterage limit was designated by the buyer?

Mr. Stallman. It may be somewhat interesting to Mr. Hobart, but I do not think it is material. It is not cross examination. The complaint shows that these particular cars were burned while in the Jersey Central yard. They had not yet been delivered on lighters within the lighterage limits. Therefore, I object, as not cross examination and not proper.

The Court. I do not understand that the testimony shows anything at all, because there is not any evidence in the case yet as to where they were burned.

Mr. Hobart. I grant Mr. Stallman's point that it is not cross examination. Perhaps he will allow me to make him my own witness for the purpose.

Mr. Stallman. Go ahead.

A We followed the instructions of G. W. Sheldon & Company, who were the shipping agents for the Republic of France, and in this particular instance, whatever point they were sent to was done at the instigation of G. W. Sheldon & Company.

Q Do you happen to know as to these five cars that were burned on the Jersey Central pier, dock 19, whether any particular point of delivery had been designated for those cars? A The bills of lading will show the points that had been designated.

Q You have not any independent recollection of it aside from the bill of lading? A Not without further verification.

Q Now, calling your attention to another provision of the contract in regard to inspectors, do you know whether or not the contract that is involved in these particular five cars was inspected at your plant? A Yes, it had been.

Q And, calling your attention to the provision for the terms of payment—purchase price to be paid by the buyer within five days after the presentation at the office of J. P. Morgan & Company of proper invoices and certificates, and so forth—do you know whether any certificate had been given for these particular five cars? A Yes, they had been.

Q When was it the usual practice to have that certificate delivered—that is, I mean, when the goods were shipped at your

plant, or when they arrived at Jersey City, or when? A No; immediately upon examination the certificate was delivered to us, and then attached to the invoice, and sent to J. P. Morgan & Company for payment.

Q And by examination you refer to the inspection provided for in the contract at your plant? A Yes.

Q Now, calling your attention to the copy of the invoice which has been attached to the affidavit—I believe the affidavit is to go in, isn't it, Mr. Stallman?

Mr. Stallman. Yes.

Q (Continuing.) Do you know which of these particular cases on the pier of this particlar invoice are included in the five cars—I understood there were some other cars besides these particular five cars on the invoice—do you know which are which? A No, I would not know.

Q Have you any way of determining by examination of this invoice, or of your affidavit, or of the contract, whether any of the other goods were paid for? A Whether the total number of cases appearing on this invoice had been paid for by J. P. Morgan & Company as agents of the Republic of France?

Q Well, I will put it that way, yes. A Yes; they had all been paid for.

Q They had all been paid for? A Yes, they had all been paid for.

Q Prior to the inspection? A Prior to the inspection.

Q What is there to show that? I mean, is there anything on the invoices, or any note, or anything, that indicates the fact of payment? A No; there is nothing on the invoice that would note the fact that that particular invoice had been actually paid for, but I would gladly make affidavit to that effect.

Q You know, as a matter of fact— A I know, as a matter of fact, that every invoice was invariably paid for long in advance of the time of the shipment.

Q That is what I wanted to know. It was the practice in other words, to pay for these goods as soon as the inspection had

been made and the certificate presented to Mr. Morgan? A Correct.

Q And you have no reason to suppose there was any different practice with regard to these particular five cars? A I am quite sure there was not, because at no time was there any period that the invoices were dealt with any differently.

Mr. Hobart. That is all.

Mr. Stallman. I think that is all.

By Mr. Hobart.

Q After the goods had once been delivered on board cars at your plant in Newark, did your company undertake to exercise any further control over them? A No; our liability ceased at that time.

Q And you, of course, would send the bill of lading and whatever papers might be necessary, to Mr. Morgan; was that the way it was handled? A They did not require the bills of lading.

Q What did you do with the bills of lading? A They were kept on file in our office.

Q Did you send them to Sheldon & Company? A If they were required, but in most instances, they were not even asked for.

Q But at any rate, your work was finished as soon as the goods were loaded on board the cars? A Yes.

Q And after that you did not undertake to exercise any further control over them? A No.

Q Were these goods insured?

Mr. Stallman. I object to that.

The Court. I do not see what relevancy that has to the case at all.

Mr. Hobart. It might have a relevancy in view of some decisions of the United States Supreme Court. If they were not, it does not make any difference.

The Court. I think I shall hold, until I see a decision that changes my view of what I have always conceived

the law to be on that subject, that the insurance has no relevancy whatever to this inquiry.

Mr. Stallman. That is all.

Mr. Stallman. Under stipulation of counsel for the defense, I would now like to offer for the purpose of saving time, the invoices of all of the cars involved in these suits, with the understanding and reservation that the prices named in the invoices—that the defendant does not agree to—that is, they do not admit that they are bound by the unit prices stated in the invoices.

The Court. All right.

Mr. Stallman. Attached to the exhibit which I now offer, is a typewritten summary just giving the names of the makers of each of the invoices, the date of the invoice, and the particular designation of the car, or lot number of each. I would like to have that marked as one exhibit because—

The Court. All right; it is fastened together?

Mr. Stallman. Yes.

The Court. You may mark the batch.

(Marked Exhibit P. 12.)

Mr. Stallman. Now, I would like to offer, under the same stipulation, subject to the reservation that the counsel for the defense may examine the freight agent of the Jersey Central Railroad and his own freight agent with respect to cars as they arrive over its line, the bills of lading for each of these cars which are in the same order as on the invoices.

(Bills of lading and the summary attached marked P. 13.)

Mr. Stallman. Under the same stipulation, I now desire to offer the freight bills for all of the cars in question with the summary attached thereto, showing the car number and contents in the same order as appear on the other summaries, with the understanding that the plaintiffs do

not claim the indorsement with reference to such of these freight bills the freight on which has not been paid. Counsel understands that as to certain cars which arrived on the Lehigh Valley Railroad the freight has not been paid, and these bills are offered for the purpose of showing the arrival of cars at Jersey City, and the amount of freight to which we are entitled in a case where the freight was paid. Where the freight was not paid, of course, we are not entitled to it and they are not offered for that purpose.

(Marked Exhibit P. 14.)

Mr. Stallman. Now, I shall call Mr. Sallade.

CHARLES H. SALLADE, sworn.

Direct examination by Mr. Stallman.

Q Mr. Sallade, what is your business? A Stocks, investment securities.

Q I see. Have you been connected with the Aetna Explosives Company, Incorporated? A Yes, sir.

Q Over what length of time? A From the time they were incorporated until May of last year.

Q In what capacity? A Sales agent for military explosives.

Q For military explosives? A Yes, sir.

Q And how long were you engaged in the business of explosives? A Fifteen years.

Q Are you familiar, Mr. Sallade, with certain contracts which were made by the Aetna Explosives Company with the Republic of France? A Yes, sir.

Q With guncotton and picric acid? A Yes, sir.

Q And I think some smokeless powder? A Yes, sir.

Q I call your attention to an invoice made by the Aetna Explosives Company to Republic of France, care of J. P. Morgan & Company, dated August 3rd, 1916; another one dated September 20th, 1916; the first one for 582 cases of guncotton covering certain cars at a price of 55 cents less 2½ cents, the second invoice being for 500 kegs of picric acid at $1.45 and another invoice dated July 20th, 1916, for 500 kegs of picric acid at the

same price; also the invoice dated July 20th, 1916, for 666 cases of smokeless powder and an invoice dated July 16th—beg pardon; that is a duplicate—an invoice dated July 20th, 1916, for 625 cases of smokeless powder at 80 cents a pound; and also an invoice dated July 13th for 87,000 pounds of smokeless powder; and another invoice dated July 20th, 1916, for 86,580 pounds of smokeless powder, which are included in Exhibit P. 2. Now, as to the first invoice to which I referred for 90,866 pounds of guncotton, which is charged on this invoice at 52½ cents a pound, can you tell us, Mr. Sallade, whether or not on the 29th or 30th of July, 1916, there was a general market, an open market for the sale of guncotton? A No; there was not.

Q What was the condition at that time with reference to the sale of guncotton? A About the only sales that I know of that were being made were to the warring nations.

Q And they were whom? A The Republic of France, Great Britain and some of the Scandinavian nations were purchasing some, Roumania and Spain.

Q Was there at or about the latter part of July a recognized market price for guncotton? A Yes, sir.

Q What was that? A Yes, sir.

Q And what was it? A Sixty cents.

Q And how did it come that that was different from the contract price?

Mr. Rockwood. One moment. I object to that as calling for a conclusion.

The Court. I think it does.

Mr. Stallman. What is it?

The Court. I think that calls for a conclusion.

Mr. Stallman. Well, I think if the witness knows—however, I won't press it.

The Court. If it is more than the contract price I do not see why you want it.

Mr. Rockwood. What was the contract price, Mr. Stallman?

Mr. Stallman. Fifty-two and one-half.

Mr. Rockwood. You have proven sixty?

Mr. Stallman. Yes, but I am not asking more than—

The Court. Is there going to be any contest on this particular point? The point is rather in relation to damages where there isn't any market, and I can readily see Mr. Stallman's anxiety about proving the facts, to show that the actual value was at least the value set forth in the contract.

Mr. Rockwood. I see no use in taking your Honor's time on that point.

The Court. Well, if there is going to be no contest over it, and the contract price will not be disputed, why then it will save time.

Mr. Stallman. It surely will; but counsel have assured me that they are going to make me prove the value of every car of this stuff by the market.

The Court. You have a right to do it if they insist upon it.

Mr. Rockwood. We cannot, of course, dispute the contract price; but we want to show at least that the market price was as much as the contract price.

The Court. Assuredly; that is different. That is what I suppose you want shown, if you can prove by a few general questions, Mr. Stallman, or leave the witness open for cross examination if they dispute many of the items—

Mr. Stallman. Yes.

Q Now, I want to call your attention to the invoices made to Comptroller or Administrator Johannet of the French Government for picric acid at $1.45 a pound. What can you say as to the market price of picric acid? A In large quantities that was the market price.

Q It was. And I call your attention to the price charged—

The Court. I suppose by the market price you mean that it was the warring nations were paying?

The Witness. Yes, sir; that was the only—

The Court. That was the only market you had?

The Witness. That was the only market we had.

Q And what can you say about the smokeless powder for delivery at that time in quantities in which your company was furnishing it? A Do you mean under the date of 1916?

Q Yes; that is around in July. This happened in July, 1916. A Yes. The price was around 80 cents; between 75 cents and 80 cents, but I think we were about the only people at that time that made such a price. Prior to that they were getting around ninety-seven and a dollar. I think we were the first ones to come down.

Q And what did that result in—your reducing the price? A Well, it resulted in the—

The Court. In your getting the contract, I suppose.

The Witness. Yes; and it resulted in the Aetna Explosives Company going in the hands of a receiver. We lost money for being too ambitious for business.

Q I see. These invoices are at 80 cents, and you say that was the market price at that time? A Yes, sir.

Mr. Rockwood. No questions.

Mr. Stallman. I would like to ask you one more question, Mr. Sallade.

Q As the war continued, was there a gradual change in the prices of smokeless powder?

Mr. Rockwood. Objected to as immaterial.

Mr. Stallman. All right. Withdraw it.

The Court. I think it is immaterial.

Mr. Stallman. No questions?

Mr. Rockwood. No questions.

Mr. Stallman. All right.

(Witness excused.)

The Court. Let me ask you, Mr. Stallman, one question. That fire was on the 29th and the morning of the 30th, wasn't it?

Mr. Stallman. Yes, sir.

The Court. You confined your question with respect to values to the 29th.

Mr. Stallman. What is that?

The Court. You confined your question, as I understand it, with respect to this matter of value to the 29th?

Mr. Stallman. Well, it was Saturday, and the 30th was Sunday.

The Court. I think you might go far enough to ask him whether on Monday there was any change, because that would be the time your market would be taken for business, if you want us to go any further. I overruled your question whether prices continued to remain the same. You can ask him one question to settle it, whether the prices continued so up to and including the 30th or 31st.

(Witness recalled.)

By Mr. Stallman.

Q During the entire month of July and up to the month of August, was there any change in the market price that you have given us? A No, sir.

The Court. All right.

(Witness excused.)

Mr. Stallman. Now, Mr. Wehrly.

CHARLES A. WEHRLY, sworn.

Direct examination by Mr. Stallman.

Q Mr. Wehrly, where do you reside? A 2670 Boulevard, Jersey City.

Q And what is your business? A Freight agent, Central Railroad of New Jersey, Jersey City, N. J.

Charles A. Wehrly, direct.

Q And how long have you been freight agent of the Jersey Central? A Thirty-two years.

Q And as freight agent at Jersey City, what was your duties? A General supervision of the freight traffic.

Q And that included the supervision of the receipt and delivery of merchandise in carload lots? A Yes, sir.

Q Mr. Wehrly, I call your attention to Exhibit P. 14, freight bills, particularly one dated Jersey City, July 26, 1916, your pro No. 7-3782, particularly car number, New York Central 95537, and a bill of the Jersey Central dated July 26th, 1916, your pro No. 7-3781, and particularly cars Nos. F. W. D. 6593; B. F. 140207; B. & O. 180323, and Wabash 76146, and ask you first whether or not those bills were made in your office? A Yes, sir; they were.

Q And was the freight shown on these bills paid? A Yes, sir.

Q And did these cars arrive at Jersey City? A They did.

Q Can you tell us what became of them? A I can by referring to the record.

Mr. Rockwood. A little louder. I cannot hear you.

A (Repeated by the stenographer.) I can by referring to the record.

Q And have you brought with you records showing what became of those cars? A Yes, sir.

Q And will you refer to them? A (Producing papers.) Yes, sir. They were destroyed at the fire at Dock 19.

Mr. Rockwood. I cannot hear you, Mr. Witness.

The Witness. They were destroyed by fire at our Dock 19, July 30th, 1916.

Q And your record shows that these cars were loaded with wet nitrocellulose; is that right? A Yes, sir; yes, sir.

Mr. Hobart. Pardon me, just a minute. I think we have a right to know whether this witness knows that of his own knowledge.

The Court. I suppose you have when the time comes to cross examine him. You can ask him that. If it appears by the evidence that what he has been giving us has been mere hearsay, that being your first opportunity to object, you may object and I will strike it out.

Mr. Stallman. I asked him if his records show that, and he said yes.

Mr. Hobart. I did not understand the question to be in that form. If it is I think we ought to object to it now.

The Court. Well, in that case, the attitude of it—I did not listen to the question with a great deal of care—but if that was the question and you did not object to it, then under the decisions in our State, not having objected to it, your right to object is gone.

Q Mr. Wehrly, did you see those cars on fire? A I saw them burn; yes, sir.

The Court. Well, it was all academic, wasn't it?

Mr. Hobart. Yes.

Q Where were they when they were burning? A At what we term our dock 19, Jersey City.

Q What time of day was that? A I should say between four and five A. M. of July 30, 1916.

Q Do you remember the Black Tom explosion? A I do; yes, sir.

Q Where were you? A I was at my home, 55 Tonnele avenue, this city.

Q How long after you heard the explosion was it that you saw these cars on fire? A Oh, possibly two hours.

Q That is, you went right from your home to the freight office? A I did; yes.

Q Now, have you a record, Mr. Wehrly, of the handling by your company of the cars P. L. 561418, P. R. R. 67263, and the thirty-five following cars shown on the summary P. 14, and if so, can you tell us if your company handled those cars,

what disposition was made of them? A I will have to look this up.

Q Just call them off and I will check off. A 561418, 67263, 26245, 535107, 84203, 560234, 95537.

Q Yes. A 6593.

Q Yes. A 14027.

Q Yes. A 180323.

Q Yes. A 67146.

Q Yes. A 561418.

Q The second time you gave me that? A 67263. That is duplicated.

Q Yes. A 226068.

Q Yes. A 578, 135795, 90283, 84,203.

Q Duplicated? A 23696.

Q Grand Trunk? A Grand Trunk, 28696.

Q 23686? A It has been corrected to 8 here; yes. 48602, 560234.

Q Duplicated? A 26245.

Q Duplicated? A 535107.

Q Duplicated? A 252318.

Q Check. A 36217.

Q Check. A 22344.

Q Check. A 35854.

Q Check A 7755.

Q Check. A 88386.

Q Check. A 71377.

Q Check. A 3147.

Q Check. A 96066.

Q Check. A 13448.

Q Yes. A 141121.

Q Yes. A 87699.

Q Yes. A 103675.

Q Yes. A 45016.

Q Yes. A 106834.

Q Yes. A 28208.

Q Yes. A 55180.

Q Yes. A 10130.

Q Yes. A 92918.

Q Yes. A 5527.

Q Yes. A 202810.

Q Yes. A 92993.

Q Yes. A 94180.

Q Yes. A 35243.

Q Yes. A 89976.

Q Yes. A Some of these cars I testified to that burned are included in these.

Q That is, you have in the last statement of cars that you have given us included the five cars that you have already testified were burned up on Dock 19? A Yes.

Q As to the other cars outside of those—as to these other cars outside of those, what generally did you do with those cars? A They were all delivered to various lighters from our Dock 19, Jersey City.

Q Have you heretofore prepared from your records a statement showing the dates and car numbers and the barges to which these various cars were delivered? A Yes.

Q I show you a statement which you made and under date of January 20, 1916, together with the various papers attached thereto and ask you if those are records which you made in your office? A Yes, sir; they are, all except photographic copies.

Q Will you look at those photographic copies and say whether they are correct copies of your records? A Yes, sir; they are.

Q And each one of these tickets attached to this statement show the name of the boat or barge to which the car was delivered or the contents of the car was delivered? A Yes, sir.

Q And do they show the date of the delivery? A They do; each one of them.

Q Each car? A Yes, sir.

Q And the car number and contents and gross weight, all that information is on these records? A Yes, sir.

Charles A. Wehrly, cross.

Mr. Stallman. Well, I would offer this statement of Mr. Wehrly with the delivery tickets as one exhibit.

(Papers marked Exhibit P. 15.)

Cross examination by Mr. Hobart.

Q Calling your attention to Exhibit P. 15, does that show the dates of the delivery of the contents of these various cars to the barges? A Yes, sir.

Q Have you any way of indicating on this Exhibit P. 15 or pointing out to us by reference to the exhibits which of these cars were for the British Government and which for the French Government, and so forth?

Mr. Stallman. Why can't we agree on that, Mr. Hobart?

Mr. Hobart. I think probably we can. Just so we get it on the record in some form. I will put the question this way, then:

Q Are the cars that were consigned to Lenham & Moore the cars that were destined for the British Government? A No, I believe not.

Mr. Stallman. I will admit that.

Mr. Hobart. Admit that, do you? All right. So do I.

Q Now, can you tell by reference to your records, Mr. Wehrly, on what date the cars that were consigned to Lenham & Moore were loaded? A No, sir; I cannot.

Q Have you any record of the loading of the barges? A Oh, loading of the barges.

Q Yes; that is what I meant. I should have said the unloading. A Yes.

Q The unloading of the goods from the cars to the barges? A Yes; I have that record.

Q Now, can you give us the date of the transfer of these various cars or contents to the barges, taking first those that were consigned to Lenham & Moore? I do not care about the car number particularly, unless a certain car happened to be

on a different date than some other car. It is the Lenham & Moore cars that we want. A Oh, pardon me.

Q At present.

Mr. Hobart. Mr. Stallman, perhaps we can agree on this. My information is that they were delivered on the 29th; is that what you understand?

Mr. Stallman. Yes; it is all matter of record, and I do not see any reason why we cannot agree on these things, because if there is any question about it I am willing to stipulate as to what the fact is, and you can read that stipulation before the jury.

Mr. Hobart. I want to get it now as incidental to the examination of the witness, that is all, and there are some other questions I want to ask him as soon as we have the dates fixed.

Mr. Stallman. You can assume that whatever the dates are I will agree to them.

A There are ten there, or eleven.

Q Yes, you have ten or eleven cars that were delivered on what date? A On July 29th.

Q And to what barges? A To the "Thompson" and "Paulina."

Q Do you know what company owned or operated those barges? A The Ackerman Lighterage Company.

Q Do you know whether all of those cars or their contents were loaded at your docks? A Yes.

Q Known as Dock 19? A Yes.

Q About how far is that from the Jersey Central Terminal? A It is part of the terminal.

Q Part of the terminal itself? A Yes.

Q How far from the Lehigh Valley Terminal? A Between the half and three-quarters of a mile.

Q Where is it with reference to the Lehigh Valley Terminal; is it north or south? A North—northeast.

Q And it borders, of course, on the Hudson River, on New York Harbor? A Yes.

Charles A. Wehrly, cross.

Q The same as Lehigh Valley and Black Tom? A Yes, sir.
Q Now, do your records show whether any of those cars that you just mentioned that were loaded on the "Thompson" and "Paulina" came over the line of the Lehigh Valley? A No, sir; they did not.
Q All came over the line of the Jersey Central? A Yes.
Q From what point? A Parlin, New Jersey.
Q So the Lehigh Valley did not have anything to do with those cars? A Not on the road haul; no, sir.
Q Did they at any time? A Not to my knowledge.

Mr. Rockwood. Ask him who gave instructions to deliver.

Q Who gave instructions to you or your representative about delivering to the Ackerman? A Lenham & Moore.
Q That was the consignee of these particular cars? A Yes, the consignees of these particular cars.
Q Does that apply also generally to all of the cars; that is to say, the consignee gave instructions as to the delivery? A Except in cases where consigned direct to the lighterman.
Q Now, can you also tell me by reference to your records if certain other cars were delivered on board the "Paulina"—were consigned to Lenham & Moore on July 28th? A Yes, sir.
Q Your records show delivery of a certain number of other cars on that date, do they not? A Yes, sir.
Q Also at Dock 19? A Yes, sir—fifteen cars delivered on July 28th to the lighter "Paulina" at our Dock 19.
Q Do you know where the "Paulina" went after these cars had been delivered on July 28th? A No, sir; I do not.
Q Did she stay at your dock? A No; as soon as they all loaded we ordered them away.
Q Well, did she go away, do you know? A I presume she did, as I understand she was destroyed in the fire.
Q Do you know whether she went away on the 28th? A Not of my personal knowledge.
Q You do not know whether she did or not? A No, sir.

Charles A. Wehrly, cross.

Q Did you see her there again on the 29th of July when she was taking some more of her load? A Not personally; no, sir.

Q But your records show she was partially loaded on the 28th of July and something else was put on on the 29th of July? A Yes; so far as we know, it was finished on July 29th.

Q Then, according to your records, and your knowledge of the method of handling those goods, the "Paulina" finished her load—that is to say, had a complete load on the 29th, and she was ready to leave your Dock 19? A She took everything that we had for her.

Q And is that also true as to the "Thompson"—that you also loaded on the 29th? A Yes, sir.

Q So that both of those barges on that day, so far as your records show, also so far as you have any knowledge, had placed on board everything that they were to get from your company? A Yes, sir.

Q Now, these other fifteen cars that you just mentioned that were loaded on the "Paulina" on the 28th, where did they come from—

Mr. Hobart. Perhaps you will stipulate, Mr. Stallman, they came from Lake Junction, N. J.

Q From Lake Junction, N. J.?

Mr. Stallman. What cars are they?

Mr. Hobart. The fifteen cars of Lenham & Moore of cordite.

Mr. Stallman. They came from Kenvil, N. J., through Lake Junction.

Mr. Hobart. I won't stipulate that.

Q Is Kenvil on the line of the Jersey Central? A Yes, sir.

Q And Lake Junction is also on the line of that company? A Yes, sir.

Q So far as your records show, did any of those cars come over the line of the Lehigh Valley? A No, sir.

Q Can you tell from your records about the loading of certain cars on the barge "Rockwell"? I would direct your attention first to certain cars that are said to have been loaded on the 25th of July—four cars in number, beginning with Pennsylvania, 84203. A Right.

Q Where was that loaded? A The contents of that car was loaded at Dock 19.

Q And the date? A July 25, to the lighter "Rockwell."

Q Sometimes called the "Charles Rockwell," was it? A We only know the name of the barge as "Rockwell."

Q All right. Now, three other cars loaded on the same barge on the same date—smokeless powder? A Yes, sir; they were loaded on the same barge at the same time.

Q And those cars are 560234? A Yes.

Q 26245? A Yes.

Q 535107?

Mr. Stallman. There is one other one.

Mr. Hobart. I have mentioned the other one already—84203.

Mr. Stallman. All right.

A Yes, sir; those four cars.

Q Those four cars were all loaded on the "Rockwell" on July 25th, according to your records, were they not? A Yes, sir; they were.

Q And I understand that those cars came from Emporium, Pennsylvania. Do you know whether that is the fact or not?

Mr. Hobart. Do you stipulate it, Mr. Stallman?

Mr. Stallman. Yes.

Mr. Hobart. It is stipulated they came from Emporium.

Q Is that on the line of the Jersey Central? A No, sir.

Q What line is it on? A Pennsylvania R. R.

Q It is not on the line of the Lehigh Valley? A No, sir.

Q And to get from Emporium to Dock 19, New Jersey Central, those cars would not come on the line of the Lehigh Valley? A No, sir.

Q Never were on the Lehigh Valley, as far as your records show? A Not to my knowledge or records.

Q Do you know where that barge went after it received these four cars on July 25? A No, sir; I do not.

Q Do you know whether it went to your dock or not? A It did, but I cannot tell you the exact date. I have not that.

Q You are not sure whether it left your dock on the 25th of July or some later date? A No, sir; I am not sure about that. I can tell if we loaded anything on that barge later on.

Q I will ask you about that later on in connection with some of the French goods. Let us look at some of the items in the French case. You have a record of two cars of picric acid, haven't you, shipped to Sheldon & Co.? A You will have to be specific; we have so many of them.

Q As to number? A Yes.

Q Here they are: 561418 and 61263, delivered at Dock 19, July 25, according to my information. I just want to make sure that that is right. A Yes, I have a record of those two cars.

Q And they were delivered July 25? A July 25, to the barge "Rockwell."

Q And they also came from Emporium, Pennsylvania, didn't they?

Mr. Hobart. It is stipulated, Mr. Stallman?

Mr. Stallman. I do not know. I will see in just a moment—yes, sir.

Mr. Hobart. It is stipulated they came from Emporium, Pennsylvania. All right.

Q Now, this barge "Rockwell," that you have mentioned, that was also an Ackerman barge, wasn't it? A Yes, sir.

Q Now, calling your attention to certain carloads of smokeless powder and cannon which are said to have been shipped from Haskell, New Jersey, by the du Pont Company, have you

a record of two cars known as 226068 and 578? A Yes; I have the record of those two cars.

Q And they were— A Delivered on July 27th to the barge "Rockwell."

Q That was two days after these other goods were delivered? A Yes, sir.

Q Do you not know where the barge was meantime? A I presume at our dock.

Q Who gave the directions for delivery on that particular barge? A The consignee.

Q Well, who was the consignee in that case, do you know? A No, not unless I—

Q Was this Sheldon & Co.? A Not unless I go into my records.

Mr. Stallman. That is right.

Mr. Hobart. It is stipulated it was Sheldon.

Q Now, I want to ask you about some other cars that are said to have been shipped from Haskell by du Pont, two carloads of smokeless powder for small arms—135795 and 90283. A Yes, sir; I have a record of those two cars.

Q From Haskell, N. J.? A I cannot tell you; I have no—

Mr. Hobart. Is it stipulated they came from Haskell?

Mr. Stallman. Yes.

Q And delivered to the barge "Rockwell" on July 27th? A July 27th; yes, sir.

Q What line is Haskell on? A Erie Railroad.

Q No part of the Lehigh Valley, is it? A No, sir.

Q So far as your records show, or any other knowledge you have, those cars did not pass over any part of the Lehigh Valley? A No, sir; they did not.

Q Now, take your five carloads of guncotton or nitrocellulose that were on Dock 19 at the time of the explosion—have you a reference to that? A Yes, sir; I have a record of it.

Q I think you have already given us the car numbers. Now, where did those cars come from? A Newark, N. J.

Q Over what line? A Central Railroad.

Q Nothing to do with the Lehigh, did they? A The cars were not moved in connection with the Lehigh from Newark to Jersey City; no.

Q Do you know what time they arrived at Dock 19? A I can tell by referring to records which it will take me some time to find.

Q Will you be good enough to look that up unless Mr. Stallman has a note of it and will stipulate it? A Yes, sir.

Mr. Stallman. I have the freight bills here.

Q I want to get it, when those cars arrived at the Jersey Central, Dock 19?

Mr. Stallman. The freight bills are dated July 26th, Mr. Hobart.

Mr. Hobart. July 20th?

Mr. Stallman. Sixth.

Mr. Hobart. July 6th?

Mr. Stallman. July 26th.

Q The freight bills being dated July 26th, would that indicate the cars arrived that day? A Yes; it would.

Q And I presume, of course, you have to use your custom of notifying consignees of the arrival of cars? A Yes; we have an excessively good system of notifying the consignees; we not only furnish them with a written notice, but also with a hand notice, delivered by messenger.

Q Do you know whether these particular five cars—whether there was any notice given after arrival, to the consignee? A Yes; there was notice of the arrival—and we hold the signature for them.

Q And do you know on what dat?

Mr. Stallman. I do not see any use wasting time on a matter that is immaterial, so I object to it—when the New Jersey Central notified the consignees that these

cars were in their yards—as to when the arrival notice was given is absolutely immaterial in this case.

The Court. What difference does it make, Mr. Hobart? I, for the life of me, do not see it.

Mr. Hobart. I do not know as it makes any. If Mr. Stallman objects, I will not press it.

Mr. Stallman. There is no use wasting time with it.

Q At any rate, those five cars which arrived on the 26th of July had not yet been delivered to the consignee, had they? A No, sir; they had not.

Q Do you know on what part of the dock they were standing at the time they were burned? A On what we termed the north side.

Q How far away from Black Tom Terminal was that? A Between a half and three-quarters of a mile.

Q I believe you said you saw these cars burning? A Yes, sir.

Q You do not know what set them on fire, do you, of your own knowledge? A Not of my personal knowledge; no.

Q What time did you say you got there—to Dock 19—or near there? A Between four and five A. M., on July 30.

Q How long did you stay? A How long did I remain there?

Q Yes. A I was there all day—all Sunday.

Q You saw a lot of things that were not on fire? A Yes; I came over from the Lehigh Valley explosion all around, driven over on our place, pieces of car wheels, and car frames.

Q But they were not burning? A Not burning.

Q Where did you see that? A I saw that in the morning, from Dock 16 to Dock 19.

Q You mean some stuff that had floated down the bay, or what? A No, sir; some stuff that came up in the air from the explosion and landed on our property, and I also took an eight-inch shell from one of the cars that was not completely destroyed.

Q When they landed they were not burning? A No, sir; not to my knowledge. I was not there when they landed.

By the Court.

Q Do you mean by your answer, when you say that, that they were coll, that you do not know whether they landed burning or not; is that the point? A Exactly.

By Mr. Hobart.

Q Go back for a moment to the records, so far as your records show as to all of the cars that you have testified to, they all came over the line of the Jersey Central, did they not, and none over the line of the Lehigh Valley? A To the best of my knowledge, yes. I cannot recall of any shipment of explosives that originated on or was forwarded in connection with the Lehigh Valley, received and delivered by us.

Q Going back for a moment to the time when these various barges were loaded, some on the 25th, some on the 27th and some on the 28th, did you permit those barges to stay there after they were loaded at Dock 19? A No, sir, not as a rule, unless we had other freight for them, that they were to take on, say, the following day.

Q Well, did you tell them to get away? A Always; the Police Department ordered them away.

Q You mean the Jersey Central Police Department? A The Jersey Central Police Department.

Q Why, if you know?

Mr. Stallman. I object to that.

The Court. I sustain the objection. First of all it is hearsay; and, second of all, it has no relevancy, anyway.

Q Did you ever order them away yourself? A Not personally; no, sir.

Q Did you notice where they went after they were ordered away? A No, sir; never gave it any attention or thought.

Q Do you know whether these particular cars that burned up while they were standing on Dock 19, whether they were

ready to be transferred to a barge—that is, were they unsealed and had anybody started to work on them, or was there any barge there ready for them? A They carried the original seals, but there was a barge there loading guncotton at the time, or nitrocellulose, the barge "George O." The barge "George O" at that time was loading nitrocellulose—the same material that was destroyed in these five cars.

Q That was on the 29th of July that that barge was loading? A Yes, sir, on the 29th of July.

Q Do you know why it did not load these five cars that day? A No, sir; I do not. It is possible that they could not reach it; they did load possibly eight or nine cars on that July 29th.

Q But they did not get around to these particular five? A Yes—I assume so, but I am not positive that the five cars were intended for the "George O" or not.

Q Was there room enough on board her to put these five cars? A Yes, sir.

Q After she had already received a load of these eight or nine? A Yes, sir.

Q When these five cars were burning, that is to say, when you saw them burning around four or five o'clock in the morning, I think you said, did you try to put the fire out? A Yes.

Q What did you do in the way of putting it out? A We had one of our own tugs on, and a B. & O. tug on, and we did take a portion of the contents off one car.

Q What did you do, pump water on? A Pump water from the—

Q From the bay? A Yes, sir.

Q That is all you did? A Yes, sir.

Q Didn't you have any hydrants on the pier? A No, sir.

Q Why had you no hydrants? A Sir?

Q (Repeated by the stenographer.)

Mr. Stallman. I object to that as immaterial and irrelevant and not proper cross examination.

A I could not tell you—

The Court. I think I will sustain the objection to that.

By Mr. Stallman.

Q You stated, Mr. Wehrly, that you saw, as I understand it, some iron parts of cars that came over from Black Tom. What parts of cars were they? A Parts of car wheels, parts of steel rods, parts of the steel underframe, parts of the brake rigging, and parts of the steel sides. In fact, it was all the iron parts of cars that had been blown up in the air and landed on our property.

Q And could you tell from what you saw whether they had the appearance of being burned or not? A No; I could not; no, sir.

Q Don't you recall at this time? A Not so far as the car material was concerned; but I did see a number of fuses.

Q Number of what? A Fuses, cannon fuses, fuses that are used to explode the shells.

Q Yes. A And they had the appearance of being on fire when they came over; they were exploded and black.

Q What shape were they—what size?

Mr. Rockwood. I move to strike that out as a conclusion of the witness—they had the appearance of being on fire when they came over. He could not tell that.

The Court. I think I will sustain the objection. You may state what the appearance was and the jury will conclude as to what condition they were in when they came over.

Q Now, you said you observed some thing that you called fuses. What was the size of that material? A The fuses look quite similar to the shape of a railroad spike, possibly a little larger, and it contains a high explosive that detonates the large charge in the shell.

Q Is it iron or steel or something like that? A It is iron; possibly steel; I am not sure about that.

Q Yes. A But I picked up a number of them and they had been exploded; they had the appearance of being in a fire.

Charles A. Wehrly, re-cross.

Q What was the appearance?

Mr. Rockwood. I move to strike out "appearance of being on fire."

The Witness. Being in a fire; not on fire.

The Court. I will strike out the first part and let the second part stand—they had the appearance of having been in a fire.

Q Well, what was its appearance? A Dirty and black on the outside. I picked one up and got all the dirt off.

Q What kind of dirt was it? A Why, from iron, similar to rust, but it was black.

Q Now, you said that you thought it had been in a fire. What we want is, what was the appearance of it? A Why—

Q We don't want your judgment that it had been in a fire, but the fact upon which you made that conclusion. A Well, about the only way I can tell you is to say it had the appearance of being burned or having been burned or having been in a fire.

Mr. Stallman. I think that is all, Mr. Wherly, right now.

By Mr. Hobart.

Q Do you know where they came from, Mr. Wehrly? A What is that?

Q Do you know where they came from? A I don't understand you.

Q Those things that looked like spikes. A I can't get you.

The Court. Do you know where the things they are talking about came from?

Q Did you see any of them coming through the air? A No, no; I didn't see them myself; no, sir.

Q You don't know where they came from at all? Of your own knowledge? A Not of my own knowledge; certainly not. I didn't know it was the explosion at Black Tom. I know it was an explosion, but I didn't know it was at Black Tom.

Q How big were they? A The fuses?

Charles A. Wehrly, re-cross.

Q These iron things that you saw? A Possibly about six inches long and an inch in diameter.

Q Do you know them as a combination fuse? A No; I couldn't tell you that.

Q You don't know what the name is? A I don't know combination or time fuse or tracer fuse; no, sir, I don't know.

Q But you know them as a fuse? A A fuse; yes, sir.

(Witness excused.)

The Court. Gentlemen, I am ready to decide that question we discussed this morning a little bit about the suit being entertained by the receivers or by the company. I looked into it as much as I desired to look into it to satisfy myself as much as I desired to be satisfied before deciding it.

The law seems to be in conflict between the Federal courts and the courts of the State. Where a person is simply a receiver appointed by a Court of Chancery or a court having Chancery powers and does not have title to the property, the two courts seem to hold that if the suit be instituted there they will not recognize out of the jurisdiction where the receiver was appointed, the receiver's having any right to maintain that suit.

The State Courts seem to hold almost unanimously the reverse rule; that by comity they will recognize the receiver and permit him to maintain his suit, unless, of course, the maintenance of the suit will interfere with the rights of domestic creditors or something of that sort.

A different situation, however, prevails where the receiver has actual title to the property. There he maintains the suit not by virtue of his title as a receiver of a court, but by virtue of his title to the property; and under the circumstances the Federal Court in large measure has permitted such a suit to be maintained even outside of the jurisdiction of the appointment of a receiver. But the question is a purely academical one so far as this suit in this court is concerned, because it has

been set at rest absolutely by the decision of the United States Supreme Court in the case of *Finny* v. *Guy,* which you will find reported in 47 Lawyers' Edition of the United States Supreme Court at page 839. In that case the United States Supreme Court held that the suit if it actually had been entertained by a State Court and had properly commenced there, the United States Supreme Court, inasmuch as the question was not one either of Federal origin or of Federal concern, would not review the situation at all, but would accept the condition as it had been accepted by the State Court and not overturn it.

So in this case there is not any difficulty whatever, as far as I see it, if the title is in the corporation or if it is in the receiver's care permitting either one of those parties to entertain the suit, and if the receivers have the title under the law of New York—I do not know whether they have or not; this order does not say anything about it, and I have not looked up the statute of New York to ascertain—but if the receivers have the title I do not see any objection whatever to permitting the receivers alone to pursue this remedy. If the corporation has the title, the only object of this order was to prevent contempt from attaching to either the corporation or the receivers for instituting the suit; and it would seem to me that under the circumstances either party might maintain it.

So, so far as that is concerned, I see no difficulty and no objection whatever in the matter, and I confirm the decision for the reasons I have given, and I have written the reasons in the record, so that they may be there, for the decision that I will permit the amendment to go into the record so that the suit may be maintained in the alternative, and as the title to the property develops later, or as the parties desire to have it maintained, either by one or the other of the two parties, I will let it go that way.

There is not any difficulty or any doubt whatever in my mind about it under the cases, and I have looked at them rather carefully.

I have already defined the question with respect to the maintenance of a suit by a foreign sovereign in a State court, and I might write right now into the record the two cases which confirm me in that decision.

One is Placquemines against Henderson in the United States Supreme Court, which is reported in 42 Lawyers' Edition, page 1106, and a case directly to the point—the Placquemines case is not directly in point, but the principle involved is applicable. The case directly in point is the case of King of Prussia against Keupper, 22 Missouri, 560; 60 American Decisions, page 639. That is practically on all fours with this case.

Now, you may go ahead.

LISLE R. BEARDSLEE, sworn.

Direct examination by Mr. Stallman.

Q Mr. Beardslee, what is your business? A Now?

Q Yes. A I am connected with the General Motors Corporation.

Q What was your business connection in July, 1916? A In July, 1916, I was with the E. I. du Pont de Nemours Company as assistant to the president in charge of the military sales division.

Q And as an officer charged with military sales, I suppose, you mean military sales of the products of the du Pont Company? A Yes, sir; sales of explosives to all governments, both foreign and our own.

Q And over what period of time did you give your attention to that work? A I was there from July, 1915, until some time after the close of the war; I think in about—May, 1919.

Q I see. And did you become familiar with prices for explosives and explosive material? A I was so; yes, sir.

Q I want to call your attention to Exhibit P. 12, particularly invoices of E. I. du Pont de Nemours Company, item No. 17 of the summary, being an invoice of cellulose powder, dated July 17, 1916, 105,000 pounds—I think it was shipped in two cars—at $1 a pound (this was a sale to the Republic of France), and an invoice dated the same day for smokeless powder for small arms, carload containing 490,940 pounds net at $1 a pound, and another invoice of the same date and the same material, 55,000 pounds—well, let us take just those two items. Take first the item of 105,000 pounds of nitrocellulose powder which is billed at $1 a pound. Was there at that time a general open market for nitrocellulose powder? A I should say that the question of a powder market was a difficult thing to determine. It is not like a market for tomatoes and potatoes where you can go out with any number of suppliers and particularly at that time during the war the entire powder capacity of the country, practically speaking, was taken up all the time, and it would be a difficult matter to go out at any particular time during the war and buy powder. You had to buy it ahead of time, and usually additions had to be built, or additions that had been previously built, their capacity had to be sold for a period when they were available.

The Court. I gather from what you say, then, that there was not any market.

The Witness. At times there might be a little surplus capacity available, but not much.

Q Well, let me ask you whether or not in the month of July, including the 31st day of July, up to and including that date—whether or not there was a recognized market price for nitrocellulose powder in quantities of 100,000 pounds for a delivery at that time? A At odd days it might be possible to buy 100,000 pounds, but I should say there was not any ready market, nor a readily obtainable market price, spot delivery.

Q And this price—and these prices that were charged were charged in accordance with a contract then existing between your company— A And the party to whom they were sold.

Q —purchaser. I presume those lots— A I presume those lots that you referred to were delivered on contract eight months later. I would not know unless you give me the contract numbers.

Q Well, I show you the invoice for the nitrocellulose powder which is endorsed 386, March 12th, that being one of the contracts that was introduced in evidence. A There was a contract. Is there a number on there? I know the invoice number —there was a contract about that date with the Republic of France at $1 a pound. I remember it very well. It was what we call a good-sized contract, twenty-four million and something.

Q Now, referring to the small arms smokeless powder which is charged on this invoice at $1 a pound, what were the facts as to a market and an available supply for delivery at that time? A Very much the same, only worse; less market for small arms than there was for cannon powder then, therefore, less easily obtainable.

Q Now, I want to call your attention to five invoices made by your company for a commodity which is mentioned on the invoices as nitrocellulose cannon powder, invoiced at 90¢ a pound, and another lot invoiced as nitrocellulose powder at 80¢ a pound, this lot containing about 600,000 pounds, and I ask you what the facts are as to the existence of a market, a market price and an available supply for delivery at that time. A At what date?

Q Between July 20 and July 31st, 1916. A My previous answer will apply to that also; conditions were just the same respecting those products.

Mr. Stallman. I see. Cross examine.

Cross examination by Mr. Rockwood.

Q There was a large demand at that time for the products of the du Pont Company? A Yes, sir.

Q And you said there was no market price? No prevailing market price you meant to say, probably, is that right? A No prevailing—that is to say, the price was made on contract for

delivery a long period ahead, as a rule. Once in awhile you could pick up a small quantity, as I stated, but nothing relatively large.

Q The choice was, therefore, simply a matter of agreement between the du Pont Company and the purchaser? A That is right.

Q But it was not affected or controlled by any other market prices of other dealers or other manufacturers? A In any business competition has its effect, but at that time the war was on and they required all the powder that could be made by everybody, practically speaking.

Q Well, it is true that there was such a demand at that time for the products of the du Pont Company that you could sell all you could manufacture? A We could.

Q And, in fact, the foreign countries were anxious to get the product? A They were.

Q And they were taking all you could supply? A Yes, sir.

Q Therefore, you largely fixed the price, didn't you, the price at which you would sell it? A It was a matter of negotiation.

Q And you would arrive at as reasonable a figure as you could, depending upon the circumstances? A We did.

Q Now, after the du Pont Company had delivered the purchased article to the car and complied with the contract, did its liability and its control over the article cease? A It did. We were very particular in this—

Q And the contract—under the contract did the producer or the consignee assume the control of the article from that time on? A I don't know.

Q Well, the du Pont Company did not? A The du Pont Company did not. We were outside from the time it was—

Q That is, if you delivered or filled a carload of explosives of the Jersey Central Railroad your duty was finished? A We did not deliver to Jersey City. We delivered at our plant.

Q No, but the Jersey Central Railroad. A Oh!

Q After you delivered a car of the Jersey Central Railroad you were through? A When we filled the car at our plant we were through.

Q Yes. You were through. And what the consignees did with it after that time you had nothing to do with it? A Absolutely nothing.

Q So, whether the price of a dollar a pound was a fair price or not you believed that it was because you made the price; is that right? A Yes; it was a fair price at the time it was made, I have no doubt.

Q What was the price of the powder in pre-war times—the same character of powder? A Why, in that—may I explain first—we said a dollar a pound—those earlier contracts at a dollar a pound gave the purchaser the option of specifying the granulation he wanted, that is the size of the powder, for what gun he wanted it, and he had the option of specifying for large cannon or small cannon or even rifle powder on some of those contracts at a dollar a pound; and the smaller granulations were more expensive to make. In the pre-war days the cannon powder price was around about—I think it was not far from eighty—the corresponding price around about eighty cents. I was not connected with that department before the war. I went into that during the war.

Q That is the same powder that sold at a dollar during the war sold for eighty cents before the war? A Approximately that. The addition was used to build plants, you know, not profit—plants had to be built.

Q How much powder did you make and sell to the Republic of France, do you know? A I can't tell you offhand. I would have—a large quantity.

Q You spoke of one contract. A One there for twenty-four million I remember distinctly.

Q You spoke of one contract for twenty-four million dollars? A Twenty-four million pounds at a dollar a pound—twenty-four million dollars.

Q How much did you sell to Great Britain? A Oh, we sold —I can't tell you how much. We sold hundreds of millions of

pounds—over a hundred millions. Great Britain bought for some of the other countries.

Q So that the few cars concerned with this case are a very small portion of what you manufactured? A I don't know how many cars are concerned in this case. I have not inquired. We did make hundreds of millions of pounds.

Q That is all.

Mr. Stallman. Mr. Hobart, it might be a good place right here to have it appear on the record a statement with reference to the stipulation which you sent me some time ago that cars under contract F—351, P—33, that is, the Hooker Electro Chemical Company, five cars of benzol, were burned up on track 16 of the Lehigh Valley yard at this time, and the three cars of guncotton from Aetna, Indiana, all French cars.

Mr. Hobart. All right.

Mr. Stallman. That will go on the record, Mr. Kelley.

DEPOSITION OF ARTHUR S. JEFFREY.

Mr. Stallman. I would like to read now a deposition of Arthur S. Jeffrey, a witness for the plaintiff. We examined a witness some time ago, gentlemen of the jury, and I have his testimony here. It is not very long, and I will read it to you.

"ARTHUR S. JEFFREY, sworn.

Direct examination by Mr. Stallman.

Q You live in Jersey City? A No, I live in Elmora, 115 Morristown avenue.

Q In July, 1916, were you an employee of the Central Railroad of New Jersey? A Yes, sir.

Q And in what capacity? A General yardmaster.

Q And as general yardmaster what territory did you have charge of? A The entire terminal, from West Side avenue to Greenville, including all water fronts.

Q That is in Jersey City? A Yes, sir.

Q Now, do you recall the occasion of the fire and explosion at the Black Tom Yard of the Lehigh Valley on the 29th or 30th of July? A The 27th, wasn't it, of July?

Q You recall the Black Tom explosion, I will put it that way? A Yes, sir.

Q At the time of that fire and explosion, Mr. Jeffrey, did you have a place in your yard or along any of your bulkheads or docks for the transshipment of explosives from cars to barges? A Yes, sir.

Q And what did you call that place? A Called that 19 Dock, the Powder Dock.

Q At the time of this fire and explosion at Black Tom, were there any cars down on that Dock 19? A Yes, sir.

Q And do you recall now, without referring to your records, the car number and initials of those cars? A I do not.

Q Do you know in a general way what the contents of those five cars were? A No, sir.

Q Well, do you know whether they were hay or wheat or straw or lumber or anything else? A I knew they wasn't hay, but I don't know what kind of powder or other stuff was in it, but I knew there was no hay down there.

Q Do you know whether or not they were explosives? A I think they were explosives; sure they were explosives.

Q Now, just about where were those five cars situated on this Dock 19? A There was five in one lot and two in another.

Q I see. And the lot of five cars, where were they located? A They were down on the north track, as we call it, and two over on the end of the south track.

Q Do you know what happened to those five cars? A What happened to them?

Q Yes. A Well, they burned up; that is, I seen them burning.

Q Did you observe anything about the condition of the cars right after the explosion, the condition of the sides or roof or running gear or anything of that kind? A Yes, sir.

Q What did you observe? A I observed the roof blowing off the cars and the sides were on fire.

Q About how long after the explosion was that? A That was, I should judge, around 6 A. M., in the morning, about 6 A. M., I got over there.

Q Did you see any car material, parts of cars, in the vicinity of these five cars? A Yes, I noticed a piece of brake rigging lying up agen one of the cars.

Q Which cars do you refer to? A To the five cars that was laying on the north track.

Q Anything else? A Well, there was shells and things sticking in the ground when we come over; just went down in the ground so far and stuck there; the top of shells.

Q Anything else besides this piece of brake rigging and these shells in the ground that you saw around these five cars? A Well, that's all that I took any particular notice of.

Q Did you notice any material of that kind in or on any of these cars? A There was some on the roof where the roof had been torn off; there was a board left; you could see the stuff on it that had come over; sparks and burnt wood and such stuff as that.

Q Let me ask you this. Did you have any watchman or other employee of the Central Railroad of New Jersey, who was stationed near the place where these five cars were? A Yes; there was a watchman there all the time, day and night.

Q Who was the night watchman? A I don't just recollect who he was. One of the police departments. I didn't have nothing to do with it.

Q And do you remember the explosion? A Yes, sir.

Q Did you hear it? A Yes, sir.

Q Do you remember what time it occurred? A I don't just remember what time the first explosion was.

Q How many explosions did you hear? A Three.

Q And do you know how far apart they were? A Well, I should judge the two first ones, somewheres around maybe fifteen or twenty minutes apart.

Q When did you hear the third one? A Well, that was quite some time after. I couldn't just say how long after; we were getting the men out of the office; I went across the passenger yard before that, I should judge, maybe twenty minutes more, maybe longer.

Q Now, did you make a record at the time of when you heard this explosion and have forgotten it now, or didn't you know? A I never made no record; no.

Q At or about the time of the first explosion, did you see anything in the air? A The first explosion, yes, sir; I was looking out the window and the sky loomed up.

Q What did you see? A The sky loomed up; then it was like a flower pot was scattered all off.

Q Now, right after this illuminated flower pot was seen by you, did anything come over into the Jersey Central yard? A Well, I couldn't say whether it was the first when it came over or the second; it came over there on our 19 Dock.

Q Well, do you remember at the time this first explosion, this large flower pot that you have described, occurred; do you remember whether any debris of any kind fell into your yard immediately after that? A I couldn't say.

Q You don't remember? A No, I don't remember whether it was the first one or the second one or the last one going over.

Q I guess that's all, Mr. Jeffrey.

Cross examination by Mr. Hobart.

Q Were you on duty on that night? A Yes, sir.

Q What time did you go on duty? A I was on duty day and night; we had a strike on our checkers and I was there on duty twenty-four hours.

Q Well, where were you located about midnight of July 29 and 30? A I was in the office. The office is a tower building, up and down stairs.

Q That was the office of the general yardmaster? A Yes.

Q Is that located in the passenger terminal? A No; it is in the freight terminal.

Q How far from the passenger terminal? A The passenger yard is right back of it; it is the south yard.

Q And how far is the office where you were located from the Black Tom yard of the Lehigh Valley? A It is about half a mile across—straight across the yard.

Q Can you see the Black Tom Terminal from your office? A Very plain.

Q Looking over the tops of the freight cars, I suppose? A My office is higher than the freight cars; you can look right directly out and see.

Q And the yard of the Jersey Central is between your office and the— A Black Tom.

Q Black Tom Terminal? A Yes, sir.

Q Is there any water between your office and the terminal or is it all railroad yard? A All land.

Q All land? A Yes.

Q You are located to the south of the terminal? A To the south of the terminal; yes.

Q Is there any record in your office showing the contents of these seven cars that were on Dock 19 that night? A Our agent has the record. I don't keep the record of the contents; I just keep the number and initial.

Q Have you a record of the number and initial of the cars that were there that night—these seven cars? A The agent has got them. I didn't bring my form, because he had them.

Q Well, do you recall whether there were any cars containing explosives on Dock 19, except these seven that you have mentioned, on that night? A On that night; yes, sir.

Q What were the others, if you know? A I couldn't tell just what were in them; they were explosives of some kind.

Q Well, dynamite, powder? A That I wouldn't say; whenever anything came in with explosive tags, they were shoved into that yard.

Q The agent has a record which will show all right? A Yes.

Q How do you recall these particular cars that were in this one lot as you describe it on the north track? A I went down there with an engine; we sent two tug boats down to work on the

fire; they called me up to get some engines down to help them with the fire apparatus.

Q You mean to help on Dock 19? A Dock 19, this fire was on.

Q Did you get the engine out? A I went down with an engine and worked on it.

Q Did you get some of the cars out of Dock 19 with this engine? A I went down with this engine and worked on this fire.

Q There was a fire on Dock 19, was there? A On the cars; yes, sir.

Q Why didn't you pull them off the dock? A Couldn't get near enough to them to pull.

Q Why not? What were you afraid of? A I wouldn't send no men; I told the men to go down there, see what it looked like, if they could get close enough to the fire with the apparatus to work, they—

Q Well, you knew there were some kind of explosives in the cars and you didn't want to risk the lives of your men, isn't that the size of it? A Very true.

Q So you didn't attempt to pull any cars out of Dock 19? A Off the dock, no, sir.

Q And the reason you didn't was because you knew they were explosives and it would be very dangerous to go near enough to pull them out; isn't that the fact? A At that stage of the game, yes.

Q And at that time some of the cars were on fire, weren't they? A Yes, sir.

Q Were there any shells shooting out of those particular cars on Dock 19? A No, sir, not when I got there.

Q Were there at any time? A Shooting out of them cars, no, sir.

Q Or any of the cars on Dock 19? A No, sir.

Q Were there any shells shooting in that direction from Black Tom or anywhere else? A Yes, sir.

Q You could see them? A Yes, sir; I walked over them.

Q That's one of the things that made it dangerous to go down there, wasn't it? A Yes, sir.

Q Did you see any of the shells from the direction of Black Tom that landed on Dock 19? A Yes, sir; in that vicinity.

Q Did you actually see them strike any of the cars? A I didn't see them strike any of the cars; the mob of people came right behind me and picked them out of the ground, going away with them.

Q Where did they pick them from? A Right off the ground where they come down, sticking in the ground; they came there, got their arms full and walked off with them.

Q Was that on Dock 19 or near Dock 19? A Near 19; in that vicinity; it is right near 19.

Q Well, you didn't allow anybody on 19? A No, but there is a road there; the public has a right to go through.

Q It was from this road the shells were picked up? A No; it was on the Central property.

Q Were there any picked up from the dock itself, as far as you saw? A Yes; I think the day watchman picked a lot out of there the next day.

Q I mean on this night, when you were down with your engine and the fire apparatus? A No; they covered it with police right away; wouldn't allow them down there on the dock.

Q To keep people away from the dock? A Yes.

Q What time did you get down to Dock 19? A I just forget; I think either around half-past five or six o'clock in the morning.

Q Well, where were you in the meantime, in your office or around the yard? A I was in the office till the first explosion—second explosion; then I had to get out. I went over in the passenger yard and laid on my stomach and covered my ears, along with two of my men. The yard then was deserted; we had nobody.

Q You were expecting a third explosion? A We knowed it; I seen it go up. I just went over and laid down.

Q So you heard and saw three explosions? A Yes, sir.

Q Were they all about the same in appearance and in sound? A I think the last one was a little bit heavier than the rest of them.

Q The third one was the heavier than either of the other two? A Yes.

Q Are you able to say about what hour in the morning the first one occurred? A No; I just forget what time it was, now.

Q Was it around two o'clock? A I won't say just what time it was.

Q The second one was about fifteen or twenty minutes later? A I think they were about twenty minutes apart; something like that.

Q The last one was about twenty minutes after the second one? A I won't say positively, but I know they weren't far apart; just gave me time enough to get out of the office. The first one, one of our towermen got caught in the face; we went back to the office to get a First Aid case to fix him up; we seen it loom up again; we all beat it out of the office down on the ground.

Q When you say "looked up" again, do you mean in appearance somewhat similar to the first one? A Yes.

Q Did the third also appear somewhat similar to the first two? A Yes; right up in a flower pot and bust.

Q So that that description applies to all three of these explosions? A All three that we seen.

Q Where did these three explosions appear to be; did you form any estimate as to where they were located? A Well, the Lehigh Valley yard, around Black Tom vicinity.

Q You couldn't tell definitely where they were? A Well, no, I couldn't tell definitely just what part of Black Tom they were in; they were in that vicinity.

Q Did they all appear to be in and about the same place? A Yes, sir.

Q You know where the Black Tom piers extend into the water, do you? A Yes, sir.

Q And are you familiar with the general situation at Black Tom, so as to know about what they call the North Pier and the South Pier? A No.

Q But you know there are two piers that extend out into the harbor from the Black Tom yard, do you not? A No; I have never been on the end of their piers at all; never been over there.

Q Can't you see them from your office? A Not from the office; we can see them from 19 Dock; we can see the extensions out there.

Q Well, how high did these flower pots appear to you to be? A Oh, my God! They went up in the heavens and came down; we didn't have time to measure them; we was in too big of a hurry to get out.

Q It was a matter of several hundred feet? A Yes.

Q Perhaps a thousand feet? A That I don't know.

Q At any rate, it was impossible for you to tell from where you were, half a mile away, from what part of the yard or what part of the piers these flower pots came, was it not? A Yes.

Q All you know is that they appeared to be in that general direction, is that right? A Yes, sir.

Q Several hundred feet high, that's correct? A I won't say how many feet high; I couldn't tell.

Q Well, up in the heavens, at any rate. A They got it on me in that height part.

Q I only want your best judgment, of course, if there was an explosion on the ground, you could tell us it was on the ground; what I want to get at is merely a general idea of how high above the ground these explosions were. A I don't know just how far he went up before he let go. I know he was up quite a distance.

Q Something like a sky rocket? A Well, them flower pots you would put up on the Fourth of July; let them go.

Q Now, do you know how long these five cars on the north track—how long they had been there? A Well, my recollection is they were placed in there on the 25th for delivery.

Q Of July? A Yes, sir.

Q And do you know how long the two cars on the south track had been there? A No, I do not.

Q Do you recall whether they had been there before or after the five cars on the north track? A No, I cannot tell without the records of the company.

Q The records will show the date they were placed, and the time? A Yes, sir.

Q Do you know whether any of those seven cars on both the north and the south tracks had been unloaded, either in whole or in part, at the time of the explosion? A No, sir.

Q They had not been unloaded? A I could not tell.

Q There are records which will show that fact? A Yes, sir.

Q Or will show whatever the fact is about it? A Yes.

Q Well, now, do you remember when it was that you first observed any of those seven cars burning? A No; let's see; I didn't know about it till—well, about the time I was going over to the dock, they told me about it, that they were burning.

Q Was that before or after these three explosions? A That was after these three explosions.

Q After the last one? A I don't know whether they were burning between the first and second or not, but I didn't know they were burning till I went over after the last one.

Q The first you personally knew that any of these cars were burning was after the last explosion? A After they cleaned up, yes, sir, after the last explosion.

Q Can you see Dock 19 from your office? A Yes, sir.

Q Did you look towards it at any time? A Yes, I was looking out the window all the time, in fact, watching the trains.

Q But you didn't see any of the cars on Dock 19 on fire, that is you didn't personally see them on fire until after the third explosion? A I won't say; I was out of the office after the first explosion; the second and third I wasn't in the office; I was on the ground.

Q I will put it this way: You were in your office until after the first explosion? A The first explosion.

Q Up to the time you left your office, did you see any cars burning on Dock 19? A I didn't look till I got out myself.

Q But it was after the third explosion before you personally knew that any of the cars on Dock 19 were on fire, is that right?

A When I went over there after the third explosion, I went over in that direction.

Q Now, when you got there, can you tell whether or not all of the five cars were burning or whether only some one or two of them were burning? A Why, I played on one car is all I remember working on, one car.

Q By that you mean you put water on it? A Yes, with this engine I took one engine down with me.

Q You mean locomotive? A Locomotive with fire pumps.

Q You got fire pumps working? A I got the fire pumps working on that one car.

Q The only one? A That's all I worked on.

Q Did you put it out? A No, it was there all day, I guess, we kept it wet.

Q While you were working on that one car, were the other four burning? A I don't think they were; I don't remember.

Q They weren't on fire at that time? A I guess they were burnt; they were gone, I guess. I just worked on the one; I guess they were burnt.

Q Do you know whether the others were burnt at that time? A No, I couldn't say; I don't just recollect.

Q Was there any explosion on Dock 19? A No, not to my knowledge.

Q Whatever destroyed the cars there was destroyed by fire, was it? A Yes, sir; as far as I know.

Q How long did you work on this one car? A I guess we worked down there till about nine o'clock when I left.

Q In the morning? A Yes.

Q While you were working on that one car, were there any shells coming over from Black Tom? A No, you could hear shells over there, but they weren't coming in our direction.

Q When you got to this one car and were playing the water on it, was it on fire on the sides or on the top or all around? A It was inside, all around; there was no roof on it.

Q No roof on it at all? A No, it was off, blowed right off.

Q Blown off; you are sure it was blown off? A Well, I couldn't say; there was no roof on the car anyway, because we got in from the top to put the hose on it.

Q That is, you turned the water in from the top? A Yes; then the men from the tug boats turned in from the side.

Q The fire on that particular car was inside the car when you got there? A I didn't see much of a blaze at all. It was just smouldering inside; we put the hose right inside the car to keep the stuff wet.

Q Could you tell when you got there what the contents of that car was? A Well, I never had seen guncotton; they told me it was guncotton; I don't know.

Q Well, was it packed in boxes? A Yes.

Q Were the boxes open? A Well, I guess they were open.

Q You don't know guncotton when you see it? A No, I never seen guncotton.

Q You don't know what the contents of the other two cars were, do you? A No, sir.

Q Well, do you know whether or not these other four cars outside of the one that you were working on, whether they were burned up? A I don't just recollect whether they had been burned or how that was. I know we went to work on the one car and the tug boat was working on the rest of the five.

Q Well, who was the man that would be charged with the duty of removing those cars out of danger, if there was danger? A Well, I would be the man.

Q Well, did you make any attempt to pull them off the dock? A No.

Q Why not? A What would be the idea? I didn't see no danger.

Q You didn't think there was any danger? A No.

Q What was the first time that you saw any blaze or any fire in the direction of Black Tom? A I think we seen that around nine o'clock or somewheres around there; we seen a little blaze over there.

Q In the evening or in the morning? A In the evening.

Q Whereabouts was it? A Over in Black Tom, or that vicinity.

Q What did it look like? A It looked just like a little blaze, ordinary blaze of a car, maybe a boat or one of them warehouses or something.

Q Look anything like a bonfire? A Well, I couldn't say, just was a little illumination there.

Q Might it have been a light on a boat? A Oh, no, not as bad as that.

Q Well, was it a blaze? A It was a little blaze, yes.

Q Do you know what part of Black Tom it was? A No.

Q Could you tell whether it was in the yard or the warehouse? A I don't think it was in the warehouse.

Q Why not? A I wouldn't have seen it so plain.

Q Why not? A It wouldn't have been so plain.

Q How long was it before you went down on Dock 19 before you noticed any of the shells from Black Tom? A I didn't go down on Dock 19 till the explosion was all over.

Q Well, can you recall when it was that you first noticed any shells coming from Black Tom? A I never noticed nothing at all till I went down there; then I noticed them sticking in the ground as I walked down.

Q Did you hear any of the popping of shells like revolver shots or anything of that kind? A Yes.

Q When was it you heard those? A All the time between the explosions.

Q You heard them before the first explosion? A Between the explosions.

Q Did you hear any before the first explosion? A No, sir.

Q Did you hear them after the first explosion? A Yes.

Q And before the second? A Before the second.

Q Well, did those shells, when they popped off like that give any indication of going up in the air or any fire or blaze in the air? A That I wouldn't say. The first one went off, it seemed to be laying up there all the time; then all you could hear was just these small explosions, shells going off here and there, one

right after the other; a bunch of them would go, then maybe a couple of more in another direction.

Q When was it that you first noticed any of these shells coming over in to the Jersey Central yard? A I didn't notice none of them coming over.

Q Not until some time after? A I didn't see none of them coming over. I went down there, as I say, in the morning around six, or half-past five, and I see shells in the ground all around our docks and the roads to our docks.

Q That was the first time you knew that the shells were coming into the yard? A Yes, sir.

Q That's all.

Re-direct examination by Mr. Stallman (reading).

Q When you went down to put out the fire in these five cars, how close did you get to them? A Got about twenty feet of them, that is on the north side; the tug boats was playing on the south side.

Q And at that time were they blazing? A No, they weren't blazing when I got there; the car was just smoking.

Q Smouldering? A Yes.

Q Did you see any of those shells on Dock 19? A I seen them in the vicinity of Dock 19, but not on the dock, but there is quite a space of ground between the docks, an L-shape, see, that's all been filled in; there was quite some of them right in there.

Q Well, how far from these five cars or how near to these five cars did you see any of these shells? A I guess 100 feet I seen them.

Q Do you remember what sized shells they were? A I guess they were six inches, six-inch or eight-inch shells, all brass—all copper, I guess.

Q You are speaking now of the diameter or the length? A The length was about eight inches; the diameter, I guess, was about two inches, two and one-half; something like that. That is the kind I took notice of the most, because the people were after the bright shells and I seen them.

Q Now, what generally was the effect of the first explosion? A In what way?

Q Well, did it do anything over in the yard; did it damage anything? A Yes, it broke all the glass out of every place we had around there; the men all quit work, they dropped their engines and beat it. I was there all alone practically alone, myself and one clerk.

Q Break the glass in your tower shanty? A Yes, took the window sash and everything right out, drove us out of it.

Q Did it have any effect on any other cars around the— A Oh, yes, shook the roofs off cars here and there through the yard.

Q And what, generally, was the effect of the second explosion? A Well, I didn't go down to see; everybody left me and I done the same. I went over and seen Johnson avenue and stayed there for awhile.

Q And where were you at the time of the second explosion? A I was down on the ground about opposite my office on the freight side.

Q And then you went right over to Johnson avenue? A I seen that loom for the third, so I thought I would leave. So I started across the track.

Q Can you see the warehouses on Black Tom from your office? A Yes, sir.

Q Could you tell whether or not any of these loom ups or these illuminated flower pots came from near the warehouses? A They looked to be below the warehouses; when it loomed up you could see the warehouses.

Q Those two cars that were over on another track, separate and apart from these five cars, what happened to those? A Why, they weren't hurt so bad; in fact, I believe there was some stuff drove into one of the cars that didn't do no damage—that is, didn't set it afire. The Taylors had a dredging machine there protecting those two cars.

Q There is some dredging machine in between the Black Tom and where these two cars were stored protected them? A Yes,

Q I think that's all, Mr. Jeffrey.

Re-cross examination by Mr. Hobart (reading).

Q One other question. When the first explosion occurred, the windows were blown out and some of the cars around the yard were damaged, weren't they? A Well, of course, we couldn't tell about that, because we made no examination after the first explosion; that's what we found in the morning after everything was settled.

Q You don't know whether the damage to the cars then was caused by the first explosion or the second or the third? A No, sir.

Q But you did know that the first explosion blew out your windows? A I know that.

Q Well, now, after that was there any effort whatever made by you to back away from Dock 19 any of the cars of explosives that were on that dock? A No, sir.

Q Why not? A Had no men to do it.

Q The men had all beat it, as you say? A Yes, sir, left the company's property there and went along.

Q That's all."

The Court. We will now adjourn until tomorrow morning at 10 o'clock.

Adjournment until Tuesday, June 8th, 1920, at 10 o'clock A. M.

(Case continued. June 8th, 1920.)

Mr. Stallman. The Court has instructed us to go ahead. He will not be here for awhile, and I want to read you now an affidavit on the captain of one of these boats. The affidavit is the affidavit of John Nelson, and he says:

"On the evening of July 29th, 1916, my boat, the 'Charles Rockwell,' was lying alongside the float—alongside of a schooner at the ammunition dock of the Lehigh Valley, Black Tom, loaded with the contents of the following cars: P. L. 516418, 500 kegs of picric acid; P. R. R. 69263, 500 kegs of picric acid; P. L. 560234, 349 cases of

smokeless powder; P. R. R. 84203, 377 cases of smokeless powder; P. L. 535167, 531 cases of smokeless powder; P. R. R. 286245, 336 cases of smokeless powder; and we had in all about ten carloads of ammunition on the deck. Nothing of any importance occurred until about 1 o'clock Sunday morning, July 30th, 1916, when I was alarmed by hearing explosions of shells. I ran up on the deck and climbed up on the fence of the float bridge, where I had a good look all around me, and I saw three cars on the Lehigh Valley tracks lying end to end on the same track, about 300 feet from the bulkhead in the railroad yard which the Lehigh Valley used for the storage of cars between the warehouse and the bulkhead. These three cars were shooting off shells in all directions. I looked around and there was no fire anywhere else and I had a good view of the fire, because I climbed up on the fence of the float bridge and looked around so as to see what, if anything, could be done for the safety of my boat and my own safety. I started off and ran up on the dock alonside the bulkhead in a southerly direction, and along the westerly side of the warehouse to get out of the way of the shells, which were bursting all around. There were captains from other boats with me. I found my boat the next day at Fluman's Drydock, Red Hook, Brooklyn, seriously injured by the fire."

I will call Captain Hansen.

BENJAMIN HANSEN, sworn.

Direct examination by Mr. Stallman.

Q Mr. Hansen, what is your business? A I am a boat man.

Q A boat man? A Yes.

Q A boat man? A Yes.

Q Where do you live, Captain? A What?

Q Where do you live? A Out in 58th street, Brooklyn—8th avenue.

Q On what boats do you work? A On Moran Boat 20—Scow Moran No. 20.

Q By Moran No. 20, you mean that that is a barge or a boat of the Moran— A A scow.

Q A scow of the Moran Towing Company? A Yes.

Q And how long have you worked on that boat? A It will be ten year now December of this year.

Q Do you remember the fire and explosion at Black Tom on July 30th, 1916? A Yes, sir.

Q And where were you at that time—before the fire and explosion occurred—where were you? A That was on a car—

(Question repeated.)

A I was on the boat—

Q On the Moran 20? A Yes, sir.

Q And where was the Moran 20? A Alongside the dock.

Q And which dock? A South side of the north dock there.

Q South side of the North Pier? A Yes.

Q And that is quite a long pier, isn't it? A Yes.

Q At which end of the pier were you near—that is, were you near the land end or the end towards the bay—your boat? A I was laying about the middle—a little farther out as the middle of the pier.

Q You think you were about the middle of the pier? A Yes—a little farther out.

Q I see. On the south side? A On the south side.

Q At that time did you see any other boats there? A Yes, there was other boats; there was three outside the No. 20 abreast.

Q What? A Abreast; right abreast.

Q Do you remember what boats they were—what boat was alongside of yours? A The "Yett."

Q The "Jet"? A Yes.

Q What boat was alongside of the "Jet"? A "Paulina."

Q What was outside of the "Paulina"? A "Johnson."

Q What? A "Johnson."

Q "Johnson" or "Thompson"? A "Thompson"—yes—"Thompson"—"Thompson."

Q "Thompson"? A Yes.

Q You know what company operates the "Thompson"? A Why, I could not exactly tell.

Q Is it the Moran Company? A No.

Q Not the Moran? A No.

Q You don't know what company operates the "Paulina"? A No.

Q You do not know that? A No.

Q Well, now, Captain, I show you a map that has been marked Exhibit P. 11 and ask you if that map shows the location of the boat according to your recollection. Let me ask you first whether you can read the lettering on that map? A Yes, sir.

Q Now, does that refer to where your boat was that night? A Yes, sir.

Q Then I show you where it says "Jet." A Yes.

Q Is that where she was, alongside of you? A Yes.

Q And the "Paulina"? A Yes, sir.

Q Is that according to your recollections? A And the "Thompson."

Q And the "Thompson"? A Yes, sir.

Q That is about where they were? A Yes, sir; there was No. 8 and No. 4 Moran.

Q You saw the Moran No. 8? Did you see the Moran No. 8? A Yes, I saw that. The "Rockwell" was laying in along here.

Q You don't remember about the "Rockwell" being in there? A No; she was not there; she was in the slip.

Q That is what your recollection is? A Yes; she was not there.

Mr. Rockwood. He says that is not accurate as to the "Rockwell."

Mr. Stallman. According to his recollection.

Mr. Rockwood. It was in the slip, he says.

Mr. Stallman. That is what he thought.

Q Now, Captain, how long had your boat been in that location before anything happened? A Well—about—before—

Q In other words, when did your boat get there? A Well, I was in there first, and so coming—so comes "Jet" afterwards.

Mr. Stallman. Will you repeat that, Mr. Stenographer?

A (Repeated by the stenographer.) Well, I was in there first, and so coming—so comes "Jet" afterwards.

Q I see. Now, do you remember just when it was that you got your scow along the south side of the North Pier? A The date, you mean? The date, you mean?

Q Well, what time of day was it, first? A Oh! That was—that was in the afternoon.

Q In the afternoon? A Yes.

Q And before you got around on the south side of the pier, where was your scow? A That was on the north side of the pier.

Q And what were you doing on the north side? A What?

Q What were you doing over on the north side of the pier? A Loading.

Q Loading? A Yes.

Q Taking on powder or guncotton or something? A Shells.

Q Shells? A In cases.

Q And then in the afternoon your boat was taken around to the south side; is that right? A Yes, afternoon.

Mr. Rockwood. Do not lead him.

Q And about what time in the afternoon was that, Captain? A I don't remember exactly.

Q Well, if you don't remember—then you say the "Jet" came afterwards? A Yes, sir.

Q Now, what time did the "Paulina" get there? A She came in an hour later.

Q And what time did the "Thompson" get there? A That was between five and six o'clock.

Q I see. Now, about midnight that night what were you doing? Along about twelve o'clock at night— A Yes.

Q —what were you doing? Were you walking around on your boat? A Yes.

Q Or asleep or what? A No, no; I was walking around the boat. So at twelve o'clock I went in and took off my coat and hat and smoked and sat on the chair, and a little while afterward the captain of the "Jet" he come and told me, "Captain," he said, knocking on the door, "there is a fire." "What," I said "fire?" "No," I said, "it cannot be. That is from the watchman's shanty," I said.

Q Talk a little louder, Captain. A "That is from the watchman's shanty," I said. "Oh, no," he said, "it is a fire." Well, I threw my coat down and jumped on the dock, right close up on the shanty, watchman's shanty

Q That is where you jumped, you say. All right. Now, go ahead. A And when I came there nothing could be seen. Well, I could see nothing there. I climbed up on the roof for to see where the fire started.

Q Roof of what? A Roof of the shanty they had built up there.

Q Roof of a shanty? A Yes, watchman's shanty. So it was dark, and there was not a soul to be seen, and not a sound to be heard. I heard a little noise up from above; that might be from the trains; I don't know. So I stood there for about two minutes, two or three; I can't remember. So I rushed down to the dock again. I could have passed by, ran up, but I went down to the dock again. I thought I should try to save something.

Q Now, when you got up on the roof of the shanty, what did you see? A I saw where a fire started.

Q And where was that? A That was on a car, up on the track. I took it for inside track to the warehouse.

Q Well, now, will you come down here and look at the map, Captain, and so the jury can get some idea where you saw that fire. (Witness leaves the stand.)

Q Now, let me call your attention, Captain—over here is the North Pier— A Yes.

Q And these light lines are the float bridges? A Yes.

Q And down here is the South Pier? A Yes.

Q And then over on this side of the map are the warehouses? A Yes, sir.

Q There is quite a long warehouse; and here is a water tank. A Yes.

Q Now, you know where all those things are on Black Tom? A No—yes, oh, yes; there was two fire hydrants.

Q Now, you say you climbed off of your boat up on the dock somewhere. Now, where did you get up? A I got up here, up here. Up here I climbed up.

Mr. Stallman. Indicating on this large map between cars 121346 and 294686 as the place where he climbed up.

Q Then from there where did you go? A I went up right—I went over them cars there, and right over to these—

Q Take the pointer. A Right up to the shanty.

Q I see. Now, let me show you where the bulkhead is, Captain. There is the bulkhead. A Yes. The pier is so long; that is a big pier.

Q Yes, I know it is a big pier. Now, where was the shanty, if you noticed, along this bulkhead? A Up here.

Mr. Rockwood. Pointing where? Tell us the point.

Q Up where it says "pile stockade"? A Yes.

Q Where Zeke lived? A No, not so far, not so far; between the dock and his shanty.

Q About in between where was the shanty that you climbed up? A Yes.

Q I see. Now, when you were on that shanty where did you see the fire? A I saw it in this direction, up to the warehouse, in some of these here cars.

Mr. Rockwood. Pointing where? Put your finger on it.

Q Just take the pointer. A There was the shanty up here, and then I saw it in this direction, right to the water tank.

Q In the direction of the water tank? A Yes.

Mr. Rockwood. Put your finger on it.

Mr. Stallman. Let me examine him now, Judge.

Mr. Rockwood. All right.

Q That was in that direction you say? A Yes.

Q Well, now, about how far from where you were, or how near to the warehouse was this place where you saw the fire?. A Well, that was about—

Q Can you tell us this way? A About twenty feet, I guess.

Q Can you tell us this way, Captain—whether it was half way, or a quarter of the way or three-quarters of the way to the warehouse from where you stood? In other words, if you were standing over here and the warehouse was over there, can you tell us? A There must the shanty be.

Q All right. A And then I saw the fire started up here, right in this direction, and it seemed to me—but in the dark night I couldn't see so well—but it seemed to me like as if the car was over on the corner of the warehouse.

Q Near the corner of the warehouse? A Yes.

Q And that is the nearest you can give it? A Yes.

Q All right. Just go back to the stand, Captain. A (Witness does so.)

Q Now, when you first saw the fire how much of a fire was it? A Well, it flamed up; there was no shouting or anything; only a flame right up.

Q And could you see what was burning? A No, I couldn't see what was burning.

Q Did you see any freight cars in the yard? A No.

Q Do you understand what I mean? A What?

Q Do you understand me? Were there any cars in that yard, freight cars? A Cars? Plenty of them.

Q Yes. How high was this flame that you saw? A How high the flame was?

Q Yes. A It was—when I saw it he was up in the air, about six or eight feet.

Q Now, do you mean by that six or eight feet above the ground, or six or eight feet above the roof of the cars? A Yes.

Q What do you mean, Captain? A From the roof of the car.

Q Well, now, when you saw that fire, what did you do? A Well, if I had getting another man with me there I would just simply go over to the fire hydrant they had there and put the

hose on; but I was alone; and then I jumped right down on the dock again.

Q What did you jump on, a boat? A What?

Q Did you jump down on a boat? A No; when I came down on the dock there was three men standing on the boat there for to go and they said, "Come on." "No," I said, "wait a minute." And then they said, "Oh, he is going after his mone." "No, no, no," I said, then I turned around and just in the same minute I saw the tug.

Q You saw what? A The tug.

Q You saw a tug. A Yes, he come right up to the bows on the boat. Then I hollered to him, "Well, Cap," I said, "are you going to rescue us or are you going to take them?" "We will take the whole fleet," he said. Then I said, "Send your deckhands on and get your lines and I will let go the dock."

Q At that time you were talking to the tug captain, where were you? On what boat were you? A I was on the dock.

Q You were on the dock? A Yes.

Q And did you afterwards go on your boat? A Yes.

Q Down on the Moran 20? A Yes.

Q Now, did this tug that came along, did it get a line on your boat? A No, not on my boat.

Q What boat did he get a line on? A When he put the—I told him so soon as he landed—I told him to blow his whistle. "I can't manage this alone," I said. "All right, Cap," he says, and then the other three fellows from the other boat, they come over.

Q What three boats? A What?

Q What three boats are you speaking of? A Them three men that were standing on that, their boats was going to ship off.

Q Yes. A And then they come over to help us, and they put a hawser — the hawser — the hawser from the tug on the two middle scows, "Paulina"—

Q Which were they? A "Paulina" and the "Jet."

Q "Paulina" and the "Jet"? A And the "Jet."

Q Put the hawser on? A Yes, "Paulina" and the "Jet."

Q They put a hawser on the "Paulina" and the "Jet"? A Yes.

Q Then what did the tug do? What did that tug do after they got the hawser on those two boats? A Pulled ahead.

Q They went? A They went. He told me to go—let them go around so soon as it is possible.

Q Yes. A Yes. Well, I told the man, "Don't get excited now," I said, "let go of the lines so soon as my boat is clear." "No," he said. Then he let go of the line and my scow was swinging right behind to the other boat, and the tug was still towing, you see; but it was low water and the boat was sucking—the boats was sucking the ground all the time. So the tide commenced to run, and "Thompson," he couldn't come alongside; he was laying right across all the time, and it was a little wind, too, and keep him that way.

Q Well, now, let us see, Captain. When the tug moved off with a hawser on the "Jet" and the "Paulina"— A Yes.

Q —where did your boat fall in? A I let go from—I let go from the bow of the boat. I let go there and I swing behind.

Q You swung behind the "Jet"? A Yes.

Q Then where did the "Thompson" go? A He was laying right across—he wouldn't swing at all.

Q Well, was your Moran—did you have a line on the "Jet"? Were you fastened on to the "Jet" with a line or a hawser? A Oh, sure, sure, sure. I was fast to the "Jet."

Q And what was the "Thompson" fast to? A The "Thompson" was hung by one line.

Q One line? A Yes.

Q Fastened to what? A He was fast to the "Paulina."

Q "Paulina"? A Yes.

Q Then what happened? A Then there was—there was an explosion coming from there.

Q Well, now, before the explosion happened, had the tug moved, or was it still standing there? A Oh, the tug was moving. So my boat was six feet from the dock when the first explosion come.

Q I see. And can you look at this map, Exhibit No. 11, and show about where your boat was when the explosion happened? A The bow of my boat was just exactly six to eight feet from the corner there, when he was swinging behind.

Mr. Stallman. Indicating in an easterly direction from the easterly end of the North Pier.

A And "Jet" was head here; I was behind.

Q The "Jet" was northeast of the end of the pier? A Yes.

Q Yes. A And I was behind.

Q You were behind the "Jet"? A Yes, but this here "Thompson" he was laying across.

Q How far was the "Thompson" from the east end of the pier when the explosion happened? A Oh, he was a good—he was a good way out.

Q When you say a good way out how far do you mean? A Oh, about two hundred feet.

Q Two hundred feet? A Yes.

Q And where was the "Paulina" when the explosion occurred? A Oh, about a little more—about one hundred and fifty feet.

Q About one hundred and fifty feet? A Yes.

Q From where? A From the south end of the pier.

Q I see.

Mr. Rockwood. Mr. Stallman, will you come here a minute and speak to the Judge a second?

(Counsel and the Court conferred at side bar.)

Q Now, have you told us, Captain, just where these, all of these boats were at the time of the explosion? A I couldn't hear what he said.

(Question repeated by stenographer.)

Mr. Stallman. Well, I will withdraw that.

A Yes.

Q All right. From the time that you first saw the fire over there in the yard up to the time when the explosion occurred, did you see any fire anywhere else? A No.

Q Don't shake your head because—say yes— A No.

Q Before the explosion occurred can you tell us whether there was any fire on any of these boats, that is, the "Moran" or the "Jet" or the "Paulina" or the "Thompson"? A No.

Q There was not? A No.

Q Well then, when this explosion occurred what happened? A Well, it happened me—we get the whole squall of red lumps of iron.

The Court. Let him tell that answer again. What was that you said, Captain? Tell us again.

A When the explosion came it rain down fire.

The Court. I understand. When the explosion came it rained down fire?

Q Yes; and that rain you say was—appeared to you to be red hot iron? A Yes, big lumps, big as my head, some of them.

Q Did any of that red hot iron or rain fall on your boat? A Not much on my boat.

Q Did any of it fall on your boat? A Yes, a little fall on my boat and I throwed it overboard, but on the "Jet" there was a whole lot. I had trouble there.

Q Now, just what happened to those four boats? A Well, there was no more fire on the boats to be seen when I was through with throwing it overboard, but I couldn't get aboard the "Thompson."

Q You could not get on the "Thompson"? A No, I couldn't get on the "Thompson."

Q Why not? A No, he was on one line and I would not risk it.

Q She was only on one line. What happened to the "Thompson"? A Well, might have coming some fire to him and he exploded.

Q Now how did he explode? A Well, went up at once, and put it so up in the sky I couldn't look at it.

Q Did you see it after that? A Oh, yes; still hanging on for one line.

Q Any more fire, explosion? A Yes.

Q On that boat, I mean, on the "Thompson"? A Yes.

Q What was happening on the "Thompson"? You said there was a spurt went up in the air? A Yes.

Q Then what happened on that boat? A Well, I stood on my boat so long as I could, but when the heat was getting was getting too bad so it commenced to smoke all over, I ran away.

Q Well, now, where was this heat? A Heat?

Q Yes. A That was all over, all over the boats.

Q All over the boats? A All over the boats. He sprayed the heat all over.

Q Where did the heat come from? A Heat come from the explosions stuff that was going up.

Q On what boat? A From "Thompson."

Q I see. Well, how long a time was it that this "Thompson" was giving off this heat? A That was about—well, nearly a half an hour after the first explosion.

Q And during this half an hour was there fire on that boat or just explosions, or what? A No, no, there was no fire on no boats.

Q Well, what was going on on the boats? A He was towing, but they couldn't get him nowhere much; he sank and sank a little, but very easy.

Q No; you don't understand me. You say that for a half an hour after the first explosion there was a tremendous heat coming off of the "Thompson"? A Yes.

Q Is that right? A Yes.

Q Well, now, where did that heat come from? What made it so hot? A That is from the explosions stuff that was on the boat.

Q Well, what was happening to that stuff on the boat? A What?

Q What was happening to that stuff that was on the boat? A Might there come some fire from the first explosion.

Q She was on fire from the first explosion? A I hope—I should think so.

Mr. Rockwood. I move to strike it out as a conclusion of the witness.

The Court. I think I will strike it out. He said it might have been on fire from the first explosion. That was his answer. I will strike it out.

Q Now, during this half hour after this first explosion—I will withdraw that. How soon after the explosion was it that you saw any trouble over on the "Thompson"? A Come a little nearer, please.

Q Do you understand it? A I understand it, but I am a little hard of hearing.

Q How soon after the first explosion was it that you saw any trouble on the "Thompson"? A That was half—about twenty minutes later.

Q And then what did you see? A It went up at once and there was nothing else to be seen.

Q And then you mean it went up—there was an explosion on the "Thompson"? A Yes.

Q And then did she sink or disappear? A No.

Q Well, what happened after this explosion on the boat that you saw? A Well, it happened that way, I see keep down and I couldn't stay on my boat longer, and I had to leave it all.

Q You mean she kept on exploding all the time? A Sure; just like an *air*.

Q How big were these explosions that you saw come off of this boat? A Oh, they made a pyramid nearly a hundred feet from the bottom and sharpened up to the top.

Q How many of those flares did you see come from the "Thompson"? A There was more as one.

Q What is that? A One.

Q Only one? A Only one. Went up in one.

Q After you saw this explosion as you call it on the "Thompson" scow— A Yes.

Q —I asked you awhile ago whether or not that scow disappeared or sank, and you said no. Is that right? A I said no; I didn't saw her sink. I didn't saw her sink.

Q Yes, but after this explosion happened on the "Thompson" did you feel any more heat from that boat? A When I was played out I run over—the "Jet" was loaded with guncotton or something.

Q The "Jet"? A The "Jet," yes.

Q That was the next boat to yours? A Yes; he was head boat to the tug.

Q And you ran over on the "Jet"? A Yes, sir.

Q All right go ahead from there. A When I come over on the "Jet" there I ran over on—across over to him and then there was three fellows there—three men stood there in shelter from the heat, and then I told them—

Q Where was that heat coming from? A From the "Thompson."

Q Now, can you tell me this, Captain: You have said there was a lot of heat coming from the "Thompson"? A Yes.

Q Do you know whether or not at any time there was any fire on the "Thompson"? A I couldn't tell you.

Q You cannot tell me and you don't know what the heat came from? Do you understand me? A Oh, yes; I know what the heat come from.

Q What did it come from? A Well, it comes from the explosion stuff.

Q From the explosive stuff? A Yes.

Q On the "Thompson," you mean? A Yes.

Q Now, what happened to the "Paulina"? A "Paulina" was alongside of "Jet," and there was nothing happened to her when I was there, and I ran over the load and then I was on the middle of the load I got a stroke of the heat, so I fall on my knees and I thought I was going to roll overboard; I come myself up again and I hollered to the tug and the captain was there and he was watching me all right, and then I hollered:

"Cap," I says, "will you refuse now or will you have to go in the water?" "All right." He backed up and then the other three fellows come running and we got aboard safe.

Q You got on board the tug? A Yes.

Q Now, do you know what happened to the "Paulina"? A Eh?

Q What happened to the "Paulina"? A That is what I can't tell you. I didn't saw that.

Q I see. Do you know whether or not any of this iron—this rain of red hot iron fell on the "Paulina"? A No.

Q You don't know that? A No. There was no fire at all on "Paulina."

Q When you saw it? A No.

Q Well, now, after you got on the tug where did the tug go? A Up to the Jersey Central station.

Q Near the Jersey Central? A Yes.

Q And what boats did she pull up there? A I forgot the name of them.

Q Well, let me put it this way; you say that when this explosion a tugboat had four of these boats in tow? A Yes.

Q And then you got on the tugboat and the tug went up toward the Jersey Central? A Yes.

Q Is that right? A With us—with us, yes.

Q With you men? A Yes.

Q Did she take any of these boats up there? A No, no, no.

Q Then what happened to these four boats that she started out with? A They burned.

Q What is that? A They burned. It wasn't more than those two scow lengths off before they was on fire.

Q What was on fire? A The boats.

Q Which boats? A Well, I saw the fire on my boat, and I saw the fire on "Jet," and I saw—I might see the fire on "Paulina," too, but I can't say that for sure.

Q I see. Did these boats break away from the tug or did the tug throw off the hawser? A I throwed off the hawser for them and then I jumped aboard.

Benjamin Hansen, cross.

Q You threw the hawser off? A I throwed the hawser off the bitt.

Q At that time how near was the "Paulina" to the "Jet"? A What side do you mean?

Q When you threw the hawser off the tug so as to let these four boats go adrift? A Yes.

Q At that time how near was the "Paulina" to the "Jet"? A Close alongside.

Q Right alongside? A Yes.

Q How long was it, Captain, from the time when you first saw the fire—when you got up on this watchman's shanty and first saw the fire, until this explosion happened? A That was over a half an hour.

Q Over a half an hour? A Yes.

Q Now at the time the tug began to pull your scow out did you see the fire in the yard at that time? A Yes.

Q You saw the fire then? A Oh, he was flaming up, but I had no time to look at it, and I didn't take no notice of it at all. I had something else to do.

(Laughter.)

Q Do you know where the mudflats are over near Bedloe's Island? A Mudflats?

Q Do you know where the mudflats are near Bedloe's Island? A Mudflats?

Q The flats, yes? A Yes.

Q Did you see any of those boats over in that neighborhood afterwards? A No.

Q Cross examine.

Cross examination by Mr. Rockwood.

Q Captain Hansen, I think you said that you had been about eight years on the "Moran"? A Eight year?

Q Yes. A Yes.

Q About eight years?

Mr. Stallman. He said ten.

Q Did you say eight or ten years? On the "Moran"? A Ten years.

Q Was the "Moran" a barge or scow? A A scow.

Q And the "Jet" and the "Paulina" and the "Thompson" were all scow boats? A Yes.

Q None of those boats had any power of their own? A No.

Q They were simply hauled by tugs? A Yes, sir.

Q And how long had you been working for this Moran Company? A Ten year.

Q For the same company? A Yes.

Q The "Paulina" and the "Thompson" did not belong to the Moran Company? A No.

Q They belonged to the Ackerman Company, is that right? A I could not tell, sir.

Q What? A I could not tell you.

Q You could not tell? A No.

Q And who did the "Jet" belong to? A I do not know.

Q Now, you had loaded the "Moran" at this pier, had you? A Yes.

Q On which side of the pier was the loading done? A That was north side.

Q The north side of the pier? A Yes, sir.

Q That was the side where all loading was done, was it? A Yes.

Q And what loads did you carry—what loads did you have on your boat? A Mostly shells.

Q Shells? A Yes.

Q Loaded shells? A Well, no—they was loaded, but I do not know if they was finished for explosion.

Q They were shells? A Yes, they were shells.

Q And who were they going to? A Oh, they were going out to Gravesend Bay to the steamers.

Q What company was taking those shells? A Oh, France—

Q The ones you had? A The ones I had.

Q Yes? A That is what I could not tell, because we did not get no papers.

Q You got no papers? A No.

Q You simply worked to the North Pier? A Yes.

Q And the boxes were loaded on your scow? A Yes.

Q Were any shells ever loaded on the south side of the pier? A No.

Q That was not the side where any loading was done at all, was it? A No.

Q And, as a captain for ten years, of course, you were familiar with the harbor regulations? A Yes, sir.

Q Did you know where the anchorage was for vessels loaded with explosives—or for scow boats loaded with explosives? A Oh, yes.

Q Where was it? A It was out on the—it was out on the flat—on the mudflat, I guess them call him.

Mr. Rockwood. Will your Honor permit me to repeat his answer?

The Court. If you repeat them correctly.

Mr. Rockwood. They are hard to understand.

The Court. If you repeat them correctly, you may.

Q Where did you say the anchorage was? A Out in the river, by the flat, that they call it.

Q Out on the flats? A Yes.

Q Did the harbor regulations of the Port of New York designate a place where scow boats loaded with explosives were to go and anchor?

Mr. Stallman. I object to the question as immaterial—

A I could not tell you.

Mr. Stallman. —it is not cross examination, and this man's scow is not involved in this suit, and it seems to me that whatever knowledge he may have had of the port regulations are utterly irrelevant in this case.

The Court. What is the relevancy of it, as you see it?

Mr. Rockwood. I want to test his knowledge of the situation. He has testified very frankly about everything.

The Court. The mere fact that a man is frank—

Mr. Rockwood. Or fully, in other words.

The Court. —does not make an improper question proper on cross examination.

Mr. Rockwood. I want to show to the jury what he was doing on that side of the pier.

The Court. I do not think that would indicate anything, to show there was a harbor regulation, to show what he was doing on that side of the pier.

Mr. Rockwood. I want to show he was there without right.

The Court. This man cannot swear what the law was, and if your offer is to show that he was there without right, I will overrule the question.

Mr. Rockwood. Then he may answer?

The Court. I overrule the question, that is, he may not answer.

Mr. Rockwood. We will have to except to that.

The Court. You may have an objection in the nature of an exception, entered on the record.

Mr. Rockwood. Yes; thank you.

Q What was required of a scow boat, or a barge, carrying explosives?

Mr. Stallman. I object to that.

The Court. I sustain the objection. You cannot ——— a statute or a regulation that way.

Mr. Rockwood. I want to test his knowledge of it, if I can.

The Court. I do not see that his knowledge of it has any relevancy to the inquiry. That is why I am overruling it.

Mr. Rockwood. With your Honor's permission, I will ask this question:

Q Did you know what was required of a boat, a scow boat, carrying explosives?

Mr. Stallman. I object to that.

The Court. I sustain the objection, because if his knowledge, even assuming he had it, has no relevancy, I cannot see what possible ground it would be to show he had knowledge, if you cannot prove his knowledge. What use is it to show if he has it? I will overrule the question, and you may have an objection noted.

Mr. Rockwood. Thank you.

Q Was your boat fully loaded? A Yes.

Q And ready to go to the vessel at Gravesend? A Yes.

Q Was it the practice for the boat, the loaded scow, to go to Gravesend, and there have the load transferred to the vessel? A Yes.

Q That was the practice, was it? A Yes.

Q Now, on the day in question, was your boat next to the pier? A Yes.

Q On the south side? A Yes.

Q And what boat was immediately next to you? A The "Jet."

Q How was the "Moran" fastened to the pier? A With two lines.

Q Two hawsers? A Yes.

Q One at each end? A Yes.

Q What was the length of the "Moran"—how long was the boat? A One hundred feet.

Q What? A One hundred feet.

Q And how wide? A Twenty-nine.

Q And how deep? A Twenty-nine inside and thirty outside.

Q And how deep? A Nine foot side amidships.

Q Was your load down in the hold, or on the deck? A No; on the deck.

Q Therefore, there was nothing in the hold? A No, sir.

Q You were fastened, as you have stated, to the pier, and next to you was the "Jet"; how far away from you was the "Jet"? A Alongside.

Q Right next to you? A Yes.

Q And how was that fastened? A With lines.

Q Two lines? A Yes.

Q Fastened to you? A Yes.

Q And next to the "Jet" was what boat? A "Paulina."

Q Also fastened in the same way? A Yes.

Q And then next to that the "Thompson"? A Yes.

Q You mean fastened with hawsers to each boat? A Yes.

Q Now, were those boats so arranged that you could walk from one to the other? A Yes.

Q And could you jump down from the dock on to the "Moran"? That is, the boat was close up to the pier, was it? A Yes, close to the pier.

Q And about how far from the end of the pier would you say that the boats were facing? A How far it was across?

Q Yes; how far in toward the land? Follow my pencil and tell me about when to stop. A Oh!

Q Here? A About forty feet from the end.

Q Forty feet from the end of the pier? A Forty feet from the end of the pier, yes.

J Forty feet from the end of the pier— A Yes, thirty or forty feet.

Q —was the bow or the front of your boat, is that right? A The bow was to there.

Q At what time of the day did you tie up to that pier? A It was dinner time—after dinner time.

Q About noon? A Yes.

Q Of the same day that the explosion occurred? A No, no.

Q What? A No.

Q Well, the explosion occurred after midnight, didn't it? A Yes.

Q But it was the day before that? A No—yes—the day before—it was Friday I was coming down there.

Q And when did the "Jet" and the "Paulina" and the "Thompson" come there? A They came on Saturday.

Q Saturday? A Yes.

Q Now, what boats or what vessels were you confined to—I mean, to what vessel were you taking your load? A I do not remember that.

Q You did not know that, did you? A No.

Q In other words, am I correct in saying that you simply went when the tug boat took you, and you went where the tug boat took you? Is that correct? A Well, I had paper for so-and-so steamer.

Q You had paper for a steamer for this load? A Yes.

Q What steamer was it? A Well, that is what I do not remember now.

Q Where was the steamer to which this load was consigned? A On Gravesend Bay.

Q It was there? A No, I do not know whether it was there.

Q You do not know where it was? A No.

Q You know, however, that it was a consignment to the Republic of France? A Yes.

Q And I suppose you had been taking these loads for some time to vessels at Gravesend? A Yes.

Q Now, having tied up to the pier on the south side, as you did, what did you do—did you stay right on the boat? A Yes.

Q All the time? A All the time.

Q How many men did you have with you on the boat? A None.

Q Just yourself. And how many men were on the "Jet"? A One.

Q That is the captain? A Yes.

Q And did the "Paulina" have only one man? A Yes.

Q And the "Thompson" had one man? A Yes.

Q Now, was the captain of the "Paulina" a man named Eiseman? A What?

Q Eiseman, was the captain of the "Paulina"? A The captain of the "Paulina"?

Q What was the name of the captain of the "Paulina"? A That is what I do not know.

Q You do not know? A I did not know the name of none of them.

Q Would you know the man if you saw him again? A I would know the old man on the "Jet."

Q Would you know the captain of the "Paulina" if you saw him? A Why, I do not think so.

Q Now, you were sitting on the boat, as you said, smoking? A I had a cigarette—or smoked a pipe.

Q When somebody told you there was a fire? A Yes.

Q Who was that? A That is the old man on the "Jet."

Mr. Rockwood. (To the jury.) Do you hear that, gentlemen? "That was the old man on the "Jet."

Q That was the captain of the "Jet"? A Yes.

Q You do not know his name? A No.

Q And just what did he say to you? A "Cap," he said, "there is fire here."

Q There is fire where? A There is fire ashore here.

Q There is fire ashore here? A Yes.

Q When he said that to you, and you were sitting on your boat, could you see any fire? A Not where I was sitting; no.

Q When you stood up on the boat could you see any fire? A Yes.

Q You stood up on the boat, you saw the fire? A Yes.

Q And you have explained where you saw it? A At the first, as I saw it, I thought it was the fire from the watchman's —from the shanty, because it was small.

Q No, but you were out here, and you stood up on your boat, didn't you, and you saw the fire then? A Yes.

Q Now, where did you see it? A I saw that right up there—right in.

Q Well, where? Was it down here (indicating)? A Yes.

Q Down this way? A Yes; down that way; up to them cars, there.

Q When you stood here before and Mr. Stallman asked you questions you said about in here; is that right? A Yes, on them cars there.

Q Pointing to car N—879758.

Mr. Stallman. That is, counsel pointing to that.

Mr. Rockwood. Counsel pointing to it and witness saying, "that is the place." Is that right?

Q Come over here and be sure about it. A I cannot see so far. (Witness goes to the map.) My boat is laying there, and I saw the fire in this direction, right up here.

Q Put your finger on it. Take this pointer. A About here.

Mr. Rockwood. Witness points to car PLE—32285.

Q How high was that blaze? A The first I saw it, it was as high as that stick there.

Q How high is that stick? A That is about four feet—three feet—I don't know.

Q And did that fire appear to be coming out, out of the top of a car? A Yes.

Q Right out of the top of the car? A On the top of the car.

Q Yes. Now, then, you went down there, did you? A Yes.

Q You jumped up on the dock. Was anybody with you at that time? A No.

Q Will you swear to that? A Yes.

Q Are you sure about it? A I am sure that there was nobody on the dock.

Q Now, I want to ask you, so as to refresh your recollection, if it is not a fact that Mr. Eiseman was with you at that time when you jumped up on the dock—the captain of the "Paulina"? A No, he was not there.

Q He was not with you? A No, no; he was not with me.

Q And you went down—how near to the fire did you go? A I did not go no farther.

Q Just jumped up on the dock? A Just jumped up on the dock and up on the watchman's shanty.

Q Up on the watchman's shanty? A Yes.

Q To get a better view of it? A Yes.

Q And you said it was right down near the fire hydrant, didn't you? A Yes.

Q And if you had had another man with you you could have put it out yourself? A Sure.

Q It was not very much of a blaze then, was it? A No; very little at the start off.

Q Do you know how it started? A If I could tell you that, I could tell you the whole story, then.

Q I say, do you know? A No.

Q You do not know? A No.

Q Did it appear to be a fire just coming out of one car—the top of the car?

(Witness nods his head.)

Q The answer is yes? A Yes.

Q Now, Captain, did you go down with another man to the pumping station, where Mr. Sloan was stationed, and did you ask for permission to use the telephone on that night? A No.

Q What is that? A No.

Q You did not do that? A No.

Q Did you go down to the pumping station with Captain Eiseman and ask Mr. Sloan to let you use the telephone? A No.

Q Did you telephone to the tugboat or to anybody to come and get you out? A No.

Q What? A No.

Q Did anybody telephone to that effect? A I cannot answer that.

Q You do not know? A No.

Q Now, at the time that you stood up at the dock and saw the fire coming from the car, on top of the car, was there any fire at all on the "Paulina" or the "Jet," the "Thompson" or the "Moran"? A No.

Q No fire? A No.

Q Isn't it true that the "Thompson" was grounded on the ground because of the tide being out? A When?

Q That time, that night? A The "Thompson" was resting right on the ground.

Q The "Thompson" was resting right on the ground, wasn't it? A Yes.

Q And so was your boat, too, wasn't it? A Yes.

Q And all of these boats? A All of them.

Q And, of course, Captain, when you went around to the south side of the pier there, you knew, didn't you, that the Lehigh Valley Railroad was shipping explosives to foreign countries? You knew that for some time the Lehigh Valley Railroad had been receiving cars of explosives and that they were loaded on the north side of the pier and taken out to the boats at Gravesend to go to Europe? A Yes.

Q And you knew that had been going on for a long time, didn't you? A Yes, sir.

Q Yes. So that when you tied your boat up to that dock on that night you knew that there were carloads of high explosives all along that pier, didn't you? A Yes.

Q Did it occur to you that that was dangerous in any way?

Mr. Stallman. Objected to as immaterial and irrelevant.

The Court. Objection overruled.

A It didn't hurt me any.

Q What? A It didn't hurt me any.

Q Did it occur to you when you tied your boat up that it was dangerous for you to be there? Did it? A There was one case of—

Q No, just take my question now and we will let the jury have it. Did it occur to you when you tied your boat up on the south side of that pier, near the carloads of explosives, that it was a dangerous place? A It was, but I didn't care.

Q You didn't care? A No.

Q Why didn't you care? A I don't go before the days—

Q What? A I don't go before my time is up; I know that.

Mr. Rockwell. I think the captain did have a charmed life that night, myself.

Q Now, Captain, can you hear me clearly? Can you hear me? A Yes.

Q All along this pier were carloads of high explosives, were there not? A How long the pier is?

Q (Repeated by the stenographer.) All along this pier were carloads of high explosives, were there not? A Yes.

Q And that was so all the time, wasn't it? A Not all the time; no.

Q Every day? A Sometimes it was only a couple; only a few.

Q What? A Just started to come in with the trains.

Q When a train came in then there would be loads taken off on the barges and taken to the vessels? A Yes.

Q Now, Captain, you knew that you were engaged in a dangerous business yourself, didn't you? A Sure.

Q And you knew if a fire came to your barge with all those explosives on it it would blow up?

Mr. Stallman. I object to this, if the Court please. This man has only testified to certain facts that came within his observation, and inasmuch as his boat is not involved in this action in any way and he is merely produced here as a witness to testify to what he saw occur with reference to other boats, it seems to me that any sensibility he may have had of the danger if his boat blew up, or anything there, is absolutely irrelevant and immaterial so far as this case is concerned. If he appeared here as a plaintiff it might be a different matter.

Mr. Rockwood. I am not going to press it further.

The Court. I was going to admit it for you, but if you are not going to press it, all right.

Mr. Rockwood. I will press it, then.

The Court. I will admit it for these reasons: That this man testified to certain things that he did at this place, and the examining counsel has a right to test whether it is likely under the circumstances of the state

of his own mind he did those things or not, to test his credibility.

Q Now, Captain, how did you get word to the tugboat to come and get you off? A I ran over the load, and when I was on the middle of the loads I got struck by the heat; I didn't thought I should get there, but I come myself up again, and down on this foredeck and hollered to the captain, and he watched me all right, and I said, "Aye, Cap., please take us off. We can't do anything and you can't do anything," I said; "all is warm."

Q Where was the tugboat at this time? A Oh, it was about —about sixty or seventy feet north of where Ackerman has his landing.

Q Near the North Pier? A Yes.

Q Now, that was a Lehigh Valley tugboat, wasn't it? A Yes.

Q Who was the captain of it? A I cannot tell you; I don't know his name.

Q Now, isn't it true that the captain of that tugboat came right around to try to get you away as quickly as he could? A Yes.

Q But he could not pull the "Thompson" off because it was grounded on the ground, wasn't it, and he could not— A It was not only the "Thompson."

Q It was all of them? A No; it was the whole fleet. That is the reason the "Thompson" couldn't come alongside, because she—

Q The truth is— A —she was laden in the water and the wind and the tide keep her out there; keep her out all the time, in the shoal water.

Q Well, the truth is that the captain of the tugboat couldn't do very much to help you, because you were on the ground, weren't you? A He could not do nothing at all.

Q But he did get his boat fastened on to your boat, didn't he? A Yes.

Q And he did try to pull you out? A He was doing his best all the time.

Q Now, wait a minute; you knew he was trying to pull you out, didn't you? A Yes.

Q And you knew he was trying to get you from a dangerous place to a place of safety, didn't you? A Yes.

Q And still you cut off the hawser yourself, didn't you? A Didn't cut; no; didn't cut nothing.

Q Well, you detached your boat from the tugboat. Why did you— A Then the tugboat was up to the bow; yes.

Q Why did you detach your boat from the tugboat?

The Court. Why did you cut loose, he means.

Q Why did you cut loose? A I didn't cut loose my boat at all. We were hanging fast to the "Jet," and this here was on the "Jet's" bow.

Q But you cut the "Jet" loose then? A Yes.

Q Well, why did you do that? A I simply let go of the tug's line; that is all.

Q I know, but why did you do it? A What?

Q Tell the jury why you did that. A Why I did that? Wasn't it right to let go the tug's line from a boat when it was going away?

Q Yes. A I should leave that there?

Q No; why did you cut loose? A I was going aboard the tug myself and leave them.

Q You wanted to get to a place of safety? A Yes.

Q Well, then, it is true, isn't it, that you and the other men thought that if you could get on the tugboat the tugboat would take you men to a place of safety? A Yes.

Q And while you felt sorry about it you did not care what happened to the load, did you? A To the load?

Q You were trying to save yourself, weren't you? A Sure.

Q You were not trying to save the load, were you? A We could not; we could not.

Q No. A None of us.

Q No. A Not the captain or none.

Q All right; you have answered. A Because it was on the ground; low water.

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Q Low water? A Yes.

Q Now, when you went in there you knew that there would come low water, didn't you? As captain for ten years, you knew the depth of the water at that place? A Oh, yes.

Q What? A Yes.

Q And you knew when the tide went out it would leave your boat on the ground, didn't you? A Yes.

Q Now, you said there came an explosion. Now, I am going over to the map and you stop this and tell me where the explosion came from. Can you do that? When I stand over there? A Oh, yes.

Q You tell me where the explosion came from. A I cannot see very well—no—there you are.

Q Right there? A Yes.

Mr. Rockwood. Witness stops the cane from the—

The Witness. From the nearest car to the—

Mr. Rockwood. To the warehouse?

The Witness. To the warehouse; yes.

Mr. Rockwood. Witness stops the cane at car—

The Witness. One of them cars.

Mr. Rockwood. Underneath car M. C. S. L. 10194—A.

The Court. He says one of those cars.

Mr. Rockwood. One.

The Witness. Yes; they were not all on fire.

Q Is that right? Captain, is that right? A What is that point, please?

Q Is that where the explosion occurred?

The Court. If you cannot see it, Captain, go down and look at it.

(Witness leaves the stand and goes to the map on the blackboard.)

Q You point with the cane to the explosion. A There is the cars, one of them here.

Mr. Rockwood. Points to the cars C. M. S. P. 202700 and P. L. E. 32285.

The Witness. Westerly.

Q Being the two cars nearest to the warehouse? A Yes.

Mr. Stallman. On track 6.

Q Now, there was a half hour—a half an hour elapsed between the time that you saw the blaze and the time of the explosion? A Yes.

Q What? A Yes.

Q And if your boat and the "Jet" and the "Paulina" and the "Thompson" had not been on the ground they could all have been moved and pulled out to a place of safety, couldn't they? A They could have.

Q Yes.

The Court. Where was your boat, Captain, when the explosion actually took place?

The Witness. When the explosion took place?

The Court. Yes; where was the boat when the explosion took place.

The Witness. I was just swinging around from the "Jet"; here comes the "Jet," and here—I was laying alongside and I swung just behind here—behind that and this—the bow of my boat was just six feet from the dock.

The Court. Six feet from the dock.

Q Now, Captain, is it true that the deepest water was up next to the pier? A That is true.

Q That is true? A Yes.

Q So that your boat could be moved a little bit? A Moved all of them.

Q And your boat was moved out about six feet before the explosion occurred? A Yes.

Q Then I suppose when that explosion occurred all you men hurried on to the tug, cut loose and told the tug to hurry away

as fast as you could, leaving the load there; is that right? A No, no.

Q What? A No.

Q Well, how much time elapsed—how much time was there— A That was the first explosion.

Q Yes. A A half an hour later we had another explosion.

Q Yes. What did the first explosion do to your boat, anything? A Nothing.

Q Not a thing? A No.

Q What did the first explosion do to the "Jet"? A It put fire into some cases, but I killed it.

Q Some fire came down on the "Jet," but you threw it out? A Yes.

Q And what were they, red-hot irons? A Yes; big as my head.

Q How did you throw them out? How did you handle them? A Well, I handled them all right.

Q How did you do it? Tell the jury. A Took them in my hand.

Q Took them right in your hand? A Yes.

Q These red-hot shells, you took them up in your hand and threw them in the water? A Yes.

Q You did that right along? A Yes.

Q Did you hurt your hand any? Did you burn your hands? A I burned them a little; that is all.

Q What? A I burned them a little; that is all.

Q What? A I burned them a little; that is all.

Q Not much? A No.

Q But they were blazing hot, were they? A Yes.

Q But you put the fire all out on the "Jet"? A Yes.

Q Now, on the "Paulina," you didn't do anything to the "Paulina"? A There was no fire at all.

Q There was no fire on the "Paulina"? A No.

Q But on the "Thompson" there was a fire? A On the "Thompson"—might have come—

Q There was an explosion on the "Thompson," was there not? A Yes.

Q Yes. That is, the explosion—

Mr. Rockwood. I am talking a little loud because he is deaf.

The Court. Yes; that is all right.

Q The explosives that were on the "Thompson" exploded and blew up? A Yes.

Q And what made them blow up, do you know? A That is what I couldn't tell.

Q You could not tell. Was there any man on the "Thompson" at the time it blew up? A No; there was no man on it, but there was a woman and two children.

Q And what happened to them? A Blowed away.

Q What? A Blowed away.

Q Were they killed? A Yes.

Q Were they? A Yes; they were killed.

Q Yes. Was there any fire apparatus on your boat? A What?

Q Did you have any hose or anything to fight a fire with on your boat? A No. Well, I had buckets.

Q And there wasn't any on any of the other boats, was there? A No.

Q Now, when the "Thompson" blew up and exploded, how soon was that after the first explosion? A How soon it was after the first explosion? It was not half an hour of that time.

Q What? A It was not half an hour of that time; about so.

Q That is, after the first explosion it was a half an hour before the "Thompson" blew up? A Yes.

Q How do you account for that lapse of time? A Well, I had no time to look at a watch or nothing, but I didn't took any very great care of it.

The Court. He misunderstands your words; he thinks you mean, how do you count.

Mr. Rockwood. I do not mean that.

Mr. Stallman. Explain it to him.

Mr. Rockwood. Yes.

Benjamin Hansen, cross.

Q How do you explain that half an hour elapsed from the explosion—between the explosion and the fire on the "Thompson"? A Well, it took me half an hour, about, for to clean up all this slag and everything from the boats, and then I didn't go off before I had the whole lot.

Q Now, each one of these boats had a captain, didn't it? A No.

Q Each one of the four boats had a captain? A No; there wasn't—the captain—one of them three that was on the boat didn't belong to "Johnson" at all—"Thompson" at all.

Q Well, did the "Thompson" have a captain? A No.

Q But there was a man on the boat? A No, no.

Q No man there? A No; he was up on the shore.

Q He was ashore, but there was a captain? A Yes.

Q But he had gone ashore, hadn't he? A Yes.

Q What? A Yes.

Q And the captain of the "Paulina," he had gone ashore, too, hadn't he? A No; he was on the boat.

Q He was on the boat? A Yes.

Q At what time was the captain of the "Paulina" on the boat? A The whole time.

Q The whole time? A Yes.

Q You could not be mistaken about that, could you? A No, no.

Q Was his name Eiseman? A I guess it was.

Q Can you swear now that he was on the "Paulina" the whole time? A Well, but when the fire started he jumped on the dock.

Q You saw him do that, did you? A No; I didn't saw it.

Q How do you know it? A I saw him on the—on the boat when they were going to ship off.

Q Did you see him jump on the dock? A Ye—no.

Q How do you know he did, then? A I saw him when they was standing on the light boat.

Q On which boat? A On the light boat that was—he had only a couple of barrels on and they were going to ship off that one, from the dock.

Q But you saw him there, did you? A I think it was him I saw there.

Q Yes. And the captain of the "Jet," you saw him, too? A Yes.

Q But the captain of the "Thompson" had gone on shore? A Yes.

Q Where was the "Rockwell," a barge called the "Rockwell"? A She was laying in the slip.

Q Right back of you? A In the old ferry slip.

Q Near you? A Yes—not near.

Q Was there a captain on that boat? A Yes.

Q What happened to the "Rockwell"? A I couldn't say what happened to it.

Q You do not know? A No.

Q Was that on the ground also? A Oh, sure.

Q What? A Sure.

Q Sure? A Yes.

The Court. What was the answer.

Q (Repeated by the stenographer.) Was that on the ground also? A Oh, sure.

Q Did the "Rockwell" have any fire apparatus on board? A No.

Q What was the "Rockwell" loaded with? A Well, what as I could see, it must be shells.

Q Shells. And it was on the way to Gravesend also? A Yes.

Q The first you knew about a fire the captain of the "Jet" said to you, "There is a fire"? A Yes.

Q And that is the time you started to look? A Yes.

Q Now, there were several watchmen there that you knew belonged to the railroad company—worked for the railroad company? A Yes.

Q How many? A There was six of them.

Q Six. Were there four men down on the North Pier in the day time and four in the night time? A Yes.

Q They were watchmen, weren't they? A They were watchmen.

Q How far would you say that the fire was from the fire hydrant when you first saw it? This is the fire hydrant, isn't it? A Yes, yes.

Q Can you see it from where you were? A Oh, the fire from where I was laying?

Q Well, let's get this on the record. Somebody tell me how far it is from that car where he said the fire was down to the fire hydrant. A There it is, in that direction—of the shanty.

Q Mr. Stallman says that taking the point which the witness designated as where he saw the blaze to the fire hydrant was one hundred and fifty feet. Had you ever seen that fire hydrant in operation? A No.

Q Never saw it? A Fire hydrant?

Q Yes. A Oh, many a times.

Q Many a time? A Many a time.

Q Saw the water come out of it many a time? A Yes; and I unscrewed it, too.

Q Eh? A I unscrewed it, too.

Q You have unscrewed it yourself? A Yes.

Q And the water was always there, wasn't it, and plenty of it? A Yes; we couldn't get nothing in that—where that went. That was always closed.

Q What was the name of the tug? A The tug?

Q Yes. A I couldn't tell you. I didn't take no name of it.

Q Did the "Moran" burn up? Did the load on the "Moran" burn up? A Yes.

Q And on the "Paulina" and on the "Thompson"? A Yes.

Q And on the "Jet"? A Yes.

Q Now, am I not correct in saying that all those boats caught fire from the "Thompson"—when the "Thompson" exploded, that the other boats caught fire from it? A I can't swear to that there, but I will say that much—I couldn't see no fire nowhere before the explosion.

Q You saw no fire on the "Jet," the "Moran," the "Paulina," until the "Thompson" exploded? A No.

Q Then, when the "Thompson" exploded the other boats had fire on them? A Yes.

Q Eh? A Yes.

Q And does that apply to the "Rockwell", too? A No; that was far away from him.

Q You were too far away from the "Rockwell"? A Yes.

Q Now, let's get this very clear, so I will make no mistake. There was no fire on any of these boats until the explosion occurred that came from the "Thompson"? A Yes.

Q That is correct, is it? A That is correct.

Q Well, then, if your boats had not been on the ground, you had over an hour to get away in, didn't you? You had over an hour before the "Thompson" blew up? A Yes; all we could have been away.

Q You could have been away? A Yes.

Q Did anybody tell you to unloosen the "Jet" from the tugboat, or did you do it of your own account? A No; they told me—they was hauling in the hawser on deck and they jumped over as soon as the boat come in and they jumped down, and said, "Come on, now." I said, "I will let go this here line first," and then I let go the line and then they hauled in the hawser.

Q Is it true, Captain, that the water on the north side of the pier was very much deeper than on the south side? A Well, I sounded it once; I found it to be nearly the same.

Q Eh? A I sounded it once and I found it to be nearly the same.

Q But boats did not go on the ground on the north side, did they? A No; not on the south side, either.

Q No. Now, when your boat came around on the south side next to the pier, I suppose you placed it there yourself; you were the captain? A Yes.

Q And you said where you wanted to put it? A Yes.

Q Yes. That is all, Captain.

Re-direct examination by Mr. Stallman.

Q One question, Captain; do you remember when the first explosion came? Do you? A Yes.

Q How long before that was it that the tug got there? A Oh, about—about twenty minutes before.

Q I see. Then the tug took hold of these two boats and you fastened a line on two other boats? A Yes.

Q And the tug moved out until you were six feet from the pier, when the explosion happened; is that right? A Yes.

Q And do I understand it at the time this explosion happened your boat instead of being alongside of the "Jet" was behind the "Jet"? A Behind the "Jet."

Q Is that right?

Mr. Rockwood. No.

Q When the explosion happened— A Yes.

Q Was your boat alongside of the "Jet"? A No, no; behind the "Jet."

Q It was behind it? A Yes.

Q That is what I thought. A I had a line and let her swing behind.

Q I think that is all I have.

Mr. Rockwood. That is all.

Mr. Stallman. Do not go away, though, Captain. There may be something else I have in my mind.

(Interruption.)

Mr. Stallman. I would like to recall Captain Hansen. Just come here a minute, Captain, and take the stand.

(Witness resumes the witness stand.)

Q Captain, do you remember about what time it was when this first explosion happened? A The first explosion that was—about—little more than half-past one, I guess.

Q How do you know whether after that there was another explosion? A Yes.

Q What is that? A Yes.

Benjamin Hansen, re-direct.

Q And where did the second explosion come from? A From "Thompson."

Q And after that was there another explosion? A No; there wasn't no more; there was more as two.

Q What is that? A There wasn't more as two explosions.

Q There was only two explosions, as far as you know? A Yes.

By the Court.

Q Captain, when that first explosion took place was any part of your boat in any way connected with the pier or the dock? A No; she was six feet from the dock.

Q Well, you told me before that the bow was six feet; I want to know whether any part of your boat was in any way connected with the pier? A No, no, no.

Q It was not? A No.

Q All right. A It was clear of the dock six feet.

By Mr. Stallman.

Q I understood you to say when you answered one of Judge Rockwood's questions that as you laid in on the south side of this pier your stern was out towards the bay and your bow was pointing inshore; is that right? A No; when I was laying alongside of the dock the stern was in and the bow out to the end.

Q The bow was out towards the end? A Yes.

Q Now, just so we will understand it, look on this exhibit, number 11, and your boat "Moran" is marked here? A Yes.

Q Now, this end that is out toward the end of the pier, is that the stern or the bow of your boat? A That is the bow.

Q That is the bow of your boat? A Yes.

Q And, of course, the other end is the stern? A Yes.

Q Which end of your boat was six feet off the end of the North Pier? A This here. When I swing around that way my stern would come up to "Jet's" stern, and the bow would be up here.

Q Well, then, when you got out towards the—off the end of the pier your bow had completely turned around; is that right? A Yes.

Q I see. So that your bow was about six feet from the end of the pier? A Yes.

Q And your stern was one hundred and six feet from the end of the pier?

Mr. Rockwood. Hold on. Hold on. I move to strike it out as grossly leading.

Mr. Stallman. It is merely a matter of mathematics.

The Court. I will strike it out. I am not so clear as to the mathematics.

Q Let me ask you this: How far from the end of your pier was the stern of your boat? A Well, the stern of my boat when the explosion was, I was only six feet from that there corner, you see.

Q How far was the bow of your boat? A The bow, I mean, and the stern was up here to "Jet," and it was about fifty to sixty—sixty to seventy feet from the dock.

Q Fifty or sixty or seventy feet away? A Yes.

Q Then, as I understand it, your boat was laying headed up the bay, as it were? A Yes; sure.

Q But as you lay out in the river the one end was closer to the end of the dock than the other end? A Yes.

Mr. Rockwood. I move to strike out that question. There is no evidence that he got out in the river. It is suggestive.

The Court. That I will strike out, that suggestion. It may be an unwarranted assumption of fact.

Q Well, now, Captain, will you indicate to the jury just with this piece of paper how your boat—supposing that is your boat—this little piece of paper is your boat. That is about the same size as it is on the map, see? A Yes.

Q Now, will you just show to the jury how that boat lay at the time of the explosion?

The Court. Do you think anybody excepting yourself is in doubt about that, Mr. Stallman?

Mr. Stallman. I am not, excepting counsel objects to the witness.

The Court. Counsel objected to your saying the boat lay out in the river. What he is clearly objecting to is your characterization of the place where the boat lay as being in the river. He probably contends it was laying on the mud, and that that laying on the mud is not in the river. That is his contention, and nobody else around, I think, that has heard it, has any doubt about it but you.

Mr. Stallman. I am not in doubt about it.

The Court. And you want to tell us where the boat was lying when everybody knows where it was lying.

Mr. Stallman. The testimony was that when the boats were over on the south side of the pier they may have been resting on the mud, but there is no testimony that when they were towed out in the position the witness testified that they were in the mud or when they were out in the channel.

The Court. You may not think so, but there may be some doubt about it, and there is some doubt in my mind, a very grave doubt. Of course, everyone is entitled to an opinion as to what the evidence means. Now, Captain, are you indicating now on this map the position of your boat at the time of the explosion?

A Yes.

Q Just hold it tight, now. Can the jury see it. Hold it between your two fingers and lift up the paper. (Witness complies.)

Q Hold both of them. A Both of them?

Q Just move that paper out. Now pick it up and show it to the jury.

(Witness shows it to the Court.)

Benjamin Hansen, re-direct.

The Court. I am not the jury. Show it to the gentlemen over there. That is what he wants you to do. I know where it was. He wants you to show it to these men over there.

A Oh, these here men. Sure, here is the pier.

Mr. Stallman. Indicating boat 20 on this map.

The Witness. Now, the explosion comes right off.

Mr. Rockwood. That is all?

Mr. Stallman. Yes.

By Mr. Rockwood.

Q Now, when you say the explosion, you mean the explosion from the "Thompson"? A Oh, no.

Q What explosion do you mean? A The first explosion.

Q You are talking about the first explosion? A Yes.

Q Now, all these other boats at that time were in the same position they had been in all the time, weren't they—they did not change at all? A Oh, no; when the explosion come?

Q Yes. A No; we was towing them.

Q But, I say, they were just where they had been? A Yes.

Q Now, your boats, because you happened to be—your boat happened to be up next to the pier, where the water was deeper; you did get a little bit away, didn't you? About six feet? A Oh, we all got away.

Q About six feet? A All the boat was towing off, and I was the last one.

Q You were the last one? A Yes; I was been the last one when they towed them out. So No. 20 was the nearest boat to the pier when the explosion occurred.

By the Court.

Q Captain, to make it clear, so that we all can understand it, I will ask you a question that everybody seems to fight shy of. Will you tell us when the first explosion occurred, were you on the mud or weren't you? A No; we was not.

Thomas W. Bacchus, direct.

Q You were not? That is what I want to find out. A No; they was not. Well, they was sliding on the mud.

Q They were sliding on the mud? A Yes.

Q How could they slide on the mud if they were not on it? They were on the mud when the explosion occurred? A He towed them—he towed them over the slick—over the slick.

Q By the slick, you mean the slippery mud? A Sure.

Q Were you on the mud when the explosion took place? That is what we want to find out. A No.

Q You were not? A No.

Q That is what we have got to find out.

By Mr. Rockwood.

Q You were being pulled over this slick, as you call it? A Yes.

Q Captain, the bottoms of the boats were on the slick? A That is the muddy bottom, and the tugs pulled the boats over the mud, but they can't pull them, so they get out.

Q But the bottom of the boats rested on the slick? A Yes.

Q That is all.

By the Court.

Q Was this at low tide at that time, or not? A At low tide.

Q It was? A But the tide was commencing to turn.

Q Commencing to turn and to come in? A It was turned.

Mr. Stallman. That is all, Captain.

Mr. Rockwood. That is all.

THOMAS W. BACCHUS, sworn.

Direct examination by Mr. Stallman.

Q Mr. Bacchus, where do you reside? A Wilmington, Delaware.

Q What is your business connection? A Vice-president of the Hercules Powder Company.

Q Were you connected with the Hercules Powder Company in the month of July, 1916? A I was.

Q In what capacity? A Vice-president and general manager.

Q In that capacity, did you have anything to do with the sales of cordite to the British Government? A I had knowledge of the sales, and had charge of the manufacture.

Q I see. Just what is cordite? A Cordite is smokeless powder, made on a formula devised by the British Government, and made to their specifications in various sizes.

Q And was that made generally in this country by different powder companies? A No; we are the only manufacturers manufacturing in the United States.

Q I see. And I understand that was made according to some special formula? A A formula furnished by the British Government.

Q And does that formula differ from other orders? A Yes; there was no other powder I know of other than cordite that was made on the same formula.

Q Now, during the month of July, 1916, can you tell us whether or not there was any general market for the sale of cordite other than the goods that were furnished by you to the British Government? A None that I know of.

Q And was there at that time any prevailing market price for this commodity? A The only market price that I know is the contract price that we had to supply it at.

Q It was not, as I understand you, dealt in between other parties than your company and the British Government? A No.

Q And that contract price was ninety-eight cents a pound? A Ninety-eight cents a pound.

Q At that time, what were the conditions as to the manufacture of cordite—the obtaining of the raw materials for the ingredients that went into it?

Mr. Rockwood. That is objected to as immaterial.

The Court. It is not at all immaterial. I think it is the most material question that could be asked. The law, as I understand it, seems to be quite well settled, if it can

be considered as settled, that where there is not any market value, you ascertain the actual value. In ascertaining the actual value the elements that enter into the manufacture are very important and very material facts. All the cases that I have read—and I have read many of them—hold precisely that thing.

Mr. Rockwood. But in this case the plaintiff is suing upon a contract arrangement, and there can be no proof disputing the price mentioned in the contract upon our part.

The Court. It seems to me the great difficulty with that situation is this: That all the cases hold that the contract price that the plaintiff in a suit makes with some person, not the defendant, is admissible as against him as an admission, but it is not an admission in his favor to prove the value of the goods, so that your objection, it seems to me, is pointless on that ground; but if you suggest that you admit that you cannot dispute the contract price and do not intend to dispute it, then it would follow that it would be wasting time to enter into that inquiry.

Mr. Rockwood. I simply intend to ask him one question, and that is, if this contract was fulfilled and at what price.

The Court. The situation developed by the law is, that the actual value may be proved. Now, if you do not intend to contest the contract price as represented above the actual value, we would be wasting time, as you suggest, to go into the inquiry; but if you do intend to contest that thing, then, I think, Mr. Stallman is within his rights in showing all the elements that enter into actual value. Those elements naturally would be what would the raw material cost, how could it be secured; all those various elements, if he wants to show, he has a right to do it.

Mr. Rockwood. I will not urge the objection in that situation.

(Question repeated.)

Thomas W. Bacchus, cross.

"Q At that time, what were the conditions as to the manufacture of cordite—the obtaining of the raw materials for the ingredients that went into it?"

A There was a great shortage of acetone, and under our contract we had to produce acetone by a method that had never been used before in the United States, so as not to interfere with the British Government market for the acetone which was produced by the ordinary method. In July of 1916 we were somewhat delinquent in our production of acetone, and, consequently, it would have been very difficult to have increased the supply of cordite under those conditions.

Q That is all. Cross examine.

Mr. Rockwood. Have you the contract here with the British Government?

By the Court.

Q Did the price that you charged represent the actual value of that material as furnished to the British Government? A Yes. It was not a high price.

Q The actual fair value of it? A I think so; yes.

Cross examination by Mr. Rockwood.

Q There was a written contract between his Britannic Majesty's Government and the Hercules Powder Company, wasn't there? A Yes.

Q Executed on the 16th day of July, 1915? A Yes.

Q Is that the contract under which you were furnishing the cordite? A Yes.

Q And his Majesty included certain specifications and particulars which he wanted to have this cordite made to conform to; is that right? A That is right.

Q Where was this article manufactured? A Kenvil, New Jersey.

Q And shipped over what railroad? A The Central of New Jersey, I guess.

Q The Central Railroad of New Jersey? A Yes, sir.

Q And did the contract provide in substance that when you had delivered the article to the car, or to the railroad, that your liability ceased? A Yes; we sold our powder F. O. B. our plant—F. O. B. cars at our plant.

Q And then his Majesty took control of the article from that time on—or his agents? A Our liability ceased; I do not know whose liability it was then; I could not pass on that.

Q It was the liability of the consignee, was it not? A It probably was.

Q And as you understand it? A I suppose the railroad company would be liable while it was in its possession.

Q But you had no further liability? A No; we hadn't any liability.

Q Do you know if the particular cordite concerning which you have been interrogated by Mr. Stallman went over the Jersey Central Railroad to Pier 19 or Dock 19 of the Jersey Central? A I could not tell you that.

Q You have no knowledge of that? A No knowledge of that.

Q Did your connection with the Hercules Powder Company have to do with the actual production of the manufactured article, or did you have a financial and office position? A Well, I had the general charge of all the manufacture of all the products the Hercules Powder Company produced at all its plants.

Q And when did you first commence to manufacture cordite in this country? A In January, 1916.

Q And you continued up to what time? A We continued under this particular contract until February of 1917.

Q A little over a year? A A little over a year.

Q And how much cordite during that time—how many pounds did you manufacture for his Majesty? A Under this contract?

Q Yes. A 24,000,000.

Q At ninety-eight cents a pound? A At ninety-eight cents a pound.

Q Approximately $24,000,000? A Approximately; yes.

Q Did it come to your knowledge that this cordite in question here was destroyed? A Not officially.

Q Did you learn it unofficially? A I understood that there had been some cordite destroyed in this catastrophe.

Q And after that did you—of course, this cordite which was destroyed was almost an infinitesimal part of what you manufactured, wasn't it? A very small amount? A Yes; about twenty per cent. of one month's output.

Q Twenty per cent. of one month's output? A Yes.

Q And when this was destroyed, you furnished some other cordite to take its place? A Not that I know of. I could not identify any lot that might take its place. We were shipping—

Q Was there any other contract between you and his Majesty? A Not at that time.

Q Wasn't there subsequently? A Yes; there was a subsequent contract.

Q And under that contract did you furnish cordite? A We furnished cordite, making deliveries from March, 1917, after the completion of the contract we are now speaking of.

Q And what was the price of the manufactured article under the new contract?

Mr. Stallman. Objected to as irrelevant and immaterial, what happened in March, 1917.

The Court. If this was bought to take its place, it might have some relevancy on it.

Mr. Stallman. He did not say it took its place.

The Court. He did not say that it didn't, either. He may want to show that it did.

Mr. Stallman. I think that ought to be done first, because otherwise the question he is now asking the witness is of no materiality or relevancy as to the value of this cordite back in July of 1916.

The Court. I gathered from the suggestion of counsel that they may intend to show afterwards that this cordite was to supply the place of the cordite destroyed, and this is a part of the offer, at least by implication, to show that thing; and if it is, I see no objection to permitting this

proof to go in, because it is a matter of the order of proof and entirely in the discretion of the Trial Judge.

Mr. Stallman. I note an objection.

The Court. You may have it.

Q His Honor says you may answer the question. What was the price under the new contract? A Sixty cents a pound.

Q Thirty-eight cents less than the other? A Yes.

Q And why was there that reduction? A Because the first contract—

Mr. Stallman. I object to this question—

A (continued) —we had to build the plant.

Mr. Stallman. —unless counsel now establishes that this new contract was made for deliveries in March, 1917, was to replace the cordite that was lost in this explosion.

The Court. Oh, if he does not, Mr. Stallman, I will charge the jury that it has no more relevancy to it than the wind that blows in the window.

Mr. Stallman. I do not think counsel has any intention of doing that. He is doing it merely as a matter of prejudice.

The Court. If he does that whom will it hurt? Not you, certainly; him. If it is just as you suggested it is, a bluff, I think the bluff always returns on the bluffer. I do not assume it is that; I assume counsel, in good faith, means to do what he says if he makes an offer. I would assume the same of you.

Q His Honor says you may answer the question? A In the first contract, before we could commence on it, we had to build the plant; we had to build not only a plant to produce the cordite, but we had to build a plant to produce the acetone. In building that plant for this particular purpose, the cost of the plant had to be added to the cost of manufacture, and after this contract had been fulfilled and the plants were already in existence and it was not an experiment with us, we were about to give a lower

price. Now, as a matter of actual fact, we made exactly the same profit on the first contract as the second one—within a fraction of a cent—the other being the amortization of the plants.

Q Did you negotiate the second contract with the representatives of the English Government? A No; Mr. Skelly, our sales manager, negotiated the second contract.

Q And is available as a witness? A He is not here in New York.

Q Where is he at the present time? A He is in Wilmington, Delaware.

Q Where? A Wilmington, Delaware.

Q That is all, sir.

Mr. Stallman. Now, I move to strike out the testimony regarding the price of the second contract.

The Court. Well, I am listening to you. Go ahead with the argument.

Mr. Stallman. I understood the Court admitted it on the theory that counsel was going to try to show that the cordite furnished under the contract effective in March, 1917, was to replace some of the cordite which was lost in this explosion of July, 1916.

The Court. That is the theory.

Mr. Stallman. And counsel did not follow it up to show it.

The Court. Well, counsel cannot follow it up with any witness until this witness certainly has gotten his feet off the stand, can he? The man is entitled to his chance to make his proof, and it is not even his side of the case yet. The objection seems to me not only to be baseless but frivolous.

Mr. Stallman. I would like to have my objection noted on the record.

The Court. It is noted with all the embellishments and embroideries that have been placed upon it by your remarks and mine.

Levi A. Ward, direct.

LEVI A. WARD, sworn.

Direct examination by Mr. Stallman.

Q Mr. Ward, are you connected with the Hooker Electro-Chemical Company? A I am.

Q Are you familiar with the contract between your company and the French Republic—sale and delivery of monochlorbenzol, in July, 1916? A I am.

Q Can you tell us at that time whether or not there was any general market for the sale of monochlorbenzol, and the production and sale of monochlorbenzol in this country? A I can say that we had at that time some half a dozen contracts for delivery of that material, and to that extent there was a general market.

Q To what extent did this—were those contracts made with the governments that were warring in Europe? A I mean exclusive of the government contracts.

Q And the contracts you had were with the European Governments; is that right? A No; at that time there were in effect two contracts with the French Government, and outside of those two contracts we had half a dozen other contracts.

Q I see, exclusive of those. And was there a market price at that time for monochlorbenzol in carload lots such as you were shipping to the French Government? A There were no quoted prices that I can find from the specifications in the trade journal, but our price was about the same as that which we had of the French Government for their contract; and that must have been market at that time or we would not have gotten that price.

Q That is, your sales to other customers than the European countries? A Yes.

Q Is that the price of 20¢ a pound? A Yes, or better.

Q You mean to say that this 20¢ was a minimum price? A There were contracts at that time and following through that year, at prices higher than 20¢.

Mr. Stallman. Cross examine.

Levi A. Ward, cross.

Cross examination by Mr. Rockwood.

Q Where was your product manufactured, Mr. Ward? A Niagara Falls.

Q Niagara Falls? A Yes.

Q How did you get to the ocean, or to New York Harbor? A I believe that most of our material—most of our shipments were by Lehigh Valley Road at that time.

Q Are you sure— A Except some in the early days, we shipped some by the New York Central.

Q Did you have charge of that yourself, of the shipments? I suppose not. A I did not; no, sir.

Q Well, this price of 20¢ that you have mentioned, did that obtain July 30, 1916? A Yes.

Q There was no market and there was no price except such price as you contracted to furnish the goods at; in other words, you fixed the price? A I won't say that is a fact. There may have been other manufacturers of monochlorbenzol that were selling as much as we, or selling a considerable amount of this material.

Q Do you know of any? Did you know of any in this country? A I am—that is my impression; that is my impression, that there were other manufacturers. I won't say that I know.

Q Well, you were regularly in the business? A Yes.

Q And you did not at that time know of any other manufacturers than yourself? A I was not the sales manager and so was not familiar with that feature.

Q Well, regardless of that, you do not know of any other manufacturers except yourself, and the prices that were fixed in the contract were merely the contract prices agreed to by both parties? A Yes, sir.

Q It was not necessarily a market price, was it? It was prices you fixed at which you would sell the goods? A Well, I take it that we fixed the price at what was the market; that we could not get what was above the market.

Q I suppose you fixed it to leave a pretty liberal profit, considering it was war material? A It was not war material that we sold to other consumers.

Q What? A It was not war material that we sold to other consumers, and which we sold at higher prices.

Q Well, you sold to the Republic of France, didn't you? A Yes.

Q And how much did you sell to them? A Well, I would have to refer to the contract.

Q Well, in round numbers. Is it approximately 2,900 tons? A For that year or for what period?

Q For that contract dated the 16th of December, 1915. A I would have to refer to the contract to tell you that.

Q I show you the contract, and ask you if that refreshes your recollection? A That appears to be the contract.

Q 2,900 tons? A 2,900 tons is the amount stated.

Q How many tons were destroyed in this fire, do you know? A No.

Mr. Rockwood. That is all.

Mr. Stallman. That is all, Mr. Ward.

(Witness excused.)

DAVID FINLEY, sworn.

Direct examination by Mr. Stallman.

Q Where do you live, Mr. Finley? A 841 Garden street, Hoboken, N. J.

Q And what is your business? A Master of steam vessel.

Q What was your position on the 29th of July, 1916? A Master of the tubboat "Slatington," owned by the Lehigh Valley Railroad.

Q Where were you about midnight that night? A Leaving Black Tom with a tow of grain boats bound for Pier 36, Atlantic Basin, Brooklyn.

Mr. Rockwood. Where did he say he was?

A (Repeated by the stenographer.) Leaving Black Tom with a tow of grain boats, bound for Pier 36, Atlantic Basin, Brooklyn.

Q And what time did you leave Atlantic Basin after having arrived there? A 1:15.

Q And where did you go? A Direct to Black Tom.

Q Is that right across New York Bay from the Atlantic Terminal? A Almost directly opposite, yes.

Q At that time when you left Atlantic Basin did you see anything of the fire at Black Tom? A No, sir.

Q What was the first you knew there was a fire over there? A After landing my tow in Atlantic Basin at 1:15.

Q I say when you were over at Atlantic Basin, did you then see anything of a fire at Black Tom? A Yes, sir.

Q Then what did you do? A I immediately run light for Black Tom.

Q You ran back to Black Tom? A Yes, sir.

Q And do you know how long it took you to go back? A Not more than fifteen minutes.

Q And when you got over there what did you see? A See the fire—as we were going in the Black Tom Channel I see the fire.

Q Where was the fire? A Just at what point I could not say exactly, any more than to locate it—any more than it looked to be on the dock, somewheres.

Q Well, that is a pretty big dock. Couldn't you give us some idea where it appeared to be? A Well, it was on the northerly side of the dock.

Q Will you step down to the map and indicate as nearly as you can where you think the fire was, and also where you were when you saw the fire? (Witness leaves the stand and goes to the map on the blackboard.)

Q Now, before you point out, you show, Captain, how it was that you came into the Black Tom Terminal from the Atlantic Basin. A Come into the Black Tom Terminal from the Atlantic Basin, come in through this channel here. Let us see, where is Pier 7—in through here.

Q How far did you go? A Right directly up into the fire.

Q No— A When I first came over, I come to about here, Pier 7, up in this corner.

Q You first came up in the corner between Pier 7 and behind Store R? A Yes.

Q Did you see the fire when you were on this corner? A Yes.

Q Where was the fire then? A Right about across this direction.

Q About in the direction of the car numbered Lehigh Valley 62899? A In about that neighborhood somewhere.

Q In that neighborhood, yes. And you see the fire in there, and then what did you do? A We tried to get our—planned to get a hose across in order to assist to put the fire out, but the distance was so great and the number of freight cars was so much, and from a lack of hose—we only had 200 feet of hose and it would not reach there.

Q All right, Captain. Now resume the stand. A (Witness resumes the witness stand.)

Q Now, after you were up in the corner—when you were up in the corner how big was this fire? A The fire was then in one box car, and the flames was running—or raising, I should judge, in the neighborhood of six to eight feet over the height—over the roof of the car.

Q At that time was there any fire anywhere near the North Pier? A No, sir, only that one spot on that car.

Q Well, then, where did you go from Pier 7? A Went around to the end of the pier, to the end of what was known as the North Pier, with the idea of taking out whatever boats I could get hold of that was loaded with explosives.

Q Yes. Now, I want to call your attention to Exhibit P. 11, which lays here before you, and to four boats that lie south of the east end of the North Pier. Did you have anything to do with those boats that evening? A Well, at the time of the explosion?

Q Before the explosion. A No, sir; that is—

Q Well, immediately before the explosion what did you do? A That is what I went down there for, to pull these boats out. I landed across the end of this pier here—

Q Wait a minute, now.

Mr. Stallman. Indicating the easterly end of the North Pier.

Q Where did you take your boat first? A Right across the end of this pier, right this way.

Q That is, you lay broadside on the end of the pier; is that right? A That end to the tide; yes, sir.

Q Head in to the tide? A Head up to the tide; yes, sir.

Q Then what did you do? A Ordered my deck hands to put their hawsers over on these two boats.

Q Pointing to "Moran" and the "Jet"? A Pointing to the "Moran" and the "Jet." I didn't know what boats they were at that time. Of course, I didn't stop to take names.

Q Go on. Then what did you do? A There was nobody on these boats just at that time when I first arrived there; but after I had blown my whistle one man came out. I asked him—

Q Do you know who it was? A No; I didn't identify him. After he came out I asked him were there any other men on the boats. He said there were men were around somewhere, for to blow my whistle and to get them around. So I blew my whistle and possibly between—five minutes or so the other men showed up. It seems they had been out on the dock. I then told these men to let go this line on this corner of these two boats.

Q Between the "Jet" and the "Paulina"? A Between the "Jet" and the "Paulina," yes, which would let these two boats swing down in this direction. These boats in the meantime were letting go the lines from the dock, which would let these ends swing down here, and my hawsers were heading this way, which would let the boats swing in behind.

Q That is, where you are indicating on the map the "Moran" and the "Jet" would swing behind your tug; is that right? The way you are indicating on the map the "Moran" and the "Jet" would swing behind your tug, is that right? A In this position; yes, sir.

Q And the "Paulina" and the "Thompson" would swing in behind the "Moran" and the "Jet"? A Yes.

Q I see. A By letting go of this line here; I had one hawser on here.

Q Pointing to the— A "Moran."

Q Corner of "Moran 20"? A And the other hawser was on this one.

Q On the right corner of the "Jet." Go on. A And let go of this line.

Q And let go of the line on the left corner of the "Paulina"? A Stern—that would be the stern, of course.

Q Yes. Go on. A To let these two boats—

Q Pointing to the "Moran" and the "Jet"? A Yes.

Q To allow these two boats to drop with the tide? A Drop with the tide directly behind my boat, my tug.

Q Yes. A And the "Paulina" and the "Thompson" dropped directly behind the "Moran" and the "Jet."

Q Did you do what you just described? A Yes, sir.

Q Then what happened? A In the meantime these men here—

Q Pointing to the "Johnson 17." A —was busy getting a line across the end of the dock to these other boats so as I could pull all seven boats out, and we endeavored to get a line from these boats to these.

Q Just a minute. Let me interrupt you, Captain Finley. You had, as I understand it, got lines on these four boats? A Yes, sir.

Q Then some man from the "Johnson 17" was attempting to get a line from the three barges on the north side to fasten to your tug? A Not to the tug, but to the boats that were fast to my tug.

Q Well, now, did he do that? A They got the line across; yes, sir.

Q Yes. A But, I believe the distance between these two boats was so great that they couldn't get a line to them.

Q Between the "Frank" and the "Johnson 17"? A So I understand.

Q Yes. Well, then, after you had gotten the lines out on these four boats and they fell in the order which you have described, what did you do? A I started to pull my boat up the river, up this channel, a narrow channel, behind what we call the Statue of Liberty.

Q That is between the— A That is a private channel.

Q Between the end of the North Pier and the Statue of Liberty? A Yes. My idea was to pull them up through there and get out into the wide water above—above the Black Tom docks, and pull out into the bay, between the Bedloes Island and Ellis Island.

Q Yes. And did you start out in that direction? A Yes.

Q And how far did you go before anything happened? A Well, I didn't get moved hardly. I had given the—I had given my engineer the signal to start his engines ahead, and we might have moved any distance from fifty to seventy-five feet perhaps.

Q Yes. A And the explosion came.

Q Where did that explosion come from? A Came from the dock—not the dock, but the land.

Q And what part of the land? A Up on this place where we had started, where the original fire was.

Q That is the explosion came from the place where you saw the fire? A Yes.

Q And what was the effect of that explosion so far as your boats and your tow was concerned? A Well, the effect was to start the—it started all the boats afire that I had in tow.

Q And which boats were they? A The "Moran," the "Jet," the "Paulina" and the "Thompson."

Q How did it set them on fire? A Why, I suppose from flying—I don't know whether it was from pieces of flying metal or fire, or whether it was done through combustion.

Q But how soon after this explosion occurred did these four boats that you had in tow catch fire? A Almost immediately.

Q I see. Did you see anything fall on your boat or any of these tows? A Well, we didn't see anything fall directly on them, but our boats having iron decks and iron houses on them we could feel or rather hear the pieces of metal and such falling on them.

Q That is, you felt the patter of something falling on the steel deck; is that the idea? A Yes, sir; and then in two parts of my tugboat pilot house pieces of shell penetrated, one piece penetrated all the way through and the other piece partly through,

and then on the port side of the pilot house aft of where I was standing at the wheel, there was two or three places where it was punctured.

Q This explosion having occurred then what did you do? A Seeing that these boats were afire, these four boats that I had in tow were afire and burning rather briskly, I backed down in order to get these men off these boats, which I succeeded in doing—and being told that I had—one of my men, one of my own crew severely hurt, and some of those other fellows were badly hurt, I started right out through the channel in order to get to Jersey City to a hospital.

Q In going up there did you—you did not take these boats with you, did you? A No, those boats were all afire, and my deckhands had thrown the lines off from the tug, and I wanted to back down and pick these boats up again, but my deckhand—at that time I supposed the hawsers had been let go from these boats and was pulled aboard to tug, but when I started to back down I had two objects in view, one was to take the man up off this boat here which was out abreast the end of the pier, and also get hold of these boats again.

Q Just at the time this explosion occurred I understood that you had pulled the "Moran" and the "Jet" down behind—where they had fallen down behind your tugboat? A Yes.

Q I see. Well then can you give us an idea as to how far from the end of the North Pier the "Paulina" and the "Thompson" were at the time the explosion happened? A Figuring for length of hawser out and the length of these boats I would say they were about in the neighborhood of a hundred and fifty, one hundred and seventy-five feet, that is the bow—the nearest point, the nearest corner of the boat to the corner of the pier.

Q I understand the last you saw of these four boats was when your deckhand cut them loose and they were burning? A No; when they were burning, yes, but the last I saw of them was after I backed down and took the men off. That was the last I see them to have anything directly to do with them.

Q Yes, and you ran up to Jersey City and took your men, and did you come back to Black Tom? A Yes, sir.

Q Did you see them again? A No, sir; they had disappeared. I did see one or two boats drifting around the bay, afire, but I couldn't identify them as the boats I had or whether they were either one of these two boats that the "Geneva" had pulled out.

Q Did you see the tug "Geneve" there that same night? A Yes.

Q Were you with the "Geneva" at any time? A We were working together during the whole time after I had gotten into Black Tom.

Q Yes. A She was up in here and I was alongside of her.

Q When you were in the corner of Pier 7 the "Geneva" was where? A The "Geneva" was in the corner and I came up.

Q What did he do? A He backed down after I did and followed me around back here. He went in to get those two boats.

Q Down to the "Moran 8" and the "Rockwell"? A Yes.

Q Did he get "Moran 8" and the "Rockwell" out before you got those four or afterwards? A Well, just about the same time.

Q Eh? A I guess there wasn't a great deal of difference.

Q I see. A If I remember rightly—

Q Well, go ahead. A If I remember rightly I think I told the captain of the "Geneva" I would get these four boats out of the way in order to give him more room to get out of the slip.

Q Do you recall about what time it was when this explosion occurred over here in the yard? A Well, my watch, I think, if I remember rightly, was about 2:25.

Q Yes. After that did you hear anything of another explosion or see anything of another explosion? A I didn't see it, but I heard and felt it.

Q About how long after the first one was it? A I should say about thirty-five minutes. My watch was out of business and I could merely guess at the time then. This is the watch I had and I had it sent to the jeweler's for repairs afterwards.

Q You may cross examine.

David Finley, cross.

Cross examination by Mr. Rockwood.

Q Captain Finley, it is quite important to get time accurate here, and I suppose that being captain of a boat you are very accurate on time, aren't you? A Yes, sir.

Q You keep that in your mind very clearly? A We have to keep a record of our arrival and departure of everything we do.

Q Have you looked up since you knew this case was coming on—have you looked up the question of time so that you would be accurate about it? A No, sir; because I couldn't give an accurate account—that is, I could give a fairly accurate account up to the explosion; after the explosion I could not, because my watch had been—

Q I mean up to the time of the explosion did you look at your records to see? A No, I did not, but I have a fairly good memory on that.

Q Memory pretty accurate on it? A Yes.

Q As I understand it, you pulled some grain boats out with your tug, and you were on the other side of the harbor, over to the Atlantic pier; is that right, or Atlantic dock? A I had made two trips over there that night; that was my work constantly, out of Black Tom.

Q This particular time you were over there about 1:15? A Yes; I had landed at 1:15.

Q Landed there at quarter-past one? A Yes.

Q Now, as I recall your testimony, you told Mr. Stallman that you had observed a flame or fire at Black Tom, or it was called to your attention? A My mate called my attention to it, because after landing my tow I—

Q It was called to your attention? A Yes.

Q Then you looked across the harbor and saw it? A Yes.

Q How far was it from the Atlantic dock across to Black Tom? A How far?

Q Yes, approximately? A Well, I will say about two and a half miles.

Q And what did you see when you looked over there at quarter-past one or thereabouts? A Just merely seen the flame—fire.

Q Now describe to his Honor and the jury about how much of a flame it was? A At that distance it did not look to be a very big flame.

Q But you thought that in the line of your duty you ought to get right over there and you started? A Yes.

Q Now, how long does it take your—your boat is the "Slatington"? A Yes.

Q How long does it take the "Slatington" to make the trip across? A Well, at that time it took her about fifteen minutes, because I called down through the speaking tube and notified my engineer, to use our expression, to open her up wide open, that is, he put her under forced draft and turns on the live steam and gives me everything he has got in order to drive the boat through the water.

Q When you arrived at the Atlantic dock had you put up to the dock and tied to it? A No, sir; my tow had, but not my boat.

Q You were not? A No, sir.

Q What time would you say it was that you left the Atlantic dock? A 1:15.

Q You left there at that time? A Yes.

Q Then it would be about 1:30 when you got across on the other side? A About 1:30.

Q Well, would that be 1:30 at about this point at the pier? A No, sir; 1:30 alongside of the "Geneva."

Q That is when you got down in this point? A Yes.

Q This point R on the map is a storehouse or warehouse, isn't it? A Yes.

Q Am I correct in saying that grain boats stopped all through here; this is the place where the grain boats are loaded? A Not where they are loaded. That is where they had put some of them there; they had been in the habit of putting some loaded boats after they were loaded out of the elevators and landing some light boats there when they were crowded at the elevators.

Q You made the point at Store R about 1:30? A Yes.

Q Then as you looked from the boat you saw a blaze over where I am pointing? A Yes.

Q Is that correct? A Yes.

Q You are quite sure, Captain, you are correct about it? A Yes.

Q Could not be mistaken? A Not very well.

Q Are you aware of the fact that the point at which you have said you saw the fire is the point where the cars were standing that contained the high explosives? A Yes.

Q Eh? A The high explosives?

Q Yes. A I would not say the high explosives were there; no, sir.

Q They were not? A That there was ammunition cars there.

Q Will you say to the Court and jury that at the point where you have stated the fire was, being the second car enclosed in a red band marked H was not stored with high explosives or TNT? A I couldn't say what—I did not mean to infer to the jury or anyone else and especially his Honor, that the fire was in the second car. I said in about that neighborhood.

Q Now, Captain, the point at which counsel put his—your testimony now stands the fire was in the cars where the TNT was located? A I didn't say anything about TNT.

Mr. Stallman. The car I pointed to was the car above the second car, the white car.

Q Up in here. Is that the car you meant? A In about that neighborhood. I did not mean to point to any special car.

Q It was in the neighborhood of the high exlposives? A In there somewheres.

Q You saw that flame in there near the high explosives at 1:30? A Yes, sir.

Q You could not be mistaken about it? A No, sir.

Q According to the map here there were several cars of high explosives at that particular point—eight, in fact—and one car to the north of the cars containing high explosives. Is that your recollection? A I have no very clear recollection as to what cars were there or what cars were not; I merely know there were explosives there and one of those cars was afire.

Q But whether it was a car containing TNT or another car you don't know? A I am pretty sure it was not the TNT, be-

cause the car that was afire was small shot into it, because the shot was flying out of the fire and flying up on that steel water tank on top of the warehouse and also coming over and landing on both our boats, the "Geneva" and our own.

Q That is the car from which the fire was—the shells were exploding from the car? A Small—I wouldn't say they were shells —that is what I meant, they were more small—

Q It was some small ammunition? A Some small ammunition, yes.

Q Are you aware of the fact that there is only one car above the TNT on the map, and if you are aware of it, do you mean to say that is the car from which you saw the fire? A No, sir; I do not mean to say which car I seen the fire in it.

Q As a matter of fact, you are not exact about it; cannot say? A I am exact to the fact that the fire was in a car that had explosives of some kind—ammunition, rather.

Q But whether you located it correctly or not here you do not know? A It was in that neighborhood. I could not specify just the particular track it was on, because I was not close enough to it for to do that.

Q May it have been in the neighborhood of where I am now pointing? A No, sir; it was not down in there.

Q Or in here? A No, sir.

Q Your testimony then—you are ready to let it stand on the fact that the fire was in the neighborhood of where my stick is now? A Yes.

Q Pointing to car 62899? A In that neighborhood.

Q In that neighborhood? A Yes, sir.

Q That was at 1:30? A Yes.

Q Now, then, is that the only car from which a car was coming? A At that time, yes.

Q There was no other fire upon any other part of Black Tom Island or upon the docks or piers except in that one car at 1:30 A. M.? A No, sir.

Q You could not be mistaken about that? A I do not think so.

Q It is your recollection. Now, then, how long did you stay near the warehouse R? A I judge I stayed there about fifteen minutes.

Q That gets us up now to about quarter of two? A About 1:45.

Q Then you started out to the end of the piers? A Yes, sir.

Q What made you start out to the end of the pier? A By the request of two men who asked me to go down and pull out the boat loaded with dynamite, to prevent further explosions of possible contents by catching afire.

Q Do you know the names of the two men who made the requests? A At that time I did not.

Q Do you know now? A Yes, sir.

Q Who were they? A Mr. Dyckman and Mr. Leyden, the man that was killed in the explosion.

Q That is the chief of the Lehigh Valley police? A Yes.

Q Con Leyden? A Yes.

Q And Mr. Dyckman? A Yes.

Q They asked you to pull down there and try to get those boats out? A I believe it was Mr. Dyckman.

Q You did pull down then to the end of the pier? A Yes.

Q As you have described? A Yes.

Q Now, how long did that take you to get from the point R down to the end of the pier? A Not more than five minutes.

Q Now, we have got you down here about ten minutes of two; is that correct? A Yes, sir.

Q That is your best recollection? A Yes.

Q Could you possibly be mistaken about that? A No.

Q That is accurate, is it? A I would swear by that.

Q Yes. Now, being down there—in the first place, are you familiar with the depth of the water on the south side of the pier? A Yes, sir.

Q How deep is it at low tide? A At low tide there is supposed to be eighteen feet of water there.

Q Eighteen feet? A Yes.

Q That is right next to the pier? A Yes, sir; that is on the outer end, to the outer end.

Q To the outer end? A Yes.

Q How much was there right along where I am now pointing? A It averages about the same until you get about the middle of the dock and then I believe it shoals up somewhat.

Q From the depth of the water next to the pier it shoals up and gets less? A Not in that direction—in towards the bulkhead.

Q Have you a survey of this water, so you can give us accurately the depth? A No, sir; not any more than I get a knowledge of the depth of water there from the boats that I tow in and out of there, counting the water that they drew, knowing that I can get in there all stages of the tide.

Q Have you a survey of the depth? A No, sir.

Q Then at ten minutes to two you started to hook your tug to the boats that were lying there? A No, sir; not—well, I started to; yes, sir; that is—

Q What time would you say it was when you finally had your lines fast to the boat you intended to pull out? A I had one line made fast to him almost as soon as I got there, because my deckhand threw the line over and run the bitt as we call it, himself.

Q Am I correct in saying it was about two o'clock before you started to move? A It was possibly a little after two.

Q How much after? A I would say about five minutes after two.

Q About five minutes after two when you started to move out? A Yes.

Q With the fleet? A Yes.

Q You were fastened first to what boat? A "Moran 20" and the "Jet."

Q You have stated that there was only one man there? A When I first arrived there, yes.

Q Who was the man, do you know? A I couldn't say who he was.

Q Would you know him if you saw him? A No, sir.

Q What boat was he on? A I couldn't tell you that. He was on some one of the four boats.

Q On any of the other boats there was no men, on any of the other boats? A No, sir; at least this one man told me to blow my whistle, that the other men were on the dock.

Q Did you blow your whistle? A I blew my whistle.

Q And one other man came? A I don't know how many—there was three men came.

Q I understood you to say in your examination to Mr. Stallman that one other man came? A No, sir; there was three men came; there was one man came when I first arrived there.

Q Then you blew your whistle? A And then the others came.

Q How many others came? A Three.

Q Three altogether? A I say three, because after the explosion and these boats got afire I backed down and took four men off of these boats.

Q How many boats were there? A On the south side of the dock; well, there was six altogether—that is not counting the sailing vessel.

Q There were six vessels hauling out? A No, sir; four boats was hauling out.

Q As you started to haul out these boats what happened, if anything? A Why, the explosion.

Q Where did you see that explosion come from—the landside? A From the land.

Q Are you sure about that? A Yes.

Q What part of the land? A Up where the fire was.

Q Where you saw the flame? A Yes, sir.

Q You had not heard up to that time, and that was about ten minutes past two, any other explosion? A Only them small explosions.

Q That is the popping off of shells? A Of small shells, yes.

Q You had heard no other explosions? A There wasn't any other explosions.

Q There had been no fire upon any of these boats? A No, sir.

Q There was no explosion from the "Thompson"? A No, sir.

Q At no time was there any explosion from the "Thompson"? A Not previous to the first big explosion at 2:10.

Q Not previous to ten minutes of two was there any explosion of any kind on the "Thompson"? A No, sir.

Mr. Stallman. I object, because this witness did not testify that there was any explosion on the "Thompson."

Mr. Rockwood. Yes, he said there was none.

Q Did you say there never was any explosion on the "Thompson"? A I said there wasn't any explosion on the "Thompson" up until the—or at least until after the explosion on the—the big explosion at 2:10.

Q That is what I understood you to say. I understand you to say then—see if I have you right—there was a large explosion at ten minutes past two? A Yes.

Q After that there may have been an explosion on the "Thompson"? A That I could not say.

Q Did you ever see any explosion on the "Thompson"? A No, sir; there was a slight explosion on one of those boats.

Q Which one of them was it? A I couldn't say which one it was.

Q Only a slight explosion? A Well, it wasn't so much of an explosion as it was—I should imagine it was a sort of liquid of some kind. I might be mistaken in that.

Q Then when you cast off the boats and got the four men on and tried to take them to a place of safety, there had not been any fire or explosion on the boats that had been called to your attention excepting little small explosions on one boat? A At that time there was not—at that time there wasn't any explosions on those boats or fire.

Q Up to the time you took the four men off, which was ten minutes past two, there had not been any explosion on any boat? A No, sir.

Q What was the effect of the large explosion on the boats?

The Court. I think we will adjourn at this time until two o'clock.

RECESS.

AFTERNOON SESSION.

June 8th, 1920.

Q What was the first boat that you came to when you started to pull the boats out? A Why, I could not recall the name of the boat.

Q Well, can you tell by the position of the boat? Look at the map. A Yes; I can tell the position of it.

Q Look at this map—this map gives the names of the boats? A I can tell that way. I could not just tell it offhand. This is the boat that got the first line.

Q Pointing to the "Moran 20." That is the one you first attached your line to? A Yes. My deckhand threw one line out—I had two deckhands, and they both threw their lines out together. My man that was on the bow took one line and my deckhand took the other. I do not know just which one he took or threw out, but both lines got on together, so really it would be hard to tell which line was out first.

Q Was the tide rising at ten minutes after two? A No, sir; the tide was falling.

Q Falling? A Yes, sir.

Q And when did the tide start to rise that night? A That was—

Q What time? A Well, in the early part of the night.

Q What time? A I could not say offhand just now.

Q What is your best recollection? A I should say around the neighborhood of six or seven—or previous to that. It was nearly at the first of the ebb tide.

Q Near the first of the ebb tide? A Just a moment; just a moment; just a moment; I said that the tide had been running down then about two and a half hours, if I remember right.

Q Then when you attached your hawsers to the "Moran," the three boats right next to it were the "Jet," the "Paulina" and the "Thompson"? A Yes.

Q And, of course, when you attached your hawser to the "Moran"—this is the end of the pier—you detached the "Moran" from the pier, didn't you? A Yes.

Q Who did that? A The men on the boat themselves, and those captains of those boats—on my order.

Q Then you started to pull the "Moran" out in rather a slanting position, didn't you? A Why, I did not do much pulling; the tide done the greater part of the work just at that time.

Q Your tug was standing across the end of the pier, is that right? A Yes.

Q And as those boats were detached and came out, will you say to the Court and the jury that all of those boats got beyond the pierhead line—that is, take the end of the pier and draw a straight line—supposing we consider this the end of the pier? A Yes.

Q And draw the straight line right down. When you pulled those boats out, did all of those boats get beyond the pierhead line before you cast them off? A I do not think so; no, sir.

Q How many of the boats stayed inside of the pierhead line? A Two.

Q Am I correct, then, in saying they were probably the "Paulina" and the "Thompson"—the two last boats? A No, sir; they would be the "Moran" and the "Paulina"—or rather the "Thompson" and the "Moran No. 20."

Q The "Thompson," that is the first boat, and the last boat? A The outside and the inside boat; yes, sir.

Q The first boat, the "Moran No. 20," and the "Thompson"? A "Thompson."

Q As you recollect it, they were at all times within the pierhead line? A I should judge so, as nearly as I can see, because my tugboat at no time was more than five or six feet from the head of the pier up to the time of the explosion.

Q Let us see, now; let us get that straight. At no time up to the time of the explosion was your tugboat beyond five or six feet beyond the end of this pier? A Yes, sir.

Q Is that right? A Yes, sir.

Q And you were across that pier in that kind of a position? A No, I was not across that way; I laid directly across the end of the pier.

Q That way (illustrating)? A Yes.

Q About five or six feet off? A I may have been up against the pier, but at no time up till the explosion was I more than five or six feet out.

Q Then you probably had just about started when the explosion occurred, hadn't you? A Yes. I might have had the boat in motion, but we did not get anywheres away.

Q What is that? A I had some of the boats in motion but not to get any distance away.

Q This tug that you were operating in trying to get these men off was owned by the Lehigh Valley? A Yes, sir.

Q And was a steam vessel? A Yes.

Q How long had you been employed by the Lehigh Valley previous to that time? A Let us see; about — roughly speaking, about two years; a year and a half or two years — I think about a year and a half, to be nearly exact.

Q You are not now employed by the Lehigh Valley? A No, sir.

Q You are on strike, aren't you? A Well, yes, we are on strike.

Q You are out? A Yes.

Q Have you any feeling of prejudice against the railroad company? A Not at all.

Q You have endeavored to tell your story here with as close adherence to the facts as you understand them? A Yes.

Q Regardless of the fact you are on strike? A Yes.

Q And you feel very friendly towards the road, wish it all the luck in the world? A I certainly do. They always used me right. I have no occasion to find any fault with them.

Q All the other captains also on strike? A As far as I know; yes, sir.

Q Now, when you were over at the pier that night about twelve o'clock, did you see any signs of fire there at that time? A No, sir.

Q Was the end of the pier what is called a dead yard, that is, there were cars there but no fire of any kind? A To the best of my knowledge, there was no fire.

Q It was a dead pier? A Yes, sir.

Q And you were on the north side of it, right near the scows? A On the North Pier?

Q Yes. A No, sir.

Q You took the grain boats from the south side? A I took the grain boats from further up in—from the grain elevators, and out through the main channel by the southerly side of Pier 1.

Q But you saw no fire or indication of anything at all up to the time you saw the blaze when you looked across from the Atlantic yard? A No, sir; in coming out of Black Tom we had to run on what we call range lights.

Q Now, Captain, there appears to be one inconsistency in your statement that I presume you want to correct, because all we want is the truth, and I presume that is what you want. You said on your direct testimony you may have moved fifty or seventy-five feet when the explosion came, from the land. Now, you said a moment ago it was five or six feet? A Up till the time of the explosion.

Q Now, which is correct? A My statement, I think, still stands. At the time of the explosion the concussion moved my boat about seventy-five feet, out from the pier.

Q At the time of the explosion you were five or six feet away when the explosion threw you out? A Yes, sir.

Q So that previous to the explosion you were five or six feet from the end of the pier? A I do not say—I may have been laying up against the end of the pier, but not more than five or six feet away from it, at any time up till the explosion.

Q Now, why did you put hawsers on the "Moran" and the "Jet" and not on the "Paulina" and the "Thompson"? A Because had I put hawsers on these boats it would have interfered with me getting a line and keeping a line to the boats in order to pull them all out and keep them all moving at the one time.

Q Were you also trying to get a line on the "Johnson 17"? A We had a line on that.

Q Your line, therefore, was on the "Johnson 17," which was on the north side of the pier, and the "Moran" and the "Jet" on the south side? A Yes, sir.

Q And the "Paulina" and the "Thompson" being attached to the "Jet," when you pulled the "Moran" and the "Jet" the "Paulina" and "Thompson" were moved also? A Yes, sir.

Q Then you had five boats you were hooked onto? A Five boats we had a line directly on, and I supposed, and I still think we had a line on the other two boats, but on that I cannot be sure.

Q You mean the "Johnson" and the "Frank"? A Yes, those two boats lying astern.

Q You are not sure of that? A No, sir.

Q Did you have any line on the "Rockwell"? A No, sir; not at any time.

Q Where were you stationed when the second large explosion occurred? A I was lying on the end of the Dock A of the Lehigh Valley Railroad.

Q You were lying on the end of the dock? A Yes, at the second big explosion.

Q You mean your boat was? A Yes, sir; I was in the dock dispatcher's office.

Q Where were you yourself? A In the dock dispatcher's office, on the end of that dock.

Q Do you know anything about the explosion on the "Johnson"? A No, sir.

Q You do not know whether there was one or not, do you? A After I had left Black Tom, I cannot say where the explosions were there.

Q Did you say on your direct examination: "The explosions set our boats on fire which I had on tow; it may have been done through combustion"? A I said I did not know just what the cause was; it may have been done through flying metal, or possibly combustion.

Q It is a fact, though, that all of those boats were on fire, is it? A In spots, yes.

Q Every boat you were tied to was on fire—that you were pulling out? A Well, that is rather a hard statement. I would not want to say that exactly, but I will say the first two boats were on fire.

Q That is, the "Moran" and the "Jet"? A The "Moran" and the "Jet"; yes, sir.

Q And what do you say about the "Paulina" and the "Thompson"? A That I cannot be so sure, because, I did not have such a good view of those boats.

Q What was the length of line between the "Paulina" and the "Thompson"? A I do not know just as there was any length of line; they were laying alongside of each other; there should not be any difference—that is only snubbing distance.

Q They were tied close up to each other? A Yes.

Mr. Rockwood. I think that is all.

Re-direct examination by Mr. Stallman.

Q As I understand you, Captain, your recollection is that the tide dropped the boats down behind your tug? A Yes, sir.

Q And how far behind your tug was the first of the two boats running beyond these hawsers? A Well, that I could not say just—I can say about fifty to seventy-five feet.

Q That is, they were brought down about fifty or seventy-five feet south of your tug boat? A Possibly that much.

Q And then the other two scows were down below that? A Directly behind that; yes, sir.

Mr. Stallman. That is all.

Re-cross examination by Mr. Rockwood.

Q Have you any knowledge of what became of the "Rockwell"? A No, sir; not the least idea.

Q Do not know anything about it? A Do not know.

Mr. Rockwood. That is all.

Mr. Stallman. That is all, Captain.

LOTTIE TOWNES, sworn.

Direct examination by Mr. Stallman.

Q Mrs. Townes, do you remember the explosion in the Black Tom yard of the Lehigh Valley Railroad? A Yes, sir.

Q July, 1916? A Yes, sir.

Q And did you live in that neighborhood at that time? A Yes, sir.

Q On the map before us, Exhibit P. 10, I see a structure marked on the map as pile stockade. Do you know what that is? A I do not know, unless it is the bulkhead.

Q There is a square structure there, marked pile stockades— of piles driven in the water? A Yes, sir; all around our place.

Q All around the place where you lived? A Yes, sir.

Q And was there a house on those piles? A Well, our house was built on these piles.

Q Your house was built on them? A Yes. sir.

Q Now, on the night of this explosion were you in bed at the time? A Not at the explosion, but before.

Q You had gone to bed earlier in the evening? A Yes, sir.

Q And what was the first that you knew that anything was happening there? A I heard shots.

Q And did you get up? A No, sir, not exactly—not then, I didn't get. I shook my husband, and then I could not wake him up, and then I shook him twice more, and then I kept hearing the shots right along, and he says to keep quiet, he says it is only the detectives shooting; so I was satisfied at that; and then I begin to smell smoke, and I spoke to him and I says, "Well, I smell smoke." He says, "Oh, it is the detectives cooking coffee"— they did cook their coffee there in the morning—and then I shook him again, and the house shook—a large report. And the whole building shook again and he fell back asleep between times, and the next time I had to wake him up quite good, and he felt it then shaking, and, of course, I was afraid to go to the door. He went with me and I was right behind him.

Q And you went to the door of your house? A Yes, sir.

Q What did the door of your house face— A Faced towards the car tracks.

Q Towards the tracks on Black Tom Yard? A Yes, sir.

Q How did you get from your house over to the yard? Was there a walk or path of any kind there? A Well; yes, sir; on the side of the tracks.

Q How far back from the first track was your house? A I don't know; I couldn't tell you how far back.

Q Well, if you went to your front door and started to walk out to where the tracks were, how far would you have to walk to get to the first track? A Well, I couldn't just tell you how far; it was not very far, the first track; right by the door.

Q Now, as you went to the door, what did you see? A The car all ablaze, on top.

Q You stood at your front door, which direction was the end of the North Pier, to the left or to your right? A I don't know that; I don't know the difference in that.

Q Well, now, just remember and place yourself where the front door of your house was. A The front door faced this way, right in front of the tracks.

Q All right. You are facing the tracks then? A Yes.

Q Now, do you know where the North Pier was, what they called the North Pier? A No.

Q Do you know—you know what a pier is, don't you? A I do; yes, sir.

Q Do you know whether there was a long pier stretching out into the bay? A Yes, sir.

Q That was near your house, was it? A Yes, sir.

Q Now, as you stood in the front door of your house looking out in the yard, which direction was this long pier? Was it towards the left hand or on your right hand? A Well, it runs right straight out of the house, right out that way.

Q You would walk right out from your house and you would come to— A Walk right that way.

Q Supposing you wanted to walk out towards the bay, how would you go, towards the left or the right? A That way.

Q Straight ahead? A Yes, sir.

Q Do you know where the warehouses were, the big brick warehouses? A Yes, sir.

Q And as you stood in your front door, was that to your right straight out by the house, right out that way.

Q To the right? You are moving your right hand? A Yes, sir; yes, sir.

Q Now, let me call your attention again to the location of the pile stockade where you said your house was as to the warehouses shown on the map. A I don't understand the map.

Q You don't understand the map? A No, sir.

Q Well, where was this fire that you saw, the car that you saw burning? A It was on the front track—it was on the third track from our door, just on a slant, in that manner.

Q Slanting towards the right? A Yes, sir.

Q And would or would not that be in the direction of the warehouse? A Well, the warehouse is a good ways down from there.

Q Well, I mean, would it be in that direction or some other direction? A Yes, sir; same way.

Q In the direction— A Only, of course, more tracks over that way.

Q I understand that. A In the same direction; yes, sir.

Q There are about—more than a dozen tracks between your house and over where the warehouses were? A Well, I could not tell you that, for I don't know.

Q And do you remember now about how far away from your house this car or these cars were burning? A I would judge about the distance of this room.

Q I see. A I could not say positively if it was as far as that, because the track was—one right next to the other.

Mr. Stallman. Has this room been measured, your Honor, at any time?

The Court. Yes.

Mr. Stallman. May we have the distance put on the record?

The Court. I think they call it sixty-eight and a half feet.

A Voice. Sixty-eight.

Q What is your best recollection? It is your recollection it was about that far from your house? A Yes, sir; I judge it was that far.

Q Now, when you saw this—how many cars did you see burning? A Only one.

Q Only one. How much of a fire was it? A Well, it was all going up on top of the car.

Q And at that time did you see anything else but flame? A I didn't see much flame; no, sir; but I seen large red balls of fire going one slowly and the other upward.

Q And did they go very high? A Well, it seemed as though they were going to the sky.

Q And did you see any of them come down? A No.

Q How long did you continue to watch that explosion? A Oh, we didn't stay there long.

Q What did you do? A I woke my children up and told them to get some clothes put upon them and get a rowboat; at least, my husband told them to go in a rowboat.

Q And you went away from there? A Yes.

Q Were you in that neighborhood when the heavy explosion occurred? A Well, I was as far as the bridge when the first explosion went.

Q What bridge do you mean? A The Communipaw avenue bridge.

Q The Communipaw avenue bridge? A Yes, sir.

Q That is somewhere up near the Jersey Central, is it? A Yes, sir; Jersey Central cars goes right in under there.

Q I see. And before that time had there been any large explosion? A No, sir; only just small reports—well, like a gun report; heavy, like that.

Q Was that time you saw there red-hot balls going up in the air? A You could see them going right up as we were hurrying over towards Mr. Taylor's dock. You could see them all the time going right up in the air. Anyone could see them.

Mr. Stallman. That is all.

Cross examination by Mr. Rockwood.

Q This is the pier here. Where do you say your house was? Can you stop my pencil where you say it was?

Mr. Stallman. She said she did not understand the map.

The Witness. Oh, I don't understand the map.

Q Do you see this long line coming out here? That is the North Pier. Now, you were on the north side of that, weren't you? A I guess so; I don't know.

Q You were on the side towards the Jersey Central dock? A Yes.

Q Now, whereabouts were you? A I don't know.

Q How far from the end of the pier? A From the end of the pier?

Q Yes. A Quite a little ways.

Q Well, how far? A I don't know.

Q About how far, do you know? A No.

Q Can you give the Court any idea? A No, sir, I cannot.

Q Well, compare it with the size of this room which they say is about sixty-eight and a half feet. A From the end of the pier to over there?

Q Take this room, which is about seventy feet. Now, how much— A It was a good deal more.

Q You were further away than the length of this room? A From the end of the pier; yes.

Q Twice as far? A I cannot tell; I don't want to tell no lie.

Q I know you don't. I just want to get it as accurately as I can. A I cannot tell you at all.

Q You cannot give me any opinion about it? A No, sir.

Q Can you tell where you first saw the fire? A Yes.

Q Where? A In the car.

Q And which car was it? Where was the car that you saw? A On the third track.

Q That is on the pier here, on this pier? A I don't understand those lines at all.

Q Well, we will take the map you have right in your hand there. Maybe that will be better. This is about the same as that map out there, except that it has got the boats put in here that were anchored in there. Now, where did you first see the

fire? This is the North Pier running out. A This is the pier that goes out?

Q That is the pier that goes out, yes. A Well, I could not tell you nothing about that.

Q Can you give the jury any idea about it? A All I know, it is on the third track, and I would not like to say, for I don't understand nothing like that.

Q You would not like to say just where it was? A I know it was on the third track, just a short distance from our door.

Q A short distance from your door on the third track? A Yes; about the length of this room, I should judge.

Q And the flame was coming out the top of the car? A Yes, sir.

Q And you said the first thing you heard, you heard shots? A Yes, sir.

Q Now, are you sure you are right about that? Were you a witness, Mrs. Townes, in what is called the Howell case? A I don't know; I have been here so many times.

Q Well, did you give your testimony before a jury on the 24th day of March, 1919? A I guess I did.

Q I will ask you, reading from page 186 of the stenographer's minutes, if you testified as follows:

"Talk the way you are talking to Zeke and that will do."

"I just woke him and told him to get up, the first thing I heard was shots like a gun going off, and I easy waked. I was awake at the time on account of my foot. I had a broken arch. And I shook him and I told Zeke there was some shooting."

"Did he wake up?"

"Yes. Well, I am ahead of my story. Then I smelled smoke and I shook him and I said, 'I smell smoke'."

Did you say that first? A Yes, sir.

Q Is that correct, the first thing you smelled was smoke? A Yes, sir.

Q Then you smelled the smoke before you heard the shots; is that right? A Yes, sir.

Q And then did you testify as follows in the Bethlehem Steel Company case, tried in this court—I haven't got the accurate date of it here. Did you testify as follows (page 162):

"I smelled smoke and then I was awakened up by the pains in my feet. I smelled smoke," again.

Did you testify to that? A Yes, sir.

Q So, when you said today that the first thing you heard was shots, really the first thing you knew you smelled smoke, didn't you? A Yes.

Q Now, did you get up then? A No, sir.

Q But when you finally did get up you saw the smoke coming from the top of the car a short distance from your house? A I heard the shots before I got up.

Q And then you saw the smoke coming from the top of the car near your house? A No; I shook my husband in between the time.

Q Well— A And I heard a large report.

Q Well, let us let Zeke sleep now. I don't care. A I heard a large report of the gun that shook the house, and then I shook my husband and I got him awakened up and we both went to the door.

Q Then you saw the flame? A Yes, sir.

Q And that was near your house? A On the third track in the car.

Q Now, it was not then—the smoke was not coming out of the car at that time away down at this end of the pier near the grain storage houses, was it? You did not see any fire right down here? A No.

Q What? A No; I only see that on the third track in one car.

Q And you saw it nowhere else? A No, sir; for I particularly looked, because I often seen the tires on fire and put them out myself.

Q I suppose you and Zeke got away mighty quickly, didn't you? A I don't know as we could get away very quickly, either. I was lame.

Lottie Townes, cross.

Q You did the best you could do to get away, anyway? A I guess anyone would.

Q Now, about these large red balls of fire that you saw, do you know where they came from? A They came out of the car.

Q Out of the same car? A Yes, sir.

Q Was it one car burning? A Yes, sir.

Q And the red shells were coming out? A Yes, sir; yes, going right up one after the other.

The Court. Red shells, you say?

Mr. Rockwood. Red balls.

The Court. Balls.

The Witness. Yes, red balls of fire.

Q Now, what time was this? A I could not exactly say the time.

Q Can you tell anywhere near it, what time? A No; I don't know.

Q Did you have a clock? Did you look at the clock? A I had plenty of clocks and watches, too, but I wasn't thinking about the time.

Q How far is the Communipaw avenue bridge from where your house was? A It was a good ways.

Q About two or three miles, isn't it? A Oh, I don't know. We had to walk a good ways up.

Q Did you walk or run? A I couldn't run.

Q What did Zeke do? A Ha!

Q What? A He got away from me with the baby.

Q He hot-footed it as fast as he could, didn't he? A I think he did.

Mr. Rockwood. Well, I guess that is all.

Mr. Stallman. That is all, Mrs. Townes.

(Witness excused.)

EZEKIEL TOWNES, sworn.

Direct examination by Mr. Stallman.

Q Mr. Townes, you lived around Black Tom on the 29th and 30th of July, 1916? A Yes, sir.

Q I see on the map, Exhibit P. 10, right after—right above where the yellow cars are marked, a place marked "Pile Stockade." Do you know where that was? A Yes, sir.

Q And where did you live with reference to that pile stockade? A I lived inside.

Q Lived inside? A Yes, sir.

Q There was a house on it, I suppose? A Yes, sir.

Q And what was the first you knew about the fire that night? A First I knew about it when the wife woke me up and I went to the door.

Q What did you see when you went to the door? A I saw a blaze; a fire.

Q Now, let me ask you, where was your front door? Did it face the tracks or was it faced towards the shore? A It faced the tracks, looking towards Staten Island, south.

Q Looking south? A Yes, sir.

Q The door faced south? A Yes, sir.

Q And then the North Pier was on your left? A On the left; yes, sir.

Q On the left? A Yes, sir.

Q And the warehouses on your right? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, as you stood in your front door, what did you see burning? A Fire was coming up alongside of the car, you know, up over the car the fire was.

Q And about how far away from your house? A Well, it was over on the third track, the way I estimated it.

Q Have you any idea of the distance? A Well, from my door to the first track is thirty-five feet and then you can figure—of course, it went across the tracks, this way; you can just about figure how far it was.

Ezekiel Townes, direct.

Q As you stood in your front door was the fire to your right or to your left, or right straight in front of you? A It was to the right.

Q To your right? A Yes, sir; looking towards—kind of towards Greenville Bay.

Q Towards what? A Greenville Bay; kind of looking this way, southwest; yes, sir.

Q Now, do you know where the last warehouse was, where the big water tank is? A Yes, sir.

Q Now, can you tell us whether it was over in that direction or some other direction? A Over in that direction; yes, sir.

Q Over in that direction? A Yes, sir.

Q Did you see flames? A Yes, sir.

Q Anything else? A Well, there was a gun firing off once in awhile, you know.

Q And did you see anything—when you heard these reports, did you see anything except the flame? A Well, they would go up.

Q What went up? A I don't know; fire, likely, or something. Of course, the shoot would go off like a blast of a gun.

Q Now, you say you saw something go off at that time? A Up; yes, sir; up.

Q How high? A I didn't take much pains to see how high. I beat it.

Q What was the color of it? A Like fire.

Q And did you see any of that stuff come down? A No, sir; I continued to go.

Q Now, I understand you got away from there with your family as soon as you could? A Yes, sir.

Q In a boat? A Yes.

Q Now, did you hear the first explosion? A Yes, sir.

Q About how long after you had gotten away from the house did this explosion happen? A Well, as near as I can guess it nearly took me an hour to go the distance that I was.

Q Took you about an hour? A Nearly about; not exactly; I used to go down about thirty-five or forty minutes to Communipaw avenue, generally.

Q You didn't see the explosion, did you? A No, sir.

Q Can you come down and point out on the map about where the fire was? A Well, if you told me—I don't know anything about the map, but I could give you an idea.

Q Well, come down. We will give you an idea where the stockade and the water tank are.

(Witness leaves the witness stand and goes to the map on the blackboard.)

Q Now, on this map, the pile stockade is represented by these dotted white lines, where it says pile stockade. A Yes, sir.

Q Then the first track is represented by these two lines running along from where I am pointing, and the next track is shown by these lines, and the third track is what you see in this sketch marked on the map, by these freight cars, and then the big tank I am pointing out to you, and I am pointing out the end of the warehouse. A Yes, sir.

Q Is that clear? A (No answer.)

Q Now, considering that the warehouse is where the letter R is, and the tank is where this round thing is, and here is your house, and there is the first, second and third tracks, where do you think you saw the fire? A It was kind of cat-a-corner from my door. This is the pile stockade?

Q Yes. A Oh, my house must have been somewhere around here. It was more at this end.

Q I see. Toward the east? A Yes; towards Liberty Island.

Q Yes. That is east— A Yes, and I am figuring this towards Liberty Island.

Q And you say it is about thirty-five feet out to the first track? A From the door.

Q Thirty-five feet. There is the first track. A First track.

Q Right there. A Well, if this is the number here—U. S. A.—

Q Yes. A And then, as near as I can come to it, I looked kind of this way, coming down that way, see?

Q In that direction? A Yes.

Q Now, you pointed to the second track; is it in the second track? A Right in here.

Q On the second track? A On the third track, I said.

Q Just count those tracks. A One, two—

Q No, those two lines is one track. A Yes—one—

Q Two rails, you see? A Yes, two. It was right in there.

Mr. Rockwood. No, no.

Q I am just telling you where the tracks are. First track, second track and third track. A As near as I can get it, I wasn't looking straight; I was looking kind of towards the—

Mr. Rockwood. Put it on the record where he says it was.

Mr. Stallman. Now, I am going to ask him now.

Q Now, Zeke, just bear this in mind: There is the first track, here is the second track, where these cars are marked "Empty." You see that? A Yes.

Q Now, the third track, where these cars are marked in heavy lines—these represent cars. A Yes.

Q Now, if your house was here and this is the third track, whereabouts did you think the fire was? A Well, if that is the third track, it was somewhere in here; somewheres across over here, because I was looking that way.

Q Do you mean somewhere near that car where it says "Wire rods"? A Somewhere off here; I don't know just—I couldn't exactly say.

Q I am not trying to pin you down. A It was over this way. I just looked right straight across. I didn't stay there long, looking.

Q No. A It was kind of cat-a-cornered across over that way, but I seen it was over the empty cars where they are loaded on the third track. That is all I could see.

Q You can't tell us definitely just about where it was? A No, sir.

Mr. Rockwood. Do the best you can about it while you are there.

A Well, it was kind of cat-a-cornered; I didn't have no square lines.

Mr. Rockwood. Put the pointer on where you think it was and we will get it on the record.

A I don't know just where, because it has to be a straight line, and I couldn't say where, but it was over there—cat-a-cornered.

Q That is the best you can give us. I think that is all.

Mr. Rockwood. No questions, Zeke.

(No cross examination.)

Mr. Stallman. I would like to have Captain Finley's mate, if he is in court.

JOHN WILLIS OLIVER, sworn.

Direct examination by Mr. Stallman.

Q Mr. Oliver, what is your business? A Tugboat captain.

Q Who do you work for? A Tidewater Transportation Company.

Q What were you doing on the 29th and 30th of July, 1916? A I was on the tug "Slatington," Lehigh Valley tug.

Q Did you see a fire at Black Tom that night? A I did.

Q Where were you when you saw it? A We were about abreast of the south end of Governor's Island, coming out of the Atlantic Basin on our way over to Black Tom.

Q Did you go right to Black Tom then? A Yes, sir.

Q What did you see? A Fire.

Q Where? A Why, we went right into Pier 7 on the west of it, and right across over there it was, by the water tank.

Q What was burning? A Car; the fire was in a car there.

Q How much of a fire was it? A Well, quite a little blaze.

Q Did you see anything besides the blaze? A Yes, sir, it was—before we got out of there, there was a little, like shrapnel started to fall on the iron deck of the tugboat.

Q Your boat? A Yes. There was shells flying onto us.

Q Where was your boat when this shrapnel was falling onto it? A Alongside of the "Geneva," in a bulkhead on Pier 7.

Q In the corner behind store R? A West of Pier 7.

Q Yes. Where did you go from there? A Around to the dynamite dock.

Q What do you call the dynamite dock? A I guess you call it the North Pier.

Q Yes, the North Pier. What did you do there? A We put a couple of hawsers on four boats that was lying abreast there.

Q Calling your attention to Exhibit P. 11, and particularly four boats marked "Moran-20, Jet, Paulina and Thompson," does that represent the location of the four boats? A Yes, sir.

Q Which boats did you get a line on? A Went up there and got the line on the two next to the dock; two hawsers, one on here and one like that.

Q You got one on the "Moran" and one on the "Jet"? A Yes.

Q Where was your tug at the time? A Right here at the end of the North Pier.

Q On the end of the North Pier; and how were you laying with reference to the North Pier? A Head up.

Q Head up? A Head up to the pier.

Q Do you mean that the nose of your tug was up against the end, or were you broadside on the end of the pier? A Broadwise on the end. I throwed the hawser from the tugboat onto this inside corner, and the barge captain, or whoever was on the boat, put the other hawser on.

Q After you got those hawsers on, what did you do? A Started ahead slow and let this inside line go and let these boats swing right around underneath that one.

Q You started ahead slow—what, the tug? A Started these boats, the tow. We had two lines. We started the tug and we had lines on the boat, and they had to come, too.

Q The tug moved in what direction? A Right ahead, swinging—

Q It moved north? A Yes.

Q And that resulted in these two barges, the "Moran" and "Jet," doing what? A Started out of the slip.

Q Where did they go? A Right out—right out, straight here, in the tide, and these two swinging behind them this breast-line was let go—the captain told me to let those go—and that made up a tow between the "Moran" and the "Jet" and the "20."

Q Then what did the tug do? A We held them up here to get a line on three lighters on the north side of the pier, and going to pull all seven at once.

Q Did you do that? A I believe we did.

Q Then what happened? A Well, the explosion happened. We were off of the dock then.

Q Where was your tug when the explosion happened? A Right abreast of the North Pier.

Q How far away from it? A Well, I don't know; didn't take particular notice. I was on the stern at the hawsers, but I should judge twenty-five or thirty feet; something like that.

Q Were you standing still or were you in motion? A We would go ahead and turn and then stop; we wasn't under no way any more than to keep the boat to tie—we could drop them back, so we could pick up the other two or three.

Q How was the tide running? A Ebb tide.

Q What effect did that have on those two barges or scows, "Paulina" and "Thompson"? A Well, that tide, with the line what they had on this other end, swung them around behind the "Moran 20" and the "Jet."

Q When the explosion occurred, where were those two barges? A Tailing right on down here. Over here there was the "Moran-20" and the "Jet" here, and the other two was behind them.

Q Where with reference to the end of the North Pier? A Why, the "Moran-20" laid about abreast of the North Pier; probably her bow.

Q "Moran 20" about abreast of the North Pier, and the "Jet" where? A Alongside of the "Moran."

Q On the right-hand side—the outshore side? A On the starboard side; yes.

Q And then where was the "Paulina" and the "Thompson"? A Right around behind them.

Q "Paulina" was behind what? A "Paulina" behind the "Jet."

Q Behind the "Jet"? A Before I go any further, I ain't testifying to names, because I didn't take notice of the names.

Q Assuming these names are right? A Assuming them names is right.

Q The "Paulina" then was behind the "Jet" and the "Thompson" behind— A Behind "Moran Number 20."

Q Behind "Moran Number 20," and the "Moran Number 20," you think, was a little offshore, abreast of the North Pier? A Yes; under the stern of the tug with two short hawsers.

Q Is that about the time the explosion happened? A We were in the act of picking up them three boats, getting them altogether, when the explosion went off.

Q That is, the three boats on the north side of the North Pier? A Yes.

Q And then, what was the result of the explosion? A Why, it kind of throwed us off, over as far as we could go, and everybody ran away to get to a place of safety, and let the tug go, and the tug went ashore.

Q Now, what happened to these four boats that you had in tow? A Well, we looked back; they was on fire, and set off by the explosion.

Q Did you see anything after the explosion occurred? A What do you mean, did I see anything?

Q Did you see anything as the result of the explosion? A No more than it set them boats on fire—all explosives and shells.

Q Did you see any shells? A Sure. The shells was flying all over us all the while we were picking them up there—small shrapnel shells and big ones and all kinds of shot.

Q Was that before the explosion that the shells fell over there? A Why, shrapnel shells fell on us when we were up here in Pier 7, way up in there.

Q Yes, but when down off the North Pier did any shrapnel reach you over there? A Sure; shrapnel reached us.

Q When the big explosion occurred did anything else reach you besides? A Yes, sure; everything came down that was there to come down.

Q Now, everything—what do you mean by everything? What kind of stuff was it? A There was—I remember very well going up to the pilot house on the "Slatington" and pulling a big piece of the outside of an iron shell that was caught there, that probably weighed ten pounds or so, eight pounds, where it was twisted, it was all raggedty, where the explosion tore it; and the shells went off—the shells was going over us, over in the water. We were in so close that the shells with such force in the powder that they went over there and the little ones came that did not have the weight to go over, and dropped on us.

Q After the explosion happened what kind of fire was on these barges? A Regular fire was burning—no explosion, except they started afterwards, like combustion; there was nothing flying from them like fire—like kerosene blazing—throw kerosene in a stove and throw a match on it.

Q Sort of a puff like? A Yes.

Q Did you notice those puffs on any one of these barges in particular? A Why, I believe the two—the "Thompson" and the "Paulina" there, they was pretty well afire. I noticed they seemed to be more afire than the others.

Q And then you saw these tugs on fire, then what happened? Did you tow these burning boats away? A No, sir.

Q What did you do? A The captain backed back and picked up the four men on them and I throwed the hawsers off on the tug.

Q When you picked up the four men off of these four barges what was the condition of the barges then? A They were on fire pretty bad.

Q And then what happened to them after that? A We let them go and we went on up the inside channel there and they drifted over with the tide and down over here on the flats, I suppose.

Q Did you see them drifting away? A Yes; they were drifting away, but we did not stay there long enough—

John Willis Oliver, cross.

Q In which direction—assuming now that the pierhead line is due north and south—in which direction were these barges? A To the eastward.

Q Eastwardly? A They were drifting around.

Q That would be over in the direction of— A Towards the Statue of Liberty and Bedloe's Island.

Cross examination by Mr. Rockwood.

Q At what time was it when you attached the hawser to the "Moran" and the "Jet"? A Well, I didn't have no watch; I could not say; the only thing I know is what time the captain put down. I don't know.

Q Have you any recollection on the subject? A Well, I didn't carry no watch with me. I was only deckhand on the boat at the time—mate.

Q Have you any recollection on the subject as to what time it was? A In the neighborhood of two o'clock, I suppose—five minutes after two; something like that.

Q You heard the captain testify here? A Yes, I heard him testify.

Q Do you agree with his statement of the time? A Yes; I would be willing to agree that he is pretty near right on the time.

Q Then when you started to move those boats out there was no fire on any of these boats? A No, sir.

Q Do you agree with his statement that the "Paulina" and the "Thompson" were at all times within the pierhead line? A Yes; they were all four of them laying right like that.

Q Just as they are now? A Yes.

Q Within the pierhead line? A What do you mean, inside the pierhead line?

Q Maybe you do not understand me. That is the end of the pier. Let us draw a line straight down. That is the pierhead line? A Yes.

Q Were the "Paulina" and the "Thompson" at all times within those lines towards the shore? A Why, I think they was —according to that line they were out a little further—more even with the end of the pier.

Q Even with the end of the pier? A Yes; according to that map that line seems to be out. They were laying in.

Q They did not get beyond that line? A Oh, yes; when we took the hawser on this one, we started out there; I suppose the tide swung them down there.

Q Have you a recollection about it so you can testify as where they were? A Well, I couldn't very well guage how far they were—they were behind the tug and I was on the stern deck of the tug, and we had hawsers on the "Moran-20" and the "Jet" and they were behind them.

Q You also had a hawser on the "Johnson-17"? A No, sir; we could not get the line.

Q Do you say there was never a line on the "Johnson-17"? A To the tugboat, no. No line, to my knowledge, to the tugboat.

Q No line to your knowledge from "Johnson-17" to the tugboat? A No, sir.

Q The only line you know about was the "Moran-20" and the "Jet"? A There was a line from "Johnson-17" to the "Moran."

Q There was a line from the "Johnson-17" to the "Moran"? A Yes—trying to get a line.

Q Where did that line go? A Bow of the "Moran-20" and the bow of the "Johnson." I suppose the suction on these started them out—those boats probably came out like.

Q But the pier intervened between the two? The pier was between the "Johnson-17" and the "Moran"? A Yes, sir.

Q You say now there was a line on "Johnson-17" to the "Moran," that is "Johnson-17" and the "Moran" were hooked together? A Yes; I believe there was a small line there.

Q I don't want to take any advantage of you. I want to get the facts. Where did the line go, over the pier or under? A Passed the line, I suppose, across the pier.

Q Don't suppose about it; we want to know what you know about it? A I don't know how they got the line; I did not see them.

Q You don't know whether they were connected or not? A No; I did not see them.

Q You don't know whether they were connected or not? A No; the man hollered there was a line there.

Q You don't know? A No, sir.

Q And you do know that the "Johnson" was not attached to the tugboat? A Yes, sir, it was not—I didn't put no line on it—I was on that side of the tug.

Q Now, when you started to pull the "Moran-20" and the "Jet" the tide tugged some also and swung the boats out? A Yes, sure; it was ebb tide and they followed around.

Q And then came the explosion? A Yes.

Q The explosion, you say, rained some shells which passed over you and some that fell on the boats? A Yes.

Q And then the boats got on fire? A Yes, sir.

Q Is that correct? A Yes, sir; after the explosion. I suppose the explosion set the boats on fire—the concussion.

Q Was there any time you saw an explosion on the "Thompson" or heard of any? A No, sir.

Q You mean to say to the Court and jury that there was no explosion on the "Thompson"? A At that time of the explosion?

Q Yes. A Yes; I did not see none.

Q You did not see none? A No, sir.

Q Is that as strong as you will put it, that you didn't see none, or there may have been one and you don't know? A Well, I don't see how there could be when I stood on the stern deck of the boat looking at it.

Q You didn't see any? A No, sir.

Q You saw the "Thompson" on fire after? A After the explosion.

Q Eh? A After the explosion.

Q Yes, and the "Thompson" was carrying what kind of combustibles? A That I don't know. Ammunition is all I know.

Q Whatever it was, it burned without exploding; is that right? A The boxes and cases was burning.

John Willis Oliver, cross.

Q They burned without exploding? A Yes; while we stood there.

Q While you were there? A Yes; but they exploded later on; I don't know, because we went right on up out of there.

Q Now, at what time were these boats on fire? A After the explosion.

Q That is after 2:10 A. M.? A Yes.

Q Are you also out on strike? A No, sir; I am working.

Q For who? A Tidewater Transportation Company, running between Stamford, Connecticut, and New York.

Q You did work for the Lehigh Valley? A Yes, sir; I was mate over there and got my two licenses over there.

Q Did you strike while you were there? A No, sir; I didn't happen to be there; not the captain's strike; I was there at the deckhands' strike.

Q Did you strike then? A I surely did go out.

Q You did? A Yes, sir.

Q What is your feeling towards the railroad as to whether it is friendly or otherwise? A Friendly? Never had nothing agen them, because I was only out a couple of days, I believe. It was the time we struck for a day a week off.

By the Court.

Q Did they give it to you? A Yes, sir; five dollars raise.

Q So you haven't any feeling? A I got what I wanted. I never—never worked on the railroad when there was any trouble. I got out of there two years ago, July 23rd, coming.

Q What was your position on the tugboat on the night in question? A I was the mate; head-line mate.

Q Eh? A Mate on the tugboat.

Q Where were you stationed? A I generally had the bow—shift the lines on the bow—and the deckhand tended the stern.

Q Where were you? A When there is two hawsers being gotten out.

Q Just answer the question—where were you, the bow or the stern? A At the time of the explosion?

Q Yes. A On the stern.

Q Sure about it? A Yes; stern deck, tending the hawsers.
Q I think that is all.

Mr. Stallman. That is all.

JOHN GALLO, sworn.

Direct examination by Mr. Stallman.

Q Mr. Gallo, where are you employed? A Lehigh Valley.
Q Do you work for the Lehigh Valley now? A No, sir; not now.
Q What did you say? A Not now.
Q Where are you working now? A No place; we are on strike.
Q Oh, you are one of these strikers? A Yes, sir.
Q Were you on the Lehigh Valley tug "Slatington" on the night of the Black Tom explosion? A Yes.
Q Did you see any fire that night? A Yes.
Q What did you see burning? A I was in the engine room; I could not see what was burning.
Q I could not hear a word you said.

(Answer repeated.)

A I could not see where the fire was; I couldn't see the fire.
Q Where was the fire that you saw? A Black Tom.
Q Whereabouts? A Down in the yard.
Q Which yard? A I do not know what they call it; they call it down in the yard.
Q In the freight car yard? A Yes, sir.
Q Can you see the map from where you are? A Yes.
Q Is there anything on this map that you can refer to as showing about where the fire was? I call your attention to storehouse and water tank and the North Pier and the South Pier—where was the fire, as near as you can place it? A About in the middle of that section (indicating).
Q Now, here is a thumb tack; which way from that thumb tack was it? A It is around that neighborhood; I cannot place just the right spot where it was.

John Gallo, cross.

Q Somewhere around where that tack is? A Yes; somewhere around there.

Q How much of a fire was it? A As far as I could see, it was about one car burning.

Q A car was on fire? A Yes.

Q Did you see anything besides the flame? A I did not at the time.

Q You did not see any shells? A Oh, I could hear shells; yes, but I was in the engine room; I could not see what was going on.

Q And where was your boat at the time you saw that fire? A Coming from Atlantic Basin, the first I seen it.

Q Do you remember when your boat got to the corner behind Pier 7? A Yes, sir.

Q Did you see the fire then? A No; I did not go out; I know it was there.

Q Did you notice the four barges out on the end of the North Pier? A I did not.

Q You did not see them? A No, sir.

Q That is all.

Cross examination by Mr. Rockwood.

Q You were in the engine room, were you not? A Yes, sir.

Q When you were in the engine room did you have a view of what was going on outside? A No; I just see the flame through the windows, looking out.

Q A little port hole you could look through? A Yes, sir.

Q That is, as you were coming across from the Atlantic Basin you could see a light that you thought was a flame? A Yes, sir.

Q Are you able to tell the jury where that was? You were approaching the pier from back in this direction, were you not? A Yes.

Q Coming toward the end of the pier? A Yes.

Q Well, how could you tell where the fire was? A Well, I know the place where—that is what I thought where the fire was.

Q Oh, you thought so? A I mean the right place.

Q I ask you how did you know where it was? A How did I know the fire was there?

Q Yes. A I seen it.

Q You saw flame coming from the top of a car? A Not the top of the car.

Q Where did you see it coming from? A She was burning amongst the cars in the yard.

Q How far away were you when you saw it? A The first time I seen it was when the captain called my attention to it coming out of Atlantic Basin.

Q How far away was that? A I do not know; a couple of miles, I suppose.

Q Are you able to tell the jury that the fire was at this point where counsel has put a tack? A Not at that time; no.

Q Not at that time; so you do not attempt to testify where the fire was when you first saw it; it was somewhere on the dock, but where it was you do not know? A I could not say it was Black Tom when I first saw it.

Q What? A I could not say where it was when I first saw it; I thought it was Standard Oil first off.

Q When you first saw it you could not tell where it was? A No.

Q Then, as you came down the basin by Storehouse R, you did see a flame somewhere? A I saw it coming by Pier 7.

Q Going by Pier 7; where did you see it then? A I seen it about the middle of the yard, as it looked to me.

Q About the middle of the yard; did it appear to be a fire coming up from one car? A I could not tell.

Q You did not observe those other cars; you were down in the engine room and you were full of business there? A I was down in the engine room.

Q You do not know very much about it, do you? A No.

Q No; all that you know is that you saw a flame and a blaze? A That is it.

Q You were attending to your duties there as engineer? A Yes; that is true.

Q And you did not see the four boats at the end of the pier at all? A I did not.

Q You do not know anything about them. Now, Mr. Gallo, what time do you say it was when you were passing Pier 7? A I could not tell the exact time; it was around two o'clock in the morning, I think.

Q Around two o'clock. That is all.

Mr. Stallman. That is all.

DANIEL CORRIGAN, sworn.

Direct examination by Mr. Stallman.

Q Captain Corrigan, what is your present business? A Steamboat pilot.

Q What? A Steamboat pilot.

Q Who are you working for? A I am working extra, down in South Brooklyn, now.

Q Were you on the Lehigh Valley tug "Geneva" at the time of the Black Tom explosion? A Yes, sir.

Q Where were you when you first learned of the fire there? A Jersey City Terminal, Lehigh Valley.

Q That is up near the Morris Canal basin? A Morris Canal basin; yes.

Q What time was it you learned of the fire? A Well, it was about one o'clock.

Q Where did you go? A Well, our inspector told me to go down in Black Tom. He said there was a fire on the North Pier.

Q And did you go there? A Yes, sir.

Q About what time did you get there? A About 1:20.

Q And what did you see? A I see a fire on Pier 7, when I went in there.

Q And what was burning? A A freight car.

Q And what part of Pier 7 was it? A Well, it looked to be pretty near in the center, you know, but further to the northard.

Q What? A It was nearer to the northard than to the center; up towards the storehouses.

Q Can you see the map from where you are? A No, I cannot.

Q Can you come down and point out on the map about where you think the fire was burning? A Well, not exactly.

Q Let me call your attention to the end of the storehouse where the letter R is, and the water tank with a big circle, and this up here is the North Pier? A Where is Pier 7?

Q This whole thing is Pier 7, from this light line up to the other line? A Is this Pier 6?

Q Pier 6. A We were in here; I was in here (indicating).

Q Point somewhere.

Mr. Stallman. He points to Erie 110928.

A Somewhere in that neighborhood.

Mr. Stallman. Pointing to Erie 110928.

Q Now, you say you saw a fire there, a car burning. Did you see any flames? A Yes, there was a flame—

Q Anything else besides flame? A No; it was not such a very big flame; about eight or ten feet above the car, coming out through the sides, though.

Q It was coming out through the sides? A The flame was burning up through the sides of the car and up through the roof; the roof was not burned through altogether yet, I guess.

Q While it continued to burn did you go away from there? A After I started away from there—we stayed there about ten minutes after we got in; we tried to get hose to it, but we could not reach it; we did not have hose enough to reach it.

Q On your tug, you mean? A Yes.

Q Go ahead; what did you do? A Then we laid there awhile, and the dispatcher came down on the dock and hollered for me to go around on the float bridges and pull the ammunition lighters out of there—and the powder lighters.

Q Did you do that? A We went right around. The "Slatington" went around first, and we went around right after.

Q I call your attention to Exhibit P. 7, and there are four boats shown below the east end of the North Pier. Did you take

any of those boats? A We took the two inside ones out; the "Slatington" took the four outside ones first on the south side.

Q The "Slatington"? A Yes; and I went in the bridge and took the other two out.

Q Did you take one from the inside of the South Pier? A Two of them was in what we call the float bridge—the float bridge racks, you see? One on each rack.

Q I see; was one on the north and the other toward the south? A One towards the north and the other towards the south.

Q If these boats are correctly named on this exhibit, you took out the "Rockwell" and the "Moran"? A Yes.

Q You did not take out this schooner that is marked on the map? A No, sir.

Q When you went in there was there any fire on any of those boats? A No, sir.

Q There was not; well, how did you take those two boats out of there? A I pulled one out first.

Q Which one? A This one here, the "Moran"; I pulled her out first.

Q Where did you tow her to? A Before we got clear out there I tailed the other one out; I sent a man over with a line, and we pulled them out one behind the other.

Q Where did you take them to? A I pulled them out towards the channel.

Q Which channel do you mean? A The main channel, going into to Black Tom.

Q That is down towards the lower end of Pier 7? A The channel that runs from the south side of the Statue of Liberty, in.

Q How did you head to get down to that channel, did you go outside of the south pier? A I went outside of the South Pier, and pulled them down—backed them down.

Q How far away from the South Pier did you get? A Well, the last scow, I guess, was about fifty feet from the South Pier. I was down 150 or 200 feet below the South Pier.

Q With your tugboat? A Yes.

Q Did you have these two boats behind you tandem fashion? A Tandem fashion; yes, sir.

Q Well, as you were going down towards the main channel, what happened? A Well, the explosion. I cannot remember anything after that for awhile.

Q Tell what was the effect of the explosion? A I know it blew all the windows out of my pilot house and knocked me out. For about five minutes I did not know what happened.

Q At the time of the explosion, did you see anything? A I did not see anything then; no.

Q Did you see the explosion? A I heard the explosion.

Q You—well, was there any light at that time? A No light at all. I could not see. I turned dark; my eyesight left me.

Q What happened to the two barges that you had in tow? A We still had to hold on to them, you see, for about five minutes, I guess, after the explosion. By the time I came to I went down on the lower deck, and then we got ourselves together a little bit, and I went back up in the pilot house and tried to turn the boat, to head out the channel, but the steering gear could not work on her port wheel, so I tried it the other way; it worked it the other way, so I ran the boat up the basin up towards the elevators.

Q And did you take these two barges with you? A No, sir.

Q Where did you let them go? A I left them go right there at the mouth of the channel.

Q Down at the mouth of the channel? A Just below Pier 7, below the South Pier.

Q And what condition were they in? A Well, there was a little fire on the top of them—just a little fire from the explosion around the top of the boxes; there was all boxes on them.

Q Were they on fire when you left them? A On fire, but not burning up.

Q They were on fire when you cut them loose? A They were on fire when I cut them loose.

Q And did you put out the fire? A No; we were to get away from it all.

Q They were still burning when you let them go? A They were still burning, but they had not burned up yet.

Q Did you have any trouble in pulling the barges out of there? A We had to wait until the "Slatington" pulled theirs out.

Q That is all the trouble you had? A I pulled one out, and we got a line behind that to the other and they pulled out behind one another.

Cross examination by Mr. Rockwood.

Q You got to the Black Tom pier at about twenty minutes after one, did you? A Yes, sir.

Q What part of the pier did you arrive at at that time? A We arrived at the outside—stopped at the outside of the South Pier first.

Q About in here (indicating)? A Outside—on the outside of the South Pier.

Q That is down here? A Yes, sir.

Q When you arrived there did you know that these other boats, these barges, were in here? A Yes.

Q You saw them in there, did you? A Yes, sir.

Q And also the "Slatington" at that time? A The "Slatington" was not in there yet.

Q What time did they come in? A She came in about, I should judge, about ten minutes after I got in there.

Q You got there— A Ten or fifteen minutes.

Q You got there about 1:20 and the "Slatington" got there about 1:30? A 1:30 or 1:35; about ten or fifteen minutes after I got there.

Q About ten or fifteen minutes after you got there when the "Slatington" arrived? A Yes, sir.

Q Where were you at that time, right in here (indicating)? A I was in around seven when the "Slatington" came in.

Q Did you proceed down on the south side of Pier 7, down near Store R? A Yes, sir.

Q With the "Slatington"? A No; with the "Geneva."

Q What? A I had the "Geneva."

Q I say, did you go along with the "Slatington"? A No; I went in there before the "Slatington" got in there.

Q That is, you got down here at about the same time the "Slatington" did, is that right? A No; she came in after I got there, about five minutes, I guess, after that.

Q About five minutes after you got to the point of R, the "Slatington" came up? A Yes.

Q Then what did you do after that? A We left there; we were going to try to run some hose over to the fire, but we did not have hose enough on the boat to run over there.

Q You saw the fire burning there where you have stated? A Yes.

Q You had on the tug about 200 feet of hose? A Yes; about 200 feet.

Q How much did the "Slatington" have? A I don't know; I couldn't say.

Q About how much? A No; I couldn't say how much the "Slatington" had.

Q Was there any attempt to take the hose from those boats and put them together? A No; by the time the "Slatington" got there the shrapnel was firing around there; we could not do anything; we had to get away from there; we started to go away.

Q Who told you to go down from Communipaw to those barges? A The man on the tug. I thought it was Mr. Conroy. I found out differently afterwards.

Q Well, now, when you got down here the only thing that was burning was this one car here in the center, as you have stated? A That was the only one I could see.

Q Now, when you got down to the North Pier, I mean? A Yes, sir.

Q There was only one car burning? A Yes, sir.

Q Did you see the Jersey City Fire Department around there? A No, but I seen the engines there pulling the cars away from the fire there. I seen them working up and down there alongside of the fire. I could see that.

Q That is, you saw locomotive engines— A Yes, sir.

Q —engaged in shifting these cars out from one track to another? A Yes, sir.

Q But did you see the fire company there, the Jersey City Fire Department? A I did not see the fire department there.

Q Did not see the fire company? A No, sir.

Q Did you go off your boat at all? A No, sir.

Q Not at all? A No, sir.

Q How long would you say that you remained at point R near the grain house? A Well, I should say I was in there about ten minutes. 10

Q Then you went out? A Went back out, outside.

Q Did you confer with the captain of the "Slatington" that night? A Yes; we were talking together.

Q As to what you should do? A Well—

Q Now, which boats did you hook up? A These two in here —this one and this one.

Q The "Rockwell" and the "Moran-8"? A Yes, sir.

Q And which ones did the "Slatington" fasten to? A He took these four out here. See? 20

Q That is the "Moran-20," the "Jet," the "Paulina" and the "Thompson"? A Yes, sir; he had to take them out before I could get the other two.

Q He had to get those two moved before you could move yours? A Yes, sir.

Q What did you see him do, if anything? A Well, I seen him get hawsers on these boats and pull them out clear of the North Pier.

Q That is, clear from the south side of the North Pier? A Clear from the south side of the North Pier. 30

Q Clear from the south side of the North Pier? A Yes, sir.

Q Did they have a line on "Johnson-17"? A I could not say.

Q Did you see any line on "Johnson-17"? A Well, I couldn't see the "Johnson-17." I couldn't see anything on the north side.

Q Did you have a line on the "Rockwell" and the "Moran-8"? A I got a line on the "Moran-8," swung her over and got a line on the "Rockwell" and pulled them two, one behind the other.

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Q How far did you pull them? A About 150 or 200 feet below the South Pier I went. The last barge just cleared the South Pier.

Q You mean you pulled them down in a southerly direction below the South Pier? A Southeasterly direction.

Q We will take a line from the end of the North Pier and run it down, straight down. Did there come a time at any time, when you got the "Rockwell" and the "Moran-8" beyond that line? A Oh, yes, sir.

Q Out in the open? A Out in the open; pulled them in, in a southeast direction from the South Pier.

Q How far did you get them? A My boat was—out to the channel; and the barges was clear—clear of the South Pier, I should say, about fifty feet, and maybe not that much.

Q When you say clear of the South Pier, you mean clear away from the end of it? A I mean clear down below us.

Q Well, if we extend the line of the North Pier right straight down, how were they then? They were within that line, were they not? A They were below the south of it.

Q Below the south of it, but within that pierhead line; is that correct? A Well, yes; about even with that pier line.

Q Well, it is correct; that is, within the pierhead line; isn't it? A Yes, sir; this pier is shorter than the North Pier.

Q Yes. The South Pier is very much shorter than the north one? A Yes, sir.

Q How much is it, Captain; how much shorter? A Oh, I should judge about 100 to 150 feet.

Q So you had pulled them down a short distance here when this explosion came? A Yes, sir.

Mr. Rockwood. The jury get that, do they? Here is the South Pier, the "Rockwell" and the "Moran."

Q Pulled them down in a southerly direction? A About southeasterly direction.

Q About southeasterly direction when the explosion came? A When the explosion came.

Q Now, at that time were the "Rockwell" and the "Moran-8" on fire? A Not before the explosion.

Q Did you see the "Thompson" so that you can tell the Court and jury whether or not there was an explosion on that? A I could not see those boats; it was dark there, you know. The fire, you see, was up more in the center of the pier, and I didn't see down below; it was all dark there.

Mr. Rockwood. Speak up a little louder.

The Witness. I say it was dark in there when we pulled these boats down. The fire had not shown down below there so much.

Q What time would you say it was when you fastened to the "Rockwell" and "Moran-8" and commenced to pull them down? A I should say about two o'clock or a little after; it might be a few minutes after.

Q When you pulled them down? A Yes, and started them out of the slip.

Q Were there any men on the "Rockwell" or "Moran-8"? A No, there was nobody on that I could say; there was a man on the dock and he hollered to us—

Mr. Rockwood. Louder, please.

The Witness. There was a man on the dock and he hollered for us to pull them out. I said my mate told me to go down on the boat and make fast. So I said after I got a line on the "Moran," why I sent the man back and him and the man on the dock, fastened the other two together—fastened the two of them together, and instead of him staying on the boat he jumped back on the dock again. I don't know what became of him at all.

Q He was a captain, was he? A I don't know what he was. He was a man in shirt sleeves. He had a straw hat on and no coat.

Q You never saw him again? A I never seen him again after that; no, sir.

Q And the force of the explosion threw the "Rockwell" and the "Moran-8" from your tug? A No; we still had the line on after the explosion.

Q Did you take them away finally? A No; we let go then. We were disabled. Our tug was disabled after the explosion.

Q And those two burned up? A They didn't burn up right away, but they were afire when we left them.

Q Now, at that time when you moved out the "Rockwell" and the "Moran-8" was there any fire on the North Pier? A No; I didn't see any fire on the North Pier.

Q Was there any fire at all on the South Pier? A No, sir.

Q Was there any fire at all when you moved them out, except on the car that you said was in the center of Pier 7? A That was the only place I seen the fire.

Q The blaze was coming out of the top of the car there, as you said? A Yes. I should judge about eight to ten feet, twelve feet above the car.

Q How many men did you have on the "Geneva"? A I had seven altogether.

Q Did you have a fire crew? A Well, we had a fireman, an oiler, an engineer, two deckhands and a boatman.

Q Did you have a fire pump? A Yes, sir.

Q Did you use it that night? A We didn't get a chance to use it.

Q You didn't use it then? A No, sir.

Q Did the "Slatington" have a fire pump, too? A Yes, sir.

Q Was that used? A I don't think we got a chance to use it.

Q I suppose, Captain, that this situation, this sudden situation coming up as it did, so unexpectedly, occasioned a great deal of alarm in your mind, didn't it? A Well, I don't know.

Q It would be natural. A We didn't expect anything.

Q It would be natural, wouldn't it? A If we thought anything like that was coming it certainly would.

Q And it is a fair statement to make to the Court and jury that you were endeavoring to get to a point of safety, were you not? A Not at the time. We didn't seem to be in danger at all when we pulled the lighters out. We thought we would get them

clear. After I intended to turn around and pull them outside into the bay.

Q Did you know that the fire was burning at a point where there were explosives? A Yes, sir; I knew there were explosives there, but I didn't think anything was as dangerous as it was, though.

Q You didn't know what was on the pier? A No, sir.

Q You did not understand the situation? A No, sir.

Q What men were in and around the South Pier when you stopped there? I mean near the point R, near the warehouse? A Well, we didn't see anybody there at all. I blowed my whistle there. I thought to get some of the watchmen out on the docks there, but there was nobody around there; seemed to have gone down the fire, I guess; down below.

Q They were down at the fire, weren't they? A Must have been; yes. They generally ran around every time I went in there.

Q The point from where you were to the fire was a long distance, wasn't it? A. Well, about 200 or 250 feet, I suppose.

Q Two hundred and fifty feet? A Yes.

Q That is, from your boat to the fire was 250 feet? A Yes, all of that. It might have been more. There was a barge alongside of us where we lay, west of 7.

Q You had a hose that would extend 200 feet? A Yes; we had a fire hose that would extend pretty near 200 feet. We were getting it ready when this man came down and told us to go around. He said, "We got the situation all right here," he said, "You go around and pull them barges out." He asked us if we would go, and we went around, both "Slatington" and us. They were pulling cars away then from alongside the car.

Q That is, the Lehigh Valley crew was down there pulling the cars out? A Yes.

Q But you don't remember seeing the fire company? A I couldn't say; I did not see them; no.

Q There was a second explosion, was there not, Captain? A Yes, sir.

Q What time did you hear that? A I should judge it was about twenty minutes after the first one.

Q And how much of an explosion was it, how severe was it? A Well, it was pretty severe, but we did not feel it the same as we did the other one.

Q Where was that explosion, do you know? A No; I could not say. We were up—we laid up abreast of the elevator on the other side of the channel.

Q Where did it appear to come from? A Well, it appeared to come down from where the fire was; I couldn't tell.

Q Do you know Mr. Dickman? A Do I know him? Yes. I didn't know he was there that night.

Q Did you tell Mr. Dickman that the second explosion came from a boat on the water? A No, sir.

Q Never? A No, sir.

Q Did you tell him that one of the explosions came from a boat on the water? A No, sir; I did not.

Q Did you make a statement in this case for anybody in writing? A No, sir.

Q Never signed your name to anything? A Not that I remember, outside of the Lehigh Valley.

Q No other statement? A No, sir.

Q And you are not now employed by the Lehigh Valley? A No, sir.

Q You are engaged in the strike? A Yes, sir.

Q What is your feeling toward the railroad? A No feeling at all.

Q What? A Best of feeling towards the railroad.

Q Best of feeling for the railroad? A Yes.

Q Now, is there anything that you have not told us here that you can think of? A Not that I know; no.

Q You swear positively, Captain, so there will be no question about it hereafter, that your boat was near the Storehouse R—

Mr. Rockwood. Will you point to it, Mr. Hobart?

Q —that your point was there? A We laid on the west of Pier 7, there, right near that store, there.

Mr. Rockwood. Just put your stick there, will you?

Q Will you swear positively that at any time on this night in question the "Geneva" was near point R, where Mr. Hobart is holding the stick? A We were on the west of 7.

Q Just answer that question, will you? A We were near R; yes. We had to be near R to be west of 7.

Q Were you near where he holds the stick, in or about that point? A Down a little further.

Mr. Rockwood. Down further, he says.

Q There? A Yes. Up close to the bulkhead; up further.

Mr. Rockwood. Up further, he says.

The Witness. Yes; about there. There was a lighter near the bulkhead. We laid alongside of it.

Q You are positive your boat laid there on this night in question, at that point? A Yes, sir.

Q Now, one further question: Is it not true that your boat never got beyond the point where Mr. Hobart now holds the stick? A I cannot see that very well.

Q That is the southeast corner of Pier 7? A I cannot see it from here.

Q Come down.

(Witness leaves the witness stand and goes to the map on the blackboard.)

A What do you want?

Q Did you ever get nearer to the land than a point at the southeast corner of Pier 7? A Yes; we were over there—further in there. We were in on the float bridges.

Q No, you do not get my question. You have said that your boat was way down here. A That is when we went in there first.

Q Now, I am asking you if you ever at any time got beyond this point where I now hold my stick, the southeast corner of Pier 7? A We have to pass that point going in and out.

Q You did pass that point? A Yes, sir.

Harry Reed, direct,

Q And went down to a point here—no question about it? A No question about it.

Q No question about it? A No, sir.

Q Did you go further than the southwest corner of Pier 7? A Only in the slip, just between the two piers. We had to go in between that slip. We landed here west of 7.

Mr. Rockwood. That is all.

By Mr. Stallman.

Q You said that the other tugboat took those four boats that were out on the end of the pier; after the "Slatington" took those four scows, did you see what became of them? A No, sir; I did not.

Q You do not know whether they went north, east, west or south? A I know they went north; that is all I know. He pulled north and I pulled right back south.

Mr. Stallman. That is all.

(Witness excused.)

HARRY REED, sworn.

Direct examination by Mr. Stallman.

Q What is your business, Mr. Reed? A Steamboat man, deck hand, mate.

Q Are you now employed by the Lehigh Valley Railroad? A No, sir.

Q Are you out on strike? A I am not working for them just now. I ain't exactly out on strike.

Q Were you on this tugboat "Geneva" at the time of the Black Tom explosion? A Yes, sir.

Q And where were you and where was your tug when you first knew of that fire? A At the end of A Dock.

Q That is up in Jersey City, isn't it? A Yes, sir.

Q When did you first see anything of the fire? A When we got down near Black Tom, going in the channel, was when we first seen it.

Harry Reed, direct,

Q What did you see? A Saw an up-flare light.

Q Did you see what was burning? A Not from there.

Q Well, later than that, did you see what was burning? A Yes, sir; later.

Q When did you find out what was on fire? A After we got up to where the fire was.

Q Now, as I understand, coming down from A Dock you had to come down past the end of the North Pier? A A Dock to come down past the end of the North Pier? A Dock is in Communipaw.

Q Yes. A And the North Pier is in Black Tom.

Q Yes. Well, now, did you come down past the end of the North Pier? A No. The Statue of Liberty is between that and you come down.

Q All right. Did you go outside of the Statue of Liberty? A Yes.

Q And you came down the channel that runs from the Statue over to Black Tom? A Yes.

Q Where did you go? A West of Pier 7.

Q Where did you go? Here is Pier 7. Now, tell me where you went. A Well, went out to the North Pier to see how close we could go to the fire and what was there.

Q Now, before you went out to the North Pier, did you go anywhere else around Black Tom? A No, sir.

Q What did you do at the North Pier? A Well, we were busy getting the hose connected up for the fire. After we got the order we started to get the hose lengths hooked together.

Q All right. Now, whereabouts, how close to the North Pier did you get? A Oh, I could not say how close. I did not pay very particular attention to it.

Q Well, boat length? A Yes; somewheres around that; maybe not that; maybe a little closer and maybe further; I could not say.

Q Well, now, were you on the outside of the North Pier, on the north side of it or the south side of it? A We were on the south side of it.

Q On the south side of the North Pier? A Yes; on the end; somewheres around there; I couldn't say just exactly the very spot.

Q And where was the fire burning at that time? A Somewheres in the yard. We had noticed that when we came in, but I paid no attention; we were then working around and getting the lengths of the hose together.

Q Yes. And did you use that hose? A No; we didn't use no hose. We couldn't use it.

Q What was the closest that you got to this fire? A Oh, I should judge a couple of hundred feet, or 250, probably 300.

Q At what point—where was your tug when you were the closest to the fire? A West of Pier 7; that is where we found the car was on fire.

Q Now, this is Pier 7, where the yard is, isn't it? A Yes.

Q And when you say west of Pier 7, were you anywheres between Pier 7 and Pier 6? A Yes; that is what I mean.

Q Now, just whereabouts in here were you? A About two-thirds, I think, to judge, from the end—on the west side here, to the bulkhead—I should judge.

Q Two-thirds up? A Yes, sir.

Q About like that? A Yes; I think so.

Q Your tug went in there? A I think so.

Q And that is the place where you were nearest to the fire? A Yes.

Q Then did you stay there? A We stayed there a little while until we found out that we could not use it—that we were no use there, and then somebody gave us some orders.

Q All right. Now, while you were there, that few minutes that you were there, did you see what was burning? A I saw cars were burning.

Q And about how many were burning? A Well, I guess there was one burning and they said there was another starting to burn when we were there.

Q And did you see any flame? A Yes; there was a good big flame.

Q How high was it? A Some seven or eight feet, or maybe ten feet, for all I know; and then it would go down again, and then it would break out again in another little spot. You could see from the deck.

Q From the deck of your tugboat? A Yes; that is where we could see.

Q And did you see anything besides flame? A No; fire like shooting out of the sides and on the top.

Q All right. Now, you said you laid near that corner, about two-thirds the way up, and while, and then where did you go? A Someone on the dock we recognized to be Chief of Police Leyden's voice, telling us that we should go down to the east of 7 and pull out those scows—those ammunition scows.

Q Well, did you go down there? A Yes.

Q Now, I want to call your attention to this map, Exhibit P. 11, and it shows four scows laying south of the North Pier. Did you take those scows? A We went in and we got a line on two scows that laid on the north side of the South Pier.

Q I see. Well, now, just look at this map. Assuming that the map correctly gives the names of these boats. There is four scows laying on the south end of the North Pier, in here, near the float bridges are two scows, the "Moran-8" on the north side of the South Pier, and the "Rockwell" lying a bit behind it tied up to a schooner. Could you tell by looking at that map which of those scows it was that you got hold of? A Now, my position on the steamboat has been this, so you will understand, is low on the bow on the "Geneva," and these scows were loaded in such a manner that whatever they had on was high—you couldn't see under the back of them very good, to give the location like that over the bow of the tugboat, but we could see what was in front of us, see. Well, we couldn't tell exactly from here whether they were made fast over there on this side or not, but two at the end of us here we could see, and we put a line on those two.

Q Yes. A But what laid under the stern of these two that laid on the north end of the South Pier I could not say, for I couldn't see it from where I was.

Q Did you see the "Slatington" there that night? A Yes.

Q Did you see the "Slatington" go there and pick up any scows? A She started down ahead of us and she laid on the outside of us on the west of Pier 7; she came there to try to put the fire out then.

Q Did you see the "Slatington" go down opposite the float bridges and make fast to any barges? A I saw her go over in that direction, and I saw her with one line on the barge, but what she had a hold of—I know it was some of the barges, but whether it was a distinguished barge or not, but in the nighttime, in the confusion, we see she was working around those barges.

Q Your captain was Captain Corrigan, was he? A Yes.

Q You went in here and got hold of two barges; you didn't know which two they were; is that right? A No, I don't. There were two barges laid on the end.

Q Then what did you do with them? A Got a line on them; got a head line on them.

Q Then what did you do? A Well, there was a man standing on this pier here—

Q South Pier? A On the South Pier, here, and he sung out that we lash them together. I said, "Like—where is the captain of them barges?" He says, "I don't know. Somebody on the end of the pier." "Well, who are you?" He said, "I have got nothing to do with them barges." "Why don't you jump down and help us to lash them together?" I said, "It is as much benefit to you to help get them lashed together as it would be for me or the man that is on there getting paid for it, because if they let go you will be just as much in the soup as we will, or him, either, whether you are working for it or getting paid or not." So he jumped down—he thought it was advisable—a little while—I didn't see him, but the captain says he soon jumped back on the pier again, but I didn't see him at that time, because I was too low down.

Q All right. When your tug went in there did you stay there the rest of the night? A No, sir.

Q What did you do? A Well, the deckhand went over and help to lash them with this fellow here, along with the float man

we carried as a shifter, and they came forward then and I sung out, "All right—" whatever they were doing, of course you couldn't see, only what they say.

Q What did your tug do? A Well, after they sung out it was all right, we started to go back on them.

Q Yes. A With the line on the barges.

Q Yes. A In order to back them out of the slip.

Q Yes, and where did you go? A Well, we backed, I guess, a little while; I couldn't tell you how long, and then something let go. Then we didn't know anything for a little while. When I found myself I was on my elbows and knees, getting up in a sort of bewildered way—Hully Gee! The floatman had been throwed overboard in the meantime, and he says to me, he says, "Hurry; I was thrown overboard, and I was being drowned." I says, "Why, are you wet?" He says, "Yes." "Are you hurt?" "Well, get out of here; go back and do something." "What is the matter?" "Holy God, this is fine; ain't it, eh? What do you say?" Well, we went back, and, of course, everybody but the captain—he turned to step out in the boat, the half of the back of the boat was knocked to pieces, smashed or something; he goes to step down, and God know where he lands, he lands some part of the deck, and everybody like—it is no good to ask a man to explain this thing, because you know yourself what you would do if this place was— Sizz!

Q Now, Captain, tell me this: After you had got hold of these two scows and had backed up this time that you don't remember just how long it was, and then the explosion happened, what happened to these two boats that you had in tow? A Well, after we came to, we were all then on the deck to see what the best thing was to be done; well, he says, "I don't know how bad she is or how she is." "Well," the captain says, "supposing we try, eh? Throw the head line off, if there is anything on the two —if the scow has a line on her let her go." He says to Mr. Flack, "Johnnie, go up and throw that line." "Well, how is it?" He says, "I can turn this wheel that way and this way." At that time he had crawled up, however he got up. He says, "I can get over a little bit this way and a little bit this way."

Q You are talking about your tug? A Yes; the captain trying to get her in shape to see what we could do with the tugboat.

Q Now, I want to know about the towboats, the two scows that you went in there and got hold of. A We let them go; throwed the line off.

Q What was their condition when you threw the line off? A "Good God! Oh!" The man that could tell that, he would be a genius. Maybe he could tell the conditions, but I couldn't tell; you know, the explosion and the smoke and the light—then it all went out, you had to grope around in the dark a little while.

Q Just a minute. Can you tell us, or don't you know, after the explosion occurred, whether these two barges were intact, or whether you cut them loose, or whether there was anything the matter with them or not? A I don't know anything about that.

Q That is all. A I didn't give it a rumble, because it was something else besides telling me to get out of this.

Q All right. A And the captain and everybody tried to do the best they could with this boat. The engineer said he thought he could work her ahead a little if they could put the wheel over, and he sung out, he said, "There is no bellpull, the lamps are all smashed, clothes all throwed away—everything we discovered afterwards." He said, "Well, you help; stand up here at the pilot house and holler to him and let him holler to me, and the mate generally carried a whistle to blow from the deck, and I will whistle so as to make no mistake just hollering to the engineer."

Q Let me ask you a question right in there, if you will. Did anything fall on your boat at the time of the explosion? A Well, there was little pieces of debris that fell here and there. "Gee Whitikers!" There might have been things fell, for all we know.

Q What did you see or hear? Did anything fall on your boat that you know of? A Not that I know of—small pieces was going here and there.

Q Pieces of what—snowballs? A Yes, that is it; pieces of what? Pieces of wood, I could distinguish one part of it; we didn't stop to examine it. I know I didn't.

Q That is all.

Harry Reed, cross.

Cross examination by Mr. Rockwood.

Q How long had you been on the "Geneva"? A Well, that I couldn't say, but I know it is over a couple of years, or a year and a half; somewheres that kind.

Q On the night in question you were at the end of Dock K, near Jersey City? A Yes.

Q You heard of the fire there, did you; somebody told you? A We got the orders.

Q Got orders to go down there? A Yes, from the dispatcher.

Q What time was that? A Around one o'clock.

Q You got an order to go down to Black Tom pier about one o'clock, and what time did you reach Black Tom pier? A Well, our run down there with a light boat is about fifteen minutes.

Q You got there? A That is the running time.

Q You got there about a quarter-past one? A I don't know; maybe a little later; maybe a little earlier.

Q That is your best recollection? A Yes.

Q Was the "Slatington" there? A No; I didn't see the "Slatington."

Q When did you first see the "Slatington"? A When she came outside of us—west of Pier 7.

Q What time was that, do you know? A Oh, maybe twenty or twenty-five minutes after one; somewheres around there.

Q About twenty-five minutes after one. Did you see the "Slatington" hook on to these boats, the "Moran-20," the "Jet" and the "Paulina" and the "Thompson"? A I saw her over there working around there at the time that we had the orders, too—we were working on that side.

Q You were up here with the "Geneva" trying to get hold of the "Moran-8" and the "Rockwell"? A I don't know; the two scows, I couldn't see the names.

Q Two scows? A Yes.

Q Those scows were loaded so high that you couldn't see over them very well; is that the idea? A No; you couldn't see what was—much behind them, from the deck of the boat.

Q In other words, your position on the tugboat was low? A On the deck, yes.

Q You were low on the deck? A Yes, and doing drill work.

Q The scowboats were loaded up high? A They had a deck load on.

Q So you couldn't see over them? A Just about see, but you can't tell very much in the dark what was behind them.

Q But you saw the "Slatington" around there doing something? A Yes, sir; you could see she was right opposite or abreast like.

Q What time was that? A Oh, that wasn't, that was around —well, we were up there, must have been around two o'clock, probably, or quarter to two, or somewhere around that; wasn't very long.

Q Did you see the "Slatington" start to pull out any barges? A I saw her manoeuvring over there.

Q Could you swear they brought any out of there? A I saw them manoeuvring, backing and filling.

Q Well, manoeuvring means they were moving around. A Yes; getting it in shape to pull them.

Q Trying to get them in shape and pull them? A Yes.

Q But the fact is that they did not get them connected together and did not get a line on them before the explosion? A Well, I could not see it all.

Q Well, what is your best recollection? A Well, I couldn't say she did or not. I couldn't tell whether they had them connected or not, or whether they did not, because we had a little job ourselves to do.

Q Can you say that you ever saw the "Slatington" moving these four boats? A I saw her manoeuvring.

Q Well, manoeuvring means getting in position? A Yes, and getting the other scows in position.

Q Did you ever see them actually moving them out? A I saw her working around them, like shoving them back to get the lines from another scow.

Q You wouldn't say you saw her bringing them out? A No, sir; I wouldn't say I saw her going with them, although she might have, but I couldn't say I saw her.

Q Did the time come when the "Rockwell" and the "Moran-8" were pulled out? A I don't know anything about the "Rockwell."

Q By your boat? A The two boats we had hold of—

Q Were the two boats that you had hold of pulled out some distance? A Yes; we started them.

Q Did they ever get beyond this pierhead line? Did they ever get beyond that, or just pull down? A We started to pull on them a little while when the explosion let go, and how far from the end I couldn't say.

Q You don't know? A No.

Q Did the explosion separate your boat from those two or did you cast them off? A We cast the line off.

Q Cast the line off; when you got there was there any captain on either of these two boats? A I didn't see them or anybody that went over there said they saw them.

Q Then there was nobody in charge of those boats as far as you saw them? A No.

Q There was nobody to do a thing to move them or have charge of them? A Not that I saw.

Q And this Lehigh Valley tug of which you are a member as deckhand was doing the best it could to get those boats out? A Yes.

Q Did you see any captains on the other four boats? A I saw only this man on the end here with the white shirt on.

Q He stood on the end of the dock? A Yes.

Q On the end of the South Pier? A Yes; there was a man with—

Q Was it an old man or a young man? A I couldn't tell at night, anyway.

Q Could you identify him if you saw him now? A No, I don't think I could. I know he wore a white shirt, and he had only pants and white shirt on.

Q At the time when you were here the fire was burning down in the yard, was it? A Yes.

Q And there had been no explosion up to that time? A Oh, shots firing and going on.

Q But no explosion? A No explosion.

Q And that was about two o'clock? A Somewheres in that neighborhood.

Q Two or shortly afterward? A Might have been before, for all I know; I could not tell the time, of course.

Q There had been no explosion up to that time? A Not until that time.

Q When the large explosion came and stunned you, to which you have testified, was there any explosion after that? A Yes.

Q There was another one, was there? A Yes.

Q What time? How long after? A Well, that I couldn't say how, what time—but—

Q What is your best recollection? A Oh, about half an hour or three-quarters, I should say.

Q Did that explosion appear to come from the land or one of these boats? A Why, that came from the land.

Q What part of the land? A Well, it came in an easterly direction over here from where we laid at the time the second explosion let go.

Q It came in an easterly direction? A Yes.

Q Well, that would be off towrads Bedloe's Island, wouldn't it? A Yes; I guess it would.

Q Did you hear an explosion come from Bedloe's Island? A I heard and saw this here big flame fire right from the big warehouse building.

Q Over near Bedloe's Island? A Yes; it was like daylight when that explosion let go.

Q There was an explosion there that you saw? A Where?

Q Near Bedloe's Island? A No; I didn't say—I said in the direction, looking that way, in the range that way.

Q Well, now, where was that explosion, do you know? A Why, on the island, or on the Black Tom Island.

Q What part of it? A Down near the warehouse or somewheres near there.

Q That is down near the R warehouse? A Yes.

Q That section? A Yes.

Q That is where you saw the second explosion? A Yes.

Q Where were you standing when you saw that, do you remember, or heard it? A We were on the side of the boat at that time.

Q Did you say where you thought the first explosion came from? The first explosion, where did it come from? A Well, it must have come from up the yard, I suppose. That is where it sounded from.

Q Will you swear it did not come from the boat? A By God, yes, I will swear to that, for I know I would not be here to tell you about it.

Q Swear it did not come from the "Thompson"? A I will swear it did not come from any of them scows.

Q Why will you swear to that? A Sir?

Q What was your reason for testifying in that way? A I think if they let go I would not be here to tell it; that is my reason.

Q That is all, is it? A I think so. They didn't look to be exploded or anything when we went up to throw the line off.

Q As a matter of fact, you could not tell where it came from, so you could swear to it positively, could you? A Yes.

Q There was an explosion? A I could tell it was not on them scows, for we were too close to live after it, I should think.

Q Couldn't it have been a scow on the North Pier or the north side? A I don't think so.

Q Well, will you swear it was not? A No, I won't swear.

Q As a matter of fact, you don't know, do you? A I know it came from that direction.

Q You don't know, do you, positively, where it came from? A Yes; I know it came from that direction—on the docks there.

Q But if it came from a boat on the north side of the pier it would come from that same direction, wouldn't it? A No, not exactly, I don't think.

Q But you don't know, do you? A Well, I know it didn't come from the scow.

Q That is, it did not come from the scows immediately around where you were? A Yes, the scows where we were.

Q But there were scows on the other side of the pier, too? A No, on this side of the pier, weren't they?

Q On the other side of the pier, too? A Between the pier.

Q There were scows on the other side of the pier, too, weren't there? Look at the map "Moran-64," the "Johnson," "Frank" and the "Johnson-17"? A Well, I did not see them.

Q Well, isn't that true, that all there is of this is that you were on your boat when this terrific explosion came and you were stunned? Now, where it came from you do not know, do you? A Well, yes; I was on the boat and I was stunned. After we came to we could see that there could not have been any other explosion on the boat, because there would have been some fire attached to it.

Q But you did not see the boats on the north side of the North Pier? A I did not see that; not on the north side, from there.

Q Then the explosion may have come from the boats on the north side of the North Pier; it might have come from them? A I do not know; I do not think so.

Q You do not think so; but it might have happened that way? A Well, I could not say, to tell you the truth. I would not like to say.

Q All you know about the explosion is, you know the general direction from which it came, is that right? A Yes.

Q But you do not know where it came from? A It would have to come from the land in order from where we were only after starting a little bit—it would have to come from that side, from where the smoke and stuff came from, after we came to a little bit.

Q Did the explosion create high waves around your boat; did it rock your boat? A I do not think so; no. It was calm as anything.

Q It was quite calm; it did not create high waves all around your boat? A No.

Q What do you think threw you over? A Why, the shock, I thought.

Q And yet your boat was calm, was it? A Do you mean still?

Q Your boat was not rocking in the water? A She was not rocking much at all.

Q And at the time of the explosion the boat was not rocked in the water? A No.

Q And still you were thrown down? A I certainly was.

Q Now, isn't it a fact that there were very high waves at that time that washed over the pier? A No.

Q It is not. Is it not a fact that on the north side of the pier the shells are imbedded—or were imbedded—in the wood of the pier?

Mr. Stallman. I object as not cross examination. The witness has never said he was on the north side of the pier.

Q Were you ever on the north side of the pier? A Not that I know of that evening.

Q So you do not know anything about it? A We were not on the north side.

Q So you do not know what happened on that side? A Not to the shells that were on that side.

Q And if there was an explosion on that side you do not know anything about it? A No, because there were explosions going on—whether it happened afterwards or not—those could have done that.

Q Did you notice a barge on the north side called the "Johnson-17"? A North side of what?

Q North side of the North Pier? A I did not see anything on the north side of the North Pier.

Q The "Johnson-17"? A I did not see anything on the north side of the North Pier.

Q Just look at the map and see if it refreshes your recollection. A No; I did not see anything at all, because I could not see over there. You know there is kind of a trestle on that dock.

Q You could not see across there? A Not from this side, to see what laid on the other end, at nighttime.

Q I guess that is all.

Mr. Stallman. That is all.

ALFRED PHILIPS, sworn.

Direct examination by Mr. Stallman.

Q Were you on the tug "Geneva" on the 29th and 30th of July, 1916? A Yes, sir.

Q What was your job? A Chief engineer.

Q Now, you will have to talk loud. Did you see anything of the fire at Black Tom? A Yes, sir.

Q And where was that fire? A Well, I could not exactly say where it was; it was up on that pier there somewhere; I could not exactly tell where it was.

Q Did you know that place well enough to know there was a big yard there where they held railroad cars? A Yes.

Q Was that fire anywhere near that railroad yard? A Yes.

Q Where? A It was in the railroad yards.

Q In the railroad yard? A Yes, sir.

Q Where was your boat when it was closer to that fire? A Well, we was up in the upper side of Pier 7.

Q Now, some of the other witnesses have pointed to a location in here somewhere? A That is right, in there.

Q Is that where your tugboat was? A Yes, sir.

Q And did you see the fire from there? A Yes, sir.

Q What was burning? A Well, that I could not say; somewheres up in the railroad cars.

Q What is that? A Somewheres up in the railroad cars. I could not exactly say what it was, because we were in the engine room; we could not see what it was.

Q The fire was near the railroad car? A Yes, sir.

Q I see.

The Court. Gentlemen, I think at this point we will adjourn until ten o'clock tomorrow morning. May I ask you before we go, how many more witnesses have you, Mr. Stallman—generally speaking?

Mr. Stallman. Well, I think this is the last witness, excepting the regular run of witnesses to prove the starting of the fire. Our side will certainly finish up somewhere tomorrow.

The Court. How much time do you think your side will take, Judge?

Mr. Rockwood. I should say two days.

The Court. Well, we will come tomorrow prepared to sit later. I will finish this case this week. I will sit Friday, if necessary. I am going to try to render that unnecessary.

Mr. Stallman. I want to introduce Mr. Jenkins, of the New York Bar. I intended to introduce him before, but we have been so busy it slipped my mind.

The Court. He will be admitted ***pro hac vice.***

Case adjourned to Wednesday, June 9th, 1920, at 10 o'clock A. M.

THIRD DAY.

(Trial continued, June 9th, 1920.)

Mr. Stallman. Mr. Philips was on the stand, and, I think, I finished my direct examination.

Mr. Rockwood. Have you finished with him?

Mr. Stallman. Yes.

ALFRED PHILIPS, resumes.

Cross examination by Mr. Rockwood.

Q As I understand your testimony, you were the engineer of this boat, the "Geneva"? A Yes, sir.

Q And where were you stationed, where did you work, down in the hold? A No, not in the hold; it is only about a foot and a half below the deck.

Q A foot and a half below the deck? A Yes, sir.

Q You did not see much, anyway, did you? A I did not see much.

Q You did not know much about it except that there was a fire and an explosion? A Yes.

Q That is about all you know? A Yes.

Mr. Rockwood. I guess we all knew that, anyway. That is all.

JOHN PLATT, sworn.

Direct examination by Mr. Stallman.

Q Where do you live? A 112 Sussex street, Jersey City.

Q And what is your business? A My business was as a deckhand for the Lehigh Valley Railroad.

Q What are you doing now? A Pilot for the Tyse Line.

Q And were you a deckhand on the tug "Geneva"? A Yes, sir.

Q At the time of the Black Tom explosion? A Yes, sir.

Q And where were you and where was your boat when you first knew of the fire at Black Tom? A We were laying at Pier 8, Morris Canal Basin.

Q Up in Jersey City? A Yes, sir.

Q And do you remember what that time was? A Well, it was about one o'clock.

Q One o'clock? A One o'clock Sunday morning.

Q And then where did you go from there? A We got orders to go to Black Tom, that there was a fire there.

Q Yes; and what was the first that you saw of the fire? A Well, when we got abreast of the South Pier we seen the fire up in the yard there.

Q In what yard? A In the Black Tom yard, there. Up among the float bridges.

Q How close to the end of the North Pier were you when you first saw that fire? A Oh, we were at the southerly pier—could not go anywheres near the North Pier.

Q And can you come down here and show us on the map about where—or can you tell me from where you are sitting about where you think the fire was? A Right here in the channel; we seen the fire up here in the yard and we thought best to come down here.

Q And that is the south end of Pier 7? A Yes.

Q And where did you go? A We came into the west of Pier 7, here, and laid in here.

Q That is pointing to a place about half way up the— A Half way up the slip.

Q (Continuing.) —west side of the Pier 7? A Yes, sir.

Q How long did you stay there? A Fully—about—twenty minutes, and when we located the situation over here, could see that there was no roof, there, we had three lengths of hose, and we could not reach it.

Q Do you know what time it was when you came down that side of Black Tom? A It was about 1:20 when we arrived.

Q I see; and then, when you arrived over on the west side of Pier 7, what time was it? A About 1:25.

Q And you lay there approximately twenty minutes? A Yes, sir.

Q Now, while you were laying on the west side of Pier 7 did you observe the fire? A Yes, sir.

Q And from that point where did the fire appear to be? A Right about here somewheres.

Q You are pointing all around that thumb tack? A Well, I could not exactly show you the proper place; it was above the float bridges, there.

Q Somewhere in the general neighborhood where that thumb tack is placed? A Yes, sir.

Mr. Stallman. For the purpose of the record, Mr. Ransome, will you show that the thumb tack on this map is marked P. R. R. 70671?

Mr. Rockwood. Who put the thumb tack there?

Mr. Stallman. One of the constables, in putting the map up.

Mr. Rockwood. It seems to be a focal point.

Mr. Stallman. It just happened to stand out very prominently, that is all.

Q Now, Mr. Platt, when you were laying there on the west side of Pier 7, what could you see in the way of that fire? A We could see the flames.

Q And could you tell what was burning? A We could see that there was cars burning.

Q What is that? A We could see that there was a car aflame.

Q I see; and did you see anything except the flame? A No, sir; smoke and flame.

Q Smoke and flame; at that time, did you hear any noise? A No, sir.

Q In this twenty minutes that you lay there, did that include the time that you were trying to get a hose and connect it up? A We had that all connected up and ready for use on our way down from Jersey City.

Q Oh! And then where did you go from the west side of Pier 7? A Well, we got orders from a man by the name of Cornelius Leyden, Chief of Police.

Q And where did you go? A He told us first to go round the end Pier 7 and pull out those scows.

Q What is that? A He says, "Boys, go around the end of Pier 7 and pull out those scows—or barges—or whatever you call them."

Q Did your tug go over there? A Yes, sir.

Q When you got over to the east side of Pier 7, did you notice four boats lying on the south side of the North Pier? A No, sir.

Q You did not observe those at all? A No, sir.

Q Those are not the boats you went in to get out? A No, sir.

Q You got out two barges? A Two barges that were in the float business.

Q And did you get a line on them? A Yes, sir.

Q Who did that work? A The mate threw a headline out on the scow and we hollered to a man that was standing on the end of the dock there to let go the lines for us, and he refused to do it, so the mate was kind of a stout man and it was not his place to go out there, so I thought I would take it out there and make a quick job of it, which I did.

Mr. Rockwood. Do the jury hear?

Q And you got a line on one of the scows? A Well, we got a line on the first one on the corner, and I got out there, and had to climb up on the bridge racks to let go of those lines, and make them up in tandem shape, bridle them up together.

Q And then did you pull them out? A I gave orders to the captain that everything was O. K., so he rang the boat in back motion and started to back toward the channel when the explosion came.

Q Was your tug backing up or pulling? A Backing up—backing—backing up.

Q You went in bow first? A Bow first; yes, sir.

Q How far had you backed out before the explosion happened? A Well, I should say about 200 yards.

Q Two hundred yards from the place your tug started to back up? A Yes, sir.

Q And then, when the explosion occurred, what happened to your boat, or to the two scows that you had in tow? A Well, I was on the scow when the explosion occurred, me and a young man named Gilfoyle were standing right on the bows of those scows when the explosion came, and he was blown overboard, and he disappeared; all of a sudden; I did not know where he went to, and the first thing I heard was his crying for help in the river; he was swimming, and I could not see him; it was so very dark.

Q All right. Then, after the explosion happened—occurred—what happened to these two barges that you had in tow? A Well, after the barges were afire and I thought then to get off them as soon as possible.

Q And how soon did they get afire? A Right after the explosion. The flying debris set them afire.

Q Where did that explosion come from; was it above the float bridges? A Of course, I was looking up that direction where the barges was clear.

Q Yes. Now, you say that you saw a fire over in the yard? A Yes, sir.

Q Now, where with reference to that fire did this explosion occur? A From about the same direction; the same spot as where we seen the fire from.

Q I see. Now, were one or both of these barges afire, or scows? A Both.

Q Both afire? A Yes, sir.

Q Did you watch them burn? A I did not take time; I wanted to get off in a hurry and let go of the line. I had to climb up on the line to get on the tugboat and let go of the lines.

Q I see. And then what happened to these barges? A Well, I could not say. We started to get out of there. It was no place for us to be hanging around.

Q Now, you spoke of some debris coming at the time of the explosion. Can you give us—can you describe what sort of debris it was? A Well, I guess it was pieces of car and shells and things like that.

Q Did any of that kind of material land on your tugboat? A That I could not say.

Q Oh, you were not on the tugboat? A No, sir.

Q You were on one of the scows? A On one of the scows.

Q I see. And did you observe when you saw this material coming through whether it was hot or red or not? A I couldn't say, because none of it struck me.

Q Immediately after that, was it, that the fire started? A Right a couple of minutes that it was aflame.

Q Did you cast these scows adrift or did they break away? A Well, we had to cast them adrift to get away from them.

Q Why did you do that? A Well, because we seen what was in them.

Q What was in them? A Macaroni stuff like; I don't know what they call it; macaroni stuff; something like macaroni; smokeless powder; I don't know what they call it; just like macaroni.

Q Well, was it in boxes or barrels or what? A In cases like that.

Q In cases? A Yes.

Q I see. Now, at that time did you see or hear anything of a further explosion? A Well, we were tied down to the stakes; we were disabled; the boat was disabled, unable to do any more help there, when the second explosion came.

Mr. Rockwood. Mr. Platt, will you be good enough to raise your voice, because counsel is so near I cannot hear you. You just talk to him. Just raise your voice.

Mr. Stallman. You must not tell me only; tell the jury.

Q You say you were tied up with some stakes at the time of the second explosion? A Yes, sir.

Q Just where were those stakes? A Well, abreast of the old elevator, out in the channel.

John Platt, direct.

Q Well, now, referring to the map on the easel, this map shows two elevators? A Yes, sir; the old elevator.

Q One called the grain transfer elevator and one further west called the new elevator. A Yes.

Q Was it—near which one? A The old one, down where that arrow shows; it was down towards that pier; out in the channel.

Q Now, the nearest pier there I see is Pier 4. A Yes; that is right. Along about here; a lot of rocks standing and old spiles there. We got a line on one of them.

Mr. Rockwood. That was at the time of the second explosion.

The Witness. Yes, sir.

Q You say you were down west of Pier No. 4? A Yes, sir.

Q And, Mr. Platt, did you observe where that explosion came from? A Well, it looked as if it came from the yard.

Q That is the same yard that you referred to where the freight cars were? A Yes, sir; the first one; yes, sir.

Q Can you tell us how long a time after the first explosion it was until you went down to those stakes? A Well, it was about fifteen or twenty minutes.

Q Before you left the water towards the—to the east of Pier 7? A Yes, sir.

Q Then you went down there? A Down towards there.

Q How much time do you think there was between the two explosions? A About twenty minutes.

Q Did you at any time make a note of the time of the second explosion? A No, sir; I just said about twenty minutes.

Q I mean, you cannot give us the hour or minute of either one of them? A Well, it was about 2:10.

Q Which one was that? A The second one.

Q You think the first one was about twenty minutes before that? A Yes, sir.

Mr. Stallman. You may cross examine, Judge.

John Platt, cross.

Cross examination by Mr. Rockwood.

Q Mr. Platt, your testimony relates to two of these boats principally, doesn't it? A Yes.

Q What were the names of the two boats? A We never had to take —

Q —concerning which you testified? A We didn't have time to take the names of these boats that we picked up.

Q I show you now the same map— A Yes.

Q —that Mr. Stallman used, and by looking at that map— A Yes, sir.

Q —can you tell us where the boats were located that you were trying to get out? A Right here on the bridge.

Q When you say on the bridge, that means on the north side or on the south side of the North Pier? A Yes, sir.

Q What are the names of the two boats as they appear to be, as they are stationed on that map? A I did not take the names of those two boats.

Q Well, assuming that the two boats that you were trying to get out are properly located on the map, what names are given on them? A The "Rockwell" and the "Jet."

Q You do not mean that, I guess, do you?

Mr. Stallman. I will agree they are the "Rockwell" and the "Moran-8" on the inside.

Mr. Rockwood. Wait a minute.

Q Now, look across at it now. I do not want to mislead you. You were trying to get those boats out right there? A No, sir.

Q The "Moran-8" you were not trying to get out? A There were two boats together.

Q Now, Mr. Stallman says you are wrong about that, and he is the one that examined you. I am ready to take any testimony you want to give. Do you say it was the "Rockwell" and the "Jet"? A I didn't take the names of the boats, but they were two boats in the bridge at the time, and I had to let go of the lines from the rack and bridle them up together in tandem shape.

Q Well, the two boats that you testify to that you tried to get out were fastened together? A They were not fastened together; I had to fasten them together.

Q You fastened them together? A Yes, sir; bridled them.

Q And there could not be any question about the two boats being near each other? A Well, they were so close that I could jump from one to another.

Q All right.

Mr. Rockwood. Now, with the Court's permission, there is the "Rockwell" and there is the "Jet." Those are the two boats he said he was getting out. Mr. Stallman here has thought he was testifying about the "Rockwell" and "Moran-8."

Mr. Stallman. I thought that was what he was testifying about.

Q Now, understand, Mr. Platt, all this jury wants is the truth about it. A That is all I am telling, is the truth.

Q And nobody wants to mislead you in the slightest way— A Because I know the work I did on the boat.

Q You could not be mistaken about it, and you are sure you did what you said you did, are you? A Yes, sir; we did.

Q No mistake about that? A No mistake at all, because I was sent down to do the work.

Q Well, if you want to rest on that, why, of course, that is satisfactory to us. A Yes, sir.

Q Now, you tried to get the two boats out, and fastened them together, yes or no? A Yes.

Q Then tell the jury just how you did that. A Well, there was a young man called Johnny Gilfoyle was shifter on the boats with us. He came out and told us to let go these lines. One had to get up on the rack while the other loosened the lines upon these scows. After we done that, why, we bridled them up together, the two corners, one on each boat.

Q Was there anyone there in charge of those scows? A No, sir; I kicked and knocked on the door, trying to get an answer

to see if there was anybody on that boat, and nobody seemed to answer.

Q I am correct in saying that both of these boats you rapped on there was nobody in charge protecting them in any way? A Yes, sir.

Q There were no captains on those boats? A No captains on them.

Q Weren't there—eh? A No captains on them.

Q The captains had gone away, had they? A I don't know where they were.

Q Assuming there had been captains, they were not there; they had gone off? A They were gone ashore.

Q And you went and knocked on the door and tried to rouse somebody up? A Yes, sir; see if there was anybody there.

Q I suppose on the top of those barges there is a little house, a place where the men stay? A On these scows they were below the deck.

Q Little houses, where the men stay; little cabins? A Yes, sir.

Q And you did that on both the boats, did you? A Yes, sir; I did.

Q Then there was nobody around there? A Nobody but us.

Q That was doing a single thing to help to get the boats changed in any way; is that right? A Yes, sir.

Q What were those boats loaded with, do you know? A With these cases. I had to climb over the top of them.

Q Hold your hand out and show me how long the cases were. A (Witness does so.)

Q How long is that, two and a half feet?

Mr. Rockwood. About two and a half feet, the jury say.

The Witness. About one and a half by two and a half.

Q About one foot and a half by two foot and a half? A Yes, sir.

Q Were those cases piled in the barge? A Oh, they were loaded to the deck.

Q They were loaded way up, were they? A Yes, sir.

Q And how far was the barge out in the water, the barge itself? How far from the line of the barge to the water? How far was the line of the barge from the water? A Well, they were right up along the deck; they were tied up; the bridge rack—

Q No; let us take the line of the barge itself; how deep was it to the water? How much of it was out of the water? A Oh, it was down right to the deck.

Q Right to the deck? A Yes, sir.

Q It was a heavy load? A Yes, sir.

Q On each one of these boats? A Yes, sir.

Q How high was it piled up? A Beg pardon?

Q How high was the load piled up on the boat? A It was so high I could not get on the outside; I had to climb over the top of those cases to get to the stern of the boat.

Q Just take me as I stand here; compare with me; was it higher than I am? A Oh, yes.

Q Twice as high? A Well, I would not say how high it was; it was pretty high? I know I had to climb over the top of them to get to the stern.

Q Was it as high as from the floor to the top of the Judge's lamp—this lamp right here? A Yes, sir.

Q And there were a lot of boxes put all over the barge? A Cases all over the barge.

Q Cases, and loading it right down to the line of the top of the deck? A Yes, sir.

Q In the water— A Right to the deck—

Q —the boat was pretty well sunk down in the water? A Yes, sir.

Q How long was the barge? A The barge?

Q Yes. A Well, I should judge about fifty feet long.

Q Well, take this court room. Was it as long as this court room, from where you sit to the wall on the other side? A Yes, sir; about as long as it.

Q And how wide was it? A Oh, it was not as wide.

Q How wide? A About twenty-five or thirty feet wide.

Q About twenty-five or thirty feet wide. And do you happen to know of your own knowledge about how deep these barges are? A No, sir; I never went down the hold.

Q You do not know anything about that? A No, sir.

Q Now, as I understand you, you were up in Jersey City, weren't you, and you got orders to come down, that there was a fire at Black Tom? A Yes, sir.

Q That was about one o'clock, and you came right away? A Yes, sir.

Q The "Geneva" was not a fire boat, was it? A Well, she is equipped for fire purposes.

Q You had some hose on? A Yes; hose and service pumps.

Q It is not what is known as a fire boat? A I don't know what you call it.

Q You had a hose for your own protection? A Hose and nozzle on the top of the pilot house.

Q For your own protection in case the boat got afire? A Yes, sir.

Q Then your boat came down, as you told Mr. Stallman—you came down here and got around the west side of Pier 7? A Yes, sir.

Q And that was about what time in the morning? A About 1:20.

Q 1:20. And then you looked over here and you saw a car on fire? A Yes, sir.

Q Now, was there any more than one car on fire? A That I could not say.

Q Did there appear to be any more than one? A Well, I could not say.

Q What is your best recollection about it? A I could not say how many cars, because it was too far a distance to notice.

Q Well, state then if it appeared to be a large blaze. A A small blaze.

Q State then if it appeared to be a large blaze, or a small blaze, or confined to a small area? A It was not a very large blaze at the time we seen it.

Q And where did it appear to come from? Where did it appear to be coming from? A In between the cars.

Q Running over the tops of the cars? A Yes, sir.

Q Yes. How long did you stay down on the west side of Pier 7? A About twenty minutes.

Q Then you got orders and went up to this point to try to get these boats out that Con. Leyden told you to do? A Yes, sir.

Q Did you know Mr. Leyden? A Yes, sir; I knew him personally.

Q Con. is dead, isn't he? A Yes, sir; he was killed, I guess; that was the last words he said to us.

Q And you know he told you to go down and try to get those boats out? A Yes, sir.

Q And was Con. Leyden the chief of the Lehigh Valley police? A Yes.

Q And located on this dock? A Well, he was all over Jersey City and Black Tom.

Q And when he told you to go down and try to get those boats out, you went right away and did the best you could to try to get the boats out, didn't you? A Yes, sir; we did.

Q And you were working for the Lehigh Valley Railroad? A Yes, sir.

Q And this was a Lehigh Valley boat? A Yes, sir.

Q Now, if there had been men on these barges would it have helped you to get them loose?

Mr. Stallman. I object to that, if the Court please. That calls for a conclusion.

Mr. Rockwood. Pardon me a moment. I think the form of my question is objectionable, if he objects to it; but I will just change it and get the same question.

The Court. All right.

Q What would have been the result, in your opinion, if the two barges had been properly manned with the men who belonged to them?

Mr. Stallman. I think that is objectionable, if the Court please. It not only calls for a conclusion, but also it intro-

duces into the question, or into the case, a further conclusion, as to what the proper manning would be of a barge under these conditions.

The Court. I think I will overrule the objection, because it seems to me that the question is entirely proper. The rule, as I understand it, is laid down in the case of Kosses *v.* The State, 27 Vroom, to the effect that where the situation is called upon—that the witness is called upon to respond to is of such a character that he cannot put the jury in precisely the same situation with respect to the facts that he has, so that they may judge, as he could have judged in the situation in which he found himself, then the statement of the situation called for is a statement of a fact, or, at least, such a conclusion as is treated as a fact in the law. Samples that are given in that case of such a situation are as to whether a man is in love, whether a dog is mad, whether a horse is frisky, and things of that sort; and then again where a party who has actually handled a boat and is experienced in the handling of a boat is called upon to state a conclusion in which the jury, because they are not expert in that line, would probably not be able to draw, they are entitled to the benefit of his expert knowledge; and for these reasons, I thing, therefore, that the question is admissible, and I admit it. You may have your objection to that ruling entered upon the record.

Mr. Rockwood. His Honor says you may answer that question. Do you understand it?

The Witness. Yes, sir.

Q Can you now tell the Court and jury what your answer is? Will you, please? A Why, if there were men on those scows there would have been a few minutes saved on them.

Q In other words, am I correct in saying that you had to leave your tug and get on there because there was no man there to help you? A Yes, sir.

Q If there had been men on that boat they would have done the things you did? A Yes, sir.

Q And you could have stayed on the barge? A Yes, sir; on the tug.

Q On the tug? A Yes, sir.

Q Now, when you got off your tug, the first thing you did was to go in and knock on the door of the barges? A Yes, sir; that was the first thing I did.

Q On each one of them? A Yes, sir.

Q And you knocked plenty and loud? A Yes, sir; it would wake anybody up.

Q Now, during all this time you and the men of the "Geneva" were doing your best to get the boats out, were you? A Yes, sir.

Q I understand you to say that you got your line on those boats finally? A Yes, sir.

Q And started to pull? A Started to back out.

Q In other words, the tug was backing, was it? A Backing.

Q Was it backing because in that way the engine had greater power? A Well, it doesn't matter whether we are going fore or aft.

Q It does not; it is not like an automobile? A No.

Q But you were backing in any event? A Backing; back motion.

Q Yes, sir. And is it correct that you were backing out in a southeasterly direction? A Yes, sir; towards the channel.

Q Towards the channel. Now, this line on this map, being plate 1, running from the North Pier down, is called pierhead line? A Yes, sir.

Q You understand it does? A Yes, sir.

Q That means the line of the pier? A Of this North Pier.

Q Yes. Did the time ever come when you got the boats that you were pulling out beyond the line of the pier, or were they inside of the line of the pier? A Well, just about on a line in the channel.

Q Just about in a line? A Yes, sir.

Q And then an explosion occurred, did it? A Yes, sir.

Q And did you say what these boxes contained that were on these barges? A Well, we find out afterwards it was that

macaroni stuff; I don't know what they call it; smokeless powder or something.

Q It was an explosive, in any event? A Yes, sir.

Q And where did that explosion appear to come from—the one that you described? A From up above the bridges; up in the yard.

Q I suppose it is practically impossible for you to tell where it came from, isn't it; that is, you could not locate the exact spot? A No, sir; I could not.

Q On anywheres near it? A No, sir.

Q It was all very dark around here this night? A Yes, sir.

Q Did you see the "Slatington" there? A Well, the "Slatington" was manoeuvering with a few scows outside of us.

Q You saw the "Slatington"? A Yes, sir.

Q And when this explosion occurred you cut off from those boats, did you; threw them off? A No; after they got on fire.

Q They caught on fire, did they? A Yes, sir.

Q Now, do you recall whether or not there was an explosion on the "Thompson"? Do you know a boat named the "Thompson"? A No, sir; I did not.

Q When the explosion came did it throw waves about you and throw the water high? A No, sir.

Q It did not? A No, sir.

Q It did not rock your boat at all? A Didn't rock my boat at all; I was on the scow.

Q Well, did it rock the tug? A I was not on the tug.

Q But you got on the tug finally? A Afterwards.

Q But you were—do I understand you to say that you were on the barge at the time of the explosion? A I was on this scow as it was backing when the explosion came.

Q And how much was the distance between the scow, where you were located, and the tugboat? A Well, it was a matter of about eight feet.

Q And the explosion came and then what happened? The tug backed up and took you off? A No; it just laid still there while I climbed up on the rope and let the line go.

Q And you cast the boats off? A Cast the boats adrift.

Q Then your boat came around and went down in back of Pier 4? A Yes, sir.

Q As you have stated? A Yes; the boat was disabled.

Q Now, is that about the whole story as far as you are concerned? A That is all I know.

Q Just a minute. Did you go over those two barges while you were around them? Did you look them over a little bit? A Beg pardon?

Q Did you look over the barges while you were on them? Did you observe what was on the barges? A Well, I know I was climbing over cases; those little cases.

Q Am I correctly advised that there was no fire apparatus on either of those barges? A Oh, I don't know about that.

Q Didn't see any, did you? A I didn't look for that.

Q You did not see any? A I did not look for that.

Q But you did not see any? A No, sir.

Q Whether you looked for it or not you did not see any? A No, sir.

Q That is all.

Re-direct examination by Mr. Stallman.

Q Mr. Platt, when you went in to take these barges out was the fire raging in the yard right behind the bridges? A While we were pulling those scows out?

Q When you went in to hook up to them? A The fire was still burning in the yard.

Q It was? A Yes.

Q That is all.

HARRY A. CAMPBELL, sworn.

Direct examination by Mr. Stallman.

Q Mr. Campbell, where do you reside? A Woodhaven, Long Island, New York.

Q What is your business? A Inspector, Bureau of Explosives.

Q What is the Bureau of Explosives? A It is an organization enforcing the regulations of the Interstate Commerce Commission governing the handling of explosives.

Q How long have you been connected with that bureau? A Eleven years.

Q In general, what are your duties, or what work do you do? A Well, generally I inspect explosives in plants during the process of manufacture, and inspect explosives in magazines and storage, and inspect explosives on railway property, teach railway employees and shippers how to handle and export explosives.

Q Were you doing that kind of work in July, 1916? A I was assigned to special work during the war period, and had direct charge of the handling of explosives in the harbor through various agencies; I taught the employees of the lighterage companies, and so on, how to handle explosives from cars to lighters; taught the U. S. Coast Guard how the stuff should be stacked in steamers, and things of that nature.

Q Do you know the Black Tom yard of the Lehigh Valley Railroad? A Do I know where it is?

Q Yes. A Yes; I know where it is.

Q Have you ever been there? A I have.

Q Do you recall the explosion there on the 30th of July, 1916? A I know there was an explosion there. I didn't get there until the following day.

Q Well, you went there the next day? A Yes; early morning.

Q What did you see in the way of explosives or ammunition when you went down there?

Mr. Rockwood. Next morning?

Mr. Stallman. Yes.

A I saw ammunition for cannon with explosive projectiles.

Q In what condition? A Some exploded, some unexploded.

Q Yes. A I saw smokeless powder; I saw the remains of cases that had contained wet nitrocellulose; I saw TNT—high explosives. I think that is all the explosives I saw there.

Q See anything else in the way of ammunition? A I said I saw—

Q What kind of shells did you see around there? A I saw explosive projectiles, both of the high explosive class and shrapnel class.

Q When you got there the next morning, did you see a string of eight cars on the third track from the north side of Black Tom which are marked on the map as containing high explosives? A Did I see them?

Q Yes. A No; I did not see them.

Q What did you see in that general neighborhood? A There was a lake there.

Q How big was that lake? A I guess it was about 175 by 100.

Q When you got there, was there any remains of fire; was anything still smouldering, or was the fire all out? A Oh, no; it was still smouldering. The firemen were still working there.

Q And over what area was this fire smouldering? A Well, it was practically over the whole area. We did not get on the pier until a great deal later in the day.

Q Well, when I say over what area, I mean over what part of the yard, taking the yard as bounded on the east by the bulkhead line and on the north by the waters of the bay, and on the south by the south side of Pier 7, and around the westerly side of Pier 7 behind the warehouses. What part of that was still smouldering or had been on fire? A Well, the part that was still smouldering or had been on fire extended from the extreme end of that North Pier.

Q Out here? A Yes—back to these houses where there was sugar burning up when I was there.

Q These houses there? A Yes; that string of houses, I think it was.

Q And it extended that way how deep? A Well, I would say it was about half way across that yard.

Q About there? A I presume about there.

Q Now, Mr. Campbell, assuming that this map is correct in showing that before this fire started there were eight cars of

trinitrotoluol in a row on the track from the north side, and the fire occurred, and burned a great many cars in that yard, and during the course of that conflagration the eight cars exploded, leaving a lake which you have described, and that during the course of this fire there was shells popping off and going up in the air, red-hot balls coming out of these burning cars and landing all over the yard and other places, can you, from those facts, tell us what caused the explosion of those eight cars?

Mr. Rockwood. That is objected to, if the Court please, upon the ground that that does not assume all the facts in the case, and which the witness could be properly asked, and assumes facts that are not in the case; that there is no evidence in the case of the explosion of eight cars of TNT, and that is an unfounded assumption at this time without evidence upon which to base it, and that the witness, who is an inspector of the Bureau of Explosives, has not been made qualified or competent to testify upon the assumption based as an expert.

Mr. Stallman. As to the facts, if the Court please, involved in this question, I have asked this witness; this question, I suppose, is a little bit out of turn, but if I do not establish these facts of this hypothesis, I will consent that the question and answer be struck out. I cannot prove it all at once, and I want to get this witness away and let him go. It does seem to me that this man's experience, covering eleven years as inspector of the Bureau of Combustibles, teaching other men—

The Court. I am not bothered about that, Mr. Stallman. That phase of the objection does not appeal to me at all. Outside of the fact that it has not been yet established that the eight cars of trinitrotoluol were destroyed, what facts do you claim were not stated in the question, Mr. Rockwood?

Mr. Rockwood. That is the principal fact.

The Court. What are the others here? Under the rules of the courts of all the states, if counsel makes an objec-

tion of this character, the Court has an indubitable right to call upon him to state what the facts are that are not in the question, so that the Court may see if the objection is founded upon some basis of fact.

Mr. Rockwood. My objection goes principally—I may say, in order to cover your Honor's suggestion, wholly to the fact that there is no evidence of the explosion of eight cars of TNT, and that, therefore, that assumption cannot be taken.

The Court. Well, now, what fact is there in the case that you claim should have been in the question which is not in the question?

Mr. Rockwood. He has not covered the testimony of the various witnesses as to the—

The Court. He is not obliged to. There is not any case in the world that does that.

Mr. Rockwood. For instance, the explosion of the "Thompson." His own witness testified to an explosion on the "Thompson," and he has not given that.

The Court. Other witnesses have stated they saw no explosion on the "Thompson."

Mr. Rockwood. But his own witness has testified.

The Court. That is all right. He is not obliged to—

Mr. Rockwood. And then there is also some evidence of some possible explosion on the other side of the North Pier.

The Court. He does not have to, under the rule of law. The law is perfectly settled, absolutely, conclusively settled that the party asking the hypothetical question is only obliged to assume as part of his question those facts which he claims are established and which he claims support his case. He is not obliged to put all the facts in. That, as a matter of law, or as a matter of logic, would be nonsensical, because as a matter of logic it would assume that counsel is obliged to assume as true that which he claims

is false, to which, those things which are put in evidence by cross examination or otherwise which make against him. He is not obliged to assume something in the case to be true simply because somebody said it. He only takes those facts which make favorably to his case. And that is what the law has established, as I understand it. If you know of any case that holds to the contrary, I would like to hear it.

Mr. Rockwood. It seems to me that the question rather wholesaled a few points and left others out which were vital. For instance, he asked the witness to assume the cause of the explosion. How he can do that without evidence that the eight cars of TNT did actually explode I cannot see.

The Court. That is why I am asking you.

Mr. Rockwood. In order to clarify the discussion I will rest on that point, because—

The Court. Very well, if it is rested on that point, then I admit the question subject to the offer on the part of counsel for the plaintiff to supply proof that the eight cars did explode. If they do not I will strike the answer out and instruct the jury it has no bearing in the case at all.

Mr. Rockwood. All right, sir.

Q Have you the question in your mind, Mr. Campbell? A Yes.

Q Will you answer it, please? A In my opinion that explosion could have been caused by a detonation of another instrument of military practice in or about the TNT. An ideal way of exposing that TNT would have been to get into that mass a detonating fuse, or a TNT shell to explode in the mass.

Mr. Rockwood. I move to strike out the answer, may it please the Court, as not responsive, and as based upon facts in his answer that are not in the evidence. There is no evidence of a detonating fuse ever having been in the cars of TNT.

The Court. Well, with respect to that objection I must overrule it. It is rested upon two grounds. The first ground is that the answer is not responsive. Now, under the decision of our own Court of Appeals in the case of d'Adame against the State, 86 Atlantic Reporter, it is perfectly settled that that objection does not lie in the mouth of the counsel who is examining. So it has no basis.

With respect to the second ground of the objection, that there is not any evidence in the case that a detonating fuse got into this TNT, I presume counsel for the plaintiff will contend that the evidence does establish that there were cars in which there were detonating fuses, and that those cars were in the midst of the explosions, and that in all likelihood the jury might conclude that some of those detonating fuses, if the explosions did take place, were propelled into the cars where the TNT was, and thereby could have caused the explosion.

I presume that is what his point is. I don't know. If that is his point, I admit—the fact is whether that is his point or not—I do not care what his point is. The question is whether it is a proper question. I think it is, and I will admit it, and you may have your objection entered on the record.

Mr. Rockwood. Yes.

Q You said in your answer, Mr. Campbell—referred to explosions of TNT shells. In your examination of this yard the day after, did you see any TNT shells around there?

The Court. TNT shells?

A Shells loaded with TNT.

Q Whatever your answer was. You mentioned that in your answer. Did you see any such a thing around there? A Did I seen any loaded shell there?

Q Yes. A After the explosion?

Q Yes. A Yes.

Q That is loaded with TNT now? A Yes.

Q How did you discover they were loaded with TNT? A Took the TNT out of them.

By the Court.

Q Well, were they in the cars, Mr. Campbell, or had they been on the outside of the cars? A They were laying around.

Q Lying around the yard? A Yes, sir.

Q And could you see by any mark on them how they came there in the place where you found them? A Well, no; there was no marks on the shells how they came there. They were just propelled from the cartridge cases. The smokeless powder propelling charges had been ignited.

Q That is what I want to know, whether you noticed any evidence that the smokeless powder charges had been ignited? A Oh, yes; their bases—

Q You saw evidence of that on the bases of them? A Yes, sir.

Q That would propel those things from the cases in which they were contained? A Promiscuously.

Q Outside? A Yes.

Q All right.

By Mr. Stallman.

Q Now, you said, Mr. Campbell, that when you got there the next morning in the location where these eight cars of TNT are on the map, you found a lake. A Yes.

Q I assume by that that you mean a depression with water in it? A Yes; a crater had been formed in the ground, water had filled in this hole.

Q In that lake did you see anything of the railroad track, in that location? A In the lake there was water; I could not see.

Q I say, could you see anything of the railroad track? A In the lake?

Q Yes. A No.

Q Could you see anything—just come down to the map here, so I can indicate more clearly what I want to ask you. I show you on this exhibit, Mr. Campbell, a dotted line marked outside

line of crater, which extends around to the location of the last car of high explosives as shown on the map, and down right through where the thumb tack is, and then a line extending in a northeasterly direction up to the east of the last car of high explosives. Does that dotted line which I have indicated to you correctly represent the location of the lake which you have mentioned? A Yes; I think it does.

Q That is approximately right? A Yes.

Q Now, in this area of this lake where these eight cars of high explosives are shown and these three cars of ammunition on the next track and four cars of ammunition on the fourth track, when you got there were any of those cars visible; was there any part of the cars visible? A I could not tell what cars—there was not anything visible in the water.

Q Nothing sticking out from the water? A No.

Q All of those cars, assuming them to have been there, had disappeared? A Yes.

Cross examination by Mr. Rockwood.

Q You said your duty was enforcing the orders of the Interstate Commerce Commission? A The regulations.

Q That is, governing the handling of explosives? A They govern the handling and the transportation and the shipping.

Q Are those regulations printed? A Oh, yes.

Q Have you got them with you? A I haven't a copy.

Mr. Rockwood. Have we a copy of those regulations, Mr. Hubbard?

Mr. Hubbard. Yes.

Q Is this book which I now show you—does it contain the regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles by freight and express and specifications for shipping containers? A It does.

Q And were the rules and regulations therein prescribed in force at the time of this explosion and prior thereto? A They were.

Q And did the Department of Commerce and Labor, Bureau of Navigation, prescribe rules and regulations governing the anchorage of vessels in the port of New York? A They did.

Q Were you familiar with them? A I was.

Q And does the paper which I show you contain such rules and regulations? A It does.

Q And were those in force at the time in question and prior thereto?

Mr. Stallman. If counsel is making this witness his own witness, of course, I cannot object to it, but it is not cross examination. I asked this witness nothing whatever about the regulations of the Department of Commerce and Navigation. It is going entirely outside the line of the direct examination. I object to it on that ground.

Mr. Rockwood. I am offering it for this reason: That prior to asking him questions which bear on the direct examination, I want to offer these in evidence.

The Court. Of course, there is one serious objection to that; it is not your case yet, and you cannot offer anything in evidence on his case.

Mr. Rockwood. Inasmuch as this is merely documentary and formal proof, I think there should be no objection to it.

The Court. That, of course, rests with counsel.

Mr. Rockwood. Do you object at this time, Mr. Stallman?

Mr. Stallman. If you would ask me, I would admit the regulations and the Interstate Commerce regulations, and the whole shooting match.

Mr. Rockwood. I now ask you.

The Court. I do not think you admit the shooting match. That is what we are now trying.

Mr. Stallman. I agree with your Honor. I do not want any of that.

Mr. Rockwood. May I offer them?

Mr. Stallman. All right.

Mr. Rockwood. The objection being withdrawn, I offer, first, the regulations of the Commerce Commission relating to the transportation of explosives.

(Marked D. 1.)

Mr. Stallman. This is on the understanding it is part of your case; not part of mine.

Mr. Rockwood. All right. I now offer the rules and regulations relating to the anchorage on vessels in the port of New York.

(Marked D. 2.)

Q You have had a considerable experience in the handling of explosives, as I understand? A I have.

Q About eleven years? A Yes.

Q Let us take up these various explosives in their order. Which one is considered the most dangerous explosive of the ones you have mentioned? A From what standpoint?

Q From the standpoint of shipping and handling. A Detonating fuses would be the most dangerous of the ones I have mentioned.

Q Will you describe to the Court and the jury a detonating fuse? A A detonating fuse is an element of explosive projectile —I think I will have to explain an explosive projectile first.

Q Do that, please. A An explosive projectile is a design of two types, primarily, for explosive purposes; a shrapnel and a high explosive projectile. A shrapnel is an explosive projectile hollow, and the interior of it is filled with lead balls. These balls are held above a diaphragm, and below the diaphragm is a charge of black powder. This black powder leads up through the center of the projectile through a brass tube up to the nose, and in the nose of this projectile is put a combination fuse and time fuse, which, upon firing the gun, functions at a given time, igniting the black powder and shooting the balls from the projectile. The projectile is permitted to remain intact; that is, it is not to break apart, so as to give the balls a general direction, on the same principle as shooting a shot gun. The high explosive

projectile is designed to fragmentate, to break up into bits. It is hollow and filled with TNT, ammonia, picric—high explosives—and either the base or the point of it is drilled out, and in that is set a detonating fuse. This detonating fuse functions on impact when it hits something. It contains mercury fulminate, or tetronitromethylaniline, so that on impact the explosion of the detonating fuse explodes the high explosive in the shell, rupturing the shell.

Q Then the detonating fuse may be set off by a blow—by impact? A By impact. That is the way it is designed to go off.

Q Which of these shells contains black powder? A The shrapnel.

Q Does that black powder—is it your experience that it deteriorates at times? A With moisture it deteriorates and slows its action.

Q When that condition arises, then what occurs? A It becomes worthless.

Q In what condition do we get spontaneous combustion? A On what?

Q On any of the shells which you have described? A You mean of the explosive itself?

Q Yes. A Not with TNT shells or black powder shells.

Q What other shells were there? A I do not know of any shells that were there that will give a spontaneous combustion.

Q What will cause spontaneous combustion? A In what material?

Q Dust. A In any material?

Q Yes. A It is a voluntary heating of the material itself, within itself, from no outside agency. That is spontaneous combustion.

Q Was there smokeless powder on the barges in question? A There was.

Q And is that capable of spontaneous combustion? A It is, if it is improperly made. That is, if the output at the time of nitration on the cotton is not thoroughly washed and boiled out.

Q And there are many cases with which you are familiar of spontaneous combustion with smokeless powder? A No.

Q Some? A In very, very rare instances.

Q But some? A It has happened.

Q You went there the morning after this fire and examined the cars, the yard, and the various conditions there, didn't you? A I did not get in there the first morning. I think it was well into the noon by the time I got into the yard.

Q Counsel has asked you the cause of the explosion? A He asked me what would cause TNT to explode.

Q And you said the detonating fuse could do it? A Yes; that is the best way to do it that I know of.

Q Now, what, in your opinion, caused this fire? A The evidence here is that one of these cars was first seen to be on fire and fire coming from the top of it. What caused it, in your opinion?

Mr. Stallman. I do not think that is a fair question to ask this witness on cross examination. He has not given him any facts upon which to give any opinion at all, and to ask this witness, who went there the next day, what was the cause of the fire, seems to be manifestly unfair and entirely improper.

The Court. I think I will sustain the objection.

Mr. Rockwood. It was not properly prepared.

Q Did you notice some Bethlehem steel shells there? A Oh, yes.

Q And what kind of powder do those contain? A You mean propelling powders?

Q Yes. A Smokeless powder—cordite.

Q And that would deteriorate like the other smokeless powder, wouldn't it, and create a spontaneous combustion? A Why, it would if it was improperly made. I cannot say that this was improperly made.

Q Whether these shells were properly or improperly made you do not know? A No; I do not know that. They were made on the British Government specifications, you know, under the British Government inspection.

Q In answering the counsel as to what would cause the explosion you merely stated what could operate to explode TNT? A Yes; that was what he asked me, as I understood it.

Q You did not give your opinion as to how the explosion occurred? A No; as I understand, he asked me what would likely set off TNT in that yard.

Q Where did you find these Bethlehem steel shells when you went there the following day? A They were all over the area of the yard.

Q And those contained the smokeless powder? A Well, a lot of them had gone—they had functioned.

Q But others did— A Smokeless powder?

Q Yes. A Oh, no; these shells had not been out of the cartridge cases. The smokeless powder is in a brass cartridge case; that is a propelling charge; that does not explode the shell; that just pushes the shell from the gun.

Q The propelling charge, what did you observe about that? A Well, they had all functioned.

Q It had functioned? A Yes.

Q Assuming, Mr. Campbell, that when the fire was first observed, it was seen to be coming from the inside of the car—one car—and it was burning and coming out of the top of the car, and that the car was loaded with shells containing smokeless powder, could spontaneous combustion have resulted or have been the cause of that fire in that car, in your opinion? A It could have if the powder was improperly made.

Q It could have been? A Yes.

Q And there being no other evidence showing how the fire started, would it be your opinion that that fire did start from spontaneous combustion in that car? A I think it unlikely, because a smokeless powder is very carefully made today; that is from observation on inspections.

Q Carrying out, now, the same assumptions, that the fire came from the inside of this car and went over the top of the car as it was loaded with shells, what would you say produced the fire? A Somebody got in there.

Mr. Stallman. That is subject to the same objection that I made before. It is asking this witness to make just a bare guess—

The Court. What was the question?

(Question and answer repeated.)

The Court. Do you object to that?

Mr. Stallman. That requires the witness to guess.

The Court. Do you object to his guess? Have you heard the answer?

Mr. Stallman. No, I did not.

(Answer repeated.)

Mr. Stallman. Oh! I withdraw the objection.

Q Have you any knowledge of the inspection or the manufacture of these particular shells—the method of inspection or the manufacture? A At this plant?

Q Yes. A Yes; I have been to that plant.

Q Which plant did you go to? A To Reddington, Pennsylvania.

Q The particular shells in question here?

Mr. Stallman. Just which shells are you referring to?

Mr. Rockwood. I am referring to the Bethlehem Steel shells.

Q Could you, by any examination of those—do you know the method of inspection or manufacture? A Yes; I know the method of manufacture.

Q Did you go to the plant of the Bethlehem Steel Company and see the method of inspection and operation? A Yes, sir.

Q When? A Do you mean the date?

Q About? A I was there about four or five months, I guess, before the explosion; then I was there after the explosion.

Q Then as to these particular shells you have no knowledge of the inspection, have you? A I could not identify any individual shell.

Harry A. Campbell, cross.

Q No. Did you observe the condition of the north side of the North Pier after the injury—after the explosion? A I did.

Q The north side, now? A Yes.

Q What did you find there? A I found that that side of the pier had suffered from an explosion in the water; it had broken the side of the pier in so that the pier leaned towards the south; that is, the piling, the timber, or whatever it is called.

Q And what did you find on the pier—mud and other material? A I think there was at least one car—I think two cars of ammunition for cannon with explosive projectiles, which were tilted towards the south—showing that an explosion had come from a northerly direction and tilted those cars towards the south, and these cars and such of the contents as were exposed were entirely covered with a gray clay mud, which had come from the bottom of the bay.

Q Come from the bottom of the bay? A Yes.

Q Showing that the explosion came from the water? A Yes.

Q Now, what part of the pier—this (indicating) is the North Pier—stop my pencil when you say the explosion— A Right about there.

Q How far from the end of the pier? A I guess that would be about seventy-five feet.

Q As I understand you now, the pier itself was all thrown in towards the south, showing clearly that there had been an explosion on the water side? A The upper end of that map—the northerly side of the pier had been pushed in.

Q Pushed in towards the south? A Yes.

Q These explosives are put up in boxes, are they not, or were put up in boxes for shipment? A Yes; they are defined by the law.

Q Was it necessary to use care in handling them? A It was.

Q That is, in handling the box containing them? A Yes.

Q And if a box was handled roughly, so that there was an impact on the shell, it would create an explosion, would it—or might do it? A It would not do it, but it would not be good policy to tell the stevedores that it would not do it, because they would get rougher as the stuff went on.

Q It might do it? A Yes, if it got too severe. It would not cause an explosion of the shell, if that is what you mean, but of different explosives it would.

Q Now, this pier was loaded with cars at the time of the injury—at the time of the explosion—containing various kinds of explosives, wasn't it? A I do not know; I did not see them, Judge, but they tell me it was.

Q Did you see any of these boats in here when you got over there that night? A No; I didn't see any.

Q Any scows, barges or boats? A No; I don't recall any of them

Q You saw none of them there at all? A No

Q Was there any evidence of an explosion on the pier except the explosion that you said the debris came from the water on the north side? A There was no explosion on the North Pier.

Q That is from that point out to the end of the pier? A That is correct.

Q Was there any explosion on the South Pier? A There was not.

Q The explosion, then, appears to have been confined to the north side of the pier at this point out here where you said the lake was in the east? A North of the North Pier the explosion was.

Q In the north of the North Pier? A Yes, sir; it was not on the pier.

Q But north of the North Pier and down here where the lake was located? A Yes; that is right.

Q Were the cars on the North Pier burned from exploding? A Not those yellow cars.

Q But these red cars? A All those were burned from explosion; that is, just the steel metal work of the frames and trucks remained on the pier when I made the examination.

Q And those contained TNT, didn't they? A That is what they told me.

Q And they burned up without any explosion whatever? A Yes, sir.

Harry A. Campbell, cross.

Q Did you on the north side of the North Pier find some shells embedded in the framework, in the wooden frame work? A No, sir; that was on that South Pier.

Q You found them on the South Pier? A Yes, sir; they called it the Borax pier.

Q Was that on the north side of the South Pier? A They were; there was one shell that I found in the pier and the balance I found in cars located on the pier.

Mr. Rockwood. Is there a photograph of that here?

Q In other words you found shells embedded in the north side of the South Pier? A Yes, sir; one shell in the pier. The rest in the cars.

Q Showing that there had been shot from the north side toward the South Pier; is that correct? A They had been shot from north of the South Pier.

Q North of the South Pier toward the South Pier? A Yes, sir.

Q What did that indicate to you? A It indicated that there had been an explosion to the north of the South Pier.

Q Is that a picture of the shells as you found them embedded in the north side of the South Pier? A That is a picture of the shell.

Q Of the shell? A Yes.

Q Is that the way you found it? A It is.

Mr. Rockwood. May I offer it in evidence, your Honor?

Mr. Stallman. Well, mark it as a defendant's exhibit, you mean?

Mr. Rockwood. Yes.

The Court. Just have it marked for identification.

(Photograph marked D. 3 for identification.

Q What was the size of that shell? A That was a five-inch shell.

Mr. Rockwood. May I show this to the jury?

The Court. Well, it is not in evidence yet.

Mr. Rockwood. Do you object?

Mr. Stallman. Put it in your case.

The Court. If you object he has no right to show it or use it. All he can do is to have it marked for identification, and when it comes to his case he can offer it and use it.

Mr. Stallman. Put it in on your own case. I want to get along here.

Mr. Rockwood. Not now.

Mr. Stallman No, not now.

Q You found shells like that in the cars, did you, also? A Yes, sir; they had punctured the sides of the cars and laid in the borax of these cars.

Q Is that a correct representation of the way you saw the cars on the South Pier? A Yes, sir, it is.

(Paper marked Exhibit D. 4 for identification.)

Q This picture I now show you—does the picture I now show you show the condition of the North Pier with the explosion that came from the water to which you have testified? A Yes; that is the pier.

Mr. Rockwood. That is offered for identification also.

(Photograph marked D. 5 for identification.)

Q There was a harbor regulation, was there not, to the effect that scow barges loaded with explosives were not to be anchored or stationed near piers.

Mr. Stallman. I objected to that before. I do not think counsel has a right to bring it up again.

The Court. I sustain the objection. The best proof of what the harbor regulations were are the harbor regulations.

Mr. Rockwood. Yes, sir;. All right.

Q Did you the following morning—where was the anchorage for barges loaded with explosives?

Mr. Stallman. I object, if your Honor please, to that as not proper cross examination.

The Court. I will sustain the objection. It has nothing whatever to do with the examination in chief.

Mr. Rockwood. Is it necessary, your Honor, under your practice, to accept, or do I have one?

The Court. You may have your objection entered on the record in the nature of an exception.

Mr. Rockwood. Thank you.

Q Did you the following morning observe any vessels in the harbor or scow barges in the harbor loaded with explosives—the following morning after the accident? A I did.

Q Where did you observe them, and at what time?

Mr. Stallman. If the Court please, I object to it as immaterial. It is not proper cross examination. I asked this witness particularly about certain matters in the yard.

Mr. Rockwood. I do not insist upon it if counsel thinks it should not be.

The Court. Very well. The question will be withdrawn.

Mr. Rockwood. Yes.

Q I show you another picture and ask you if that shows the tilting of the car on the North Pier from the explosion upon the water side? A It does.

Mr. Rockwood. That is offered for identification.

(Photograph marked D. 6 for identification.)

Q Are you able to tell where the five-inch shells came from, or where manufactured? A They were manufactured by Washington Steel Ordnance Company. Do you mean what point they were shipped from?

Q Yes. A Some town right outside of Washington, D. C. I think it was Uniontown, some such name.

Harry A. Campbell, cross.

Q Were they carried over the line of the Jersey Central Railroad? A They were; they came via B. & O., Jersey Central.

Q Were any of them ever carried, to your knowledge, over the line of the Lehigh Valley?

Mr. Stallman. I object to that, if your Honor please.

The Court. I think I shall sustain the objection to that, because it is not proper cross examination. Nothing was asked in chief about that, and the cross examination must be confined to the subject matter of the examination in chief.

Q You stated on your direct examination that it was a part of your duty and that you did go about giving instructions in the matter of handling explosives and directing the various people who handle them? A Yes, sir.

Q What instructions, if any, did you give to the Ackerman Barge Company?

Mr. Rockwood. Is that the only barge company in question here, the Ackerman?

Mr. Hobart. Ackerman Lighterage Company, with reference to the handling and storage of explosives?

Mr. Stallman. I object to that as not proper cross examination. I did not ask this man anything about instructions given to barge captains. I asked the gentleman his experience in order to ask him a question about the explosion.

Mr. Rockwood. Counsel asked him in detail your Honor, about his duties, and he said that he talked of the handling of explosives.

The Court. It is perfectly manifest to me, the reason for the question, but, nevertheless, I will admit this question on the theory that you have a right to test the knowledge and experience of this witness with respect to matters concerning which he gave instructions by finding out what the instructions were, and seeing whether they were

instructions which indicated that he knew what he was doing, and what he was talking about when he gave them.

Mr. Rockwood. His Honor says you may answer.

Q What did you do about them? A I taught them the proper kind of chutes to have made and constructed, taught them how to handle the explosives on the chutes, showed them the proper mats to have for unloading ends, discharging ends; preventing them from using hooks in handling explosives, showed them how to break out a load in a car so as not to injure the boxes. That is about the substance of it. It was just the rules relating to the handling of material from the cars.

Q What instructions did you give about where they were to be stored or kept? A Well, those instructions I gave them on behalf of the United States Coast Guard.

Q What were those instructions? A The Captain of the United States Coast Guard asked me to assist him in enforcing the harbor regulations, and have those lighters not remain at docks after they were loaded. So I told the foremen of the lighterage companies what the harbor regulations were, and they would have to abide by that.

Q What did you say? A I said, "When you finish loading your explosives you should take them to the powder anchorage." They all admitted they knew where the powder anchorage was.

Q What did you say, if anything, about a red flag upon them, about the necessity of having a red flag upon the barges? A That was in the regulations; that as soon as a ship took on explosives she must fly a red flag by day and a red light by night.

Q What, if anything, did you say to them about their tying up at piers?

Mr. Stallman. I object to further examination along this line on the ground it is not proper cross examination.

The Court. I am going to let it go. I think it is wasting time but I am going to let it go on. The regulations themselves distinctly provide that. They will undoubtedly be in evidence in the case by them. Ignorance of

them will be absolutely no excuse for anybody, and we are wasting time; but I will permit the questioning to go on.

Mr. Rockwood. I won't waste time, if your Honor feels that way about it; I will ask no further questions about it.

The Court. I am not bothered about it. I am simply saying it is wasting time as the result of my judgment on it. You can ask all you want on it.

Mr. Rockwood. I have nothing further to ask on it.

Mr. Stallman. Just one or two further questions, Mr. Campbell.

By Mr. Stallman.

Q Do you know, or did you see anything of the barge called the Thompson? I think George W. Thompson, Jr., was the full name. A No, sir; I didn't see it.

Q Well, will gunpowder explode in the sense of causing a great vibration of the air? A Gunpowder?

Q Yes. A That is a pretty broad term. You mean black powder?

Q Cannon powder, for instance. A Or small arms powder?

Q Smokeless powder, I should say? A Oh, smokeless powder?

Q Yes. A Smokeless powder will only explode when it is confined.

Q Are you familiar with the character of packages in which smokeless powder that was shipped to Europe during the war was packed? A I am.

Q Well, now, take smokeless powder in those packages, would that, if ignited, explode? A Oh, no; it would have to be ignited from the outside, and so going it would admit air; it would not explode; it would fume off, but going very furiously.

Q Well, now, you know those kinds of packages in which the smokeless powder was packed during the war? A Yes.

Q Now, if some of those packages were set fire to, either by a hot iron or some other—ignited in some way, what would happen to that smokeless powder? A It would be entirely consumed by the fire that would result from the original ignition.

Q And what would be the character of that combustion? A It would be very rapid, and very fierce, strong.

Q Would there be anything in the nature of puffs during that combustion? A Well, there would be a great roaring going on, accompanying it, which would probably to some people seem to be puffs; but it would be just an intense roaring of the material.

Q I see. But, as I understand you, it would not explode such as other explosives? A Oh, no, no; it would not explode in those packages.

Q Is guncotton and smokeless powder explosive in the same way as I understand dynamite to be, in case of a sudden shock? A You mean smokeless powder or black powder—

Q Yes. A Smokeless powder?

Q Yes. A No; smokeless powder is not set off from shock.

Q Well, there are explosives that are set off from shock, are there not? A Yes, of some intensity.

Q And take wet nitro-cellulose, is that explosive? A Of itself, you mean?

Q Yes. A No; you have to prime wet nitro-cellulose in order to detonate it.

Q Are you familiar with the manner in which wet nitro-cellulose was packed and shipped during 1916? A Yes; it was packed in cases as provided by law.

Q Well, you are familiar with the way in which it was packed? A Oh, yes.

Q If fire got into the wet nitro-cellulose, would it explode? A No.

Q Would it explode from severe shock? A No.

Q Do you call—that is, technically in your profession as an inspector of the bureau—do you call guncotton and smokeless powder high explosives? A If the guncotton is charged, it is a high explosive.

Q I mean wet nitro-cellulose? A Wet nitro-cellulose or smokeless powder are not high explosives.

Q One of the witnesses, Mr. Campbell, said that on one of these barges was a substance resembling macaroni. Can you tell

the Court and jury what that was. A Yes, sir. That was cordite, British smokeless powder.

Q That was smokeless powder. Now, Mr.—

Mr. Stallman. I withdraw that.

Q Were you familiar with the Black Tom yard before this explosion occurred? A I was.

Q Had you been there often? A I had.

Q Now, of your knowledge of that yard before this fire and your taking into account—considering what you saw there the next morning, in describing this lake, and assuming that there had been eight cars of trinitrotoluol in packages on a track running through the center, or approximately the center of that lake, can you form an opinion, Mr. Campbell, as to what happened to these eight cars? A You mean what formed the lake there?

Q Yes. A The explosion of some part of those eight cars, or the eight cars. I do not know just how much of this exploded, but it was the explosion that made that lake, made that crater in the ground which afterwards became a lake.

Q Well, now, if in the location of that lake there were eight cars of TNT and six or seven cars of ammunition for cannon and one car of benzol, if that was all of the carloads of explosives in that area of that lake, just what of that material do you think exploded to make that lake? A The TNT. The benzol or the ammunition for cannon would not make the lake at all.

Mr. Stallman. That is all.

Mr. Rockwood. That is all.

(Witness excused.)

C. P. BEISTLE, sworn.

Direct examination by Mr. Stallman.

Q Mr. Beistle, what is your profession? A Chemist.

Q With whom are you connected? A Bureau of explosives.

Q How long have you been connected with the Bureau? A Thirteen years.

Q What work do you do at the Bureau? A Well, investigating accidents, examining of explosives and other combustible materials, studying causes of accidents, fires, explosions, and so forth.

Q Over what length of time have you been familiar with the manufacture and functions of explosive materials? A Well, about eighteen or nineteen years.

Q Were you familiar with the Black Tom yard of the Lehigh Valley Railroad in July, 1916? A I never was there before the explosion.

Q You were there after the explosion? A Yes sir.

Q If I called your attention, Mr. Beistle, to a lake which was apparent there after the explosion, being about 300 or more feet long, and some 200 feet wide, and some ten feet deep, and that the day before this fire occurred there was on tracks extending across the location of this lake eight cars of trinitrotoluol and seven cars of ammunition for cannon, and one car said to have contained benzol, and while those cars were there a fire occurred in that yard and an explosion occurred during the progress of that fire, and after the explosion those cars had all disappeared leaving a crater or a lake filled with water in the ground,—assuming those facts can you tell the Court and jury what it was that probably caused that lake? A Well, the most probable cause of the crater would be the explosion of the TNT.

Q Now if there were in that yard these carloads of TNT, carloads of cannon ammunition, shells, shells loaded with TNT, shrapnel, and a fire started there about half-past twelve at night and burned until after two o'clock, and during this fire a large number of shells came out of the burning cars and flew all around and other articles went into the air which are described as red hot balls, other articles going up exploding and making a noise such as the popping of guns or the shooting of guns, and these eight cars of TNT finally exploded; can you tell us from that description, or can you form an opinion as to what caused the explosion of those eight cars of TNT? That calls for an answer yes or no, whether you can form an opinion?

Mr. Rockwood. No objection to that.

A Shall I answer it?

Mr. Stallman. Counsel says he has no objection to your answering it yes or no.

A You could form an opinion, yes.

Q And will you state what in your opinion caused the explosion of these eight cars? A The opinion would be more or less of a guess, for this reason, that there were—

Mr. Rockwood. I object to it, if that is so.

The Court. I would sustain the objection, if it is a mere guess, Mr. Stallman.

Mr. Stallman. I would like to know what the witness means?

Q Do you mean that there would be more than one cause, or that any cause would be a mere guess?

The Court. His answer would be a mere guess, that is what the normal English language means in the way he expresses it.

A There would be a number of possible causes existing at that time. There was fire there, and there were explosive projectiles, shrapnel been thrown around by accounts, fragments, there were fragments of shells all over the place afterwards, so it would not be possible to definitely state whether the explosion was caused by the fire alone, by a projected material falling into the explosion,—it is just a matter of chance, you might say, which one did cause it.

Q Well, now, taking the explosion as I have described it, in your opinion do those facts state more than one possible cause of the explosion or probable cause of the explosion?

Mr. Rockwood. That is objected to on the ground the witness said himself there were several grounds for the explosion.

The Court. Well, the question now is just the reverse of what you thought.

A There were more than one—there were more than one probable cause, or more than one cause probable there, I might say.

Q And from the facts I have given you what were the probable causes of that explosion? A Fire, flying fragments, and explosions of projectiles after they had fallen into the material, exploding material.

Q That is all.

Cross examination by Mr. Hobart.

Q You don't know which of those is the more probable? A Oh, no.

Q They are all equally probable? A You could not say they were all equally probable, because it would be a sheer guess as to which one did it. They are all possibilities.

Q And you have named all the possibilities that occur to you? A All that I think of.

Q As reasonable? A That are reasonable under the circumstances.

Q You are familiar with the properties of smokeless powder? A I am.

Q And do you know whether or not any of the shells that came from the Bethlehem Steel Company contained smokeless powder as the propelling charge? A Well, the fixed ammunition, that is all made up, would have smokeless powder in the brass case.

Q Do you know anything about these particular shells that came from the Bethlehem Steel? A I don't know about the particular shells, but I know all the shells that were made had some kind of smokeless powder in where they had the propelling charge attached and fixed ammunition.

Q And by fixed ammunition you mean every kind of shell that had the propelling charge attached to it? A Yes.

Q And assuming that these shells that were in the cars known as the Bethlehem Steel Company cars in the yard did have this

propelling charge of smokeless powder, what can you say from your knowledge of the properties of smokeless powder whether that is liable to spontaneous combustion? A Smokeless powder is all liable to spontaneous combustion if it is improperly made, or the great age or storage conditions have been bad.

Q And assuming that this fire started in a car containing shells of this kind, that is, with the propelling charge of smokeless powder, and that the fire when discovered was seen to be coming from the top of the car or around the sides of it, can you give your opinion as to what was the cause of the fire? A Well, if you could exclude all outside causes, why, absolutely, why, then, of course, you would say it was due to spontaneous combustion.

Q By outside causes you mean somebody setting a match to it or something? A Or some external—any external source of fire, or anybody going into the car and starting a fire in there or anything like that?

Q Exactly. Assuming there is no proof of anyone starting the fire or setting a match to it, or any other similar external cause whatever, then what would be your opinion on the conditions I have named as to the cause of the fire? A Well, that is a possible cause, that is as much as I could say.

Q That is, spontaneous combustion? A Yes, that is a possible cause.

Q What other possible causes would there be—now, excluding what you call external causes? A Well, of course as a matter of argument you cannot exclude all external causes. As a matter of fact you can. It would be merely a matter of argument to say that spontaneous combustion was the only possible cause, simply because you don't know of any other.

Q But you agree that is one of the possible causes? A That is a possible cause, there is no doubt about that.

Q Would a time-bomb be another cause? A Time—

Q Time-bomb? A Oh, yes.

Q And how about wet phosphorus applied inside the car when the car was started at the Bethlehem works? A If they

put wet phosphorus in a car at the time the car started it would have caught fire long before it got there.

Q How long would it take for wet phosphorus to get in its fine work? A Phosphorus in the summer time will catch fire in about ten minutes. Of course there are innumerable devices that might be used to start off a fire with some one who was so inclined.

Q Those that I mentioned are some of several that might have been used? A Yes.

Re-direct examination by Mr. Stallman.

Q When you say that spontaneous combustion was within the range of possibility, that all depends upon the fact that the smokeless powder has got to be in a poor condition, doesn't it? A No, good smokeless powder won't catch fire spontaneously under no conditions.

Q That would not happen, would it? A Would not happen if the stuff was of first class quality.

Q Do you know whether or not at that time there was any system of inspection to determine the quality of powder that went into these shells? A Why, I assume that there was, because being purchased by some government—I am not familiar with the system of inspection, but it naturally would be.

Q Now, Mr. Hobart asked you whether or not it could possibly happen from spontaneous combustion in a carload of shells?

Mr. Hobart. Smokeless powder.

Q Or smokeless powder. Just assuming that a shell with smokeless powder projectile charge, I take it to be, would be subject to spontaneous combustion, what would be the first thing that would happen? A Why, it would burst the brass shell and blow the projectile away, and it would ignite the surrounding shells and cause the thing to burn up; it would not be a violent explosion, but it would cause rupture of the individual brass cases in driving off the projectiles.

Q In other words the very inception of this thing would be a series of small explosions, wouldn't it? A Well, yes, slight explosions. It would make a noise, I think, a slight noise, popping sound.

Q That is all.

Re-cross examination by Mr. Hobart.

Q If that occurred in a car that was sealed or locked you would see evidence of the flame coming out from the sides or around the top, wouldn't you?

Mr. Stallman. I object to that as purely guesswork.

A Well, I never actually saw that kind of fire, and on that kind of any car, so I really cannot say.

Q That is what you would expect if the car got on fire from the inside, wouldn't you? A If the car got on fire from the inside, I think if the shells got—if the fixed ammunition got burning, it would lift the roof pretty quickly, that is, blow the side out. It would not be a violent explosion, but I think it probably would be more than just flame come out.

Q So that the fire or flame would appear to be coming from the top or sides, or both? A And through them, probably.

Re-direct examination by Mr. Stallman.

Q You never heard of those shells exploding by spontaneous combustion, did you? A I heard the smokeless powder igniting spontaneously many times. I have had it happen myself.

Q What is that? A I say I have had it happen myself.

Q I say did you ever hear of one of those shells going off by itself? A Well, you misunderstand me or I misunderstand you. The shell is the cartridge case. I was speaking of the shell having smokeless powder in, not the projectile.

Q You have a brass shell— A Yes, that is the cartridge case.

Q And in that you have a steel projectile? A In the end there—in the open end there is a steel projectile.

C. P. Beistle, re-cross.

Q And the smokeless powder is a part of the charge that propels the projectile, isn't it? A Yes.

Q And what quantity of powder do they put in those shells? A I couldn't say exactly, but seems to me it is about twenty-two ounces,—that is just a guess. It is not a very large quantity for a three-inch shell.

Re-cross examination by Mr. Hobart.

Q Mr. Stallman asked you if you ever have known of those shells exploding from spontaneous combustion. Isn't it a fact that, based upon your knowledge and upon your study in your profession, that during the war there were a great many so-called dud shells that did not go off, that had something the matter with them? A There were, yes.

Q That is all.

By the Court.

Q What do you conceive to be the bearing of the proposition that a shell does not go off with the fact that it may explode if there is smokeless powder that spontaneously combusts inside of it? What is the point? There is no connection, is there, between the two? A I don't know what the point is.

Q I don't either. I thought probably you could see it. I do not.

Mr. Hobart. It has a bearing.

Mr. Rockwood. May I ask one question of this witness, your Honor?

The Court. Surely.

Re-cross examination by Mr. Rockwood.

Q Assuming that there was a fire coming from the top of a car, or one car, and red balls as described by the witness firing in the air from it, and about it, and giving the impression of shots being fired, what would you say was the cause of that, the car being loaded with shells, Bethlehem Steel shells and smokeless powder?

Mr. Stallman. I object to that part of the statement, because there is no proof that any one car was loaded with Bethlehem shells.

The Court. I do not think that there is any such proof.

Mr. Rockwood. Then I will leave that last part out, because I thought there was. There is proof of the other by the colored lady.

The Court. Yes.

Mr. Rockwood. I will restate it.

Q The witness states she heard a sound as of shots firing; they went out and looked and there was a car on fire, and balls of fire coming from it coming through the air in flames. What would that indicate? A That would indicate it was more likely shrapnel, I think.

Q What would that indicate as the cause of it? A Well, if that shrapnel was by itself, that is, if it was not fixed ammunition, it would not indicate anything about—it would not indicate anything as to the cause of the fire, because shrapnel alone would not probably cause a fire.

Q If the shrapnel— A It would not exactly start a fire lying quietly in a car where the car was not being moved.

Q Now I want you—

Mr. Stallman. I think the witness ought to be allowed to finish his answer.

The Court. Had you finished?

A Yes, I had finished.

Q The evidence is the car was alone, the flames came from it alone, and shells or red balls going in the air and the shots firing off, being shots fired,—what would that indicate to you as the cause of the explosion—of the fire in that car? A Well, couldn't indicate the cause of the fire, I don't think, at all. It would merely indicate there was a fire in the car of explosive contents.

Q Might that condition, if there was smokeless powder there, be created by spontaneous combustion? A It might.

Q It might have been? A Yes.

Re-direct examination by Mr. Stallman.

Q That is further on the assumption that the smokeless powder was in a deteriorated condition as you have mentioned as a condition precedent; isn't that right? A It might not; it might be either deteriorated or might have been smokeless powder that was in poor condition to start with. It is easy to make powder that is unstable to start with. It is only by great care that is avoided, and it would be just as bad if the powder was poor to start with if it had deteriorated from age. In fact, it would be worse, because it would—trouble would come quicker on poorly made powder than on powder that had deteriorated on account of bad conditions.

Q But you would have to have some conditions of that kind in a perfectly dormant shell in a box before you could have anything of that kind occur, isn't that right? A It would have to be in the smokeless powder; it would not be in your projectile.

Q That is all.

Mr. Rockwood. That is all, thank you.

JOHN F. GATELY, sworn.

Direct examination by Mr. Stallman.

Q Mr. Gately, you were Battalion Chief of the Jersey City Fire Department at the time of the Black Tom fire? A Yes, sir.

Q And what time did you get there? A Around one o'clock.

Q And how near to the fire did you get? A Well, about four or five hundred feet.

Q Can you tell us with reference to any of the warehouses how far you went towards the fire? A Well, we were right opposite on the roadway, about 400 feet from the warehouse .

Q There are three warehouses, there are three blocks of warehouses; can you tell us which one of these blocks it was that you were in front of. A I could not tell that.

Q You think you were about 400 feet from the fire. What did you see burning? A I saw some cars.

Q And about how many? A Well, about like half a dozen.

Q Yes; and as you stood in the roadway where were those cars that were burning? A Down in front of me.

Q In front of you. Now, can you tell whether they were just exactly in front of you or a little bit to the left or a little bit to the right? A They were a little bit to the right from me.

Q Would that be to the south? A Yes—well, that way.

Q If I turn out to you the roadway coming down, which stops about here, and then I continue straight up in line with that roadway, you think the fire was just a little bit below that line? A Yes.

Q When you saw these six cars burning, did you see anything of flame? A Plenty of flame there and—

Q Anything else? A Well, there was skyrockets was going up in the air.

Q Skyrockets? A Well—

Q Any noise? A I did not hear any noise until the explosion.

Q I mean, when you saw these skyrockets, was there any noise at that time; did you hear the skyrockets? A I heard them hitting against some of the warehouses there, I believe—the shutters.

Q I see. Did you see yourself any effort being made by any of your men to get water to put on this fire?

Mr. Rockwood. That is objected to as calling for a conclusion of the witness.

A Oh, yes.

The Court. It does not call for a conclusion. Ask him what he saw his men do.

Mr. Stallman. Yes.

Q What did your men do about getting water? A They tried to make connections to the hydrant to get water.

Q And these hydrants were where? A They were on the roadway from us.

Q That is the roadway along in front of these warehouses? A They were just opposite from the warehouses, from the warehouses here, and the hydrants here—in the driveway.

Q The hydrants were along the driveway? A Yes, sir.

Q And what did you see your own men do with reference to getting water? A They were trying to make connections to the hydrant with the hose.

Q And did they put a hose on the hydrant? A I believe they were hosed on the hydrant.

Mr. Rockwood. Now, if he does not know, I object to it.

A I ain't positive whether they put it on, or it was on.

Q What did you see about this hose? A Well, I saw the lieutenant trying to work the hydrant to get water out of the hydrant.

The Court. Did you see the hose on the hydrant? A I did.

The Court. All right.

Q You did? A Yes.

Q When the hose was on the hydrant, did you see them turning any of the valves on the hydrant? A Yes.

Q As a result of turning any of the valves on the hydrant, did any water come out? Do not shake your head. A Not worth speaking about.

Q When you say not worth speaking about, can you give the jury an idea of just what you mean? A Well, it would not put no fire out.

Q I do not know yet that that makes it very clear. It was probably more than would come out of a sprinkling can, I suppose, wasn't it? A Well, yes; it might go about three or four feet from the end of the nozzle.

Q Now, was that at any one particular plug, or more than one plug? A Well, that is all I noticed, I believe, was one; and then when I saw that I could not get any water, I telephoned

in to headquarters and got some apparatuses to come, and we took suction from the river.

Q And what time was that? A Well, I should judge it was an hour after I arrived there.

Q Was it before or after the explosion? A I believe it was after the explosion.

Q Were you there at the time of the explosion? A Yes, sir.

Q Did you see anything at the time of the explosion; did you see it happen? A I did not see it happen until I recovered myself. I got carried away about fifteen or twenty feet from where I was standing.

Q What I want to know is, at the time the explosion happened, did you see anything go up in the air? A I did not notice anything.

Q All you knew was, the shock that you felt? A Shock that I felt.

Q Can you tell us where that explosion came from? A Well, it seemed to come in front of the fire where I was looking at.

Q I see, and it was not until after that explosion that you got some fire engines down there to get water out of the bay? A Yes.

Q Had you ever been to Black Tom before that? A No, sir.

Mr. Stallman. Cross examine.

Cross examination by Mr. Rockwood.

Q Chief, what time did you get word that there was a fire at Black Tom? A I believe around one o'clock the fire had started.

Q And how far were you located from the scene of the fire? A Well, I should judge about three or four miles.

Q And you started at once with your apparatus and your men? A Yes.

Q And about how many men did you have with you? A Well, I had the truck come there—I believe about six men.

Q That is, yourself and six men started? A My chauffeur and I and the truck company and six men, about.

Q And you took with you how many feet of hose? A Well, we did not take any hose. The other companies from different neighborhoods came there with hose.

Q You took no hose at all? A Oh, no. I could not take any hose.

Q Then you simply took yourself and the men in the automobile and went there as rapidly as you could? A Yes, sir.

Q Taking no apparatus of any kind? A Only my machine.

Q What machine? A Automobile.

Q Yes, but that is not a fire fighting machine? A Oh, no.

Q You took no engines of any kind? A I took the truck company that was in the house with me.

Q Yes, but no hose? A No, the headquarters sent the other hose wagons.

Q You got down there, then, about what time? A I should judge five or seven minutes.

Q And that was the first time you had ever been on Black Tom Island? A Yes, sir.

Q There were city hydrants there, were there not. A I believe they were.

Q That is, hydrants maintained by the City of Jersey City? A I believe they were.

Q Well, you know that is so, don't you?

Mr. Stallman. I object to that. That calls for a conclusion, I think, of law.

The Court. I think it does. I sustain the objection.

Q Did you have given to you at any time by the city or by your superiors a diagram or chart or any information concerning the location of the various city fire hydrants? A I never got any instructions in that regard.

Q From anybody? A No.

Q There was such information available, however, I suppose? A Oh, yes.

Q How long did you say you were Battalion Chief—eighteen years? A Battalion chief, about twelve years.

Q And you had been with the department before that? A Over--well, over thirty years.

Q Over thirty years. You knew, in a general way, where the city hydrants were? A Yes, sir.

Q And those hydrants are marked, are they not, to indicate that they are city hydrants? A Yes, sir.

Q And did you at Black Tom find a city hydrant? A Well, I did not notice in particular whose hydrants they was.

Q You saw the hydrant to which the men were trying to fasten the hose, or to which they had fastened the hose; was that a city hydrant, or was it another hydrant, or don't you know which? A I would not be positive.

Q You do not know which? A No, sir.

Q Now, you will not swear, then, that it was a hydrant of the Lehigh Valley? A I could not—

Q You could not swear to that? A No.

Q Now, Chief, isn't this the truth: That when you got down there this was a burning mass on six cars? A Yes.

Q And you knew it contained explosives? A Well—

Q Well, you thought that it did? A Yes, sir.

Q And you knew it was a very dangerous place? A Yes, sir.

Q And you never got within four or five hundred feet of it, did you? A No, sir,—not at that time.

Q Isn't that true, now, Chief, that having regard to the safety of your men you instructed your men not to go down there and try to put out the fire? A Well, I would not send any man in there when I did not have any water.

Q Of course you would not; but that is the truth, you told them not to go? A I told them.

Q You gave orders not to go. A Not to go until we had water.

Q Yes, and the men did not go down there, did they? A We could not get any further than where we were.

Q Now, Chief, were you examined as a witness in the case of the New Jersey Fidelity & Plate Glass Insurance Company against the Lehigh Valley Railroad some time in 1918 — March

or April, do you remember? A I do not know exactly who they were, but I guess I have been here ever since the thing began.

Mr. Stallman. We will admit that he was.

Q You were. Now, how far would city pressure ordinarily throw water? 10

Mr. Stallman. I object to that because it does not appear that there was a city line there, and if there was, that the line there had the same pressure that it had up on the Heights, or there is anything else in the question that makes it competent or relevant in any way.

The Court. I overrule the objection. I do not see anything in it.

A Well, about sixty feet, I should judge.

Q About sixty? A That is, from the hydrant. 20

Q About sixty feet? A Yes.

Q And what was the ordinary diameter of the outlet of the city hydrants? A Well, they are all supposed to be two and a half inches.

Q Two and a half inches. So as to be effective, to do any good on that fire, a man would have to go down within sixty feet of the explosives, wouldn't he? A Of course, you know that that hydrants we put apparatus to them which works and gives us more water in case of fire. 30

Q But there was none of that apparatus there, was there? A No.

Q You did not have it there? A We had it but we could not get the water. I told you we took the water from the river —took the engine to the river and took suction out of it.

Q And then did you get near the fire, then? A Well—no.

Q Yes, to be perfectly fair about it, was there ever a time, whether with water from suction from the bay or anywhere else that you men ever went down there and tried to put out the fire? A We could not get close enough. 40

Q You could not? A That was when the thing happened.

Q It was not safe, was it? A It was not safe, no.

Q Therefore, you never got close enough for any of your men to put the fire out, even if you had all the water you wanted? A Well, later on we did, when the explosion was over.

Q Yes, after the explosion was over? A Yes.

Q But at the time of the explosion there was never a time when any of your men, assuming you had all the water you wanted, could have gotten close to the fire to put it out? A No, sir.

Q Now, Chief, did you on the previous examination when you were asked as a witness some questions—were you asked this question (page 189): "Well, you did not open the city hydrants, did you, while you were there?" "No, sir." A Well, I can't exactly remember.

Q Does that refresh your recollection? A I cannot recall it.

Q You won't say that you did not say that? A I might have said it.

Q Well, what is your recollection now? Were the city hydrants opened up at any time? A The hydrants that were there, that you spoke of, we had opened.

Q Now, is it a fact that the only man who did go down near that fire was killed; that is Leyden? A I believe there were policemen killed, too.

Q And Officer Doherty? A Yes.

Q What? A Yes; that is all that I know of.

Q They went down near the fire and lost their lives, didn't they? A They lost their lives, yes.

Q And you had it in mind, having charge of these men, that their safety at such a time was more than anything else, didn't you? A Well, yes.

Mr. Rockwood. Yes, that is all.

By Mr. Stallman.

Q Did you see anybody else down there outside of your men making any effort to put out that fire? A Didn't see anybody trying to put out the fire, outside of us.

Q And the first thing that you did there was to try to get water? A Yes, sir.

Q And what were you doing it for? A To put out the fire; we tried to put out the fire.

Q And you did not know that it was dangerous when you were putting on that hose, did you? A Didn't know it until that explosion happened, no.

Q And the first thing you knew that there was any danger was after the explosion occurred; isn't that right? A Yes, sir.

Q You were putting on that hose to go down there to put the fire out, weren't you? A Exactly.

Mr. Stallman. That is all.

By Mr. Rockwood.

Q Wait a minute, Chief? You said that you got down—you said after you got down there you saw the shells popping all around the place? A I saw them going up in the air, as I thought.

Q And you said you heard them hit up against the shutters on the storage, grain houses? A Yes; but I couldn't say exactly what—

Q Well, now, the information I got—and you can tell me whether it is correct or not—the very first thing you said was, "It is too dangerous to go down there, and my men are not going down there," in substance? A It was dangerous, yes.

Q That is what you said, isn't it? A Yes.

Q Did you see the Lehigh Valley trainmen down there pulling out the cars? A There were men there pulling out cars, yes.

Q And do you happen to know Mr. Hanley? I suppose you do not know him. A Who?

Q Hanley. A I don't know anything about that—

Q Did you see some engines and Lehigh Valley men right out on the pier here switching these cars, down here pulling out the burning cars? A I saw them taking out cars, but not burning cars.

Q Well, they were taking out burning cars, weren't they? A They were saving the other cars from getting burned, and they were pulling them out.

Q And those trainmen were going right up near the fire, were they not? A Well, they were not going any closer than we were to it, as I saw.

Q I am not going to say right now I think you did just right, so I am not trying to reflect on you in the slightest way. I do not know what else you could have done. Did these men on the train go down within a few hundred feet of where the fire was going on? A Well, they were down around where I was; but I was on the main road and they were on the tracks there pulling the cars out.

Q Do you know Mr. Dickman? A I—I saw him that morning at the fire.

Q He was down there? A He was down there, yes.

Q He was a Lehigh Valley man in charge of that yard? A I don't know what he was in charge of.

Q But you saw him going down towards the fire that night? A Oh, yes; he was trying to help us in regard to the hydrants, to get some water.

Mr. Rockwood. All right, Chief; thank you very much.

Mr. Stallman. That is all.

(Witness excused.)

JOHN J. HOGAN, sworn.

Direct examination by Mr. Stallman.

Q Captain, are you still captain in the Jersey City Fire Department? A Yes, sir.

Q You were with the fire department at the time of the Black Tom fire, weren't you? A Yes, sir.

Q And you went down there with Chief Gately, did you? A Well, not with him, with my company.

Q Oh, you were with a different outfit? A Yes, No. 8, on Ege avenue near Ocean.

Q That is right. And when did you get there? A I got there about—I should judge about 1:15.

Q 1:15? A Yes, sir.

Q And what did you see when you got there? A I saw several cars, freight cars afire, and explosions of ammunition in all directions.

Q How many cars were on fire? A Well, I should judge about six or seven; I don't know exactly about that.

Q And just about where were they? A Over to the right of the roadway, about—just below the last row of storehouses.

Q Now, I see on the map that the roadway stops about opposite Store O, and then there is a track that crosses over there, preventing the road from going any further. But if we carry that track right through, come about where that string of cars is—now can you tell whether the fire was north or south of that line? This is south and that is north. A It was south of that line.

Q South of that line? A Yes.

Q Now, you observe the front end of the warehouse? A Yes.

Q Where was it with reference to that line, the front line of the warehouses? A Well, it was below, below towards the—

Q Well, was it east of there to start with? A East.

Q All right. Then if we carry that front line of the warehouses straight out in an easterly direction, where was the fire with reference to that line? A I should judge about—about where you had—you are pointing to.

Q About where my finger is? A Yes, sir.

Q Then you know the fire was about in line with this building line of the building; is that right? A Well, between there and the road, on the line of the road, between the front of the—

Q On the line of the road? A Yes, sir.

Q That is about four inches from the line of the warehouses? A It is about a hundred feet.

Q And on this map, Captain, from the road over to the warehouses? A Yes, sir.

Q Now, we extend that one hundred feet right straight east. Was the fire anywhere in that hundred feet? If we carry that

track right eastward? A It was between the line of the warehouses and the roadway.

Q I see. A About — I should judge about a hundred feet south of the storehouses.

Q About a hundred feet south of the storehouses? And somewhere between the line of the road and the line of the buildings? A Yes, sir.

Q And there you saw half a dozen cars or so on fire? A Yes, sir.

Q Anything besides flame? A I seen the shells burst and flying in every direction.

Q Did you hear anything of them? A I heard the shells burst, the sound.

Q Now, did you personally do anything, or did your men do anything about getting water from any hydrants? A Yes, sir; we run in a line.

Q Where? A Down the roadway about six hundred feet.

Q What did you have it on? A We connected it up to the hydrant, tried the hydrant—at least we connected it up first and we tried the hydrant and there was no water there.

Q And then what did you do? A Well, we picked the hose up again, and the chief ordered us to take the hose up.

Q How many hydrants did you try? A Tried two hydrants.

Q I see. In the same neighborhood? A Right along the roadway.

Q Then were both these hydrants in about the same place? A Yes, sir.

Q Can you tell us about where that hydrant was? Here is the first block of storehouses. There is the second block of storehouses, and the third block. A Well, it was between—it was on the road to the pump house, towards—

Q That is opposite Pier 5? A I don't know what—

Q If the pump house is in front of Pier 5, marked "pump" on the map, is that about where you connected these hydrants? A Yes, sir.

Q And you say you got no water. Now, were you there at the time of the explosion? A Yes, sir.

John J. Hogan, cross.

Q And did you notice or observe where that explosion came from? A Yes, sir; it came about where the fire was amongst the cars. Of course, it spread a little.

Q It spread a little? What spread a little? A The fire kept spreading while we were down there, and it seemed to come right in where the bulk of the fire was.

Q I see. Were you there when there was another explosion? A Yes, sir.

Q How long after the first one was that? A I should judge—well, we had time—I was looking around to gather up my men—I should judge about twenty minutes.

Q Yes. And you have any recollection now about where the second explosion came from? A I could not say where that one came from.

Q What was the difference in the effect between the first one and the second one? A Well, the first one was tremendous and the other one didn't seem half so bad.

Q And when you say the first one was tremendous, just what do you mean? A Well, I heard the—I heard the racket there, and as though a tin roof were flying over and crashing, and after the explosion I was surprised to see all the storehouses—a number of storehouses blown to pieces there.

Q And after this explosion happened, did you see anything flying around in the air, of any kind? A Not after.

Q At the time of the explosion? A No; I was thrown down on the ground and it took me a few minutes to get up and get myself together again.

Q You did not notice it.

Mr. Stallman. Cross examine.

Cross examination by Mr. Rockwood.

Q Captain, is the Black Tom Yard under the jurisdiction of the Jersey City Fire Department? A I believe it is; yes, sir.

Q Well, you were connected with Company 8, weren't you? A Yes, sir.

Q How many men did Company 8 consist of at this time? A Eight men.

Q What apparatus did you have? A I had a steam fire engine and a hose wagon tender, combination chemical.

Q Combination chemical tank? A Yes, sir.

Q And a steam engine? A Yes, sir.

Q And did you have hose, too? A Yes, sir.

Q How many feet of hose? A A thousand feet.

Q And what was the diameter of it? A Two and a half inch.

Q So it would fit any city or other hydrant, fit any hydrant? A Yes, sir.

Q Had you ever been down at Black Tom before? A Yes, sir.

Q And you know that there was a city hydrant down there? A They were supposed to be city hydrants, city water.

Q Well, you knew they were, and city water? A Yes, sir.

Q Do I understand you to say that there was not pressure enough to give any water that night? A No, sir.

Q Do you swear positively that you coupled the hose to the hydrant? A Well, one hydrant we did.

Q What one was it? A The city hydrant.

Q You coupled to the city hydrant? A Yes, sir.

Q And there was not enough pressure from the city hydrant to throw any water out so that you could do anything with it? A No.

Q Well, now, as a matter of fact, you were several hundred feet away from this fire, weren't you? A Yes, sir.

Q How many, Captain? Five or six hundred feet away? A I should judge about that.

Q What? A About that; yes, sir.

Q And here were cars burning and explosives going off and shells going in the air. Now, what did you do with your men? Did you tell any of your men to go down there? A Well, we started down and we couldn't get the water. So the chief ordered us to pick up our line and go back again.

Q You were ordered not to go down there? A Yes.

Q So you did not go down? A We made an attempt but we didn't get there; no, sir.

Q No. And isn't it true that when you got there the explosion was going on at that time? A The shells; yes, sir.

Q Explosions going on? A Yes, sir.

Q That is when you first got there? A Yes, sir.

Q You saw in a minute that it was a very dangerous place, didn't you? A It was a dangerous position; yes, sir.

Q To be perfectly truthful about it to this jury—do not misunderstand my question—you did not do a single thing, or try to do anything to put out the fire, did you? A Oh, yes, sir.

Q What did you do? A We tried to line in and get water, and I seen we couldn't get the water, so there was no use going down there.

Q But you did not take your engines down? A Our hose wagon we had to drive down to line it.

Q You did not take your engine down? A The engine?

Q Yes. A No, not at the time.

Q No. All you had was your hose wagon, wasn't that all? A Yes, sir.

Q What? A Yes, sir.

Q What? A Yes, sir.

Q And isn't it true, now, so the jury will get the facts, that it was over two hours before you got any engine down there at all? A I could not say what time it was.

Q Well, isn't that true? A I could not say what time the engine came.

Q What is your best recollection? A The engine came there after we were working.

Q What is your best recollection about how long it was before the engines reached there? A That I could not say.

Q Well, it was after the second explosion, wasn't it? A Yes, sir.

Q What? A Yes, sir.

Q In other words, the damage had all been done before your engines got down there; that is true, isn't it? A It was a considerable fire after that.

Q In the warehouses? A Yes, sir.

New Jersey State Library

Q But the damage to the pier had all been done before your engines ever got down there? A I don't know whether there was any fire on the pier; just the freight cars that I saw burning.

Q You did not think it was advisable to take the chance of your life on this night, did you, in this fire? A Well, we would take a chance if we got the water. We done the best we could.

Q You did not desire to take any chance, did you? A We are taking chances every day in a fire.

Q I know, but here were a lot of explosions, weren't there? A That is part of my business. If we got the water we would have gone down.

Q What is the nearest you ever got to the fire, Captain? Did you ever get nearer than 600 feet to it? A Yes; I think we did. I was down near the end of the storehouses. When we lined in we were down near the end of the storehouses, with our line, when we started to pick it up.

Q And how near was that to the fire? A I could not say how much—

Q Well, now, the jury does not know a thing about it. How far do you say it was? A I should say within 500 feet.

Q About 500 feet? A Yes.

Q Isn't it true that the first thing you did when you got there was to telephone for help? A I went in to notify headquarters.

Q Just answer my questions. That is what you did, wasn't it? A Yes, sir.

Q You telephoned for help to headquarters? A Yes, sir.

Q And how long did it take you to do that? A A few minutes.

Q You had to leave the place where you were standing to go to the telephone, didn't you? A Go to the telephone.

Q Where was the telephone? A Just in off the roadway, alongside of the pump house.

Q Yes. Did you know that the Lehigh Valley had tanks there which that night held 200,000 gallons of water? A I didn't see the tanks there.

Q You did not see any tanks there? A I see the tanks.

Q You saw the tanks. Did you know that that had been tested just that afternoon, and that they had an excess of pressure instead of a diminished pressure? That they had an excess of pressure? A No, sir.

Q You did not know that? A No, sir.

Q Did you call upon any of the Lehigh Valley men to help you? A When I found conditions at the hydrant, I informed the chief and told him we would have to get somebody that knew something about the hydrant; that I opened the hydrants, and there must have been other valves somewhere that I didn't know anything about.

Q In other words, you had not been down there and you were not familiar with the hydrants? A Yes, as far as the hydrants; but outside of the hydrants I was not familiar.

Q You did not know anything about the method of operating them or turning the water or anything of that sort? A No, sir.

Q Why? A Because that is the company's proper—

Q Did you know that the Lehigh Valley maintained at that point a sea line running out to the water and a pumping station? A Yes, sir; I know that they had a pumping station.

Q And did you know that the man in charge of the pumping station was there that night with his pressure all up and everything ready for you to take the water if you wanted it? A I looked in the boiler room and I saw a fire under the boiler, but it had not been pulled down to my estimation; it had been banked.

Q Did you ask any of the Lehigh Valley men for any help at all? A I went to the chief and told — I went to the chief and stated my condition to the chief.

Q Just answer my question. Did you ask any of the Lehigh Valley men to help you at all or do anything? A I don't know whether—I asked two or three; I don't know whether they were Lehigh Valley men or who they were.

Q Did you go to the pumping station? A I passed the pumping station.

Q Did you go in it? A No; I didn't go in it.

Q No. Did you ask the man in charge of the pumping station if his pressure was right, or if you could connect with it? A I didn't see anybody around there.

Q Do you know Mr. Sloan? A I know him from coming here; yes, sir.

Q Did you see the pump going there in the pumping station? A No, sir.

Q Operating? A No, sir.

Q Will you swear they were not operating? A I did not hear the exhaust. If they were operating they have a very strong exhaust.

Q Did you step inside of the door? A No.

Q No. Could you tell without stepping inside of the door whether the pumps were operating or not? A You could hear the exhaust.

Q By what you could hear on the outside? A Yes, sir.

Q And shells were popping all this time? A Yes, sir.

Q Now, this was a very sudden and unusual fire, something that you never had had any experience with before; is that right? A Something out of the ordinary.

Q Very much out of the ordinary? A Yes, sir.

Q It happened very unexpectedly and quickly? A Yes, sir.

Q And you did the best you could in the emergency? A Yes, sir.

Q But, of course, you were under the orders of your chief? A Yes, sir.

Q And your chief told you not to go down where the fire was? A Yes, sir.

Q You said that you opened up the hydrants before you coupled on to it, did you? A Yes, sir.

Q To see if there was water pressure? A On one hydrant.

Q One city hydrant? A Yes, when we coupled up.

Q When you saw the city did not have any pressure on its hydrant did you turn to the pumping station and call attention to that fact? A No, sir.

Q Well, you were pretty well excited and disturbed, and everybody else was that night, I presume? A Well, it was a fire with conditions—wasn't the same as we generally go in.

Q It was not like any ordinary fire, was it? A But we, of course—we—in those railroad yards there is conditions that are different from the time we have been there before. They change from one place to the other, and hydrants and systems change there, and so on. I know fires, when I went there before, why, there was always somebody there that would—that was ready to help us out.

Q Yes, did you look around for other hydrants to connect to after the chief told you to go away, or did you just try this one, and that is all there is to it? A I tried two hydrants; I tried a city hydrant, fresh water hydrant, and one of the Valley hydrants.

Q Yes. A And there was no water when I opened the valves, and there was other valves I thought that I see, two stanchions there, and didn't know what that connected with, and they may have connected with sprinklers or something there.

Q Do not misunderstand this question, because I do not mean to say anything to offend you at all. Wasn't it your business to know what those uprights connected with? Wasn't that a part of your duty? A Not outside of our hydrants; no, sir.

Q Shouldn't you have known before you went down there, by reason of the information you had received and the study that you had had as a captain of the department, just what every condition was down there, so you could fight that fire intelligently? A That was not in my inspection district. If I had been inspecting there, why, I might have.

Q Well, should the chief have known of that? A The chief—the captains make inspections, but they have their regular districts.

Q You have never made the inspection of that district? A It was not in my district.

Q Who had made inspections? A That I don't know.

Q So that when you arrived there that night at Black Tom Island you were practically a stranger to conditions on that island, weren't you? A No, sir; I had been there before.

Q But you were practically a stranger with reference to a knowledge of how to operate the water there? A Well, if there was water in the hydrants, why, I could have got water from the hydrants, but outside, if there is anything shut off from the hydrants I didn't know anything about it.

Q If the hydrants were shut off? A If they had been shut off in the pump room.

Q If they were shut off or needed to be put on from the pump room, you didn't know about it? A No, sir.

Q You had no knowledge on that subject? A Yes.

Q Now, I want to ask you, and I mean no offense, wasn't it your duty to have knowledge on that subject? A No, sir.

Q Well, I guess that is all. Don't you know that some of the men of the department had been down there shortly before this fire and made a complete inspection? A No, sir.

Q You were never told anything about it? A No, sir.

Q Did you know that the American District Telegraph Company had installed there their electrical system of inspection? A No, sir.

Mr. Stallman. I object, if the Court please. It doesn't make any difference, it seems to me, if this witness knew that or not. He testified to all that he did and all that he found there. Now what the American District Telegraph Company did—

The Court. You are only wasting time about it, because he said he did not know.

Q You did not know about it? A No, sir.

Q Outside of the fact that there were some hydrants down there you didn't have any other knowledge of the fire protection of the island? A I knew there was a pump house there and a private line there which was supposed to be put there for fighting fires, but outside of the hydrants I knew nothing about it.

Q Was there a line to pump water from the bay maintained by the Lehigh Valley? A That I couldn't say; there must have been, if they had a pump house there. I understood they—

Q You understood they did? A I understood they pumped salt water.

Q Was there a fresh water line in addition to that maintained there by the Lehigh Valley, with tanks? A There was a fresh—

Q With tanks? A There was a fresh—what we call the fresh water hydrants. I am not sure whether they were city hydrants or maintained by the Valley.

Q You don't know about that? A No, sir.

Q The pumping station was a large pumping station, wasn't it? A Yes, they had a good sized pump.

Q I want to be sure on one point. You did not go into the pumping station and ask the man in charge to give you pressure, or anything about it? A I didn't see anything.

Q You didn't go inside the door? A No, sir.

Q All right. That is all.

Re-direct examination by Mr. Stallman.

Q While you were there trying to get water did anybody from the Lehigh Valley Railroad Company come up and direct you where you could find water? A No, sir.

Q Did you see anybody excepting your men making any effort to put out that fire? A No, sir.

LEWIS TREGER, sworn.

Direct examination by Mr. Stallman.

Q Mr. Treger, you are a member of the fire department? A Yes, sir.

Q You were at the time of the Black Tom explosion, were you? A Yes, sir.

Q You go down with Captain Hogan? A No, sir.

Q Who did you go down with? A With our company.

Q You were still a different company? A Yes.

Q What time did you get there? A I should judge around about 1:20.

Q What was the nearest point to the fire? A The last driveway. The last driveway goes according to the block.

Q The last driveway, that would be M and N on the map, between the second and third blocks? A Yes.

Q Opposite Pier 6? A Yes.

Q What did you see burning? A I seen cars, to my knowledge.

Q How many? A Well, I couldn't judge. About a dozen or so. Between half a dozen and a dozen.

Q Just where were they? A Well, looked to me to be right off the roadway—right ahead of the roadway.

Q To your right or left? A Well, little bit to my left facing out towards the bay.

Q You thought they were to your left. Were you there when the explosion occurred? A Yes, sir.

Q The first explosion I mean? A Yes, sir.

Q And did you observe where that came from? A It looked to me right ahead on the roadway.

Q Well, with reference to the pier, where did it come from? A Right from about the heart of the fire.

Q The heart of the fire? A Yes.

Q What was the effect of that explosion? A The effect of the explosion was expansion, I suppose—the effect, as far as the way I can explain it, would be that it blew things apart, and loosened up things around there.

Q What kind of things? A Well, such as cars and buildings—

Q What makes you think that the cars were blown apart? A Well, because they were all in pieces.

Q Did you see the pieces? A Well, yes, after I seen the metal laying there, and woodwork what was burned from them after the fire.

Q You saw burned woodwork from car bodies, you mean? A Yes, car bodies.

Q Where was it? A On the railroad tracks.

Q Did you see it on the ground or flying through the air, or where? A I didn't see anything going through the air, because everything went black when the explosion—the explosion about to take place.

Q After the explosion was over you mean you found parts of car bodies lying around you? A I didn't look for them, I seen them laying there.

Q Now, did you hear a second explosion? A Yes, sir.

Q Or see a second explosion? A Yes, sir.

Q About how long after the first one? A Well, I should judge inside of an hour; I couldn't just exactly say.

Q Have you any recollection of about where that one came from? A Somewheres about the same place.

Q What was the effect of that explosion? A Pretty near on the same principle as the first one.

Q Now, when you got down there did you do anything else or did you see anybody else doing anything about getting water, connecting hose or doing anything towards putting out that fire? A When I arrived down there, I was tender driver, driving the tender to 16 engine, and was ordered by the captain of the company to line in, and stretch in the hose in from the hydrant. They pulled the hose off the hydrant. I stretched in down the gangway, down as far as that gangway, when I was told to stop. I stopped there, and they pulled off the hose, and they broke the connections then, and I pulled to one side.

Q You pulled your hose wagon, whatever it was, down this driveway? A I lined on the roadway down from the hydrant along the roadway.

Q Did you see any of your companions connecting up to a hydrant? A No, sir; I couldn't see that, because I was driving ahead. We have a rope on the hose, attached on, and we drive right on.

Q You were nearer the fire than anyone else? A No, sir; I only drove down to that gangway in between them block of stores.

Q Anyway, you did not get any water through your end of the hose? A No, not as I know of.

Mr. Rockwood. I object. He hasn't said that, and I object to that as leading. He said that he was called off, that is all.

The Court. I think I will overrule the objection, because it came after the question had been answered.

Mr. Stallman. That is all.

Cross examination by Mr. Rockwood.

Q You said you were told to stop; who told you to stop? A Captain of the company, told me to hold fast where I was. The captain of the company.

Q Who was the captain? A Captain Mathison.

Q Of your company? A Not the company I am in now. The company at that time.

Q The company you were in at that time? A Yes, 16 engine.

Q How near were you to the fire when he told you to stop? A Well, down to that gangway there.

Q How far were you in feet from the fire? A Well, I should judge around that block of stores, about five hundred feet.

Q You were five hundred feet from the fire, and at that time were the explosives going in the air? A Yes, sir.

Q It was a very dangerous place, wasn't it? A Looked to be.

Q Yes. What did you do when he told you to stop? A Well, I stood there by my team of horses, when I was ordered to—

Q Stood right there? A Yes, waiting for further orders.

Q Did you get further orders to do anything? A Later on I did.

Q Yes. After the explosion? A Yes.

Q But not until after the explosions? A No, sir.

Q So between the time you were told to stop and the time of the second explosion, you stood there and did nothing? A Oh, yes; the second time—the first explosion and second explosion we lined in between the first explosion—we stretched in another line of hose.

Q That is an hour? A Inside of an hour.

Q Inside of an hour? A Yes. We did stretch in on the ground before the first explosion.

Q What hydrant did you connect to? A One on the roadway there.

Q What was it, city hydrant? A I could not say.

Q Before the first explosion did you have any engines hooked up? A No, sir.

Q You say no, sir, do you? A Now, here now—steam fire pumping engines?

Q Yes. A No.

Q Eh? A No, sir.

Q Did you have any engine of any character hooked up before the first explosion? A No, sir—now, I had no authority or anything like that on that as far as the engines; I am only private in the department.

Q Just answer the question. Before the first explosion did you have any engines of any kind hooked up? A I don't know nothing about what the others were doing. No, I didn't.

Q How do you answer the question, yes or no? A I don't know.

Q You don't know. Were you sworn in the action of the New Jersey Fidelity Glass & Insurance Company against the Lehigh Valley? A I believe I was, yes.

Q And did you testify as follows—page 231: "Q And you are sure that was before the first explosion? A Yes, sir. Q Did they have any engines hooked up? A Yes, sir. Q Just taking water out of the plug? A Out of the hydrant."? A I don't remember ever being called to say that, not before the first explosion.

Q Did you testify to that? A Not as far as I—at the—

Q Answer the question now. Did you answer what I have read? Is that your testimony? A I don't recall saying that before this first explosion, about engines being hooked up to a hydrant.

Q Will you say you did not swear—you did not say what I read? A I would not swear, because I can't recall it.

Q You can't recall it? A No, sir.

Q What did you do? Did you have engines hooked up before the first explosion? A We didn't have engines hooked up be-

fore the first explosion—that is the 16 Engine. That is 16 Engine, we didn't have no engine hooked up to the hydrant—that is 16 Engine Company.

Q What other companies were down there? A I understood there was 8, 10, 16 and 5-truck.

Q How many men altogether? A That is something I don't know.

Q You don't know? A No, sir.

Q You said the second explosion seemed to come from the same place? A Yes, around the same direction.

Q Also that about an hour elapsed between the first and second explosion; is that correct? A Inside of an hour.

Q Did you see the Lehigh Valley men down there taking out the cars? A Yes.

Q How did you regard this, as a very dangerous place for men to go down? A Well, yes.

Q With these shells popping? A With the shells.

Q When you got the order to stop, why, you simply stopped? A I stopped and waited for further orders.

Q That is all.

FRANK CAMPBELL, sworn.

Direct examination by Mr. Stallman.

Q Mr. Campbell, you were a member of the Jersey City Fire Department at the time of this Black Tom explosion? A Yes.

Q What company did you go down with? A 10 Engine Company.

Q How near did you get to this fire? A About four hundred feet.

Q What did you see burning? A Why, freight cars, directly on the road in front of me.

Q How many of them? A I couldn't say exactly, about four or five, I should judge.

Q And did you stay there until the explosion happened? A Yes, sir.

Q And where did that explosion come from, if you know? A Right where the fire was.

Q And after that was there another explosion? A Yes, two.

Q About how long after? A A half hour, or three-quarters, I guess it was.

Q Where did it come from, if you know? A Exactly in the same spot, it seemed to be.

Q Now, after you got down there did you personally do anything towards connecting up a hose, or did you see any other men of the fire department do anything? A When we arrived down there we pulled up at the crossing, the first block of storehouses from the river end, and we stood there, I couldn't say, a couple of minutes we were there, and we were told to line in, and 8 Engine Company tried to get water, 10 Engine tried to get water, and they were told to pick up again, they couldn't get no water.

Q Did you see any firemen connect a hose with a hydrant? A I seen Jimmie Connell, trying the hydrant—a member of my company.

Q What do you mean by trying the hydrant? A Why, he opened the outlet cap, took the outlet cap off and then turned the valves around.

Q Did any water come out? A No, sir.

Q How many hydrants did you see him do that with? A Three.

Q And did you see anybody from the Lehigh Valley Railroad around there or anybody from the company giving any instructions about getting water? A No, sir; I did not.

Q Did you see any efforts being made to put out the fire by anybody excepting the firemen of the Jersey City Fire Department? A No, sir; I did not.

Cross examination by Mr. Rockwood.

Q What time did you get down there, Mr. Campbell? A Why, about twenty minutes after one o'clock.

Q Twenty minutes after what? A After one o'clock.

Q And what part of the pier did you station yourself at? A In the gangway between the first and second block of warehouses.

Q That is way down here? A No, sir; down further—right there.

Q In here? A Yes.

Q That is you were in this space between M and N? A No, sir; on the runway, the roadway.

Q Up in here? A Yes.

Q Between M and N? A Yes.

Q How far was that from that point where you say you were down to the fire? A Well, as I say, of course, it is four hundred feet, as far as I could—

Mr. Rockwood. Has anybody got a scale; I would like to trace this out.

Mr. Stallman. Here is mine.

Mr. Rockwood. Mr. Dixon, will you do it. You stop my pencil when I put it where you say you were. Is that about right?

A Yes, right around there, but not exactly on the crossing, but a little bit beyond the net, little bit further down this way.

Q Is it that way? A No, sir; back this way, right around there. Right there.

Mr. Rockwood. Now, Mr. Dickman, measure that to this celebrated tack, and see.

Q How many feet is that from there? A Thirty-four inches.

Mr. Stallman. 850 feet.

Q 850 feet, Mr. Stallman says. Is that right? You were 850 feet away from the fire? A Of course, you asked me—I could not accurately give you the distance—I said 400 feet.

Q You were mistaken about that, weren't you—now? A I guess I may be.

Q About 850. Now, what did you do when you got there, just stood there? A When we arrived there?

Q Yes. A As I said before, we stayed there for a couple of minutes, I could not say how many, minutes, after we arrived there. 8 Engine company was ahead of our company. We was the second company in; of course, as I say, after that we were ordered to try to get water.

Q How many men did you have with you? A Five men in our company.

Q What apparatus did you take down? A Just the hose tender.

Q How many feet of hose? A 1,000 feet.

Q Of two and one-half inch hose? A Yes, sir.

Q And you got there at about what time? A About twenty after one o'clock.

Q And at that time how long had the fire been burning? A I could not say; I did not know.

Q You do not know? A No, sir.

Q And you saw this man at the hydrant, you say? A Yes.

Q And what did he do; he unscrewed the valve or cap? A The outlet cap; yes, sir.

Q And you testified to the jury that no water of any kind came out at all? A There was a little water came out of one, I do not know whether it was the second, third or first, but it was one of them. I could not say exactly which one it was.

Q Were those city hydrants? A I could not say whether they were or not.

Q You do not know? A No, sir.

Q Were you familiar with the fire apparatus or the fire equipment on Black Tom Island? A No, sir.

Q Before you went down there? A No, sir.

Q Had you ever been there before? A No, sir.

Q So you had no knowledge of any kind before you went down there? A Not about that; no, sir.

Q Did you know of the pumping station that the Lehigh Valley maintained there and the two hundred thousand gallon tanks? A No, sir.

Q Did you know there was a sea line from which the water could be pumped up from the bay? A No, sir.

Q And a fresh water line? A No, sir.

Q Now, are you trying to tell the jury that you did not put the hose on the fire because you did not get water; is that what you are trying to say? A Well, if we had of got water, I guess we would have been killed—

Q Is that what you are trying to say, that you did not go down to the fire because you did not get water? A No, sir.

Q You know the truth is, you were told not to go down there at all, and you did not want to go anyway; is not that the fact? A No, sir; we were not told not to go there.

Q Wait a minute.

Mr. Rockwood. Where is that other evidence?

Q You testified here, didn't you? A Yes.

Q You testified previously? A Yes.

Q Did you say—

Mr. Stallman. Page and record?

Mr. Rockwood. 246 of the Fidelity.

Q Did you say: "The chief ordered us back and said we would only burn if we stayed there"? A Yes—after we could not get no water.

Q You said that, didn't you? A Yes.

Q And what else did you say about Mr. Gately, the chief—you know that Gately ordered you away, don't you? A Yes, sir.

Q Did you hear him testify here that he thought it was a dangerous place for his men, and that that was the reason—

Mr. Stallman. I object to that.

Mr. Rockwood. I will not press it if you object to it.

Q You know perfectly well, don't you, that the reason you men did not go down there was because you considered it a dangerous place? A Yes, sir; it was dangerous.

Q And that is the reason you did not go, isn't it? A If we were ordered to go, we would have to go, I guess, if we were ordered.

Q That sounds good here in the court room, and I am making no reflection on any man? A Yes.

Q But your company, as well as everybody connected with that fire, stayed away from it because they thought they would take their lives in their hands if they went to it?

The Court. How can he say that?

Q You heard your chief say that? A I heard the chief say that if we had got water, without a doubt some of us would have got killed because we had to do our duty.

Q But you heard the chief say what I said? A Yes, sir; I did.

Q Now, after the first explosion, you have testified previously that something fell on you. What was it—fell around you? A Fell around me?

Q Yes. A After the first explosion I was knocked on the ground for a few seconds, and there was dirt and stones and everything else flying around, coming down on top of me then.

Q Was the dirt wet? A Yes, sir, it seemed to be wet.

Q Was it black dirt? A Well, I could not tell you the color of it.

Q Did it appear to be black, wet dirt? A Everything was black.

Q Can you testify where that explosion came from? A As far as I know, of course, it is where the fire was, as far as I could tell.

Q Are you so accurate about that that you can be sure? A Well, the only thing I can say is, that I seen a colored ball going up in the air, and then all of a sudden I did not know anything after that.

Q Then the second explosion came within about half an hour or an hour? A Something like that, yes.

Q Did any wet, black dirt come with that explosion? A It was not as severe as the other; it did not throw the dirt up as far as the first one did, I don't think.

Q Did you see Mr. Dickman there that night? A Mr. Dickman? No, sir; I do not know him.

(Counsel indicates a man in the court room.)

The Witness. Oh!

Q The gentleman right there? A I may have seen him; I do not recall it.

Q Don't you remember seeing him? A I remember seeing him, but of course, I cannot say positive, I did. I seem to place him now some way or other, but I would not be positive in my identification.

Q Did you see any other Lehigh Valley men there? A Yes, sir; I seen this gentleman down here, Mr. Kane, I think his name was.

Q He was a watchman? A Yes, sir.

Q And you saw the grain boat captains? A I do not know the grain boat captains.

Q Did you ask Kane to tell you anything about the water facilities there? A No, sir; I did not; I seen him running around there; I do not know what he was doing.

Q As a matter of fact, there was not any attempt made to find out about the water facilities at all, was there? A I could not say.

Q It was considered too dangerous for any man to go there, and that was all there was to it? A It was dangerous.

Q That is the truth? The jury wants the truth here? A Of course, it was dangerous.

Q I say, that is the truth. It was considered too dangerous for the men to risk their lives and everybody stopped, isn't that so? A Of course—

Q Come now—

Mr. Stallman. I object. This witness can answer for himself.

The Court. I have marveled why you have not objected before. He cannot answer for the world. He can answer for himself.

The Witness. It was dangerous, yes.

Frank Campbell, re-direct.

Q It was dangerous, and any man that went in that fire risked his life, didn't he?

Mr. Stallman. I object to that, because this witness can only speak for himself.

The Court. I sustain the objection, as the question calls for a conclusion.

Q If you had gone near the fire, from the conditions that were there, as an experienced fireman, from the explosives and the conditions, would you have risked your life? A I would have risked my life, yes.

Q That is all.

Re-direct examination by Mr. Stallman.

Q Did Mr. Kane tell you where you could get water when you saw him down there? A I did not hear that.

Q Did Mr. Kane tell you where you could get water when you saw him down there? A No, sir.

By the Court.

Q Did anybody else tell you where you could get water in connection with the Lehigh Valley Company? A No, sir.

Q Did they tell you anything? A No, sir; they did not say anything to me. The officers was there, they were trying to do that, get the water and find out as far as I understand.

Q What officers? A The officers of each apparatus that was there, like the chief and the captains.

Q You mean the fire department officers? A Yes, sir.

Q What I asked you was, whether anybody from the Lehigh Valley Railroad told you anything about the water supply or how to use it, or where you could get it, or what you could do with it? A No, sir; nobody said anything to me.

Q Or to anybody in your presence? A No, sir; I did not hear any.

The Court. We will adjourn until ten minutes after two.

ADJOURNMENT UNTIL 2:10 P. M.

AFTERNOON SESSION—2:10 P. M.

EBENEZER W. CLOSTERMAN, sworn.

Direct examination by Mr. Stallman.

Q Lieutenant, you were a member of the Jersey City Police Department? A Yes, sir.

Q And you were at the time of the Black Tom fire? A Yes, sir.

Q Where were you when you first learned of the fire? A I was at Hudson and Orient avenue.

Q And what time was that? A At 1:10.

Q And did you go down to Black Tom? A Yes, sir.

Q And what time did you get there? A About 1:35.

Q And what did you see? A On my way down, sitting on the front of the wagon, I see about fifty freight cars burning.

Q And where were they? A They were on four or five tracks, just off the lower end of the brick warehouses.

Q Speaking, then, of the easterly end of the warehouses, the end toward the bay? A Toward the bay; yes, sir.

Q 1:35, you say that was? A Yes, sir.

Q And did you stay there until the explosions occurred? A Yes, long after it.

Q About what time was that? A The first explosion was 2:08.

Q Eight minutes past two? A Eight minutes past two, yes.

Q Will you describe that explosion to the jury? A Well, that is not an unpleasant—that is not a pleasant thing to do, but I will try. I was standing about three or four hundred feet west of the fire; I was on the roadway about fifty to one hundred feet east of the driveway leading into Pier 5. I was watching the fire at the time. The Lehigh Valley had just backed in two trains which they were using to draw out the cars that were on our side of the fire, that were not burning, and there were two brakemen, one on each train, standing on about the third car from the end of the train nearest the fire. I was expecting to see one of these men or both of them struck by the flying shells and

things and knocked off the train. While I was watching them I see a ball of fire leave the center of the fire on a column of smoke; the smoke seemed to push the ball up about 150, maybe 200 feet, but about 150 feet. The ball then left the smoke and went up about fifty feet further. It opened up; it did not bust; it just slowly opened up. It seemed to draw the life out of the air, hold everything very tight. I know I could not move nor breathe for about ten seconds. Then I heard the report. This report seemed to loosen everything up. The two upper stories of the lower warehouses crumbled up, slid away. Some of the firemen and policemen that were with me were blown quite a distance. I turned and I started to get away from the fire. Before I went far the air was filled with cinders and dirt from the roadway. That was mixed with flying sparks, like you see from fireworks—you might say fiery snakes, and that, going through the air. I went a little ways, was crushed down, got up, went a little further, went down again a number of times, until I got up to fifty feet away from the fire, and as I was going down that time, somebody yelled, "Look out for the horses; look out for the apparatus." Looking back against the glare of the fire, I see these horses coming to me, and I see I didn't have a chance to get up, so I rolled to one side. I could not get out of their way. I was wedged against the running board of the fire truck. Fortunately, the horses were stopped directly in front of where I lay or I would have been damaged by the wheels of the wagon. They were taken away later, and I got up, followed them up. The air seemed to clear suddenly—seemed to let everything fall. I went back looking for my cap. Then I see the damage that was done by the explosion.

Q Which direction did the upper story of the warehouses slide? A They slid away from where I was standing up towards, you might say, towards Staten Island.

Q South? A Well, in a southerly direction.

Q And then after that was there another explosion? A There was a second explosion; yes, sir; at 2:30.

Q About 2:30? A Yes, sir.

Q And how did that compare in external nature to the first one? A Well, that I did not see. I was in that driveway leading to Pier 5, taking out a man from the ruins at the time. All I can say, that it made quite a noise, but I did not see any damage that was done by it.

Q At that time, did you observe anything similar to—things flying through the air, or the concussion of the air? A Where I stood, taking this man out, the upper two stories of the end warehouses east of the driveway leading to Pier 5 stood solid—I mean by that, just the end wall; there was no side wall supporting it. The second explosion did not disturb a brick in that warehouse, or that wall, rather.

Q Is that all it did to that wall? A It did not do anything to the wall at all.

Q Just dislodged one brick? A Did not do that; did not dislodge a brick.

Q Now, did you see the members of the Jersey City Fire Department there? A Yes, sir; they were there before I arrived.

Q And were they nearer to the fire than you were, or were you nearer than they were? A No; they were inside of my fire lines. Of course, my position there is to erect fire lines to keep the public from interfering with the firemen. Naturally, we have to be outside of where the firemen are.

Q How much nearer to the fire were the firemen than you? A Well, they were in and out there, probably I would say, fifty, maybe a hundred feet at different times, but they were going and coming.

Q Did you see any fire hose stretched or being stretched? A Well, I did notice two lines of fire hose leading in there from where I stood, watching the fire.

Q Now, during all the time that you watched that fire, were these fireworks shooting off? A While I was watching the fire, yes, up to the main explosion—the first explosion.

Q I see. Did you see any of the Lehigh Valley employees there at that time while you were there? A No, I could not just distinguish them as Lehigh Valley employees. The first one that I might say that I see, that I knew, was—as near as I can place

the time, between three-thirty and four o'clock; and then I noticed Mr. Dyckman or Dickman. He was coming down from the city end of it with a Mr. Mulligan—I don't know—I think he was superintendent or general superintendent; and at that time I was clearing the yard and naturally I had to pass them through the policemen that were clearing the yard.

Q Did you see anybody outside of the Jersey City firemen making any effort to put the fire out before the explosion? A Well, I might say I don't know as I seen anybody making an effort to put the fire out. It just depends on what you mean by an effort, Counsellor.

Q Well, did you observe down there any fire apparatus outside of the apparatus of the Jersey City Fire Department? A No, none at all. The only effort you might say that I see that was made, there were several firemen walked over to the end of the fire hose and raised it up and water did come out of it to the extent of probably ten or fifteen feet; that is about the only effort that I know, and the Lehigh Valley, two trains pulling out the cars that were near the fire.

Q And you say the firemen were holding up hose. Were they Jersey City firemen? A Several around there, over there at different times; that is several went over there at different times. They may have been the same men, they may have been different men.

Q Did you identify the firemen? A Jersey City firemen, yes; they were the only firemen that were down there on the island. There were New York firemen, but they were outside on the boats, outside the island.

Q Did you, at the time of the explosion, see any fragments of freight cars? A Yes.

Q Just what did you see? A That is painful. Well, when the explosion went off at 2:08, as I say, I was standing two or three hundred feet away—as I say, this ball went up and the smoke pushed the ball up and the ball left the smoke, and when the report went these buildings slid away, shells, pieces of cars, timbers—everything was flying in all directions.

Q And was any of that stuff that was flying in different directions—was any of it burning? A Well, I didn't notice at the time; though as I went back afterwards — when we went back afterwards looking for Doherty, I noticed that the fire was in all parts of the yard, little fires all over; so there is no doubt that it was burning.

Mr. Stallman. Cross examine.

Cross examination by Mr. Rockwood.

Q What time did you say you arrived at the fire? A About 1:35.

Q Was anybody with you? A Yes, sir.

Q Who? A There was patrolman Shaefer, who was chauffeur of the patrol wagon. There was patrolman Tiplady, Walsh and Meinholz who was with reserves—and there was patrolmen—no, Tiplady, Walsh and Meinholz was from post, and Doherty, Tackler and Hamilton, if I remember rightly, was from reserves.

Q The fire company had been there for some time before you got there? A That I don't know; they were there when we arrived.

Q They were there when you got there? A Yes, sir.

Q What they did before you got there you don't know? A Not the slightest idea.

Q There is not any doubt of the proposition, though, that not even the firemen tried to put the fire out, did they? A That I don't know, only I spoke of the effort that I seen them make.

Q You said, as I understood your testimony—you said no one was making any effort to put out the fire. That is correct; isn't it? A I said that depended on what the counsellor meant by effort, and then when he explained I said the only effort I seen was the firemen walking over, lifting up the hose, and getting about ten or fifteen feet of water out of it, and that the Lehigh Valley had two trains pulling out the full cars that were on our side of the fire.

Q That was all you saw? A That was the only effort I see was made by anybody to put the fire out.

Q Outside of that nobody was doing anything at all? A Not to put the fire out.

Q Do you know to what hydrant they were attaching this hose that you saw being used? A No, sir; I am only speaking of the nozzle end of it.

Q You had no knowledge of the water facilities or fire fighting apparatus down there? A No, sir.

Q There was no reason why you should? A No, sir.

Q Your duty was simply to establish a line to keep out people who had no business there? A That is the idea exactly, sir.

Q And that was a very sudden emergency, that fire, wasn't it, an unusual occurrence? A Well, I don't know what you mean by a sudden emergency, or unusual.

Q Well, it was an unusual thing to have explosives of that kind afire, wasn't it? A Well, it was the first time it ever happened in Jersey City.

Q And yet that pier has been used for the handling of explosives by the Lehigh Valley Railroad for a good many years, hasn't it? A Not to my knowledge.

Q Do you know anything about it? A Not to my knowledge; no, sir.

Q Do you know how long that pier was used for the handling of explosives prior to the time of the fire? A I don't know as it was ever used prior to the fire.

Q And you do not know that it was not, do you? A No.

Q Have you any knowledge of the subject at all? A No, sir.

Q Do you know that explosives also came over the Dock 19 of the Jersey Central? A No, sir.

Q Your jurisdiction, while it extended down as far as Black Tom Pier, did not require you to go over it? A No, my duties were not that. My duty is going around visiting the men on post to see that they are tending to their duties properly. That night I happened to be detailed to the Fifth Precinct or I would not be there.

Q I see. A I was detailed there and naturally I took charge of the things that happened in the precinct during the time I was in it.

Q So that you had no knowledge previously, not much? A I had previous knowledge of Black Tom as a boy born and brought up in Jersey City.

Q General knowledge? A General knowledge I had.

Q For instance, you did not know the fire alarms or the hydrants? A No, sir.

Q Or the tanks? A No, sir.

Q Or the underground water mains? A No, sir.

Q Or the connections with the sea or anything like that? A No, sir.

Q And, of course Black Tom is a pretty large place, isn't it? How many acres are there in it? A Well, it is a pretty large place now. There was a time when it was a small piece of land. It had been filled in all around, made quite a place.

Q Of course we are speaking of this time now, how large was it at this time now? A Well, I could not tell you that.

Q Well, thirty or forty acres, wasn't it? A I am not up on farming; I could not tell you anything about an acre from the looks of it, but it is quite a place. I would judge it is about —speaking from the—from the outside fence in, I suppose it is three-quarters of a mile possible.

Q Yes. A That is from the outside; that is in towards Jersey City, I mean.

Q How near did you get to the fire? A I got within three or four hundred feet of the fire; possibly fifty feet closer.

Q Then, as I understand, you admit yourself that you were the nearest one to the fire of any man there? A No, sir.

Q What? A No, sir.

Q Was there any man nearer than you? A The firemen were inside of my fire line.

Q They were nearer than you were? A Yes, sir.

Q And that you are sure about, too? A Yes.

Q Let us take the map and look at it for a minute. Now, where do you say the fire was? This point that Mr. Stallman has designated, is that a fair— A No, sir.

Mr. Stallman. I did not designate that.

Mr. Rockwood. What?

Mr. Stallman. I did not designate that.

Q Is that a fair place? A No, sir.

Q Where do you say the fire was? A Off the end of the warehouses.

Q Down here? A Yes, sir.

Q So the fire you are talking about is the fire down here near the storehouses? A Yes, sir; in front of that—not the small warehouse, the other warehouse; the second warehouse in—the next.

Q The one marked Q? A Yes, sir.

Q This one? A The corner of the warehouse; that corner.

Q The point of that warehouse marked Q is where the fire was? A That was about the center of the fire.

Q Yes. A There were four or five cars above that which don't show on the map. And there is four or five cars back of it that was on fire on each track; that is the fourth track; there were about fifty cars in front of these that was burning that don't show on the map.

Q Right in front of warehouse Q? A Yes, sir.

Q That is where you say the fire was? A I say the corner of that warehouse was about the center of the fire, as it was burning at the time I see it.

Q Let me see if I get you correctly now. The fire that you are talking about is the fire that was on the tracks about in front of the corner of the point Q, of the warehouse? A The center of it was there, yes.

Q The center of it, about where my pencil is? A Yes, sir.

Q You say there were cars stationed there at the time of the accident? A Yes, sir; there was.

Q Could you be possibly mistaken about that? A No, sir.

Q No? A No, sir.

Q When you say you were within 350 feet of the fire, that is the fire you are talking about, it is? A That is the fire I am talking about.

Q Now, where did you stand, this way or the other? A I stood this way, toward Jersey City.

Q Towards Jersey City? A Yes, sir.

Q So if I put you about 350 feet towards Jersey City from the corner of the warehouse marked Q, I have got you stationed; is that right. A No, sir; you will find me up near the drive-
10 way leading into Pier 5.

Q Well, Pier 5 is right down here? A Yes, sir.

Q What? A Yes, sir; that is Pier 5.

Q Is that where you were? A No; I was in front of the storehouse down on the roadway. Will I come down and show you?

(Witness leaves the witness stand and goes to the m
on the blackboard.)

Q Take my pencil and just show me where you were. Point out where you were. A When we arrived at the fire we stopped
20 here.

Q Pointing to a point between Warehouses F and G? A I stood right here by Pier 5.

Q Being the driveway leading into Pier 5? A Yes, sir.

Q Is that correct? A Yes, sir. We got off the wagon. I placed my men here. This is what we call the flats. One man here, three men across the tracks here, two men in here.

Q Two men in here, meaning— A In the passageway leading into Pier 5.

30 Q Between Warehouses F and G? A Between Warehouses F and G as it shows on the map. I do not know anything about that. And after placing my men there on account of having three men from post, which if I had no occasion to keep I would have returned—I got out there to get a better view of the fire probably a hundred feet; probably to about here.

Q Pointing to a point on the upper part of the map opposite Warehouse L? A Yes. On this—of course, as I say, I don't know anything about L. I am judging the distance as I see it.

Q All right. A And seeing the fire was of such a size that I would need all my men there, I come around to this—we call it
40 the police shed; the telephone was in there.

Q That is between Warehouses F and G, opposite Pier 5? A Yes, and I telephoned to the 5th Precinct informing the Sergeant there that he would have to cover the post with three men that I had there, and coming out of there, I see this gangway here, the bulkhead as you call it. I went down this bulkhead, it was light by the illumination from this fire.

Q Yes. A I walked all the way down here.

Q Pointing to a point— A About seventy-five feet from the end.

Q Of Warehouse Q? A Yes.

Q Yes. A When I got there a shell busted on Pier 6 and the shrapnel flew, and I stood there looking around to see what it was. Fragments of shells dropped around me there. I realized that it would be foolish for me to walk to the corner of the building to look around, as I intended to do and see the fire. I turned around and went back. As I looked back, I looked here and I could see there were a hundred cars but no fire—

Q You are giving very important testimony. A I am trying to place it.

Q I know. Let me see. The time came after your arrival at 1:35 when you stood about seventy-five feet from the bottom end of Warehouse R and near point Q? A About there; yes, sir.

Q And the fire was over towards the upper end of Warehouse Q? A Yes, sir.

Q There were several cars on the track burning? A There were fifty.

Q You then being stationed, as you were, looked to the east and north, and your eye took in the whole range of the cars in this part?

Mr. Stallman. I object to counsel pointing out to the jury and this witness that the witness looked to Warehouse R, because it is manifestly impossible. He did not say anything of the kind.

Q Did you stand here and take a look over this way? I am now pointing to the north and east of the pier. A I stood at

the edge of the bulkhead about seventy-five feet from the corner of the warehouse.

J Yes, right. A From here I could see the lower yard.

Q You are pointing to the lower yard? A Yes, sir.

Q Was there any fire there? A No, sir; none at all.

Q Was there any fire where Mr. Stallman or somebody has put this little pin? A Not when I seen it.

Q And that was at the time when you were down there? A When I was there that was—why I should judge around 1:45.

Q 1:45? A About that; around that time.

Q So there was no fire in this section of the yard? A No; there was no fire in this section of the yard.

Q Leave your cane right there.

Mr. Stallman. Just hold that. (Mr. Stallman draws a line on the map.)

Mr. Rockwood. That is correct.

Q There was no fire in this section of the yard? A No, sir.

Q Above or below it, above or below this line? A What I could see, I am talking about.

Q You could not see any above or below this line? A What do you mean any above or below, Counsellor?

Q Either this way or this way. A There was no fire this side of that line. I could see across in here. I could not see through these buildings, and naturally—

Q Was there any fire above the line? A I could not see it, because I could not see around the building here.

Q Do you mean to say that if you stood here that you could not see around this point here? A How could I when I was in here?

Q No, answer my question. What you just said now—they have got that down; the stenographer is taking your testimony— A Certainly.

Q You said when you stood here and you cast your eye over this part of the yard, there was no fire there. A In the lower yard; I could see no fire in the lower yard.

Q All right; let it go at that. Now, then, was there any fire at this point where the pin is stuck in? A That I could not say, because I could not see that.

Q Could not see that? A There was a reflection from a fire in there somewhere that showed here, but there was no fire. Where I was; there was over 100 cars; there was no fire there.

Q Where were you when you heard the explosion? A Where was I when I heard the explosion? I was probably fifty to one hundred feet east of the driveway leading into Pier 5.

Q Where did the explosion come from? A It came from about in here somewhere.

Q Pointing—

Mr. Stallman. Wait a minute.

Mr. Rockwood. Keep it right there. (Referring to the cane which the witness is holding on the map.)

(Mr. Stallman makes a line on the map on the blackboard.)

Q That is where you think the explosion came from? A Yes, sir.

Q Where did the second one come from? A I don't know; I was in here digging a man out.

Q What is your impression about it? A I haven't the slightest impression. All I know is that it made a noise.

Q You haven't any impression about it at all? A No, sir; not the location.

Q Now, when you say you got within 350 feet of the fire you were back of the warehouse, the warehouse between you and the fire? A No, sir; I stood here on the roadway, right here.

Q That is above Warehouse H; and where was the fire at that time? A This was the center of the fire.

Q At point Q? A It was four or five cars this side, and there were four or five cars below burning on four or five tracks.

Q Now, it is possible that you could be mistaken, and that there in fact was any fire opposite Warehouse Q at all? Could you be possibly mistaken about that, or are you sure you are right? A Positive I am right.

Mr. Rockwood. I suppose there will be an objection to this question.

Q Are you just as accurate about that as you are about everything else that you have testified to? A Positive.

Q Did you see any tug boats around there? A No; there was no tug boats there while I was there. What I seen while I was there—and the only time I had an opportunity of seeing them is when I walked down this here bulkhead and back again, and when I came in here to get Doherty.

Q When you walked down here and stood seventy-five feet from the corner of point R on this lower ground, did you see a couple of tug boats on the west side of Pier 7? A No, sir.

Q They were not there, were they? A I didn't see any.

Q About 1:50? A About 1:45.

Q About 1:45 A. M. All right, sir. Go back. (Witness resumes the witness stand.)

Q Did you know there were any explosives in the yard until you heard the first explosion? A Well, no; Mr. Garrison got me on that last case. You mean—

Q I am not trying to get you. You mean the large explosion or do you mean the shells? A Yes; the shells was going off continuously, but I didn't know there was anything there that would cause a large explosion.

Q No? A Up to the time it went off.

Q That is, you didn't know there was any TNT? A No, sir.

Q How do you time that first explosion as 2:08? A The records show that.

Q What records? A Police records.

Q Records that you made yourself? A No, sir.

Q That is somebody else's record? A Yes, sir.

Q Somebody told you that or you looked at the record? A I looked at the records.

Q And somebody else made the record in the entry? A Yes, sir.

Mr. Rockwood. I move to strike out his evidence that the fire occurred at 2:08.

The Court. I will strike it out. I see no reason to let it stand.

A I didn't say the fire started at 2:08. Pardon me, I said the explosion.

Q The first explosion was at 2:08, and I moved to strike it out because you do not state it of your own knowledge. If you know that, then it is all right. How do you know that the second explosion occurred at 2:30? A The same way.

Q From the police record? A Yes.

Q You read the record? A Yes.

Mr. Lark. 2:40, he said.

Mr. Rockwood. Or 2:40. I move to strike that out also.

The Court. Strike it out.

Q Now, when you say that you were within 300 or 400 feet of the fire you do not refer to the fire that was up in this section near which the red mark is made there? A I speak of the end of the pier that was nearest Jersey City, the westerly end of the fire.

Q The fire down near the point Q? A I am speaking of the westerly end of the fire.

Q This is the fire you are speaking about, up here? A Yes. You are pointing to the center now, and I mean the westerly end of it.

Q Down this way? A Yes.

Q Nearer to Jersey City? A I should say about 300 to 400 feet from the westerly end of it.

Q Nearer Jersey City? A Yes.

Q Now I want to ask you if you ever saw any fire at any time in any of this section up where I am now pointing? A No; I didn't see fire, but I see the fires that was burnt there by fire.

Q Saw no fire. You did see the cars that were burning up here? A Oh, yes.

Q You are clear about that? A Yes; I saw the cars that was burnt there.

Q Didn't you tell me a minute ago that when you stood down here you could not see up there because you could not see that far, that you could only see this side of the line? A Yes.

Q What did you mean by that? A I mean there was no fire when I stood on the bulkhead, but when I was down here afterwards I see the cars that was burnt by the fire.

Q Afterwards? A Yes.

Q After the fire was all over? A Yes sir.

Q Oh, yes. That is different. Was there ever a time when you saw fire actually burning at the point where I am now drawing this cane? A That they were afire there?

Q Yes, did you see the fire burning there? A No; I see smoke coming from there.

Q Well, did you— A I saw fire on the bulkheads, saw fire on the boats at the docks, saw fire on the docks.

Q You mean to tell the jury that you saw smoke that night? A Yes.

Q Was it dark or light? What kind of a night was it? A Well, it was a dark night, but it was very bright down there owing to the fire.

Q So that you could see smoke all over the place? A Yes, sir. You could see smoke coming up from the cars.

Q You saw it clearly? A Yes. When I speak of seeing it I speak of when I went in after the second explosion to get Doherty.

Q Then I understand you there was one very great explosion that threw you to the ground? A Well, the explosion did not throw me to the ground.

Q What did? A It was—I don't know. I judged it was the concussion from the explosion when I was trying to make my getaway to get out.

Q Well, was it one explosion or a series of explosions? A It was one big explosion.

Q You told the jury, as I understood your testimony, that you were knocked down and you got up and walked a few feet and was knocked down again and walked a few feet and knocked down again? A Yes.

Q So that battledore and shuttlecock business kept on for quite a while; is that right? A Counsellor, I have testified at so many cases, naturally I think the people know that I am trying to explain and I don't probably explain it thoroughly.

Q I am sure of that. A When I turned to go away from that fire I was carrying a load on my shoulders that was almost equal to this building as far as the feeling of it.

Q Sure it was on your shoulders, that load? A Well, it was on myself, but it was bearing down on me, when I say my shoulders,—I would go a few feet and then it would bear me down and I would stumble up and go a few feet further and I would go down. The actual feeling was just as if the heavens were in touch—I could swear that I could put my hand up and touch the heavens. That is the reason I don't like to have any more to say about it than actually necessary. It is a very trying thing for me to tell about it.

Q I suppose it is a very painful thing for you to tell about these incidents? A It surely is, and everybody that was down there.

Q Especially about the freight cars? You said that was painful to you? A No, sir, it is not, but you are talking about the explosion and the bearing on me now. You are talking about my feelings down there.

Q Yes, I know, but you said you were knocked down many times and stood up. A I was crushed down, I said.

Q What crushed you after the explosion? A I judge it was the concussion from the explosion, the same that killed Doherty, and the same that made Tiplady crazy and commit suicide,—the same thing I guess, was what affected me.

Q That is it was a series of crushings? A It was a weight bearing down on you, and I was trying to get away from there, the same as anybody else would, and it was bearing down and I was doing my best to keep my feet, and I would go a little ways and my feet would get the best of me, you could not see, you would stumble and down you would go; this weight you were carrying was what you had to get—Counsellor, it was like hav-

ing a bag over your head and trying to run out of this room, you would run every way but the right.

Q Every man that went up there and tried to put out that fire took his life in his hands? A You are speaking of the firemen in there?

Q Yes. A Firemen are always taking their lives in their hands.

Q This was a very unusual occurrence all the way through? A It certainly was an unusual occurrence, but they have unusual occurrences every day. We took our life in our hands when we went back there after the second explosion, when we went back after the first explosion and got the captain of the Lehigh Valley freight lighter out—Stifey, I think his name was —we dug him out underneath five feet of steel that was upon him. When we got him out the second explosion drove us away before we got him half out—we didn't have him out, and then we came out. It is not only the fire department and the police. We had a priest there with us, and we had the surgeon from the City Hospital.

Q Every man there was simply in a place of unusual danger and great jeopardy. A They certainly was; and after we got him out and sent to the hospital, we went in there and got Doherty out.

Q You didn't —? A It was not a question of danger, it was a question of doing your duty.

Q You did the best you could? A As we seen it.

Q The best you could under the circumstances? A We done our duty under the circumstances, and all of us were trying to do it.

Q I have no doubt you did. You said you saw no other apparatus there other than that of the Jersey City firemen? A That is all I seen.

Q I suppose you didn't mean that the Lehigh Valley did not have a full equipment of apparatus there? A No, but what I seen. I don't know what they had.

Q You wouldn't say they did not have full apparatus? A No. I say I didn't see it.

Q Just testified to what you saw? A That is all I am trying to do.

Q Are you quite correct in saying that you did not see any Lehigh Valley men until half-past three or four o'clock? A I didn't say—now if I answered that question that way it is not as I meant. I say that I didn't see any that I knew.

Q But you did see some others there? A You have seen firemen working at a fire?

Q I know what you mean? A When they were there working in their working clothes they are like everybody else. They may have been Lehigh Valley men mixed in with them. That I don't know. I am speaking of the men that I seen I knew.

Q You could not say there were not several Lehigh Valley men there? A No, I couldn't say that.

Q There were men there? A I know there were some, because one of my men reported he tried to put one off of there and found out that he was a Lehigh Valley man.

Q And the train crews of the Lehigh Valley were there also risking their lives trying to pull out these cars? A Yes. The two men on top of the cars, they risked their lives. The train crew did not, because they were twenty or thirty car lengths away from the fire.

Q They were all there pulling the cars out and pulling the cars out, and doing their best, as you were? A They were way past where I was; they were back of where I was, the train crew was.

Q That was before the first explosion? A That was before the first explosion. I don't know as any of them were after the second.

Q Isn't this a fair statement. Isn't it true that the Lehigh Valley men and the firemen and yourself, and everybody there confronted by this unusual catastrophe simply did the best they could? A Well—

Q You see anybody there that was not doing the best he could? A I was going to say I would put this answer this way, I don't know as anybody down there did not do the best they could.

Q Yes; and did his duty as he saw it at the time? A To the best of his ability, I think so. I can't say I saw anybody shirking.

Q And using the best judgment he could use under the very unusual emergency which presented itself? A That is about the way I would place it.

Q I think you are very fair about it. That is all there is to it.

Re-direct examination by Mr. Stallman.

Q You did not get there until you think there was about fifty cars on fire? A When I arrived there, as I said before,—it is about a mile in from the fence, and on the ride down, it is a little down hill, I could see these cars burning. I did not count them, I approximated it as being about fifty cars. They were on tracks, and I judged about ten cars on each track.

Q All right. That is all.

EDWARD J. KANE, sworn.

Direct examination by Mr. Stallman.

Q Mr. Kane, where are you employed? A Lehigh Valley Railroad.

Q On the night of July 29th, and July 30th, 1916, you were working at Black Tom? A Yes sir.

Q You were sort of a foreman of the watchmen, were you not? A Yes.

Q You were on the night force, weren't you? A Yes sir.

Q What time did you go on duty? A Five thirty.

Q That is five thirty on Saturday night, July 29th? A Yes.

Q How many men employed by the Lehigh Valley Railroad and comprising your crew or your gang, were there? A Four other watchmen and myself.

Q Yourself and four men? A Yes sir.

Q And the four men were whom? A William Garrity, Samuel Sloan, James Kelly, and James Groth.

Q And James Groth, did he have a station or a particular place where he worked? A Yes.

Q Where? A Over to the oil yard.

Q What did he do there? A He was punching buttons and looking around the buildings.

Q Now you are familiar with this map of Black Tom, were you not? A Yes.

Q And does the oil yard show on this map? A No, sir.

Q It is further down off this end of the map, isn't it? A Yes, sir.

Q And how far is the oil yard from Pier 7? A About three-quarters of a mile.

Q About three-quarters of a mile, and then Mr. Kelly was another one of your men? A Was at the grain elevator.

Q And he was stationed in the grain elevator? A Yes sir.

Q Now there are two grain elevators shown on this map; which one was he stationed at? A There—

Q This one is marked, in case you cannot read it, this is marked "Grain transfer elevator"? A Grain transfer.

Q And there is a building nearer to the tracks? And this one is marked "New grain elevator," and a carpenter shop on one end? A The grain transfer.

Q The grain transfer elevator, that is where Mr. Kelly was stationed? A Yes, sir.

Q What did he do there? A He was to punch buttons on side of Pier 4,

Q He had to go clear down to Pier 4? A Yes, sir.

Q On the west side? A Yes, sir.

Q To punch buttons. What did he do in the grain transfer elevator? A Why, he used to look after that boiler that was in there.

Q What do you mean by looking after the boiler? A He saw that the boiler was kept going on her.

Q Yes. Was that boiler there for the operating of the elevator machinery? A In the day time, yes.

Q In the day time, but at night you kept up the fire, is that it? A Yes.

Q Now Mr. Sloan was another one of your men, was he not? A Yes.

Q He is the third man, and where was he located? A In the pump house alongside of Store F.

Q Store what? A Store F.

Q That is immediately west of Pier 5? A Yes.

Q Did he have any duties to perform in and around the pump house? A Why, he used to keep steam in the boiler.

Q Keep steam in the boiler. Did he have any buttons to punch in that neighborhood? A Yes.

Q Where? A On the east side of Pier 4.

Q Over here on the east side of Pier 4? A Yes.

Q How about the west side of Pier 5? A He had one in there.

Q He had one in there somewhere? A Yes.

Q So he had the west side of Pier 5, the east side of Pier 4, and the pump house to look after? A Yes sir.

Q Then you had Mr. Garrity, was the last of your helpers? A Yes.

Q Where was Garrity located? A He had from Store G to Pier 7.

Q From Store G to Pier 7? Well, now, did he have buttons to punch in these warehouses? A Yes sir.

Q And Pier 6? A Had one on Pier 6.

Q One on Pier 6, and Mr. Garrity, do you know where he is now? A He is dead.

Q He is dead, and do you know how old he was at the time of this fire? A No sir.

Q Well, was he a young man or an old man? A He was an old man.

Q An old man. Now what duties did you perform? A I was traveling the whole yard looking after all the men.

Q You saw that they were doing their duty? A Yes sir.

Q And you made a tour of the whole yard? A Yes, sir.

Q And that took you all the way from the North Pier down to the cork works or the oil yard? A Yes.

Q So that back and forth you had a post of about a mile and a half, didn't you? A About a mile.

Q Now what was the first you knew of the fire? A I heard a man hollering and blowing a whistle.

Q And where were you when you heard that man? A I was on the bulkhead between 5 and 6.

Q That is between Pier 5 and Pier 6? A Yes.

Q About midway? A Yes.

Q That would be somewhere between Store I and Store K? A Some place there.

Q In there some place? A Yes.

Q Where did you go when you heard that? A I went back to the pump room to see who it was.

Q You went back to the pump room, that is between Store F and Store G? A Yes.

Q And is that where you heard the whistle and the noise come from? A Sounded from in front of the stores.

Q Sounded like it was out in front of the store? A Yes.

Q What were you doing back here behind Store I? A I was walking down along the bulkhead.

Q Walked on the bulkhead? A Yes.

Q Which direction were you going? A On this Pier 7.

Q Had you been talking to anybody? A Not at that time.

Q What time was this? A Oh, around half-past twelve.

Q About half-past twelve. What were you doing at twelve o'clock? A I was eating a lunch.

Q Eating your lunch? A Yes.

Q What were you doing between twelve o'clock and twelve thirty? A Eating my lunch.

Q Then you walked around Store G, did you, when you heard this whistle, or over to the front house? A Yes.

Q And then what did you do there? A I met two men.

Q Who were they? A They were Doherty's detective agents.

Q They told you there was a fire? A Told me there was a fire down on the North Pier.

Q What did you do? A I got on the platform of Store G.

Q That was the platform out in front of that building? A Yes.

Q How high is that platform above the ground? A About four feet.

Q About the same height as the car floor? A Car door.

Q Car door, yes. Door of a box car? A Yes.

Q While standing there what did you see? A I looked around towards the North Pier and I saw a small blaze.

Q Where did the small blaze appear to be? A Well, it looked to be at the extreme end of the yard.

Q You mean the yard of Pier 7? A Yes; way down towards North Pier. I couldn't say whether it was on the pier or in the yard.

Q All you saw it was some distance east of you? A Yes.

Q Did you see any box cars down there? A I had to look over the tops of them.

Q Had to look over the tops of them? A Yes sir.

Q Well, was this fire anywheres near where the box cars were? A Well, I couldn't say, I just only looked over the tops of them. I couldn't say whether it was in a car or where.

Q How big a fire was it? A Very small.

Q Well, I might light a match and have a little flame. It was not that small, was it? A No, not quite as small as that.

Q Let us have the jury understand just how big it was? A Well, it was as high as I could say, it was about six or eight inches.

Q Six or eight inches? A High.

Q Oh, high? A Yes.

Q How wide was it? A Oh, about the same width.

Q I see. Well, the fire, as it was burning, would be, what you could see, about the size of my straw hat? A Yes, sir.

Q Just about that size? A Yes, sir.

Mr. Rockwood. Let us see how big that is.

Mr. Stallman. About the same size you wear, I imagine.

Q And when you saw that fire down there what did you do? A I run down and started to telephone.

Q And where was the telephone? A In the time clock office.

Q And where is the time clock office? A Between Store F and G.

Q Is it the small building right next to Store F? A Yes, sir.

Q You went in there? A Yes, sir.

Q And what did you do? A Telephoned to the Lehigh Valley Railroad.

Q Telephoned to the company's office? A Yes, sir.

Q And how long were you in there telephoning? A About twenty or half an hour.

Q Twenty minutes to half an hour? A Yes, sir.

Q And from the time that you went in you staid there twenty minutes to half an hour without coming out; is that right? A Yes, sir.

Q And when you came out of there what did you do? A I went out in the roadway.

Q Out in the roadway opposite Pier 5? A Yes, sir.

Q And then what did you see? A I saw the locomotives coming down.

Q Yes, sir; but I mean, looking down towards the fire what did you see? A I did not look down towards the fire.

Q You did not look towards the fire. A No, sir.

Q Was there any fire apparatus provided for use down in the yard there; provided to you or your men? A Yes, sir.

Q And where were the hose carriages? A They were—stationed in different sections of the yard.

Q All right; where is the hose carriage that is nearest to the yard? A There was one opposite Pier 6.

Q And is this the hose cart right in front of Pier 6 that I am pointing to? A Hose carriage right on the side of the storehouses.

Q Now, this shows a hose cart on the map. I am pointing to a place that is marked hose cart on the map; is that about where it was? A Yes, sir.

Q Within a few feet—I do not care whether it was one side of the bulkhead or the other. A Yes, sir.

Q There was one hose cart? A Yes.

Q Did you go down to that hose cart? A No, sir.

Q Now, where was another hose cart? A Right behind the time clock office.

Q That is in here somewhere? A Yes, sir.

Q Oh, yes; I see it. And did you go to that one? A No, sir.

Q And is there another hose cart anywhere? A On the west side of Pier 4.

Q I do not see it, but it is over here somewhere? A That little—right there.

Q Right here? A Yes, sir.

Q Near Store 3? A Yes.

Q Did you go down there? A No, sir.

Q Did you send any men to any of these host cart stations? A No, sir.

Q Didn't you have provided for your use any chemical fire extinguishers such as you usually see hanging on the walls in public buildings, that you turn upside down to shoot a chemical stream? A Yes, sir; they were stationed all over.

Q Where were they located? A They were in all the piers.

Q Down in these structures here? A Yes, sir.

Q Did you go and get any of them? A No, sir.

Q Did you tell anybody else to get any of them? A No, sir.

Q Now, how long had you been employed at Black Tom up to the time of this fire. A Nine years.

Q And how long had Mr. Sloan been there, if you can recall, up to the time of the fire? A I do not know.

Q He was there even before you were? A Yes, sir.

Q So he was there at least nine years? A He was there twenty years, I guess.

Q Yes, but you knew that he was there nine years before that? A Yes, sir.

Q And how about Mr. Kelly? A He has been working there before I got down there.

Q He was there even before you were? A Yes, sir.

Q And Groat, the man down in the oil yard? A He was working there, too.

Q He was an old employee? A Yes, sir.

Q And how about Mr. Garrity? A He was an old employee.

Q And so you five men down there had been there at least nine years? A Yes, sir.

Q And up to the time of this fire, this explosion, how long—over what length of time was it that munitions—shells and other munitions had been handled through that yard? A I could not say.

Q Well, let us see; the war started in August, 1914; was it some time after that that the munitions began to be handled by the Lehigh Valley Railroad? A Yes, sir.

Q Now, this fire occurred in July, 1916. Had these munitions been going through there for about a year, would you say? A I could not say.

Q The Lehigh Valley did not start that month with them? A No, sir.

Q They had been going for some time? A Yes, sir.

Q And you do not know just how long? A No, sir.

Q Now, after the munitions had started—the company had begun to handle munitions through that yard—was your force of four men increased any? A No, sir.

Q Were you provided with any additional extinguishers—fire extinguishers? A No, sir.

Q Were you provided with any additional hose carts or carriages? A No, sir.

Q Now, Mr. Kane, you said that after you had telephoned—about twenty minutes—you did not look after the fire again, after you went out on the roadway you saw these locomotives coming up, you did not observe the fire? A No, sir.

Q Do you recall when it was, when any of the shells began to shoot up in the air? A Shortly after one o'clock.

Q Shortly after one o'clock? A Yes, sir.

Q Now, by shortly, do you mean ten minutes or twenty? A About quarter after.

Q About quarter after one? And when you first heard the alarm given by somebody, I think you said a detective, that there was a fire, that was about half-past twelve? A Yes, sir.

Q So you first heard the shots or the shells going off about three-quarters of an hour after the fire started? A Yes, sir.

Q Or after you learned of the fire; I will put it that way? A Yes, sir.

Q Now, I have got you down to the point where you saw the locomotives coming. Then what did you do? A I was called back on the telephone again.

Q Called back into the telephone booth? A Yes, sir.

Q And how long did you stay there? A About five or ten minutes.

Q Yes; and then when you came out, where did you go? A I went down the yard with Mr. Leyden.

Q How did you get there? A Walked down the track.

Q Down the track in front of the warehouses? A Yes, sir.

Q How far did you get? A Down as far as Store R.

Q Down as far as Store R? A Yes, sir.

Q Down as far as Store R? A Yes, sir.

Q And then what did you see from there? A I saw the blaze.

Q What is that? A I saw down the yard, blazing.

Q You saw the blaze? A Yes, sir.

Q What was blazing? A Well, I saw a car burning.

Q You saw a car burning? A Yes, sir.

Q Just one car? A That is all I saw.

Q And at that time did you see anything of the Jersey City firemen? A They were up at the driveway—up in front of Pier 5.

Q And did you see any hose carts? A Yes, sir.

Q What were they doing with the hose carts? A Standing there.

Q Did you see any hose stretched? A No, sir.

Q Well, how long did you stand there watching the fire burning? A I did not stand at all; I just went down there and

he sent me back after the locomotives, told me to send them down the sea wall track.

Q That is, Captain Leyden sent you back to tell the locomotives to come down to that point? A Yes, sir.

Q That is, to come—to get out cars that were standing there on those tracks? A Yes, sir.

Q Where were you at the time of the explosion? A I was on the sea wall track.

Q That is, the first track to the north? A Yes, sir.

Q About where were you? A About right where your pointer is.

Q Say in front of Store K? A Some place there.

Q I see; and what did you see of this explosion? A All I could see was a red light.

Q Well, did you hear anything? A No, sir.

Q What? A I did not hear anything.

Q What—what? It was one of these silent explosions, was it? A Well, I was knocked. I did not hear anything.

Q Did you hear anything before you were knocked? A No, sir.

Q What did you see in the way of a light? A All I can remember is I got hit in the face with like a handful of cinders, and found myself going in the air; that is all I can remember.

Q Where was this light that you saw? A It was just like one flash.

Q I say,—where was it? A Oh, down at the end of the yard, some place, I could not say.

Q Was it anywheres near where you saw the car burning? A Down that direction some place.

Q Down that direction. And after this explosion occurred and you came to, did you see anything flying around through there? A No, sir.

Q How long was it before you knew where you were at? A I do not know.

Q You do not know that. Where did you go when you came to? A I came over as far as the pump room to see if I could find Sloan.

Q Did you find him? A No, sir.

Q Did you know where he was? A No.

Mr. Rockwood. He did not say he did not know where he was; he said he did not find him.

The Court. He just now said he did not know where he was.

Q Now, Mr. Kane, at any time during the night of the 29th—you were down at Pier 7, I believe, some time during that night? A Yes, sir.

Q What time was that? A I could not exactly say. I got back in the pump room around twelve o'clock.

Q Yes; you got to the pump room from the oil yard, didn't you? A No, sir.

Q Let us see; where were you at eleven o'clock? A At eleven o'clock? I came from the oil yard.

Q You left the oil yard at eleven o'clock? A I won't say at eleven o'clock, something around eleven o'clock.

Q Oh, I am not pinning you down to minutes now. I do not want to do that; but you left the oil yard about three-quarters of a mile to the west about eleven o'clock? A Yes.

Q And then you came up past the elevators and you went in the pump house to see if Sloan was there? A Yes, sir.

Q And what time did you get there, half-past eleven or quarter-past eleven? A I could not say what time it was.

Q You do not know. Did you walk fast or slowly? A Well, I walked not very fast.

Q Then you went from there down along this bulkhead, did you? A Yes, sir.

Q Did you go down on the pier? A Yes, sir.

Q Just along the bulkhead? A Yes, sir.

Q To Pier 7? A Yes.

Q Then which way did you go? A Down along the tracks.

Q Along this track (indicating)? A Yes, sir.

Q Out to that bulkhead? A Yes, sir.

Q Then where did you go? A Straight across.

Q Right straight across? A To the sea wall.

Edward J. Kane, cross.

Q To the sea wall track? A Yes, sir.
Q Is that the track marked Track 18? A Yes, sir.
Q Then where did you go? A Right back again.
Q Down the sea wall track? A Yes.
Q Until you came opposite Pier 5? A Until I come up the roadway.
Q Then you came down to opposite Pier 6? A Yes, sir.
Q Somewhere along there (indicating)? A Yes, sir.
Q And across the roadway? A Yes, sir.
Q Down the roadway to Pier 5? A Yes, sir.
Q And then back again? A Yes, sir.
Q In other words, you went around this yard? A Yes, sir.
Q You did not at any time go down in where any of these cars are? A No, sir.
Q In between the tracks? A No, sir.
Q And that brought you back to Sloan's pump house at about twelve o'clock? A Yes, sir.
Q And it was half an hour after that when you were informed there was a fire? A Yes, sir.

By the Court.

Q Why didn't you go in between those tracks, Mr. Kane? A Well, there was four Doherty men there, watching them cars.
Q That is the only reason why you didn't go in? A Yes, sir.
Q Because you understood there were four Dogherty men there? A Yes, sir; they might mistake me for somebody else and shoot me.
Q I understand; I want to know if that is the only reason why you didn't go in?

Mr. Stallman. You may cross examine.

Cross examination by Mr. Rockwood.

Q In addition to your watchmen, whose names you have given, in answer to Mr. Stallman, there were several detectives there, employed by the Lehigh Valley Ralroad Company? A Yes, sir.
Q Known as Doherty men? A Yes, sir.

Edward J. Kane, cross.

Q How many of them? A Four.

Q Where were they stationed? A All around—right down—

Q Down this way— A Up on the—(referring to counsel's indication with the pointer on the map)—further—

Q Here (indicating)? A Around there, yes, sir.

Q This end of the North Pier? A Yes, sir.

Q Did they have a little house there? A Yes, sir.

The Court. Their house is actually on that pier, isn't it?

The Witness. No, sir.

Q Are you sure? A (No answer.)

By Mr. Rockwood.

Q I asked you if they are employed by the Lehigh Valley Railroad Company, and I misspoke myself. Do you know who they were employed by, these Doherty men?

Mr. Stallman. That calls for a conclusion.

Mr. Rockwood. I am asking yes or no. Do you know who they were employed by? Yes or no.

A The four watchmen?

Q Yes. The Doherty men? A They were employed by—

The Court. Do not say who they were employed by. Do you know? Yes or no.

The Witness. Only from what they told me.

Q You only know from what they told you? A Yes, sir.

Q I will not ask you that, then. But you know these men had a little house down here? A They were watching these explosives, yes, sir.

Q They were there on this night in question? A Yes.

Q And it was one of these men that told you there was a fire there? A Yes, sir.

Q Now, where did you say you first saw the blaze? Will you come down here and point to it? A From where I stood, it

looked in this place (indicating); somewhere— I couldn't say the exact direction.

Q You point to the easterly end of the pier, don't you—or the easterly end of the yard? A This pier.

Q About here? A About some place there; I could not say for sure whether it was here.

Q Let us take Zeke Townes' house; was it near Zeke Townes' house? A Well—

Q Here is Zeke Townes' house here; was it near that? A It looked to be past that.

Q That is, is was further on past the pier? A Yes, sir.

Q From Zeke Townes' house, that is, the colored man? A Yes.

Q And along in here? A Yes, sir.

Q And when you first saw it it was a slight blaze? A Yes, sir.

Q Coming out of the top of the car? A (No answer.)

Q Now, his Honor asked you—

Mr. Stallman. I would like to have the record show that I object to counsel characterizing his statement as coming out of the top of the car, because he did not say that.

Q Did you, or did you not say that?

The Court. I will not only sustain the objection, but I will strike it out.

Q Did you or didn't you? Where did you say the fire was coming from? A I saw it over the tops of the cars.

Q That is what I thought you said.

The Court. But that is not what you said you thought he said. You said that he saw it coming out of the top of the car. He now says he saw it over the tops of the cars.

Q We will take it that way, then. Was it over the tops of the cars that saw it? A That is, from where I stood, I had to look over the tops of the cars.

Q And you saw the fire over the tops of the cars? A Yes, sir.

Q Yes. Now, his Honor asked you why you did not go down and put the fire out.

The Court. No, I did not.

Mr. Rockwood. What was your question?

The Court. I asked him why it was he did not go down amongst the tracks. I did not ask him anything about the fire at all.

Mr. Rockwood. I see; watch the tracks.

Q You did not go there because of the Doherty men; is that it? A Yes, sir.

Q That was not your round, anyway, was it? A Well, I am supposed to make a round around that way, yes, sir.

Q How near to it? A Up alongside of them.

Q Now, as I understand you, you went to the telephone and called up the Lehigh Valley Railroad terminal at Jersey City, is that right? A Yes, sir.

Q For tug boats and locomotives? A Yes, sir.

Q Did you telephone to any fire department. A Yes, sir.

Q What one? A The New York fire tug.

Q For what—for fire tugs? A For fire tugs.

Q Did you telephone anywhere else? A Standard Oil, Greenpoint, for their tugs.

Q For their tugs? A Yes, sir.

Q And therefore you telephoned to three different places, didn't you? A Yes, sir.

Q Is that why it took you twenty minutes in the room? A I was calling up Mr. Dickman and I called the Lehigh Valley fire marshal.

Q Then you called five different parties, did you? A Yes, sir.

Edward J. Kane, cross.

Q You and Dickman and the Lehigh Valley fire marshal; you called for the Standard Oil tug, the New York Fire Department and the Jersey City tug boats and locomotives? A Yes, sir.

Q And that took you twenty minutes or so? A Yes, sir; something like that.

Q Did you also call a man named Julian? A Yes, sir.

Q Who was he? A He was the fire marshal.

Q Yes. A The Lehigh Valley fire marshal.

Q When you came out of the telephone station what did you see with reference to the Lehigh locomotives? A They were just coming up the yard.

Q Was that in answer to your telephone call? A Yes, sir.

Q What were they doing? What did you see them do? A They come right up—right up as far as the Store F.

Q Well, up to that time—how many locomotives were there? A I saw two of them.

Q Up to that time had there been any explosion? A No, sir.

Q Had there been any shells popping at all? A They were just starting to pop.

Q In which direction? A Going up in the air.

Q Up in the same direction toward the end of the yard that you have described? A Yes, sir.

Q Did these shells appear to be coming from the car or cars where the fire was? A Yes, sir.

Q Did you see whether or not there was one fire or one car on fire or more than one car on fire? A I couldn't say at that time.

Q Because you could not see it? A No, sir.

Q At what time was the yard closed each day? A At 5:30.

Q And after the yard was closed was anyone permitted to enter it? A The boatmen.

Q The boatmen? A Yes, sir.

Q And that is all? A That is all.

Q Was it a dead yard? A Yes, sir.

Q What do you mean by a dead yard? A No trains or nothing moving in the yard.

Q On that night in question was this yard closed at 5:3
A That was Saturday night, it was closed at five.

Q At five o'clock? A Yes.

Q Did you go down about there after it closed up? A Yes sir.

Q Was there any fire of any character in and about or around the cars? A No, sir.

Q So that it was over seven hours from the time the yard was closed before you saw this blaze coming over the tops of the cars? A Yes, sir.

Q Did you see the fire apparatus coming down there? A Jersey City fire apparatus?

Q Yes. A Yes, sir.

Q Were you present and did you hear any remarks made by the chief about the fire? A No, sir.

Q Did you hear the firemen say anything about whether they would go in to fight the fire or not? A Well, I heard one fellow say it was not safe to go down there; he said he would not go down.

Q Did the firemen go down there? A No, sir.

Q Did any of the firemen go down? A No, sir.

Q Did they make any attempt to put the fire out? A No, sir.

Q The fire was simply allowed to burn, wasn't it? A Yes, sir.

Q As far as the firemen were concerned? A Yes, sir.

Q Can you describe to the Court and jury in a general way the fire protection system which was on those piers? Mr. Stallman asked you about some of it. Were there any tanks there? A There were three water tanks. There was one at the end of the yard; there was one on top of—on top of store—I think it is Store O.

Q What was the capacity of all the tanks? A About 200,000 gallons.

Q 200,000 gallons.

Mr. Stallman. I will agree with you Judge, as I did with Judge Garrison, and admit a description of the whole thing.

Mr. Rockwood. You know what the old lawyer said years ago. He said: "I fear the Greeks when they come bearing gifts."

Mr. Stallman. Well, I just wanted to save time. You have a whole description of the fire apparatus and I am willing that it should be read to the jury.

Mr. Rockwood. I am going to ask a few questions.

Mr. Stallman. Do not get excited.

Q Were these tanks all full of water on the night in question? A Yes, sir.

Q To your knowledge? A Yes, sir.

Q And ready to be used? A Yes, sir.

Q Was all the fire apparatus and all the tanks and all the fire hydrants in good working order? A Yes, sir.

Q How do you know? A Well, in case that anything should happen to any of the fire hydrants, or anything, why, the American District Telegraph people would ring me up and find out what was the matter.

Q Were they all connected electrically so that if there was anything out of order it showed immediately? A Yes, sir.

Q Where did it show? A Down in the American District Telegraph people's office.

Q In their office? A Yes, sir.

Q If there was anything out of order with reference to the fire apparatus it showed on the electrical indicator in their office, did it. A Yes, sir.

Q Was there a salt water line with a pump on this pier? A Yes, sir.

Q What was the diameter of this line? A I cannot say.

Q To refresh your recollection, was it twelve inches? A Yes, I think it was.

Q And was there a fresh water line which could be connected with the pump? A Yes, sir.

Q Was there a fire sprinkling system through all the storehouses? A Yes, sir.

Q On the piers? A Yes, sir.

Q Now, was the most easterly plug east of Store R? A Ye sir.

Q One hundred feet east of Store R; is that a fair descrip tion of it? A I could not exactly say how many feet.

Q Where were you standing when the first explosion took 10 place? A At the sea wall track.

Q With whom? A Mr. Julian and Mr. Dickman.

Q How far away from the explosion? A Not very far.

Q And from where you stood there did you see cars burning? A Yes, sir.

Q Now, come right to that—stop this stick when I come to the point where you and Dickman and Julian stood.

Mr. Stallman. Well, you are not moving the stick.

The Witness. Some place around there.

20 Q What? A Some place around there.

Q Where I am now? A Some place there; yes, sir.

Q That was about opposite Pier 6? A Well, in that neighborhood there.

Q That is, you and Julian and Dickman were standing on the sea wall? A Yes, sir.

Q And, now, where did you see cars burning when you stood there? A Right down by Zeke's house there.

Q This is Zeke's house. You saw cars burning down here in this direction? A Yes, sir.

30 Q What? A Yes, sir.

Q Were there any cars at all burning up here opposite point Q? A No, sir.

Q You heard the Chief of Police say that there were a number of cars burning in here. Is there anything— A No, sir.

Q Is he mistaken about that? A Positively.

Q You stood right here on the sea wall? A Yes, sir.

Q Was there at any time any number of cars burning in that section, near Storehouse Q? A Not until a long while after the explosion that I seen.

40 Q Until after the explosion? A Yes, sir.

Edward J. Kane, re-direct.

Q Was there a number of grain boats stationed there that night? A Under the grain elevator; yes, sir.

Q Near the grain elevator. How many were there? A Oh, I guess there might be one hundred or over.

Q There were about 175, were there not? A Something like that; yes, sir.

Q And were those grain boats stored in here, along by the corner of Pier 5 and Pier 6, in through here? A No, sir.

Q What? A No, sir.

Q Where were they? A Up at the grain elevator.

Q Whereabouts is that? A West of Pier 4.

Q What? A West of Pier 4.

Q Up here? A Yes, sir.

Q West of Pier 4? A Right in there, around where your pointer is.

Q Now, did each one of these boats have a captain? A Yes.

Q That is 175 men were there then? A Yes, sir.

Q Were they there that night? A Yes, sir.

Q Did they come out? A Some of them; yes, sir.

Q Were those Lehigh Valley grain boats? A Yes, sir.

Q What? A Yes, sir.

Mr. Rockwood. That is all.

By Mr. Stallman.

Q Now, who was in charge there that night for the Lehigh Valley Railroad?

Mr. Rockwood. If he knows.

The Witness. What?

Mr. Rockwood. It is a pretty broad question.

The Court. Yes, if he knows.

Q This was a Lehigh Valley yard, wasn't it?

Mr. Rockwood. Well—

The Court. He has withdrawn his question by substituting another.

Q Did you have any boss there that night? A No, sir.

Q So far as you know were you the man who was in charge of the yard? A Yes, sir.

Q When you walked around the bulkhead at Pier 7 how many of those Doherty men did you see? A I didn't see any of them.

Q Now, as you walked around Pier 7 from there, did you see any boats laying below on the south side of the North Pier and near the float bridges? A Yes, sir.

Q And did you go over on these boats? A No, sir.

Q Did you have anything to do with them? A No, sir.

Q Any instructions about them? A No, sir.

Q What instructions did you have as to your duties or the duties of your men in case a fire broke out on any of the ammunition cars in the yard? A There was a notice printed on the wall who I was to call up.

Q What is that? A There was a notice framed on the wall who I was to call up.

Q How long had that notice been on the wall? A Always.

Q Well, all the nine years that you were there? A Well, it has been changed.

Q Well, I mean up to the time of the fire, from the time that you started to work nine years before the fire, up to the time that the fire occurred, there was always a notice on the wall? A Yes, sir.

Q Now, was there anything in that notice about fire occurring in cars containing TNT or benzol or guncotton or gunpowder?

Mr. Rockwood. Wait a minute. I object to it. The printed notice is the best evidence of its contents. He is trying to prove a printed notice by the witness' recollection.

The Court. I think I will permit that to be done. These fugitive papers like that, that may be destroyed, and probably were destroyed, are not required to be produced. We have a direct decision in this state on the point in the case of Gilbert *v.* Duncan, 5 Dutcher, where it is said

if the paper is not directly in controversy, parole evidence of its contents is admissible.

Q Now, did you have any instruction about what you were to do, or your men were to do, or what you were to have your men do in case of any fire breaking out on any of the cars of munitions or explosives of any kind. A No, only call up the terminal immediately.

Q When did you get these instructions? A Well, just as soon as—as soon as I was told there was ammunition there.

Q You were to notify the Jersey City terminal? A Yes.

Q And that is all you were told to do? A Yes, sir.

Q Well, during the year before the fire occurred had there been any change in the notice hanging up in your office? A No, sir.

Q Now, you spoke of the grain boat captains. How any grain boat captains did you see after you were notified of the fire? A About four or five.

Q And did you have any instructions as to who would put the grain boat captains to work? A No, sir; they were all drilled during the day time.

Q Well, did they have to report to anybody in particular? A No, sir.

Q Did you have any instructions as to what the grain boat captains should do in case of a fire? A Well, I was told that they would come out and work.

Q They would come out and help you? A Yes.

Q Did you instruct them what to do? A No.

Q When this fire happened, I mean, did you tell any of them what to do? A No, sir.

Q How long after you heard the alarm of fire was it that the fire department arrived? A About a half an hour.

Q Now, do you say that there was a number of pipes or hydrants and tanks and all that sort of stuff around the storehouses? A Yes, sir.

Q Were there any hydrants or hose connections or fire extinguishers in the yard east of the storehouses? A There was a fire hydrant east of the storehouse, yes, sir.

Edward J. Kane, re-cross.

Q Well, there was one fire hydrant right near the storehouse—one of these red blotches is a fire hydrant, is it not? A Yes, sir.

Q Well, now, you take from that tank here opposite the bulkhead, was there anything in the way of a fire hose connection out there? A No, sir.

Q There was none. Now, all this fire apparatus that you have described, you did not employ any of it that night, did you? A No, sir.

Q Did Mr. Groat have anything to do with watching munition cars? A No, sir.

Q Did Mr. Kelly have anything to do with watching ammunition cars? A No, sir.

Q Did Mr. Sloan have any work of that kind to do? A No, sir.

Mr. Stallman. That is all.

By Mr. Rockwood.

Q You were injured on the head that night, were you not? A Yes, sir.

Q And very seriously? A Yes, sir.

Mr. Stallman. When?

Mr. Rockwood. On the night of the fire.

Q You were? A Yes.

Q Were you injured by the explosion? A Well, when I fell.

Q When you fell? A Yes.

Q What has been your condition since that time? A Normal.

Q What? A All right.

Q How long were you ill? A Oh, I didn't lay up at all.

Q You did not? A No, sir.

Q Do you know what hit you? A No, sir.

Q On this night in question in doing what you did, confronted by the situation as it was, did you do everything that seemed the best thing to you to do under the circumstances? A Yes, sir.

Mr. Stallman. If the Court please, I object to that—well, I do not care.

The Court. Do you withdraw the objection?

Mr. Stallman. Yes.

Q Did you? A Yes.

Mr. Rockwood. That is all.

(Witness excused.)

SAMUEL SLOAN, sworn.

Direct examination by Mr. Stallman.

Q Mr. Sloan, I believe you were employed at the Black Tom at the time of the fire in 1916? A Yes, sir,

Q And you have been there before that some twenty odd years, had you not? A Yes, sir.

Q What was your principal work? A Well, I was night engineer there.

Q Night engineer? A Yes, sir.

Q And as night engineer, what did you do? A Keep steam on the boiler, in case of fire run the fire pump; punch two buttons on Pier 4.

Q Did that require your spending most of your time in the pump house or out on the pier? A All the time in the pump house.

Q All the time in the pump house except when you went out to punch the buttons? A Yes, sir.

Q And you went out there and came right back? A Right back.

Q You had nothing to do with watching any explosives? A None whatsoever.

Q By the way, Mr. Sloan, had you been down in the yard while they were transporting explosives? A Yes, sir.

Q And what was the first you knew of the fire? A Well, along between half-past twelve and twenty minutes to one I heard two men hollering.

Q Yes. A And they come running up excited and said the North Pier was afire. So I run across to ascertain myself, and I looked down between the line of cars, and I could see a blaze in away down the extreme end, it looked to me.

Q And how big a blaze did it seem to be? A Well, I would say the blaze was about the height of a barrel from the ground.

Q About the height of a barrel from the ground? A Yes, sir.

Q I see. How much area did it cover? A Well, it looked just about the space between the two tracks, I would say about the width of a barrel, and about the height of a barrel.

Q About the width of a barrel and about the height of a barrel? A Yes, sir.

Q In other words, if there had been a barrel standing down there between two cars, and it was on fire— A It just looked like that.

Q That is the way it looked? A Yes, sir.

Q Well, was there enough light from that fire so that you could see the car bodies, on each side of the body? A Yes, sir; there was cars on the tracks on each side, as far down as I could see, and then the fire looked, you know, in the space between the tracks. That made the fire very plain to be seen.

Q I see. And how long did you continue to watch it? A Oh, I run right over. I said to these fellows, "I must go and turn the fire alarm in." They said, "We have already turned the fire alarm in." So I tied the whistle down, as there was no box there to pull the whistle, you know, to notify all the canalmen and lighter men that there was a fire; and in the meantime I got my pump under control and also regulated the damper on the boiler, and saw everything was all right in the pumping equipment.

Q Yes. And after you got that done, what did you do? A Answered the phone. It was ringing up; the National District people that had the supervision of the sprinkler system, and all the water equipment there,—they called up and wanted to know Alec Davidson's telephone number.

Q You were busy keeping them informed? A Yes, sir.

Q But after you saw this fire which you have described as looking like a barrel, when did you see the fire again? A Well, not for some time after.

Q That was after the second explosion? A Oh, no; I don't remember the second explosion at all.

Q You do not? A No.

Q Where were you at the time of the first explosion? A I was after coming out of the office and speaking to Mr. Mulligan, the superintendent of the terminal.

Q You did not see that explosion then? A No, sir; I heard the explosion.

Q What effect did it have? A Well, I will tell you, everything was very bright, and then everything turned instantly black, and I know I was whirled a little space through the air; I don't know what way I went.

Q Well, did it have any effect on the buildings? A I could not say what effect it had on the buildings at all until after in the morning I could see the buildings were pretty well shook up.

Q Now, then, did you have any instructions what to do in case there was a fire down in the ammunition cars? A Well, the instructions we had, which was always in case there was a fire the men on the plant were supposed to go down and try to put the fire out.

Q You had printed instructions to that effect? A Yes; we had that printed instruction, and we had verbal instructions, too.

Q Did you have any instructions to go down and put out a fire among the cars— A No; I never had instructions to go down. My instructions was to stay in the pump room and give water when they needed it, and shut the pump down and answer telephone.

Q So far as going out and handling hose— A None whatsoever.

Q —and fire extinguishers, was that a part of your duty? A No, sir.

Q It was not. And you do not remember the second explosion at all? A No, sir.

Samuel Sloan, cross.

Q Could you give us any sort of an idea, Mr. Sloan, about where you think the fire was? Now, here is your pump house where I am pointing to. Do you see where that is? A Yes, sir.

Q Now, when you ran out, how far did you go? A Out in the road, around clean across the road, or across the furthest track on the easterly side.

Q That is the sea wall track where I am pointing to now? A Yes, sir.

Q And from there where did the fire seem to be? A Way down at the end of the North Pier, like; that way.

Q Down here somewhere? A Way down there as far as I could see. I couldn't give you the exact place, right down that way it appeared to me.

Q It looked like it was in between two lines of cars? A Yes, sir.

Mr. Stallman. Cross examine.

Cross examination by Mr. Rockwood.

Mr. Rockwood. I will call this witness on our side of the case.

The Court. All right.

Direct examination by Mr. Rockwood.

Q You are now employed by the Lehigh Valley? A No, sir.

Q You are not now? A Standard Oil.

Q Standard Oil now? A Yes, sir.

Mr. Rockwood. Then I will ask you this question and recall you again.

Cross examination by Mr. Rockwood.

Q When you went back to your pumping station, what did you do with reference to your water pressure? A I got the pressure on the pump, opened the twelve inch suction valve and then the ten inch discharge valve on the pump, and got 130 pounds pressure on the line that runs all through the whole yard.

Samuel Sloan, re-direct.

Q In other words, you charged your steam boiler up to 130 pounds pressure? A The water line.

Q The water line? A Yes, sir.

Q And did you charge the salt water line? A That is the salt water line I charged up.

Q Charged it up? A Yes.

Q So there was that pressure on that line at all times? A Yes, sir; and I had to open the relief valve when we had excess of pressure, and I had to open the relief valve because there was nobody taking water.

Q In other words, if anybody had taken water, you had plenty for them? A Oh, plenty; why, sure.

Q That is all.

Re-direct examination by Mr. Stallman.

Q Did you go out and instruct the Jersey City firemen how to get water? A Well—

Mr. Rockwood. I object, because it is shown not to be a part of his duty. Counsel has proven by him that his duty was to stay in the pump room and keep up the pressure which he did.

The Court. Well, the question is not what his duty was; the question is what he actually did as a matter of fact.

Mr. Rockwood. That cannot be urged to the jury as a thing that is binding upon our part.

The Court. Perhaps not, but I think I will permit him to prove it. You may have your objection entered to that ruling.

Mr. Rockwood. Except.

The Court. I might say in vindication of the ruling that this gentleman has said, as all of them said, that it was their duty when a fire came to put the fire out if they could, and his duty was to be down there in the boiler room or in the pump room, and see that the pressure was on. It may very well be,

if his duty was to put the fire out, see that the pressure was there, that that might be considered by somebody to be his duty to inform those that came with their hose that the pressure was there, and if it was, that some unusual pattern of valve where the water hydrant was, to inform them how to use it, otherwise what good is pressure if you cannot use it.

Mr. Rockwood. Of course he cannot do that without leaving his pump room.

The Court. Perhaps not, but I think I will permit this question. He apparently did leave the boiler room occasionally, according to the evidence.

(Question repeated by stenographer.)

A I was at the pump room there watching the development of everything that was going on, and a fireman came over to me at the boiler room, and I says, "When are you going to take some water, and I am waiting on you?" And he says, "To Hell with it, I am not going down there."

Mr. Rockwood. Who said that?

A One of the fire department.

The Court. Do you want that struck out?

Mr. Rockwood. No, certainly not.

The Court. Very well.

By Mr. Stallman.

Q Now will you answer my question (I can move to strike it out, but I won't), will you answer my question? A Just what is that?

Q Did you instruct any of the Jersey City firemen how to get water from any of those— A It was a Corey three-way hydrant on the roadside, and I went out there and I saw the fire department fiddling with it, and I says to one fellow, "I will show you how to work the thing." He says, "Hell, we know all about it." I says, "All right," and I walked away back to the pump room.

Q Who was that man, do you know? A I couldn't tell you who he was. He was one of the fire department.

Q Just that one man? A Yes.

Q That is all.

Re-cross examination by Mr. Rockwood.

Q Mr. Sloan, were those hydrants or fire plugs of any unusual design, or were the valves of any unusual design? A Well, these Corey three-way hydrants, you had to open the flood-gate, that is the large valve in the center, and then they had three independent outlets from that, and you could connect on to each of the independent outlets before you opened the main flood valve.

Q Does that require any special understanding or knowledge about that? A I should say not, but they didn't seem to be familiar with it.

Q It is a standard plug, isn't it? A It is, yes. They have them now all through Jersey City.

Q Eh? A They have them now, I guess, all through Jersey City.

Q Standard fire plug? A Standard fire plug.

Q That is all.

Mr. Stallman. That is all.

JAMES J. KELLY, sworn.

Direct examination by Mr. Stallman.

Q Now, Mr. Kelly, you were stationed at the grain elevator? A Yes.

Q At the time of this Black Tom fire? A Yes.

Q What were your duties there? A To take care of the boilers in the grain elevator and punch buttons.

Q Did you have anything to do with the watching of any of the munitions down in Pier 7? A No, sir.

Q Had you been down in that yard during the time they were handling munitions there? A No, sir.

Q Did you have any duties in case of fire? A Well, we did, yes.

Q What was your duty in case of a fire on Black Tom? A Go down and put it out if we could.

Q On the night in question what was the first you saw of the fire? A Well, when I got down to the pump room Sloan told me there was a fire down to the North Pier.

Q Well, that is the first you knew of it? A That is the first I knew of it.

Q What were you doing down at Sloan's pump room? A I heard a whistle blow, and I thought it was a tugboat whistle first, and I came from the elevator—

Q After you heard the whistle blow what did you do? A I went out to see whether there was a tugboat in the basin or not, to see whether she was going to take any grain barges out, and there was no tugboat there, so I said, "That must be the pump whistle."

Q Wait a minute. What were you doing when you heard that whistle blow? A Oh, I was in the elevator underneath the boiler blowing down the boiler getting it ready to wash it up Sunday morning.

Q When you heard the whistle did you go back and finish up the job first? A No; when I heard the whistle blow I was underneath the boiler first, and then I came out.

Q You finished up the job first and then went out? A I went out after I finished up that job, yes.

Q All right. A Then I went over to the dock and looked out at the basin to see whether there was a tugboat out in there.

Q Now, Mr. Kelly, from the time you first heard the whistle blow until you went out to look at the tugboat, and find out what the whistle was, how long a time was it? A I guess about ten minutes.

Q About ten minutes? A More or less.

Q When you got out and looked for the tug and didn't see one? A Yes.

Q Then where did you go? A I went down as far as the pump room at Pier 5.

Q Yes? A And Sloan—I asked Sloan if he blowed, and he said, yes. I said, "What is the matter?" He said, "The North Pier is afire. Go over to the seawall and you can see it." So I walked over there and looked down in between two strings of cars, and I could see a fire.

Q How big a fire was it? A Well, seemed to be four feet high.

Q How wide was it? A Oh, about the same width.

Q You could see that between two strings of cars, two lines of cars? A Yes.

Q Was there enough of the fire so as to illuminate the sides of the cars? A Well, it did look bright. You could see—looked bright.

Q How near to the roof of the cars did the flames reach? A Well, they just about got to the roof; looked to be just about to the top of the roof.

Q Coming from the ground up? A Well, I don't know. It seemed to be about half ways, about from the middle of the cars like.

Q Very dark down there, was it? A Well, there are some pretty dark nights; I couldn't say just for sure what kind of a night it was that night, whether it was light or dark.

Q Well, now, when you saw this fire down there, as you have described, what did you do? A I went back to Sloan and I told him I was going back to the elevator to secure my other boiler.

Q You had other work to do up at the elevator? A Yes.

Q You went back to work? A Yes.

Q When was the next time when you gave any attention to the fire? A Well, then I came back to the pump room again when the Jersey City—

Q How long afterwards? A Well, from the time I left Sloan until I came back again it was ten minutes at the least.

Q Yes; that would have been how long after you first heard the whistle? A Oh, that was twenty-five minutes to a half hour.

Q After you first heard the whistle? A Yes.

Q Then you went back to Sloan's place? A Yes.

Q Of course you couldn't see the fire from there? A No; you had to go over.

Q Yes. Did you go over then to look at the fire again? A The Jersey City fire department was coming down at that time.

Q Just about that time? A Yes.

Q Then what did you do? A Well, I stayed there at Pier 5 crossing.

Q At Pier 5 crossing? A Yes.

Q At a place where you could see the fire? A Yes.

Q What did you see? A Oh, I could see two cars—looked like two cars burning.

Q Looked like two cars, that is the flames had gotten up high enough so you could see it was two cars? A Yes, it looked as if it was two cars.

Q You saw the flames? A Yes.

Q Did you continue to watch it? A Yes.

Q Did you continue to watch it until you saw some sparks or anything of that kind? A Well, that was shooting when I was coming back from the elevator.

Q Coming back from the elevator? A Yes.

Q That was from twenty minutes to a half hour after the whistle blew? A Yes.

Q Then you saw these sparks coming? A These shells going off.

Q Yes. Did you hear anything? A When I came back I did, yes, and I heard that.

Q Where were you when you first heard it? A Coming back from the elevator.

Q Now did you see any grain boat captains around Sloan's place? A I seen Mason and Crockett.

Q And were they doing anything? A No; they were just standing there at that time when I came down.

Q Was the fire burning at that time? A Yes.

Q And you did not get out any hose or anything of that kind? A No, sir.

Q That is all.

James J. Kelly, cross.

Cross examination by Mr. Rockwood.

Q When you first saw the fire you said it seemed to be about four feet high, and then you said it seemed to be near the top of the car. How high is the top of the car? A Top of a car runs about twelve feet from the ground to the top of the car. About twelve feet.

Q Then you said you saw the fire coming out of the middle of the car? A No; I said it looked in between two cars.

Q Did you see it was coming out of the car itself? A No; I could not say it was coming out of the car itself.

Q Could not say it was or was not? A No, sir; I could not say.

Q How far were you away from it? A It seemed to be away down at the end of the yard.

Q About how far away in feet? A Oh, eight hundred to a thousand feet.

Q Eight hundred to a thousand feet? A Yes.

Q As you looked at it did the flames come over the tops of the cars? A Just about going level with the tops of the cars.

Q Level with the tops of the cars? A Yes.

Q Could you tell whether it came over the car itself or not? A Well, I wouldn't say, no, sir.

Q You would not be positive on that? A No, sir.

Q It might have? A It might have.

Q Yes. In fact you were so far away I presume you could not accurately tell just where it came from? A I knew it was in between the cars.

Q Eh? A It was in between the cars.

Q In between the cars? A Yes.

Q Now how much work was it to blow out the boiler? A Well, just according—sometimes it takes you ten or twelve minutes before you get things ready, before you could get it started down, to blow her down.

Q It is a very small operation? A Well, it is, sometimes; sometimes it ain't It is just according how that locknut that holds the stop-cock, whether you can get a wrench on it or not, or it keeps slipping. You haven't much room to hold it.

Q On the night in question you had no trouble about it? A It took me ten to twelve minutes to do the job, at least.

Q Altogether? A Yes.

Q That was about twelve o'clock? A Oh, that was after half-past twelve when I started that job.

Q And you finished it then in about ten or twelve minutes? A Yes, sir.

Q Then what did you do after that? A Well, I heard the whistle while I was doing that, and I walked over to the dock, more to cool off than to see whether the boat was there or not, and I went over there and I didn't see no boat, and then I took a walk down as far as Sloan.

Q Went to the pump room? A Yes, sir.

Q You saw Sloan in the pump room working? A Yes, sir.

Q What was he doing? A He was standing in front of his pump with an oil can in his hand.

Q Tending to his work? A Yes.

Q Do you know if there was plenty of pressure on or not? A Yes, sir.

Q And the mains full of water? A Yes, sir.

Q So that if the water had been taken by the firemen there was plenty of water for them? A Yes, sir.

Q Was there anything there that night that was not in good working order in the fire apparatus that you know about? A Nothing as I know of.

Q And it was all in good condition? A All in good condition.

Q Was there ever a time, Mr. Kelly, when there was any fire burning before the explosion down here near Warehouse Q? A Do you mean the night of the explosion, or before?

Q Yes, the night of the explosion? A Fire was down further than that when I seen it.

Q Down further this way? A Yes, to the end of the North Pier.

Q Did you see any cars burning down here near Warehouse Q? A No, sir; they were down further when I first seen them.

Q Never saw any burning around there at all? A No, not until after they got going.

Q After what? A After they were burning awhile they started to come up awhile.

Q Until after the fire all burned, the fire was down this end? A It seemed to me to be away down on this end.

Q Would you say it was down near Zeke's house? A That is where it looked to me, around in that place.

Q Around in that location? A Yes.

Q When you first saw it? A Yes.

Q Then you were eight hundred fifty feet away from it? A I figured that from the pump room.

Q Yes. You know, of course, that all those cars where the fire was burning, were loaded with ammunition? A I did, yes.

Mr. Stallman. I object to that. The witness said he was not down there.

The Court. I think I will overrule the objection—it came after the question was answered.

Q I will ask it in another way. Did you know—

The Court. What is the use, he has already answered it.

Q Did you know it was a dangerous place down there? A I did.

Q And very soon after you saw the blaze you heard the shells popping? A Yes.

Q I suppose you were pretty well excited that night? A I was.

Q Where did you go then after that time? A Well, then I stayed around there for awhile and I went back to the elevator again to look over things, and then when I was coming back just passing Store 3, going on the road, the first explosion went.

Q Did the firemen make any attempt or effort to put the fire out? A Not as I seen.

Q You did not see any? A No, sir.

Q Did you see firemen standing around there? A I seen firemen standing between 5 and 6, nearer to 5.

Q Doing nothing? A Doing nothing.

Q That is all.

Re-direct examination by Mr. Stallman.

Q Did you see any of the Lehigh Valley employees attempting to put out the fire? A No, sir.

Q Where did that explosion come from, Mr. Kelly? A Well, it came, as far as I could—well, I didn't see the explosion, because I was just coming from Store 3, just as I got on the road the explosion went up.

Q Did you see it go up? A After, I could see the flare of light, but I could not just see where it came out of.

Q Where was this flare of light? A Up in the heavens when I seen it.

Q Over what part of the yard? A It looks right over the far end of the storehouses.

Q Over the corner of the storehouses? A Yes, sir.

Q That is all.

Mr. Rockwood. That is all.

Mr. Stallman. By arrangement with counsel, I would now like to read the testimony of the police officers, taken on the previous trial—I have a summary of the testimony; it is shortened up somewhat. Mr. Allen was examined, and the rest of the police officers. The testimony was summarized.

The testimony of Mr. Allen was on page 708 of the Royal Indemnity record. He testifies that he was a lieutenant of police on July 30, 1916, and about two o'clock in the morning of that day he was in the vicinity of the Summit avenue tubes at Sipp avenue near Bergen, up near the Public Service station.

"Q Did you hear the explosion about that time? A About nine minutes after two, according to my watch, I heard the explosion, yes."

Then turning to page 712 of that record. On page 712 of that record Lieutenant Allen continues.

"At Sip avenue and Wilkes street, at 2:08 A. M. I met an officer; half a minute later noticed the fire, and in about ten seconds the report blew us in the street, with the windows. The windows were pretty much blown out in the entire precinct. I heard the second explosion about twenty minutes later. It had practically no effect. The first one appeared eight or ten times as strong as the second one. The second one did not affect us in any way.

"Frank Niehauf, a police officer, said he was on post at Buffalo avenue and Leonard street, West Hoboken, several miles from Black Tom; he heard the explosion around 2:08 o'clock.

"I had nine blocks. Nearly all of the windows were broken. The second explosion was twenty minutes to half an hour later. The second one was not as strong as the first. It did not do any damage that I saw.

"Officer Austin Lashford was at Bergen street and Newark avenue, near this court house. The explosion was shortly after two o'clock. There was a second one about twenty minutes later. The effect of the first explosion was that most of the store windows to the other end of my post at Summit avenue blew out. I do not remember seeing any windows go out with the second explosion, or any damage being done. It was all done with the first one.

"Officer Joseph Rowan testified that he was standing on Newark avenue near Jones street. The explosion occurred between 2:05 and 2:10. All of the store windows on his post were blown out. There was a second explosion twenty to twenty-five minutes later. Nothing happened at the time of the second explosion.

"Officer J. J. Langdon testified that he was standing at 150 Monticello avenue. The explosion occurred at 2:05. It busted all the windows. A second explosion occurred about twenty or twenty-five minutes later. It blew out one window.

"Officer J. H. Robertson was at Edge and—"

The Court. That is Ege avenue.

Mr. Stallman. It is Edge here.

The Court. That is a mistake. It should be Ege.

Mr. Stallman. (Continuing.)

"At Ege and Ocean avenues, two miles from Black Tom. The explosion occurred about 2:10. I saw a lot of glass blown out, store fronts, and windows of apartment houses. The second explosion was about twenty minutes later. I did not see any damage done by the second explosion.

"Officer George A. Duffy, standing at Grove and Bergen streets. An explosion occurred at 2:10; about three-quarters of the windows of the stores and flathouses on Grove street were blown out. I heard the second explosion about twenty-five or twenty-seven minutes afterwards. I did not see anything happen on the second explosion. It was all done on the first."

Mr. Stallman. Now, I would like to read the deposition of Gustave Ackerman. Have you got your copy, Mr. Hobart?

Mr. Hobart. Yes.

Mr. Stallman. (Reading.)

"Gustave Ackerman, being duly sworn, testified as follows—(I examined him.)

"Q Mr. Ackerman, where do you reside? A 426 Sixth street, Brooklyn.

"Q Are you connected with the Ackerman Lighterage Company? A Yes, sir.

"Q And were you connected with that company, in July, 1916? A Yes, sir.

"Q In what capacity? A Why, just operator.

"Q The operating officer of the company? A That is all—just operator-- I don't believe I was vice-president at that time; I didn't look it up; I don't remember.

"Q Are you vice-president now? A I am.

"Q At that time you were sort of a manager? A Exactly—assistant manager.

"Q And at that time did your company own or operate barges known as the 'Paulina,' the 'Rockwell,' and the 'Thompson'? A Operated them.

"Q Are those the correct names of those boats? A With the exception of some initials.

"Q What are the correct names? A 'Charles Rockwell,' 'Paulina,' and 'W. A. Thompson, Jr.'

"Q During the week preceding July 29, 1916—that is the date of the Black Tom explosion—in what service were those barges engaged? A Why, carrying munitions and anything else that we might put on them, not specially munitions.

"Q And that work was done in and around New York Harbor, I suppose? A Yes, sir.

"Q With whom did you make the arrangements for the use of these barges, in the handling of munitions? A Just what do you mean?

"Q Who was it that made the arrangements with your company for the use of these barges? A What companies—representing the different governments?

"Q Yes. A Lunham & Moore and G. W. Sheldon.

"Q And in that connection, do you know which of these firms represented the different governments? A Lunham & Moore, I presume, represented the English government, and in Russia also, and the Sheldon, French; but there were times when we got some English stuff from Sheldon.

"Q More or less interchangeable? A It was interchangeable at times.

"Q Do you know, Mr. Ackerman, whether or not any of these barges were injured or damaged in any way in the Black Tom explosion at Jersey City on the 29th or 30th of July? A I didn't see them at that time; I didn't see them until after they were burned.

"Q How long after, did you see them? A Two days after.

"Q What was their condition when you saw them? A Why, just charred on the top.

"Q Were all these boats alike—of the same general character? A Two of them, the 'Thompson' and the 'Rockwell' were alike.

"Q And what type were they? A Barges.

"Q Just a hull with a deck on it? A A deck on it, and a mast and boom.

"Q That was the 'Rockwell' and the 'Thompson,' did you say? A Yes, sir.

Q "What kind of a boat was the 'Paulina'? A A scow.

"Q How did that differ from the other two? A She didn't have a boom and mast.

"Q Can you just tell us the degree of damage to each of these boats? A What do you mean, the extent of the damage in value?

"Q No, I do not mean the value. I meant can you state just the extent of the damage as it appeared to you when you saw them? A Why, they had to go to the repair yard to be fixed before we could use them.

"Q Take the first one, the 'Rockwell'; you describe that as a boat having a deck and a boom and a mast; what was the matter with the deck, for instance? A The deck was burned on top, not through.

"Q And the 'Paulina'? A Same way.

"Q The deck was burned on top, also? A Yes, sir, and part of the sides.

"Q 'Thompson' the same way—part of the sides of the 'Paulina'? A Yes.

"Q All three of them? A All three of them.

"Q At the time you saw these boats, did any of these boats have any munitions on board them? A No, sir.

"Q Were there any traces of the presence of the munitions? A Why, I didn't see anything; I would not know it if I did see; there were no cases laying on deck and that was the only way I would know.

"Q Can you tell us, Mr. Ackerman, when, about when it was that the 'Rockwell' arrived at Black Tom preceding the explosion—I do not mean the exact hours—about? A I don't know that, because I didn't look it up; you didn't ask me to tell you that in the subpoena.

"Q What is your best recollection? A I imagine about a day before; I don't know.

"Q And the 'Paulina', what is your best recollection when she got to Black Tom? A Probably about the same time.

"Q And the 'Thompson'? A Same thing. I believe they took goods up that dock; I don't know that.

"Q When you say 'goods' what do you mean A Munitions.

"Q By 'that dock' what do you mean? A Black Tom.

"Q Can you tell whether or not during a week or any short period preceding this explosion your boats transferred any munitions from Black Tom to some other place in the harbor, to any ocean going steamship? A If we transferred freight from Black Tom to a ship?

"Q Yes. A During that week?

"Q Yes. A Yes, we were handling it right straight along, but on these three boats, I wouldn't say as to that because we were using quite a lot of boats.

"Q The boats that were handling munitions—these three barges that you have spoken of, after your barges were loaded what became of the munitions? A On those three barges?

"Q No, on any of the barges that you were handling? A Why, we took it down to the ship and put it in the steamer.

"Q Your barges were used for transporting munitions from the railroad terminals out to some steamship and taken to Europe, is that right? A Yes.

"Q And were these barges that you mentioned in that service? A They were at that time, they were all in the service, all our boats; whenever we needed anything extra we employed them.

"Q Can you tell us what the occasion was for these three barges being at Black Tom at the time of the fire? A Waiting for the steamer.

"Q Just what do you mean by that? A The ship was not in Gravesend Bay, ready for the cargo. It was the practice and the custom at that time—we would get orders the night before to take the barges down to the ship at Gravesend Bay.

"Q Do you know why it was that these particular barges that were burned were at Black Tom, rather than at another place? A I presume they loaded there.

"Q Who was the captain of the 'Thompson' at that time? A I just don't recollect; in fact we don't—I didn't look up the names of the captains—we don't keep any records, nothing in the office at all—they send the time slips in.

"Q Was Luke Eiseman the master of the 'Rockwell' at that time? A No.

"Q Or of the 'Paulina'? A Yes.

"Q And Nelson was the master of the 'Rockwell'? A I believe he was.

"Q You don't remember who was the master of the 'Thompson'? A I don't remember who was on the 'Thompson', because we were changing quite a lot and at times the men were quite active and they would leave their boats and we would have to get some one else to go on them, because they were working night and day, practically, and the men had to get off some time."

Cross examination by Mr. Hobart (Mr. Hobart reading).

"Q Were you familiar with the layout of Black Tom, with regard to the general location of the railroad tracks and the piers? A Why, I have been over there, I think, about twice in my life; that is something that—I didn't get around like that very much; I go around on the tugboats, but you just get a general idea of where the place is and that is about all you know.

"Q Do you know where the so-called North Pier was? A I believe the North Pier was where we loaded the munition; when we received orders to put aboard at Black Tom we went to that dock, we told the men to put into Black Tom and that was all.

"Q They were supposed to know which part? A It is a common custom in the port.

"Q In other words, it was not the custom to direct your men to go to any particular pier, such as North Pier, but merely the general name, Black Tom? A Go to Black Tom.

"Q They were supposed to know where they should go, what particular point? A Yes, sir.

"Q Do you know where these three barges or any of them were on the night of July 29th and 30th, with respect to the North Pier? A No, sir, I don't; I wasn't over there.

"Q Were you there the next day? A No, sir; I didn't see the barges until they were at Brewer's Dry Dock.

"Q Do you know whether these barges, or any of them, were taken away from the North Pier after the fire started on the night of the 29th or 30th—did they break loose? A I couldn't answer to that.

"Q All you know is that you saw them the next day at the dry dock? A The second day.

"Q And then they were partly destroyed? A Yes, sir.

"Q As far as you could tell at that time, the contents had also been destroyed, whatever the contents might have been? A Well, it had been destroyed or—I don't know where it had gone—some one might have taken it off, for all I know.

"Q Do I understand you to say, when you saw the barges a couple of days after, there wasn't any munition on them at all? A No, sir.

"Q What had become of it in the meantime, of course you do not know? A No, sir.

"Q Now, the usual place of loading for export was at Gravesend Bay, was it? A You mean into the steamer?

"Q Into the steamer. A Yes, sir.

"Q I understood you to say that you would generally get word at your office the night before when the steamer was ready to receive—to load a ship? A Either the night before or the next morning. It all depends on how the men worked that night.

"Q Do you know whether it was the practice at that time to have the munition put aboard the last thing or the last part of the steamer's load? A Yes, sir, it was. They may put a few cases of automobiles on the ship or some airplanes, or something like that.

"Q But the munition was got on board last? A The munition was usually the last thing to go on the steamer.

"Q Did you know at that time of a government anchorage ground, a mile or so below Black Tom, in the lower harbor? A For what?

"Q For munition? A There was a high explosives munition ground there.

"Q Did you ever instruct your captains where that anchorage ground was for high explosives? A Why, we didn't carry anything that was termed high explosives—we didn't carry any dynamite.

"Q Is it your understanding, or was it at that time, that the only explosives that was called or came within the description of high explosives, was dynamite. A Yes, sir.

"Q You did not consider TNT, for example, as a high explosive? A No, sir.

"Q Had you given your captains any instructions what to do in case they did have a load of high explosives, and the ship was not yet ready to receive the load? A You refer now to dynamite?

"Q Anything that was high explosives? A We called high explosives dynamite, and that was our orders—dynamite.

"Q And what were your orders to your captains? A We didn't handle dynamite.

"Q You did not give them orders with regard to the anchorage grounds? A They had their orders, because they had charts, as every captain in this port has, on the tug boat, knows the harbor and knows the different anchorages for steamers or for explosives and all about it—all over the harbor it is practical knowledge which he has to have before he can become a captain.

"Q So that your captains had these charts which indicated the various ports? A I don't know whether they had the charts but they have the port license to navigate these boats.

"Q All I am interested in are the lighterage captains. Were they supposed to have these charts? A The lighterage captains

are common laborers, who do as you tell them; the boats are non-propelled and cannot move unless you tell them.

"Q Then the captains of your lighters did not have any instructions about the anchorage grounds, as far as you know? A No, sir.

"Q And when you spoke of captains you were referring to captains of the tug boats? A Exactly, tug boats or steam lighters.

"Q Any vessel that goes by its own power? A Yes.

"Q Your tug boat captains, then, did have some instructions or some knowledge as to the anchorage grounds? A Yes, sir.

"Q Had to have it before they could have the boats? A Yes.

"Q Did your company furnish these charts or did you have licenses on the boats to show he had knowledge of where he should go? A There are charts on all tug boats.

"Q Your boats were equipped? A Yes, sir. As to whether they were there or not I couldn't say; they were on every boat that came out, because that is a part of their equipment.

"Q I suppose you have no personal knowledge of either the time or the place of the loading of the munitions on these three barges, have you? A No, sir; I have not.

"Q Would not be any part of your work to know about that, or to see about it? A No, sir.

"Q Was it the practice of your lighterage captains to make a daily report of where they were and what they had on board? A That is the custom in ordinary times, but at that time, as I told you before, we would change captains, and we did not get complete logs, they did not turn in daily reports.

"Q So far as your office is concerned, you got word from these men you have mentioned, the firms you have mentioned, Lunham & Moore and Sheldon, as to when munition was ready to be placed on board the lighters? A No, we received orders, car numbers at times; sometimes we would not get orders.

"Q From Lunham & Moore or from the railroad company? A Those orders would come from various places; we would get them from Lunham & Moore, DuPont Company; got them

from Aetna Company; they were shipped in cars leaving at a certain time in the afternoon, and were due at the dock in the morning and were to go to the ship that night.

"Q How would your captains or how would your company get word at Black Tom, for example, or at the Jersey Central pier or anywhere else that a certain number of cars of munitions was ready to be put on board the lighters? A Not until the men were there in the morning. We placed the boats at night, figuring on the cars coming in. They usually did, because it was all express work and they had men right in the cars and had been told there was to be no delay on it; it was rush work.

"Q In other words, then, at that time you relied upon the information given you by the consignee or the consignor of the goods rather than upon any information from the railroad companies? A Why, we generally had the car numbers at night and they were taken down there the next morning.

"Q Where would you get the car numbers from? A From Lunham & Moore, Aetna or Sheldon, on the telephone.

"Q But not from the railroad company? A No, we would check up with the railroad companies, and if those car numbers corresponded with that it was our stuff; there were times when there would be a similar number and we would take that car by mistake.

"Q You have not any distinct recollection of getting any at Black Tom that day? A No.

"Q Or several days before that? A Might have.

"Q Might have gotten it from Jersey Central? A Might have; we were working from those roads.

"Q New Haven? A No.

"Q So far as you know, did your company or any of your captains have any permission from the Lehigh Valley Railroad to place their boats or barges at the Black Tom pier, except they were actually being loaded there? A Did we have permission from the Lehigh?

"Q From the Lehigh Valley, to have your boats stay there over night, unless you were actually loading or intended to load? A Why, that question had never been raised.

"Q You never did have such permission, so far as you know? A Never been raised.

"Q Did you ever ask for it A I don't recollect whether we did or not.

"*Re-direct examination* by Mr. Stallman.

"Q You say that the question had never been raised, Mr. Ackerman. Over what length of time, approximately, did your boats lay over at Black Tom? A You mean after they were loaded?

"Q Yes, or before they were loaded? A Why, sometimes they would not lay—go right out just as soon as they were loaded, if the ship was waiting for it.

"Q You said in answer that the question had never been raised as to the right of your company to have these barges or scows lay in at Black Tom? How long had it been the custom or the practice of your company to have its boats at Black Tom? A Since we started handling munition.

"Q And can you approximate how long that was before this explosion—this explosion was in July, 1916? A The war started in 1914. We started in handling munition late in that fall.

"Q Fall of 1914? A I think it was, or it might have been late in August or September, I don't just recollect just what time it was.

"Q One thing I forgot to ask you. Can you give me approximately the capacity of these three barges in car loads, or any other way of stating the capacity? A You mean how much cargo we would put on them to go to Gravesend Bay?

"Q Yes. A Well, that would vary, all depend on the size of the cars, what they put in them; we used to put about 250 tons in weight on the 'Thompson.'

"Q Same on the 'Rockwell'? A Yes, sir.

"Q How about the 'Paulina'? A Might vary; might go a little more or a little less; they carry 500 tons, the barges; it was not practical to load a barge going to Gravesend Bay on account of the winds—if you got in any trouble down there, on

account of the storms—got to have a high free board. And the 'Paulina' carried—we used to put about 500 tons on her—she carried 1,000 tons, she is a great big boat.

"Q Can you tell us, Mr. Ackerman, whether it was customary at that time during the rush in the handling of munition to take a part of a barge load at one railroad terminal and then finish the barge load at some other railroad terminal? A Yes, sir.

"Q By the way, did your company own the 'Jet'? A No, sir.

"Q That wasn't an Ackerman barge—a Johnson barge? A I don't know.

"Q You also said in answer to a question by Mr. Hobart that you got information either from the shippers or the shipping agents, Lunham & Moore and G. W. Sheldon & Company, of the expected arrival of carloads of munitions, and when you got that notice I understood you to say you sent your barges over during the night so as to be ready for the cars in the morning. Did I understand you correctly? A Exactly.

"Q On these occasions did you use the Ackerman Lighterage Company tugs to take them over to the railroad stations? A Why, we tried to, but of course it wasn't always possible to do it, because they were busy, and we might have to get outside boats to do it.

"By Mr. Hobart.

"Q When you sent your barges over the night before, as you just explained, the barges would be empty, I suppose? A Generally empty, yes, unless we did as Mr. Stallman said, picked it up at the Black Tom to go to Jersey or elsewhere.

"By Mr. Stallman.

"Q Did it frequently occur at that time that a ship at Gravesend Bay would not be ready to take these loads? A It was a common practice.

"Q And during that time, can you tell us whether or not it was a common occurrence for your barges to lay up at any of

the Jersey Central piers, waiting until that ship was ready? A Yes, sir.

"Q And did your boats frequently lay up at Black Tom for that purpose? A At either place.

"Q How about Black Tom? A Black Tom—we laid there or Jersey City.

"Q Or the Jersey Central, you mean? A Yes.

"Q Was any objection ever raised on the part of the Lehigh Valley Railroad to your boats laying there? A I never heard of any.

"*By Mr. Hobart.*

"Q You never heard of any permission that they lay there? A It is the custom in the harbor here, whether you are loading cotton or munitions or anything at all, that you lay at the dock where you are loading, yes.

"Q If you are loading at that particular dock? A Yes.

"Q That is what you mean by the custom that you mentioned in answer to Mr. Stallman? A Yes."

Mr. Stallman. Now, I would like to read interrogatories by arrangement with counsel, interrogatories and answers that have been made by the railroad company in another case. This is from the Royal Indemnity record at page 376.

"1. Describe by means of map or otherwise, the dimensions of the Black Tom pier referred to in the pleadings in this action, and therein show or describe the locations and extent of the tracks, buildings and other structures upon said pier as the same existed on July 30th, 1916.

"2. Describe by showing on said map or otherwise the location of the fire hydrants, if any, on said pier.

"Answer: On the assumption that the 'pier' referred to in these interrogatories is intended to include all the lands and premises commonly known as the 'Black Tom yard' at Jersey City, and the tracks, buildings and other structures, including fire hydrants located therein or thereon, the defendant answers

that the map thereto attached correctly indicates the dimensions of said lands and premises and the tracks, buildings and other structures therein or thereon, including fire hydrants, as the same existed on July 30, 1916.

"In answer to these two interrogatories the map was furnished which is on the easel, and which we accept as a complete description of the *locus in quo,* and the fire hydrants in question.

"3. State as nearly as possible the actual number of cars on said pier on the right of July 30th, 1916.

"4. State how many of said cars containing or marked as containing explosives or explosive munitions were on said pier on the night of July 30th, 1916.

"5. How long had said cars containing explosives or explosive munitions been on said pier up to twelve o'clock midnight of July 30th, 1916?

"Answer: On the assumption that the 'pier' referred to in these interrogatories is intended to include all the lands and premises commonly known as the 'Black Tom yard' at Jersey City, defendant answers that the total number of cars on the night of July 30th, 1916, was 228. None of the defendant's officers, agents or employees has any personal knowledge of the contents of any of the cars, excepting as shown by the shipping orders furnished by the respective consignors to this defendant (with respect to traffic originating on the defendant's line), or as shown by the waybills furnished by connecting lines to the defendant at the point of connection (with respect to traffic originating on such other lines). According to the statements in said shipping orders or waybills defendant answers that there were 17 cars, the contents whereof were described and designated in said shipping orders or waybills as 'Ammunition for cannon'; there were eleven cars, the contents of which were similarly described and designated as 'High explosives'; there were three cars, the contents whereof were similarly described and designated as 'Wet nitrocellulose'; there were two cars, the contents whereof were similarly described and designated as 'Combination fuses.'

Interrogatories and Answers.

"The following is a list containing a description and the number of each of said cars, the contents thereof as shown by the said shipping orders or waybills and the number of days each of said cars had been on said pier prior to July 30, 1916:

"Car		Lading	On Hand
C. St. P. M. & O.	33602	High explosives	2 days
C. & N. W.	129112	" "	2 "
C. St. P. M. & O.	32452	" "	2 "
C. & N. W.	139900	" "	2 "
C. & N. W.	135762	" "	2 "
C. St. P. M. & O.	32194	" "	2 "
C. St. P. M. & O.	30484	" "	2 "
C. & N. W.	131112	" "	2 "
C. & N. W.	137046	" "	2 "
C. & N. W.	126960	" "	2 "
C. St. P. M. & O.	30832	" "	2 "
Wabash	67166	Wet nitrocellulose	6 "
C. P.	128766	" "	6 "
P. R. R.	517708	" "	6 "
P. M.	52932	Ammunition for cannon	3 "
Erie	102070	" " "	4 "
P. R. R.	11832	" " "	4 "
P. L.	517981	" " "	4 "
P. L.	536125	" " "	4 "
H. V.	32020	" " "	3 "
G. T.	26343	" " "	3 "
B. & A.	37330	" " "	3 "
P. L.	517930	" " "	3 "
N. C. & St. L.	10194	" " "	3 "
P. R. R.	84422	" " "	3 "
C. & E. I.	61659	" " "	4 "
L. V.	85282	" " "	1 day
C. C. & St. L.	54578	" " "	4 days
P. & R.	14537	" " "	9 "
P. & R.	12275	" " "	11 "

"Car		Lading	On Hand
P. R. R.	84146	Ammunition for cannon	part day
N. H.	77254	Combination fuses	6 days
N. H.	84321	" "	6 "

"6. To whom were said cars consigned?

"Answer: The contents of the cars described as 'Ammunition for Cannon' were consigned to the Bethlehem Steel Company; the contents of the cars described as 'High Explosives' were consigned to C. J. Medziknovsky; the contents of the cars described as 'Wet Nitrocellulose' were consigned to G. W. Sheldon & Co.; the contents of the cars described as 'Combination Fuses' were consigned to Bethlehem Steel Company.

"7. On July 30th, 1916, did the defendant own or lease, occupy and use said pier known as Black Tom pier and the lands covered with water immediately adjacent thereto?

"Answer: On the assumption that the 'pier' referred to in this interrogatory is intended to include all the lands and premises commonly known as the 'Black Tom yards' at Jersey City, defendant answers that it did not own the said lands or premises; it leased, occupied and used the same in accordance with the terms and provisions of a certain lease made by National Storage Company dated June 24, 1913. Copy of said lease and of the map therein referred to is hereto attached as a part of this answer."

A copy of that lease is annexed herewith, but I will not bother to read it.

Additional interrogatories:

"1. Were the tracks in the B. T. yard severally numbered or otherwise designated or identified on or prior to July 30, 1916?

"2. If so, state how said tracks were numbered or identified.

"3. State where, with reference to such identified tracks, said cars containing explosives and munitions were placed and held immediately prior to the fire and explosion of July 30, 1916.

"Answer: With respect to these interrogatories, the attorneys for the plaintiff have expressed themselves as satisfied with

the information conveyed to the plaintiff in and by a map furnished to the plaintiff by the defendant on November 10, 1917. Later information has caused the defendant to make certain corrections in the said map, which corrections are shown on the map furnished herewith.

"4. Referring to the amended answer, paragraph 3, second defense to first count, did said cars bear signs or placards indicating the nature of the contents and instructions rehandling and transportation as prescribed by law and the rules or regulations of the Interstate Commerce Commission? If so, state the test of each of such placards on each of said cars.

"Answer: Yes. The placards on the following cars which originated at Barksdale, Wis., and which had been placed thereon at point of origin were in the form and of the size and contained thereon the printing prescribed by Section 1666 of the rules and regulations for the transportation of explosives and other dangerous articles by freight and express, issued by the Interstate Commerce Commission, effective October, 1914, which regulations were in effect on July 29th and 30th, 1916:

"Initial	Number	Contents	Point of Origin
Omaha	32194	Trinitrotoluol	Barksdale, Wis.
"	30484	"	"
C. N. W.	131112	"	"
Omaha	33602	"	"
C. N. W.	129112	"	"
Omaha	32452	"	"
C. N. W.	139900	"	"
C. N. W.	135762	"	"
C. N. W.	126960	"	"
Omaha	30832	"	"
C. N. W.	137046	"	" "

"'EXPLOSIVE' PLACARD.

"1666. Placard A. Certified car for the dangerous explosives specified in paragraph 166 must be protected by attaching to each outside end, and the side door, the lower edge not less than 4½ feet above the car floor, a standard placard 12 by 14 inches, on which appears in conspicuous red and black printing on strong tag board the following notice:"

".....14 inches.....

..... R .....Company

EXPLOSIVES
(Printed in red)

HANDLE CAREFULLY.

(Keep fire away.)
(Printed in red)

..... Station .....19..

"Condensed rules for handling this car.

"(1) This car must not be placed in a passenger train or in a mixed train if avoidable.

"(2) Cars containing explosives must be near center of train and may be together if desired; must be at least 15 cars from engine and 10 cars from caboose when length of train will permit.

"(3) Cars containing explosives must not be placed next to cars bearing the inflammable or the acid placard or cars containing lighted heaters. Whenever it is possible to avoid so doing, they must not be placed next to tank cars or flat cars or next to carloads of lumber, poles iron, pipe, or other articles liable to break through any car from rough handling.

"(4) The air and hand brakes must be in service.

"(5) In shifting have a car between this car and engine whenever possible, and do not cut this car off while in motion.

"(6) Avoid all shocks to this car and couple carefully.

"(7) Avoid placing it near a possible source of fire.

"(8) Engines on parallel tracks must not be allowed to stand opposite or near this car when it can be avoided.

"(9) This placard must be removed from car when explosives are unloaded.

"The placards on the following cars, which originated at Redington, Pa., were those required by paragraph 1666 of the rules and regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles by freight and express, which paragraph is quoted above and in which quotations the wording contained on the said placards is set forth. The placards on each of the said cars in accordance with the requirements of the said paragraph 1666:

"Initial	Number	Contents
P. & R.	12275	Ammunition for cannon
Erie	102070	with explosive projectiles
P. R. R.	11832	"
P. L.	536124	"
P. L.	51981	"
Big 4	54578	"
C. & E. I.	61659	"
P. R. R.	84146	"
L. V.	85282	"
P. L.	517930	"
P. R. R.	84422	"
H. V.	32020	"
G. T.	26343	"
P. M.	52932	"
B. & A.	37330	"
N. C. St. L.	10194	"

"The placard on car P. & R. 14537, containing ammunition for cannon with empty projectiles, which originated at Redington, Pa., was what was known as an 'inflammable' placard and was in accordance with the provisions of paragraph 1913 of the rules and regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles by freight and express. The said paragraph, with a copy of the wording required to be placed upon said 'inflammable' placards, is as follows:

"'INFLAMMABLE' PLACARD.

"1913. Placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars containing an inflammable liquid, and on strong tag board for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars or tank cars, measuring 10¾ inches on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end to each side door of a car containing one or more packages protected by the red or the yellow diamond label:

"10¾ inches.

.....R. R. Co.

INFLAMMABLE
(Printed in red)

Keep Lights and Fires Away.

Handle carefully.

..... Station 19

"1—This car must not be next to a car containing Explosives.

"2—Do not enter with exposed flame, nor with lighted lantern, until car has been ventilated and vapors allowed to escape.

"3—When lading requiring this placard is unloaded from box or stock cars, Agents, Yardmasters and Conductors must re-

move the placards. Tank cars must retain placards until cleaned.

(Par. 1903)

"The placards on the following cars which originated at Aetna, Ind., and which contained wet nitrocellulose, were the 'Inflammable' placards required by the said Section 1913 of the said regulations of the Interstate Commerce Commission, hereinbefore quoted in full:

"P. L.	517708
C. P.	128766
Wab.	67166

"The following cars which originated at Waterbury, Conn., and contained combination fuses, contained no placards:

"N. H.	77254
N. H.	84321

"Said signs or placards as above stated remained upon the said cars in the Black Tom yard up to and on the 30th day of July, 1916.

"5. State which of said cars, by initial and number, were burned, or the contents thereof exploded, or were otherwise destroyed, by said fire and explosion.

"6. State which of said cars of explosives were not so burned, exploded or destroyed.

"Answer: Without attempting to state whether destruction resulted from fire or explosion or otherwise, it is the fact that the contents of the following cars were destroyed:

"Initial	Number	Contents
Omaha	32194	Trinitrotoluol
Omaha	30484	"
C. N. W.	131112	"
Omaha	33602	"
C. N. W.	129112	"
Omaha	32452	"
C. N. W.	139900	"
C. N. W.	135762	"

"Initial	Number	Contents
C. N. W.	126960	Trinitrotoluol
Omaha	30832	"
C. N. W.	137046	"
P. L.	517708	Wet Nitrocellulose
C. P.	127766	"
Wah.	67166	"
N. H.	77254	Combination fuses
N. H.	84321	"
Erie	102070	Ammunition for cannon with explosive projectiles
P. R. R.	11832	"
P. L.	536124	"
P. L.	517981	"
Big 4	54578	"
C. & E. I.	61659	"
P. R. R.	84146	"
L. V.	85282	"
P. L.	517930	"
P. R. R.	84422	"
H. V.	32020	"
G. T.	26343	"
P. M.	52932	"
B. & A.	37330	"
N. C. & St. L.	10194	"

"The contents of the following cars were partially destroyed:

"P. & R.	14537	Ammunition for cannon
P. & R.	12275	with explosive projectiles

"7. When did the fire begin? Or when was the fire first discovered by the defendants, its agents or employees?

"Answer: The defendant does not feel obligated to make statements based upon derivative information and therefore does not answer so much of this interrogatory as relates to the beginning of the fire. It states, with respect to the time when the said fire was first discovered by any of its agents or employees, that the hour was between 12:15 and 12:45 a. m., July 30, 1916.

"8. Describe the location or place or premises known as Black Tom yards where the fire was burning when first discovered by any agent or employee of the defendant company.

"Answer: The same agent or employee who first observed the fire is not able to place the exact location of the fire, but states that, from his point of observation, which was in front of Store G, the fire was to the east of him, but he was unable to determine whether it was on or adjacent to the North Pier or at some point in the yard near the North Pier and between him and the North Pier.

"9. Referring to Paragraph 7 of said answer, state the quantities of shrapnel and trinitrotoluol on the two barges referred to in the said paragraph of the answer, and whether the explosives on said two barges were destroyed.

"Answer: On the Barge 'Frank', of the Johnson Lighterage Company, there were the contents of the following cars which the billing indicated to be trinitrotoluol:

"C. N. E.	141052	57675 lbs.
C. St. P. M. O.	30764	57675 lbs.
C. St. P. M. O.	29468	57675 lbs.
C. N. W.	121346	57675 lbs.
C. N. W.	139326	57675 lbs.
		288375 lbs.

"On Moran Barge No. 64 there were the contents of the following cars, as indicated on the billing therefor:

"Initial	Number	Contents	Weight.
R. I.	37594	Combination fuzes	56160 lbs.
N. H.	72192	"	56160 lbs.
L. V.	86456	"	56160 lbs.
N. Y. C. St. L.	27117	"	49060 lbs.
Erie	105020	Ammunition for cannon	86366 lbs.
N. Y. C.	248647	"	67200 lbs.
C. P.	123132	"	72800 lbs.
B. & A.	39526	"	71475 lbs.

"Initial	Number	Contents	Weight.
S. P.	21499	Ammunition for cannon	71475 lbs.
U. P.	123964	"	101256 lbs.
L. S. M. S.	85754	"	86366 lbs.
L. & N.	101543	"	86366 lbs.
F. W. D.	6369	"	84000 lbs.
			944844 lbs.

"The defendant, excepting from derivative information, does not know whether the ammunition and explosives on the said barges were destroyed or not.

"10. On the night of July 30, 1916, were there any cars or tanks of naphtha, gasoline or other volatile or explosive liquids or gasses in said Black Tom yard?

"Answer: There were no cars or tanks or naphtha or gasoline at the time mentioned, and with respect to other cognate products, there were present four cars of chlor-benzol and one car of monochlorbenzol, of which plaintiff has knowledge from the map referred to in the answer to interrogatories Nos. 1, 2 and 3, showing the cars containing the same and the location thereof. The defendant does not by this answer commit himself as to the characteristics of properties of the said chlorbenzol or of the said monochlorbenzol.

"11. What was the result or effect of said fire and explosion upon said Black Tom yard, and the piers extending therefrom, and the cars, tracks and structures?

"Answer: Defendant's counsel, having conferred with plaintiff's counsel respecting the interrogatories, and having learned from the plaintiff's counsel that they did not expect defendant to give an all-inclusive answer to this question, in that light answers the same as follows:

"Among the results of explosion was the presence, at the place shown by dotted lines on the map furnished plaintiff, of a hole in the ground generally referred to as a crater, approximately 375 feet long, 175 feet wide and from 7.7 to 10.5 feet deep, and in the vicinity thereof evidences of the destructive effect at that point.

"Some of the other effects of the explosion best observable by results on the North Pier and the South Pier were disarrangements of track, shattering of cars and of the timbers of the piers, the penetrating of one of said timbers by a shell and other similar effects of explosion from some point north of the North Pier."

Mr. Stallman. With that the plaintiff rests. Oh, I would like to offer in evidence the regulations of the Interstate Commerce Commission. I have a copy of them available for the Court.

PLAINTIFF RESTS.

MOTION FOR NON-SUIT.

Mr. Rockwood. Shall we make our motions tonight?

The Court. Yes; I am ready to hear them.

Mr. Rockwood. Hear them now?

The Court. Yes.

Mr. Hobart. Now, if your Honor desires I would rather have a little more time to put it in formal shape.

The Court. Well, I am ready to hear them. I do not think it requires any great time to put them in formal shape. If you need them in more formal shape than you have them at the time of making the motion, without inserting any new point, of course, merely increasing their formality, I will permit you to put them in later.

Mr. Hobart. On behalf of the defendant we ask for a non-suit on the following grounds:

The grounds which will be first stated are those which relate to all the goods, both in cars and on barges, that is to say, including all of the goods in the suit brought by the King of England, all of which were on barges; all of the goods in the suit brought by the Aetna Explosives, all of which were likewise on barges; and all of the goods in the suit brought by the Republic of France with the exception of one car, known as car New York

Central, 90340, containing fifty drums of benzol, which arrived on July 28, 1916, and as to which the defendants make no claim that any notice of arrival was given or that it had been there for the period of forty-eight hours; in other words, as to that particular car the defendant would be liable as a common carrier, subject to whatever conditions there might be in the bill of lading.

And before starting to state the grounds of my motion I would like to have an understanding with counsel for the plaintiffs, so as to save complications in stating the grounds, as to certain items which I understood were not to be urged in the present case.

Mr. Hobart. In the French Government suit.

Mr. Stallman. Those that we discovered were included by mistake?

Mr. Hobart. Yes; and I understand that counsel does not press the item known as Number 4, containing certain goods on the Lighter Jet, and item number—

Mr. Stallman. That is the item of the six drums, isn't it?

Mr. Hobart. Yes; and item Number 6, certain drums of benzol, which are said to have been destroyed a week later, and which we are not concerned with at all at this time in this case.

So eliminating those two items by consent, the motion is intended to apply to all of the items in the French case, as well as the items in the other two cases, with the single exception of that one car in the French case, where the defendant is probably liable as a common carrier, subject to the terms of the bill of lading.

The grounds, therefore, are stated as follows, as applicable to all the goods, with the explanation above made:

1. Plaintiff has failed to prove facts sufficient to state a cause of action.

2. Congress having taken jurisdiction of the subject matter, and having enacted statutes thereon to provide for the safe transportation of explosives in interstate commerce on land,

and the Interstate Commerce Commission, in accordance with the directions of said statutes having made rules and regulations governing the subject matter, and the explosives in question in this suit having been in the course of transportation on land in interstate commerce, the plaintiff can only succeed if it has proved a violation of said statutes or the rules and regulations of the Interstate Commerce Commission, above referred to, and this it has failed to do.

I will state right at this point that wherever I use the word plaintiff I intend it to apply to all three of the plaintiffs.

3. Assuming that there may have been some other duty to which the defendant was subject, which is not covered by the statutes of the United States and the rules and regulations of the Interstate Commerce Commission above referred to, there is no proof of any violation of any such other duty, if any existed.

4. Plaintiff has failed to prove any negligence on the part of the defendant in respect of the starting of the fire, and the facts do not permit the Court to allow the case to go to the jury upon the doctrine of *res ipsa loquitur*.

5. Since there is no proof from which any inference could be drawn of negligence on the part of the defendant in respect of the starting of the fire, and since the facts do not permit the application for *res ipsa loquitur*, if it is sought to hold the defendant responsible because of the conduct of its employees after the fire started, then the plaintiff may not succeed on this theory, because the evidence shows that the fire when discovered was in a car, and that such car was either a car containing ammunition or explosives, or was in the immediate vicinity of cars containing ammunition or explosives, and the only inference which the jury could be permitted to draw is that any one going near such fire would be in great danger and therefore the defendant could not be held responsible even if its employees under these circumstances of emergency made any error of judgment in their conduct.

6. There is no proof that the omission of any duty set forth in the complaint or complaints, with which the defendant was legally chargeable, was the proximate cause of the injury to the plaintiff.

7. There is no proof that the performance of any duty set forth in the complaint or complaints with which the defendant was legally chargeable, would have prevented the injury of which the plaintiff complains.

8. The defendant may not be held legally liable upon the assumption that the failure of its employees to procure water and to put out the fire was the proximate cause of the injury to the plaintiff, because the proofs show that the Jersey City Fire Department was promptly notified and came to the scene of the fire without means for pumping water, and any failure in this respect was the failure of the Jersey City Fire Department, and of its duty as a public agency, and is not attributable to the defendant.

9. Since there is no proof that the fire was started by human agency directly applied at the origin of the fire, there is no proper legal inference that the presence of any number of watchmen would have prevented the outbreak of the fire, and there is no ground to attribute negligence to the defendant in respect to the number of watchmen furnished by it, and if the plaintiff seeks to hold the defendant responsible with respect to the starting of the fire as the proximate cause of the injuries complained of, it may not do so legally under the proofs.

10. Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients of the materials composing the shells was capable of spontaneous combustion, the jury may not legally infer that the fire was started by human agency applied at the place of the commencement of the fire.

11. Plaintiff may not have a verdict upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant with respect to the starting of the

fire, because the evidence is consistent with the non-existence of negligence in that respect.

12. The plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant in respect of the spreading or non-extinguishment of the fire, because the evidence in the case is consistent with the non-existence of any negligence in that respect.

13. By suffering their explosives to come and remain at the terminal in the manner described in the proofs, the plaintiff voluntarily took the risk of their destruction except by the willful negligence of the defendant, and no such negligence is pleaded or shown by the evidence.

14. By suffering the high explosives to come and remain at the terminal in the manner described by the proofs, the plaintiff contributed to the injury complained of.

What has been said applies to all of the cars in all the cases, with the single exception of that one car in the French Government case; in other words, it is intended to include all cars on the land as well as the contents of the cars on the barges.

Now, in addition to those grounds the following special grounds are urged with relation to the goods on the barges. Of course this motion, if granted, would dispose entirely of the King of England, because all of his goods were on the barges.

The Court. I understand, and the Aetna Explosives.

Mr. Hobart. And the Aetna Explosives. It is not strictly a motion for non-suit as to the French case, because some of those cars were on the land, but for convenience it may be considered, with your Honor's permission, as a motion to strike those parts of the goods out of the case, and limit the inquiry of the jury, in the event the first part of the motion should be denied, to the goods that were on the land.

I will state these following additional grounds then with that understanding:

First, since the goods for the loss of which the plaintiff sues were illegally at the defendant's pier on the night of the accident, the plaintiff cannot recover.

Secondly, since the evidence shows that the barges in which the goods were contained were trespassers upon the defendant's property, and such trespass was the proximate cause of the damage complained of, plaintiff cannot recover.

Thirdly, by bringing the munitions described as being on the barges to the Black Tom Island Pier or the vicinity thereof, and permitting them to remain there, the plaintiff contributed to the damage complained of and cannot recover in this action for the destruction of such munitions.

Fourth. If the plaintiff seeks to hold the defendant responsible for a high degree of care on the ground that it had dangerous material in its possession in the railroad cars in the yard, the plaintiff, in bringing and mooring its barges at or near the Black Tom Pier with similar dangerous material immediately adjacent to their yard, took whatever hazard and risk there was in the situation, and cannot recover.

Fifth. The proofs show that after the outbreak of the fire on the land the plaintiff could have removed its barges to a place of safety if it had available any motive power or any men for that purpose, and the failure on the part of the plaintiff to take reasonable precautions for caring for its property in this respect was the proximate cause of the injury to the plaintiff's property.

Sixth. Under the proofs the barges of the plaintiff had no fire fighting apparatus, and if it was proper to infer the fires were communicated to said barges, the failure of the plaintiff to equip its barges with such apparatus was the proximate cause of the injury to the contents of the barges.

Seventh. The defendant was not under any legal duty to anticipate the presence of the plaintiff's barges at or near the Black Tom Terminal on the night of the fire and explosion.

Eighth. The destruction of the contents of these three barges was not a proximate result of the defendant's negligence, which the defendant was bound to anticipate or to guard against.

Ninth. There is no evidence to show that the defendant had any knowledge of the contents of any of the three barges or that they were at this pier on the night of the explosion.

Tenth. There is no proof that the plaintiff had any right to have the barges tied up at the Black Tom Pier on the night of the explosion, and there is no proof that the defendant ever authorized any agent to give permission for them to do so, or that it was within the range of the duties of any such agent, and since it was illegal by reason of an illegal preference under Interstate Commerce Commission Act, and also a violation of the harbor rules, the plaintiff cannot recover.

Eleventh. By permitting ammunition on the barges to be and remain in the vicinity of the terminal, plaintiff voluntarily increased the risk of their destruction, and assumed whatever risk there might be from having them at that point.

I think that covers all of the grounds. Wherever I have used the word plaintiff in connection with this second motion, I intend to have it apply to both the King of England and to the Aetna Explosives Company, and to the Republic of France in so far as its cars were located on barges.

Now, I do not know whether we need take a great deal of time for the argument of this, if your Honor please, but of course your Honor is aware of the fact that so far as the first series of points are concerned they have been decided and there is no use of rehashing them.

The Court. Yes, I know that.

Mr. Hobart. I desired to have them on record.

The Court. You commence at the new point, at the thirteenth point, on the ground of willful negligence. Previous to that they have all been discussed before me and decided in the higher court.

Mr. Hobart. Now the principal point in this case as it now stands, of course, is the question with regard to these barges.

Now we say that under this evidence it appears without dispute that the goods on those barges were there unlawfully and as trespassers. We are not sure whether the harbor rules may be considered as evidence at this time or not. It really does not make very much difference for the purpose of this motion, whether they are considered in or not, because the point does not depend upon the construction of the harbor rules, that is merely an additional reason why the point should prevail, if they were there in violation of the rules.

The Court. Let me ask you one thing, now, Mr. Hobart. It hasn't anything to do with your argument except collaterally. How much time do you think your case will require if it passes this motion. I am only asking for the relief of the jury.

Mr. Hobart. There is certain testimony which Mr. Stallman and I will read, two or three witnesses that we cannot get very well.

Mr. Stallman. We have done that before.

Mr. Hobart. I have not checked them over.

The Court. I thought perhaps, if I could get a line on it now, I could be able to make a beneficial and advantageous arrangement of it, for all of you.

Mr. Rockwood. Some of our witnesses have already been sworn by the other side. I think that will save about a half a day. I should say a day and a half.

Mr. Hobart. Perhaps a day and a half would be the safest way to express it. Certainly a day.

The Court. Well, what I had in mind, was, that if we could not with any great probability consume any more time tonight with witnesses, I would let this jury go, and it might be beneficial in every way to have the argument heard outside of their presence.

Mr. Hobart. Yes.

The Court. And then I want to conclude, if I can by Friday night, because the rest of my list is very, very long, and while I am going to give you all the time that you need and not un-

necessarily cramp you, at the same time it may resolve itself in my sitting longer on Friday, that is all, and I just want to get some line on it, so I can make an adjustment.

Mr. Hobart. I think that will work out. We might possibly have to work over until Monday for your Honor's charge, or something. I am not sure about it.

The Court. No, I do not think we will run over until Monday. We will make a charge if I have to charge up till at midnight. We will make that charge on Friday night. The charge will not be a retreat, in other words.

(To the jury.) Well, I think, gentlemen, I am going to let you go home and eat, whether I do or not. So you can go now.

(The jury retires.)

Mr. Hobart. Following in particular the point as to trespass, there is no claim in any of the complaints of willful or wanton negligence.

The Court. Let us assume, in order to shorten the argument up a little bit—let us assume for the sake of the argument, that these plaintiffs or their agents, or those who represented them, were either trespassers or, to put a better phase on their function, but no better phase upon the legal consequences which flow from them—were conceived.

Mr. Hobart. Yes.

The Court. Let us assume that they were just that, and let us assume under the cases in this State, which I think are uniform on the subject, that such persons while at the dock were not entitled to the exercise of any duty from the defendant except the duty to refrain from willful and wanton injury while they were trespassers or licensees at the dock, and let us assume, for the sake of the argument, that the jury may conclude from the evidence that these barges, before the explosion took place and the fire had started, and perhaps before the minor explosions there, the explosions of the small arm ammunition, had commenced, and while the fire was small—let us assume that those barges had been slipped away from the docks, and let us

assume, for the sake of the argument, that those barges were below mean high water mark in New York Bay, and then let us assume that the explosion took place, and that the jury can conclude from the evidence that the fragments blown by the explosion ignited the barges and injured or destroyed the property, the value of which is sued for in this case—I want to hear you, in the light of those assumptions, say what right I have, as a Judge, to control this jury by ordering a non-suit or directing a verdict?

Mr. Hobart. Let us assume one further ground, namely, that there is no proof of any willful or wanton negligence.

The Court. Oh, yes, let us assume that is not charged or proven, and let us assume for the purpose of the argument, to take it quite as far as you want it to go—let us assume for the sake of the argument that there is nothing of the Harbor Board regulations, or the Navigation Board regulations in evidence to indicate that these persons, in not being at the anchorage ground, were in that regard, violating the law; let us assume—

Mr. Hobart. That simplifies the matter a great deal.

The Court. That simplifies the argument a great deal, I think, because I think that I have got to determine the questions of law implied in those assumptions.

Mr. Hobart. I certainly do not need to take any time reciting authorities on a well-settled proposition. I have noted most of them on a memorandum which I have handed your Honor, the other day, and you are familiar with them, anyhow.

The Court. The only memorandum I have from you is with respect to trespassers and licensees. On that point you need not argue it. The law is perfectly settled in this State, and the memorandum correctly states that law.

Mr. Hobart. Then we can save a whole lot of time.

The Court. In other words, you claim, and I am prepared for the purpose of this argument, that admit that if the plaintiff is found to have been at the time of the happening of the

accident, a trespasser or a licensee, and that trespass or license proximately contributed to the happening of the accident—or without it contributing even—that the only duty that is owing by the defendant to any trespasser or licensee, is the duty to refrain from willful or wanton injury to that person. I think that states the law in this State as laid down probably most completely and accurately, first, in that case of Vanderbeek against Henry, 5 Vroom, and going down through all the cases —Lyon against Fitzgerald, and all the cases down to the present time.

Mr. Hobart. Then we start with the assumption that at the time the fire started, these barges were trespassers, and of course, I assume in that connection that any such trespass would be chargeable to the plaintiffs, because there is nothing to show that the defendant had anything to do with putting them there. Whoever put them there must have been representatives of the plaintiffs, so that any trespass in that regard was chargeable directly to the plaintiffs, because, of course, these plaintiffs would be chargeable with whatever their agents did in that respect, certainly in the absence of anything to show that the defendant had anything to do with putting them there.

The Court. I would not run that assumption just now to too violent a limit, because it may be possible that the contention on the part of the plaintiffs in this suit will be that those persons who had their property in charge were not their agents and that therefore they were not chargeable with what those persons did. I do not want to conclude myself by admitting that now, but for the purpose of the argument, and only for the purpose of the argument, I will assume it.

Mr. Stallman. To relieve Mr. Hobart of any embarrassment, that is one of our points.

Mr. Hobart. One of your points is, that these barge captains, or tug captains, in placing these barges there—

Mr. Stallman. The Ackerman Lighterage Company.

Mr. Hobart. The Ackerman Lighterage Company—were not acting as the agents or representatives of the plaintiffs.

Mr. Stallman. Just assume, for the purpose of the argument, that D. W. Sheldon & Company and Lunham & Moore were the shipping agents for the British and French Governments; just how that works out in the question I do not know.

Mr. Hobart. I think that appears from the invoices.

The Court. Then if they employed anyone to transport these materials from the Central docks over to Gravesend, I think it would follow that those who had charge of the barges would be the agents of Lunham & Moore, and consequently the agents of the plaintiffs.

Mr. Stallman. I was just making this explanation so as to clarify the argument, that the fact of the matter is that these people were engaged, as shown by Ackerman's testimony, as an independent contractor, to take them from the Jersey Central dock to the steamship. Their deposition showed that that was the contract between them.

The Court. I do not see where you get anywhere with that, anyway, Mr. Stallman, because, assuming, if it be a proper assumption, that the Ackerman Lighterage Company were responsible for what occurred there in any degree, and assuming that they are independent contractors, then they would be a responsible, culpable agency intervening between the leaving of these goods from the Central dock and the actual happening of the catastrophe, which would destroy completely the continuity of connection of culpability and relieve the railroad company of responsibility under the circumstances, unless you could show that the combination of negligences of the two brought about the accident, and that they were both proximate causes, as very frequently occurs.

Mr. Stallman. That is my idea of it.

The Court. I only suggest that. I do not think that that is going to bear very—so far as I am concerned—of course, it it may bear a very strong part with you, gentlemen, you have a right to take advantage of it and review it—but I do not think that has an awful lot to do with it just now.

Mr. Hobart. I may say it strikes me as a very extraordinary proposition, that the Ackerman Lighterage Company was not acting as the agent of these plaintiffs in view of the undisputed testimony of the Central Railroad agent, of the Sheldon & Co., and the other consignees, and that they were carried by the Ackerman barges and the invoices which have been offered in evidence, which show directly how they were carried.

The Court. I do not think there is very much doubt about it; I am not deciding it—I suppose, if I hire a messenger boy, he is an independent contractor if I do not hire him from the company, if I engage him myself and pay him; at the same time he is my servant, and if he does something in and about my work ordinarily he is responsible for what he does while he is in and about the performance of my business.

Mr. Hobart. Just to play safe on the record, in view of the suggestion made by Mr. Stallman, I would like to add to the grounds of non-suit with reference to the barges, that the trespass or the negligence of the Ackerman Lighterage Company was an independent, intervening, proximate cause of the damage to the goods on the barges.

The Court. I will permit you to do that.

Mr. Hobart. I place it on the record.

The Court. Because whatever the legal rights are that you are entitled to, I want you to have them.

Mr. Hobart. That brings us back again to the question of whether these barges were trespassers, and I started with the statement that at the time of the starting of the fire they were trespassers, or at most, licensees. The legal effect is, of course, exactly the same, and there are cases. There is nothing whatever to show that the defendant knew these barges were there, gave them any permission to be there, and indeed, so far as the record now shows, there is nothing to show that any of the goods on the barges had been transferred over the line of the defendant, or had been loaded on these barges at the docks of the defendant; in other words, they were complete strangers.

The Court. Let us assume, for the sake of the argument, that the defendant company did not know anything at all about these barges being there.

Mr. Hobart. Yes.

The Court. On that they were not under any obligation to anticipate that barges loaded with munitions would be at their dock, I think that that argument has nothing in it, for this reason: The reason is that no man is discharged from liability because he did not anticipate the precise presence of a particular barge in a particular place at a particular time. The rule of law, as laid down in the United States Supreme Court in a very interesting opinion by Justice Holmes, writing for a unanimous court, is that if such an accident, or an accident of any similar character is likely to occur, if negligence arises, the fact that the defendant did not understand that precisely this thing or this kind of thing might happen, would not discharge him.

Mr. Hobart. What is that case?

The Court. I do not recall it just now. It is a United States Supreme Court case, but it is a common rule laid down in all the cases and in all the text books, the point being this, that if the bay is a public highway, the Lehigh Valley Railroad Company was bound to anticipate and to know that ships, boats, might be traversing the highway; they had a right to be there, and therefore they were obliged to use reasonable care—indeed, with respect to ammunitions, a high degree of care, which is reasonable care under the circumstances—not to let those things explode and thereby injure anybody who was lawfully traversing that highway, whether he had ammunitions, or whether he did not. That is the point about it.

Mr. Hobart. Now, let us suppose, for a moment, that the damage to these plaintiffs was not suffered while the barges were actually tied up, either at the pier itself, or at another barge adjoining the pier—the evidence shows one or the other as to all of them—let us suppose that the damage had occurred under those circumstances—

Motion for Non-suit.

The Court. Unless the other side can induce me by some argument, that unless the damage happened while those barges or scows, or whatever they were, were moored to the pier, or to a barge that was moored to the pier, as to form a continuity—bond of continuity—between the barge and pier—I say unless they can convince me that that was not a trespass, that they were not—or an act of a mere licensee—and that they were not then in the situation of licensees or trespassers, you need not waste time on it; but I do not want to listen to an argument unless they can show me some authorities indicating that was not a trespass, or at best, a license.

Mr. Hobart. I want to state that as the first step.

The Court. I understand. You want to raise it, and I am indicating my state of mind, because you need not go trudging over a road that I have already traversed and think I am right on. I may be mistaken. Maybe Mr. Stallman can show me I am.

Mr. Hobart. That brings us to the second step, whether the situation is changed in any respect by reason of the fact that the Lehigh Valley, in their enthusiasm to save life and property, threw lines into these barges and had them partly away from the pier, or had them at least sufficiently far away so that there was no longer a direct continuity—if I may quote your Honor—between the trespassing barges and the fire itself—and I apprehend that that really involves the question of whether the original trespass, granted it to be a trespass, was the proximate cause of the damages which they suffered under those circumstances; but before we come to that point—

The Court. That is what I want to have some authority on.

Mr. Hobart. Yes; but before we come to that point, there is the further question of whether the mere fact that they had been cast loose from the piers or from the barges to which they had just been attached—whether that mere fact would be sufficient to change the trespass rule in the absence of evidence that after being cast loose they had gotten clear of our property. Now, there is a very narrow question, so far as that is concerned, with regard to one of the barges—I am not sure that the

moment which one; and of course, if your Honor thinks it does not make any difference whether they were inside or outside the pierhead line, I was about to say it had not any bearing on it—

The Court. I am very anxious to find out from you in your argument precisely what the distinction is between the situation of these barges—whether they were inside or outside the pierhead line.

Mr. Hobart. Yes—so long as they are outside the mesne high water mark. That is what I want to find out.

Mr. Hobart. Yes. Well, I think if they are inside the pierhead line it must be assumed that the Lehigh Valley through this lease which is in evidence was the owner not only of the pier but of the land under water, subject, of course, to public right of navigation; but as far as the pierhead line. Now, it may be that the record is not quite sufficiently in shape at the moment, but I think we may assume it for the purpose of argument; it will perhaps save time later; as to just where the pierhead line is. It has been referred to constantly by different witnesses and they all go on the theory, and I think one of the maps Mr. Stallman offered indicates it rather just outside of the end of the North Pier; and so if these barges were still inside of the so-called pierhead line, it would seem to me to follow that they were still trespassers, even though they were not actually tied up to the pier or to a barge adjacent to the pier at the moment that the explosion occurred.

The Court. That argument involves and assumes something which I am not prepared to admit yet. That involves an assumption that the pierhead line of the Lehigh Valley property is a line drawn by the extension north and south of the easterly line of the North Pier, which does not at all follow; because the easterly line of the South Pier is 150 feet or so inside of the easterly line of the North Pier; and then again the line of the New Jersey Littoral is a line that runs to the westward as you go southerly.

Mr. Hobart. Well, of course, that is the reason that I said perhaps the proof is not in such shape as it ought to be to have that question directly raised; but if it becomes necessary to do so, why we shall of course—

The Court. I will tell you frankly I am interested in it. It is a subtle and interesting point, and I would like to hear it, and that is why I am suggesting these things to you, to find out what the real point is. I have looked into these things a great deal, because I have been for many years, until the war broke up my relationship as it broke up many other things, as it did the munitions, the attorney for the Hamburg American Line with respect to their shore line, and I have some knowledge as to that kind of thing, and I think your point will need some further elaboration or evidence before, at least, they can be supported in law.

Let me suggest this to you, Mr. Hobart: Suppose that in your more Godless and less serene days should have come upon my piazza without my consent and against my will and I had ejected you and put you down on the street, and after you got down on the street, from negligence which I was guilty of and the origin of which had predated your trespass upon it, the wall should fall or be blown up and you should be injured while you were on the public highway where I had placed you. Do you think the fact that being on the public highway by reason of my propulsion of you there—that that gave you any less right to recover from me for damage that resulted? It seems to me an analagous case to the one we are arguing. I state that because the examples help by way of illustration.

Mr. Hobart. I think if the original trespass was the proximate cause of the unfortunate result—

The Court. But how could it be? My original action would not have proximately caused the trespass which resulted in your injury.

Mr. Stallman. Mr. Hobart and I argued that before your Honor and before the Court of Appeals when Daisy was here with both of her legs gone, and I contended very strongly in

the Court of Appeals, if I did not before your Honor, that her previous trespass upon the railroad was what was the cause of her injury.

The Court. I did not believe that.

Mr. Stallman. And Mr. Hobart said it was not so. Then we got down before the Court of Appeals and the Chancellor wrote the opinion. He said that she had gotten down in Greenwood avenue before the train got there, and therefore her previous trespass—

The Court. I remember the case. That is why I raised this particular point now. It seems to be analagous.

Mr. Stallman. I thought he had forgotten the case.

Mr. Hobart. No; I remember Daisy very well. That case turned primarily on the construction of a crossing statute, as to when it was effective, and when it was not. Now, as I have said—and I have said it purposely because I wanted to, if I may so express it, draw your Honor's fire on the question of that pierhead line—and I said frankly in the beginning of that part of the discussion, there was some doubt in my mind whether the evidence does now say where the pierhead line is, and it may be necessary to raise that point clearly, to have evidence to show just exactly where it was. I do not know whether the Court will take judicial notice of it or not. It is a matter fixed by the State of New Jersey, but we are prepared to prove it anyhow.

The Court. Well, the Court does not recognize, as I understand it, the mere reasons and orders of the Board, such as the Riparian Board in the State. I rather gather that the pierhead line is not fixed by the State at all; it is fixed by the Navigation Board of the United States Government. As far as navigation is concerned it is fixed there. As far as the pierhead line is concerned, with the right to build out there on the land, it is fixed by the Riparian Board. We had exactly that question raised when they brought these tremendous thousand-foot boats here from England and Germany, the Leviathan and the Vaterland, and we had first to obtain the permission of the United

States Government to extend the pierhead line, and then we had to go down before the Riparian Board which was then presided over by Woodrow Wilson to obtain from them the right to extend the pier to the line which had been previously extended by the Navigation Board, as far as navigation was concerned.

Mr. Hobart. Well, of course, that fact not being in evidence it would not be proper for me to comment on what I understand to be the fact in this discussion—

The Court. Well, it would not hurt any. The jury is not here. I am not going to be prejudiced by it.

Mr. Hobart. I think we would be ready to show that the State pierhead line did extend some distance outside of the North Pier.

The Court. Well, now, let us assume for the sake of argument that the pierhead line did extend out there as established by the State; nevertheless, until the piers are built there and until some improvement takes place, the rights of navigation, as I recall it still exists.

Mr. Hobart. We do not dispute that. Our only claim is that the right of navigation is limited to lawful purposes, and if those parties go in there, having the right to navigate for lawful purposes, very well; but if they go in there for unlawful purposes and are injured while inside that line, then we say the trespass still continues. That is the point we desire to raise so far as that feature of the case is concerned.

The Court. Suppose a thief is walking along the street at night and is injured, and he is actually bent on an errand of theft, and his whole object of going into the street is to get to a certain house which he intends to rob or burglarize. Does the mere fact that he is bent on that kind of an errand, and intending to violate the law interfere at all with the fact that he is entitled to recover if he is injured while he is going on the public highway where he has a right to be?

Mr. Hobart. He had a right to be on the street, perhaps, for a lawful purpose; and it is not so much a question perhaps of lawful purpose or otherwise as a question of trespass or non-

trespass; and the fundamental question is whether that trespass continues until they get by the pierhead line in a case where they went there, originally they went there as a trespasser; in other words—

The Court. That assumes the very point we are arguing.

Mr. Boles. Suppose he stays in his front yard.

The Court. That assumes the very point we are arguing, Brother Boles. Your suggestion is that he stays in the front yard. But the difficulty is we have not yet arrived at the point where that is determined to be the front yard. The question is whether the front yard does not end, in the absence of the evidence indicating an improvement of the particular point, and a dedication to the uses of the company; whether the front yard does not end at the mesne high water line. That is just the very point we are arguing, and that begs the question. In the absence of any showing that the railroad company have so far appropriated that particular place, where they say they were, so as to prevent anybody else using it, considering it a public highway. That is the very point in the case.

Mr. Boles. Well, doesn't that really involve the question of whether they were using it lawfully at the time? Now, acting by—

The Court. Well, they were certainly using it lawfully. They were trying to go somewhere and they had a right to be on the public highway.

Mr. Boles. They are not trying to go anywhere. Our men were pulling them somewhere. Can it be that a company can be held responsible in a case where if they did nothing and let the barges, whoever might be on board, stay there and be blown to pieces—can it be said that the company would not be held liable for doing nothing, and yet can be held responsible when they do attempt to do something?

The Court. I will tell you that sounds awkward.

Mr. Boles. It is awkward.

The Court. That does sound awkward. Let me suggest something to you that sounds just as well, and yet that sounds just

as awkward. We have in this State two lines of cases. I do not know but what you helped to establish one of them. If a man goes along the street and somebody driving an automobile said to him, "Won't you take a ride with me?" He becomes a guest, and if the owner of the automobile in driving it injures him, he has a right to recover. The same man walks along the same street; the same automobile is there with the same driver, and the lad who walks along says to the driver, "I would like to take a ride with you," the driver says "All right; I will permit you to." He gets in and is injured. He cannot recover Now, doesn't that sound awkward? Yet that is the law of this State.

So we run amuck with the proposition—I did not think it was the law and I was reversed two or three times in the ardent hope—until the Supreme Court decided it—in the ardent hope that someone would move it to the Court of Errors and Appeals; but it has never been moved there.

Now, take this particular case. It sounds rather ridiculous when one company is trying to save another man's property, and in the very act of salvation the injury takes place, that the fact of trying to save it in its process eventuates in the raising of a duty that did not exist before; and yet, nevertheless, there isn't anything so remarkable about it, if we stop to consider that the right of recovery arises out of the fact of the presence on the public highway; because the duty is owing to a man who is in the highway, and this man was there, and how he got there it seems to me is a matter of indifference.

Mr. Rockwood. May I make a suggestion?

The Court. Glad to hear it.

Mr. Rockwood. Your Honor said suppose someone came in illegally into your yard.

The Court. Yes.

Mr. Rockwood. And you went out and put him out. He is a trespasser, and you put him out in the public highway, and then he is injured by some cause which preceded the time of your putting him out; that is, there was something going on

there before you put him out. It seems to me that overlooks this: These boats were trespassers. Your Honor has held that. Whether they were on our land or not they were originally trespassers—

The Court. I have not held they were trespassers. I have held they were licensees in effect.

Mr. Rockwood. Now, the men who had these boats there had abandoned these boats. The evidence is they had gone away and left them there. Therefore, I think we have a very different situation from that which your Honor has suggested about the front yard or the thief. I think we have got this case: The thief comes in your front yard and there is a fire going on, from which he may be injured. Recognizing that he is a thief, your Honor comes down and says to him: "Here, you haven't any way to get out. Your legs are injured in some way and you cannot get out (the boat was abandoned). I will lift you up in my arms and take you out;" and you are taking him up and lifted him out to the highway, and as you do a brick falls down and kills him. Are you liable?

The Court. Am I liable if the brick falls down on him?

Mr. Rockwood. Yes. It falls from your house and you are in the act of removing the trespasser from the property.

The Court. Not actually moving him. I have him out. I have him put on the highway where he has a right to be.

Mr. Rockwood. You have put him into a place of safety.

The Court. Not quite that, because by your premise he was injured there.

Mr. Rockwood. I say he was injured because these boats were left alone; they were abandoned. In other words, somebody comes on your Honor's premises and ties a baby in the front yard, and the baby is helpless and cannot walk—

The Court. And I take it out and put it on the highway, and a brick falls off my house because—

Mr. Rockwood. Of a fire that has happened.

The Court. Of a fire I am responsible for.

Mr. Rockwood. Or spontaneous combustion.

The Court. And hits that child. I think I am responsible.

Mr. Rockwood. What possible duty could you owe that child?

The Court. I owe that child any duty that I would owe anybody else on the public highway.

Mr. Rockwood. But your duty did not have its inception on the public highway; it had its inception when the party was a trespasser on your property and you were trying to get it out to a place of safety.

The Court. The difficulty with that argument is that that duty arose the moment the highway was reached; and if the negligence continued and the child was injured after it got into a place where it had a right to be, why, then the duty owing it was to refrain from any willful or wanton neglect.

Mr. Rockwood. Yes. I think that might be so if the injury arose later, but with the trespasser there, with the child there, and with the injury about to happen, with the emergency right on, right paramount and pre-eminent at the moment, and you endeavor to save its life—

The Court. That adds to the dramatic force, but I do not think it adds anything to the legality of it.

Mr. Rockwood. It must add to the absence of liability, I think.

Mr. Bowles. The thing that is running in my mind is this—that here is the front yard and outside is the highway. Both are in a field of danger. The zone of danger includes both. Now, if a person walking along the highway in the natural course of his duties is injured, I think that is one case; but if a person who was a trespasser were put into another part of the same field of danger by the owner of the property or the one who is appearing as the defendant, I do not think the rights and duties have changed a bit. He is still in the same field of danger by reason of the act of the defendant, and not by reason of his own act.

The Court. He is in the same field of danger, but he is not in the same field of duty.

Mr. Boles. The field of danger has never changed.

The Court. But the field of duty does change. That is the very thing we are arguing. The field of duty changes because the geographical location of the parties changes. The location of the party in one instance gives rise to no duty whatever, because he is a trespasser. The geographical duty in the second instance gives rise to a duty because he is not a trespasser.

Mr. Boles. But his situation changed not by his own act.

The Court. I do not care what changed it. I do not think you investigate the intention of a party when he is on a public highway.

Mr. Rockwood. Let us leave parties out, and say I come in your Honor's front yard and put my automobile in your yard and go away, and at twelve o'clock at night your Honor is awakened and there is a cry of fire and you see that the automobile is in a dangerous place; you try to save it; you take it out in the highway. On the sidewalk it gets beyond your line; it is out in the public highway; a cinder comes from the fire and burns it. Are you liable for the automobile? It never had any right on your premises. These boats never had any right on our premises. They should have been at the anchorage and we owed them no duty and your Honor owed the automobile no duty.

The Court. I did not owe it any duty until it got on the public highway.

Mr. Rockwood. You did not owe it any duty at that time.

The Court. That is your argument. That begs the very question we are talking about.

Mr. Rockwood. Well, the very same condition which Mr. Boles says prompted you to move it was existent at the time you moved it out, and was existent afterwards. In other words, there was no change in condition.

The Court. There was no change in condition, but there was a change of duty because of the change of place.

Mr. Rockwood. In other words, if your Honor left the automobile in the yard and it burned there you would not be liable.

The Court. Not whatever.

Mr. Rockwood. But because you were kind-hearted enough to move it six feet you are penalized.

The Court. That is not penalizing kind-heartedness; it is only saying whether or not you are to determine in settling what legal result of the situation is, the geographical locality of the article injured has anything whatever to do with the duty owing to it from the party whose negligence is predicated, and in my judgment it has.

Mr. Rockwood. In the Crown Point case, 112 N. Y., a man went down a shaft and the elevator was in bad order and he was injured. They held there was no liability; that he had no business in the shaft, but there was negligence. They held he was a trespasser, and our Court of Appeals denied liability.

The Court. What is the analogy of that in this case?

Mr. Rockwood. Simply that this boat was on our land without any invitation.

The Court. We have numerous cases that hold that if a man rambles on another man's property and travels to an elevator shaft and it runs down and he is injured, he cannot recover; because manifestly he is a trespasser, and the mere fact that you did not willfully or wantonly injure him prevents you from being liable. I admit that. That question I admit from the start.

Mr. Rockwood. I did not mean to interrupt Mr. Hobart's argument.

The Court. Glad to have you. The point is interesting.

Mr. Boles. I want to reduce it—*reductio ad absurdum.*

Let us have the barge tied up by one rope, say to the North Pier, and the tide was quiet at that time, just on the change. Mr. Dickman, we will say, walks down as soon as the fire breaks out, and slices that rope, but the boat does not move, doesn't change an inch, and then a shell comes and lands on it and she blow up. Have the legal rules changed by reason of the fact that Dickman sliced that rope?

The Court. I confess, Mr. Boles, that that sounds rather, as I suggested a moment ago to Judge Rockwood—it lends to the dramatic quality of it, but—

Mr. Boles. It goes to the logical quality of it, too, I think.

The Court. Perhaps it does. But if a man rambles up alongside of a dock, on the outside of a dock, and he does not tie up to the dock at all, but the tide holds him against that dock that he has run up against and where he meant to be, the mere fact that he is not tied by a string of ropes or one rope, would not make any difference at all. He would still be a trespasser. But when he has cut loose from the dock with the intention of getting away from it—

Mr. Bowles. Oh! But he did not.

The Court. Well, when anybody cuts loose with the intention that he should be gotten away from there and he is out in the public highway, a different situation arises than the one which you very subtly suggested, that the rope was cut but the man was still against the dock. The mere fact that the rope was cut and the man is still against the dock, has not separated him from the dock—but let us assume that the rope is cut, to make the case an analogue, and the man has gotten away from the dock, or the boat has gotten away from the dock, then you have an analogue and then I say the fact that he is in a public highway, where he has a right to be, and where he has a right to expect from you and from anybody else whose premises abut on the public highway, and whose negligence would menace his safety while he is there—I say that he has a right to expect from you the performance of that high duty in the care of those combustibles and explosives which the law casts upon you because of the danger that arises from the fact that if the care is not exercised harm will happen.

Mr. Boles. Whether or not it be a dramatic statement of it, it seems to me that the law of this State cannot be that the plaintiff's rights change because the defendant tried to put him in a better position. It seems to me inconceivable. I cannot think of any analogous case.

The Court. I can think of an analogous case right away.

Suppose a man attempts to take home a drunk in the kindness of his heart, and in leading him home he does not exercise the amount of stability on his own feet that he should exercise, or the observation and look out for things that get in his way, and something bumps them both. The mere fact that he is doing the deed of a Samaritan does not relieve him from the obligation of reasonable care towards the person he is attempting to help. He was not obliged to help that drunk.

Mr. Boles. That is an act for which he is held responsible, which occurred during the very course—

The Court. Precisely, just as this which we have here.

Mr. Boles. No.

Mr. Rockwood. In other words, if he took the drunk out in the street. But suppose he had removed the drunk from a place of great danger and the danger continuing, as Mr. Boles said, he got hurt anyway when he got out in the public highway.

The Court. If he were responsible for the creation of that first situation and its continuance and he puts the man in the highway where he has a right to be, that man is in the same position, nevertheless, that anybody else would be with respect to his right to demand that he should not be injured while there. You see, the position of this man when he is on the property—when I say on the property I mean tied up—is a vastly different position than the position of the man when he is away from it. If he is on the property, the very fact of his presence there contributes in a degree to the injury that resulted to him; and also the fact that he is practically a part of the property or that there is a continuity between him and the property makes a vast difference. But, when he is outside he is in a place where everybody who is outside has a right to exact and demand that the person who has the munitions on the land shall exercise a high degree of care that they shan't become dangerous to him.

Mr. Rockwood. Very true; but in this particular case, Judge, isn't it permitting the plaintiffs to take advantage of their own wrong and thereby violate a basic legal principle for this reason:

Those boats were loaded at the Jersey Central pier; they should have gone to the anchorage according to the harbor regulation. Instead of doing that for the accommodation of the men who wanted to go ashore, and this being the only place where they could do that, they came in there without our consent, tied up and abandoned their boats and went away. Without any fault upon our part all that was done. This situation was created of great danger then. That situation was not created after they got out to a place of safety, but, as Mr. Boles says—and I think that is a vital point—it was coexistent and had started before they were moved. Now, with that danger created and with these boats abandoned we went out there and dragged them out as far as we could as a volunteer.

The Court. You see where you get with the assumption that you have been constantly making.

Mr. Rockwood. Because there was nobody in charge.

The Court. No, only one man was there.

Mr. Rockwood. Well, only one man was there. He only belonged to one boat. There was four boats. That is the evidence —this old man Hansen.

The Court. Yes, but the other men were in the neighborhood there.

Mr. Rockwood. No, there is nothing in the evidence. The evidence was that the man went there and knocked on the doors and tried to find somebody, remember that—and could not get anybody.

The Court. All right. Let us assume that.

Mr. Rockwood. Yes.

The Court. You mean it is not an abandoned boat in the sense that you use the word abandoned, but in the sense that he was not present on it.

Mr. Rockwood. I do not use that in the legal sense of abandoned.

The Court. Oh, that is what I thought.

Mr. Rockwood. I mean, the mere fact that they were away from the boat.

The Court. They were not present on the boat.

Mr. Rockwood. No. Because the man on the tug says he jumped over and knocked on the houses, and tried to get somebody, there was nobody there, couldn't get anybody around. One man on the dock who rendered him no help.

Mr. Stallman. He was on the Moran 8. Rockwell was on his boat.

Mr. Rockwood. One man was on the boat and that is all there was there, and that is the one man Hansen. Now, then, if we had towed them out to a place of safety and they had come to some damage through out fault, then we have now where the cause of injury had already started while we were there and we were merely attempting to get them to a place of safety and they were injured in any event. In other words, that if they are permitted to recover in this case by the verdict of the jury, aren't they permitted then to take advantage of their initial wrong in going there and leaving the boat in violation of the harbor rules?

The Court. I do not see how they take advantage of the initial wrong.

Mr. Rockwood. Because they had no right there.

The Court. Of course, they had no right there, but that is not taking advantage of the initial wrong.

Mr. Rockwood. They were wrong to be there at all.

The Court. And that wrong would have acted against them. It would have prevented their recovery if the boats had remained where they were. I grant that.

Mr. Rockwood. As I understood your Honor, if we left these boats absolutely alone and there was only one man to handle at least four boats that belonged to the parties, your Honor would have directed the non-suit?

The Court. Yes.

Mr. Rockwood. But because we went in there with two tugs and we partially brought them out— and your Honor has not decided whether we got them in public waters—your Honor now says our duty attached.

The Court. That is exactly the extent to which I hold the law and the logic of the case leads, and I am not at all afraid to follow my own logic out to its conclusion, if it is logic, and I am not at all afraid to follow it out to just exactly that point.

Mr. Rockwood. Well, I, with much deference would follow along your Honor's line of argument, if a situation had developed after the boats got out into the public waters, but the situation was developing, it had already started, and we were trying to get the boats out, and the fire was coming, and the explosion was sure to happen, we were trying to remove them to a place of safety, that is all.

The Court. Well, nobody knew that the explosion was sure to happen.

Mr. Rockwood. Well, the fire was started.

The Court. Yes, the fire was started. That is true enough.

Mr. Rockwood. And the shells were popping.

The Court. I would not say that from the evidence.

Mr. Rockwood. Kelly just testified to it a few minutes ago.

The Court. Kelly's testimony in the case was that after the whistle was blown the shells did not commence to pop until twenty-five or thirty minutes afterwards.

Mr. Rockwood. Yes. I call your attention to the fact that it was pretty near two o'clock before those tugs started to take out those boats.

The Court. True enough.

Mr. Rockwood. And the shells were popping at Mr. Hansen long before that, in fact, he testified that he picked up from his boat the red hot fuses—your Honor remembers.

The Court. Yes, I remember.

Mr. Rockwood. Coming from the explosion.

The Court. Yes.

Mr. Rockwood. So, if your Honor would consider the case not from the standpoint that something happened after they got out into the waters, but that had already started before we started to take them out, perhaps that would be a different ruling. That is what I would like to suggest.

Mr. Stallman. I do not know, if the Court please, that I can add anything to the discussion, because pretty near everything has been mentioned that I might have mentioned, excepting that I hope that your Honor does not expect me to concede, even if your Honor is assuming, that these plaintiffs in respect to their property were trespassers while they were in the position they were at the time of the fire. I understand your Honor so holding—

The Court. You mean tied to the dock?

Mr. Stallman. They were not tied to the dock.

The Court. You will have to show me some authority, because, if you don't, I have not the remotest doubt about it. I think if you proceed to go out and tie yourself to a boat that is tied to a dock and thereby make up a continuity between yourself and the dock and are held in place in effect, ultimately and in the last analysis, by that dock, you are just exactly as much a trespasser as if you threw your hawser around the cleat on the dock and fastened yourself there. Now, if you have any case that holds anything contrary to that, I would like to see it. I have seen the cases all the other way. You say you don't want me to concede it. I do not want to concede it if there is anything the other way, but I would like to see it.

Mr. Stallman. Your Honor has, in discussing the matter with counsel, assumed that to be true.

The Court. Assumed what to be true?

Mr. Stallman. That we were trespassers if we—

The Court. Yes.

Mr. Stallman. During all of that time when we were lying there while the fire was raging, and before they moved us, or either the tug moved or the tide moved us out from where we had been lying.

The Court. Before you cut loose from the things that held firmly, fastened to the dock, I said I would assume, and so I will assume, that you are trespassers, unless you can show me something to the contrary.

Mr. Stallman. I do not want your Honor to take that I am conceding that point of law.

The Court. No, I do not ask you to concede anything, but I do ask you to accede to my suggestion that you show me some authority on the proposition with respect to a person not being a trespasser who ties up to a dock that belongs to somebody else or to a boat that is tied to a dock that belongs to somebody else, and thereby moors himself in a fixed position by virtue of the fact that he is tied to something that is tied to the dock. I have never seen a case that holds anything like that, and I do not believe there is any such case, and I do not think you have any such case.

Mr. Stallman. No, I have not.

The Court. That is what I was rather convinced of.

Mr. Stallman. I have not. The only way I can argue is by analogy to some other case.

The Court. What cases? Let me hear some of them.

Mr. Stallman. It seems to me that the case of Polhemus versus Bateman, and the other cases where these men have come in on the riparian lands of the owner and have dug up oysters, for instance, on these riparian lands. There they have made a physical trespass upon those submerged properties, in which the adjoining land owner had a certain qualified right, that is, he has the right to go out and occupy that particular part of that submerged land by an improvement, if he wished, and there is a sort of a technical trespass on the physical property that is on the submerged property.

The Court. The courts hold there is not any trespass at all there.

Mr. Stallman. Yes, they hold there is no trespass there.

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The Court. No trespass. It is not either technical or physical or anything.

Mr. Stallman. Yes.

The Court. Because the law is perfectly settled in this state by every decision on that point that unless there has been something done whereby the party has reduced his ownership and possession of that submerged land in some way into his actual possession, that anybody has a right to go over it.

Mr. Stallman. Yes.

The Court. This is not that case and has no analogy to that case.

Mr. Stallman. Let us see: Here is the dock over there, that is the pier, the North Pier, we will take it, in this case, and some boat is tied up to it; for the present purposes we will assume it is there lawfully, I don't know anything to the contrary, and another boat is tied to it, and we will assume that is there lawfully, that is, doing some business with the railroad company. This water, this particular area they occupy, the exact geographical spot they occupy—that our two boats occupy—is in those waters in which the tide ebbs and flows, and is below mean low water mark. It seems to me that the question of trespass is not only a question of how you were there, how you remained where you are, but a question of whether the spot that you located is right where you have got to be or not.

If it is so that the tide ebbs and flows in the place where these barges were, and I do not think anybody will dispute the fact, because there was evidence in the case that the tide did swing these boats when they were once released—it appears in this case the boats were in the tidewaters of New York Bay, that is, geographically speaking, a certain point that could be pointed out on the map. Counsel says you are there, and that is the particular spot at this particular time, because you were held there, directly or indirectly, by a tying up to a structure which we have also there lawfully. So that it is an effort, it seems to me—if it was possible, by some mechanical means, by an anchor or drag or something else, for that boat to have been in tha

identical spot without a string or rope over to that dock, it would not be a trespasser if he was in the navigable tidewaters of New York Bay, and yet counsel argued, and your Honor has acceded to the suggestion, that because he is in exactly the same geographical spot, occupying those same tidewaters, that he remains in that place because he has tied up to somebody else who is there lawfully, and annexed to that pier, that that makes him a trespasser.

The Court. I said it did, and in fact, the very case you thought of here, the mere fact that the tide ebbs and flows would absolutely prevent, under the logic that you are trying to employ here, any man who is tied up to the dock even from being a trespasser, because the tide ebbs and flows all around that boat, yet he is tied to the dock, and he occupies a position that he is not tied up to it. According to your argument, he has a right to sail over it if it is a public highway. The sole question is does the man tie himself up? He could be charged wharfinger fees under the cases as it has been decided.

Mr. Stallman. I grant that. They might charge him something for the use of the wharf that sticks out there and presumably runs to deep water. But I do not want to concede—I do want to argue, because your Honor has your mind made up, and there is no use of arguing against a stone wall, but I do not concede it.

The Court. I do not think that that is quite the situation.

Mr. Stallman. Your Honor has said that you believe it to be the law.

The Court. I do not feel like acceding to what seems to be a very ungracious statement that because my mind seems to be perfectly made up that therefore it is a stone wall.

Mr. Stallman. Your Honor knows I do not want to be ungracious.

The Court. I do not care whether you are or not, it does not interest me especially, but the point I make is that if you had any faith in your point and desired to argue it, I would suppose your argument, but if you did not have any faith in your point,

you would not argue it, but if you felt to argue it would be entirely futile because my mind was adamant when once made up, when it could not be changed—either one of those things is perfectly satisfactory to me. Now, go ahead with the rest of it.

Mr. Stallman. I have tried to make your Honor see my point of view. It seems to me that it must depend on the trespass; and then I did not say—your Honor may have thought it—the question of trespass is sifted out in the Vanderbeek versus Henry case. There they had the right, as must be in every case of trespass, to exclude the trespasser from the place where he is, and what I wanted to say further is, that if that man had the right to be where he was, provided he could hold himself there by an anchor or a drag, he would not then be a trespasser, and it seems to me that it must be immaterial, if he had the right to be there some way. The mere fact he was tied by a rope could not change his status.

The Court. That depends on what he was tied by a rope to. If he was tied to a dock, or something fixed to the dock and he is using the dock or pier practically as an anchor, why, that would constitute him a trespasser.

Mr. Stallman. That is, a trespasser to the pier.

The Court. Why certainly; because the pier is what holds him to the fastening, the mere bolt. The bolt is a mere link in the chain of holding. That is what the bolt is. If the bolt were not there he would tie to the pier, but the bolt was there and he tied to the bolt, and there is an absolute continuity between the pier and himself, and he was held in place by the pier and that is why he secured to the pier. If he had gone out and thrown an anchor out in the public waters and had held himself by his own anchors without fixing himself to the property that had been fastened there for the very purpose of use as a pier, he would not be a trespasser. I assume that without any hesitation.

Mr. Stallman. I think I understand that exact point on which your Honor rests his decision.

Now, on the question of whether or not that trespass which is assumed in the case had terminated, I confess that I have found very little law on that precise point, that is, involving a prior trespass, and the only case I can think of is the James case, which we tried, and in that case we tried to apply—and in that case we tried to apply the Railroad Law, section 55, which says that if any person stands, walks or rides on railroad property—

The Court. Yes, I remember the case. She wandered out of her place of trespass and got on to the public highway.

Mr. Stallman. Yes; and in the United States Circuit Court of Appeals and also in our own Court of Appeals, in both of those courts it was held that she was no longer a trespasser, so that we could not debar her of her recovery as being on railroad property, and the reason she was debarred of her recovery, that is, at least, in the Court of Errors—I have forgotten now whether your Honor put it on a precise ground or not—that Vice Chancellor Walker said that coming on the way she did it was her duty to stop, look and listen. She was not relieved of her duty; but that her trespass had ended.

The Court. Precisely.

Mr. Stallman. So that is the most recent case in point on this particular subject, and I submit the evidence shows these plaintiffs were in the public highway when they were cut loose, that is, they were in the free waters of New York Bay where the tide was ebbing and flowing, where they were under the influence of the tide, and in that connection I submit that the exact location of the pier line, that is, the farthest point to which they might extend their structure or the farthest point to which they might, under the State law, acquire a riparian right, or the point to which they had already acquired a riparian right out somewhere in the ocean where there is no line of demarcation in the water—I submit where the pier line was is immaterial in determining whether or not they were on the public highway, because if these boats having been cast loose from the pier or the boat to which they were attached were in the waters of New

York Bay, that they were then in the public highway, and that the question of continuing trespass or the question of whether or not they were in the public highway, does not depend upon the exact location of the exterior line of piers, provided that water was outside of the low water mark. Now, it seems to me that those are the real points of law that have been urged and—Mr. Hobart says this is all those that he intended to urge, and the rest of the discussion all ran around those two points, and I do not see anything else I can say, except to refer to the decision in James against the Delaware, Lackawanna & Western Railroad, and the other decisions which I have here, and a copy of which I gave your Honor, in the United States Supreme Court, that held, as your Honor says, that until they had taken possession of that particular property covered by the waters of the arm of the sea, that remains open as a highway for navigation.

Mr. Rockwood. There is a very grave question, I submit, on this evidence, when the load on the barges received the contact of the fire or the flying missiles which resulted in their damage. The testimony is that as the boats were being towed out—and it is not at all clear that they got into free waters—that as they were being towed—and one witness said they had gone about six feet when he noticed that the boats were on fire, and then these men cut the hawsers, cut them loose. At the time they were cut loose they had no attendants—

Mr. Stallman. They were cut loose from the tug.

Mr. Rockwood. Yes; they were cut loose and had no attendants of their own upon them. Now, the evidence of their own witness, Hansen, is to the effect that as they were being towed out, the Thompson exploded with a tremendous explosion, and thereby cast this fire, and these missiles upon the other boat. It is not a clear question at all that these boats were out in free waters at any time.

The Court. Well, if it is not clear, my duty under the circumstances is not to grant Mr. Hobart's motion, but to submit the evidence to the jury.

Mr. Rockwood. That point is not clear; the point that they were trespassers is, of course, clear, and the point that they were without men of their own in charge of them is clear, and likewise whether they were attached to our docks—they were in a legal sense, still attached to our property; we were endeavoring to get them away, that is all.

The Court. I do not think that makes any difference, whether they were attached to your property at all. If you detach them and lug them out into the waters, I do not see that that makes them continuous trespassers.

Mr. Rockwood. We had to move them when they got on fire. One witness said six feet out and another one—

The Court. Yes, another one said more feet. I think in the light of the peculiar delicacy of the question raised and in the light of the fact that as my mind now stands, I am rather inlined to believe—the fact that they were actually, geographically, in the public highway, or that the jury may so find, and that the question as to whether they got there, or how they got there, is a matter of indifference so long as they were there, I think that I will deny the motion that has been made for the nonsuit. Mr. Stallman seems to think that the discussion of this question and the decision of this question, settled all the questions that were raised by Mr. Hobart. There was another very awkward one raised that was not mooted at all, and I will decide that now, and also, so that the decision may be entered on the record and the reason on which I rested it, so that if I am wrong I may be reversed, and that is this: We assume that, for the sake of the argument—and there may be enough evidence in the case to require me to determine as a matter of fact—that the vessels at the time they came in, wherever they were, in the public highway, were where they had no business to be, being loaded with munitions, in other words, that they were violating the harbor regulations—the anchorage regulations. On that point, to says the least of it, I think it raises a question for the jury as to whether their violation of those regulations was the proximate cause of the injury, in other words, whether it con-

tributed to the injury, or whether it furnished a mere condition; the distinction between the two situations from a legal standpoint is probably best stated in our own State in Menger vs. Laur, 26 Vroom; but there are many, many cases; and in Massachusetts the doctrine has been very thoroughly mooted; in one case in particular which I have in mind they had a regulation that no automobiles should be permitted to park in a certain street except they did it longitudinally to the curb, and some people went out and parked diagonally to the curb, and a man came along and bumped one of the automobiles that was parked diagonally in violation of the ordinance, and the Massachusetts Court held that the presence there of that automobile in that position was a mere condition and not a contributory cause; and there is a lot of leaning on that subject; and I think, as I say, to say the least of it, it amounts to a question for the jury, as to whether the violation of those regulations contributed as a negligent act to the production of the injury complained of, or whether it furnished a mere condition which rendered the happening of the accident physically possible but was not a legal contributing cause to it; so I think for these reasons, which I have probably inadequately, but nevertheless plainly enough, I guess, stated, I deny the motion and the defendants may have an objection to that ruling in the nature of an exception.

(Exception noted.)

Mr. Stallman. On the first twelve grounds, or on the first ten grounds—

The Court. I have already discussed those, and Mr. Hobart and I have agreed that those grounds having been already mooted between him and Judge Garrison and myself often, and having already been decided in the Court of Appeals, I am not apt to reverse the Court of Appeals now. I suppose Mr. Hobart desires to have them in the record for further appeal, especially in these cases where it was very manifest to me the subtle brain of Mr. Hobart was working, because these are cases of an international aspect, they may very likely much more easily be gotten before the Supreme Court of the United States, and those ques-

tions may be passed upon there, and I can readily see the propriety of having these questions raised as he raised them, and I think it was only a proper thing that they should be written in the record as they have been written. I may say, gentlemen, that I have enjoyed this discussion a whole lot, because they are nice points and I do not feel any great confidence in the correctness of this decision, but I feel that the worth of the reasoning from a legal standpoint is in favor of the conclusion I have reached; and I want to write down there just how I feel about it, that that is the situation.

So we will adjourn until ten o'clock tomorrow morning.

(Adjourned to 10 o'clock Thursday, June 10th, 1920.)

TRIAL RESUMED.

Thursday Morning, June 10th, 1920.

DEFENDANT'S TESTIMONY.

Mr. Hobart. On behalf of the defendant we will offer in evidence the following exhibits:

The anchorage rules and regulations which were referred to in the plaintiff's case which received an exhibit mark in that case. Let it have the same mark.

(Marked D. 2.)

Mr. Stallman. I would like to have an objection on the record when the Court comes in as to the application of it.

Mr. Hobart. Very good.

Also an amendment to the anchorage rule dated May 18, 1914, and request that that be marked Exhibit D. 2a.

(Marked exhibit D. 2a.)

I also offer what is known as the Red Book of the Interstate regulations, being same regulations as were included in the first book which were offered in evidence in the plaintiff's case as

Exhibit D. 1, and request that that Red Book also be marked the same as the White Book—D. 1a.

(Marked exhibit D. 1a.)

And I offer in evidence various photographs that were referred to by certain of the plaintiff's witnesses, and which have heretofore been marked for identification, namely, Exhibits P. 3, 4, 5 and 6

(Marked exhibits D. 3, 4, 5 and 6.)

I now offer in evidence a copy of the lease that was attached to plaintiff's interrogatories that were read in evidence, or rather, to the defendant's answers to those interrogatories, being the lease from the National Storage Company of June 24, 1913.

(Marked exhibit D. 7.)

And in connection with that lease I offer the original of the maps referred to in the lease, showing the property in question, being two maps attached to the lease.

(Marked exhibits D. 8 and 9.)

ALBERT M. DICKMAN, sworn.

Direct examination by Mr. Hobart.

Q On the 29th and 30th of July, 1916, were you employed by the Lehigh Valley Railroad? A Yes, sir.

Q And what was your position at that time? A Freight agent at the National Storage Docks, Jersey City.

Q Did your territory cover what is known in this case as the Black Tom Terminal? A Yes, sir.

Q Including the piers in the immediate vicinity? A Yes, sir.

Q How long had you been such agent prior to July 29? A Since December 15, 1915, and prior—

Q And prior to that time you had also been in the employ of the railroad? A Yes, sir.

Q And in what capacity? A Freight agent at Oak Island Transfer, that is Newark, N. J.

Q And you are still in the employ of the railroad? A Still in the employ of the company.

Q Do you know whether or not the Interstate Commerce regulations which are included in this Red Book, marked exhibit P. 1a, were in use at that time by the freight agents and other employees as part of their directions? A Yes, sir. This is the copy.

Q This is a copy of the book that was actually in use? A Yes, sir.

Q The one marked "Effective October 1, 1914"? A Yes, sir.

Q Will you state generally what your duties were as freight agent at the Black Tom Terminal? A Supervising the various yards, grain elevators and piers, office force, and so forth, down there—in fact, full charge of all that territory.

Q What was the date that you took charge of Black Tom? A The date that I took charge?

Q Yes. A December 15, 1915.

Q And after that date were you in charge continuously up to the time of the explosion? A Yes, sir.

Q Was there any passenger traffic at that point? A No, sir.

Q Will you state generally what the Black Tom Terminal was used for? A For the handling of all kinds and classes of freight, such as grain, structural iron, salt, borax, these high explosives—in fact practically everything that was coming over the railroad, that the railroads would handle in the line of freight.

Q And did those different articles come generally from all parts of the United States? A Yes, sir.

Q Was that the only terminal of the Lehigh Valley in Jersey City? A No.

Q Where was the other? A At Jersey City proper—what we call Jersey City Terminal located at Communipaw.

Q Well, both of them are within the limits of Jersey City? A Yes, sir; both of them were within the city limits.

Q The passenger traffic was handled at the other terminal, was it? A The passenger traffic was handled at the C. R. R. of N. J. at that time.

Q Jersey Central? A Jersey Central; yes, sir.

Q How far is the point where Lehigh Valley passengers were delivered at Jersey Central Terminal from the Black Tom Terminal? A Straight line, about two to two and a half miles.

Q Was there any place in the Black Tom Terminal where freight was delivered direct to consignees on trucks or wagons? A Not at Black Tom Terminal; no, sir.

Q How was the freight delivered to the consignees at Black Tom? A In all instances to barges and scows, lighters, and so forth.

Q And in turn how did the barges or lighters receive the freight? A From the cars placed on the piers, or the cars previously unloaded on the piers and then delivered.

Q Well, were there times when the cars themselves and contents were placed directly on the barges? A Not at Black Tom; no, sir.

Q At least, not at that time? A Not at that time.

Q There was not any car floats there? A No car float service there at all.

Q I ask that because reference has been made by certain witnesses to the so-called float bridges. A Well, they were not in use at that time, none in use up until October, 1917.

Q Well, then the method of handling freight at that point was to unload the car directly on the barge or lighter, or vessel, whatever it might be? A Yes, sir.

Q Now, when the freight arrived at the Black Tom Terminal, how did the consignees get word of the fact that it was there? A The railroad would send them an arrival notice.

Q And how was that usually sent? A By United States mail, messenger service to New York and then United States mail from there.

Q Did you ever use the telephone for that purpose? A Well, we would use telephones when the consignee was really looking for his freight and had given us advance information

to advise us upon its arrival; that is the only instance we would do that; it was not the custom.

Q Well, aside from the telephone messages that you occasionally sent, how would these other notices be given? Were they given verbally or in the form of a written notice? A Written notice, and where the telephone notice was sent a written notice was also sent, too.

Q So that your rule was to send a written notice in every case whether you telephoned or not? A Yes, sir.

Q In order that the consignees might receive the freight from the cars on to the barges, where would the barges be placed? A Down in this lower bulkhead yard for various commodities; out in the Claremont yard for other commodities.

Q Now, won't you please step down to the map and point out to the jury where deliveries were made? A Step down to the map?

(Witness leaves the witness stand and goes to the map on the blackboard.)

Q I mean now both general freight and also explosives. A Well, for grain boats, they would be up at Claremont yard and brought down to these grain elevators, and for direct delivery to a boat it would be placed or passed through this grain transfer elevator. If it would go in storage it would go in what is termed the new grain elevator. That applies to all classes of grains. Then for such as flour and commodities that would probably be damaged by water, rain or so forth, they would be handled from this Pier 4. The boats would be on the outside bulkhead of the piers and the goods trucked to the sheds and delivered to the boats.

Q That was a covered pier? A A covered pier.

Q And so marked on this map? A So marked. The same thing applies to Pier 5 and Pier 6. Pier 7 here, which includes this property right through here, was used for the transporting of structural steel, automobiles, salt; borax was handled at the South Pier, but large and bulky freight was handled through Pier 7.

Q And where would the barges and lighters go in order to get it? A Come right in the bulkhead.

Q That is inside of the slip of Piers 6 and 7? A Yes, sir, and tied inside here. The South Pier—we used that for handling borax, both in crude and refined forms. This here we sometimes transferred grain, and sometimes salt.

Q The trestle you indicate is the trestle that runs out on the North Pier, and the connection with the track marked 17? A 17; yes, sir. The track 18, we used that exclusively for handling inflammable and explosive commodities.

Q And how long had that been used exclusively for that purpose prior to July 29, 1916? A Period—from the time that I had taken charge up until the time of the explosion.

Q For some time before that? A Yes, sir.

Q Well, was there any part of the terminal of any pier other than what you have described as the north part, or the north side of the North Pier, that was used for the handling of explosives or inflammables? A No, sir.

Q Now, was there any particular part of the yard, meaning by that the part that I am pointing to now, toward the west of the terminal—was there any particular part of the yard itself which was used for the placing of cars of explosives before they were taken out to the North Pier? A Yes, sir.

Q And what part of the yard was used for that purpose? A Tracks 13 to 16 inclusive.

Q And was there any particular reason why those tracks were used for that purpose? A Yes, sir.

Q What was the reason? A So that they would be available and prompt deliveries would be made to the North Pier.

Q Well, was that the most convenient point for placing those cars, to get them out on the North Pier when the time came? A Yes, sir.

Q Who had charge of the unloading of the various explosives and inflammables from the cars on the barges or lighters? A The consignees.

Q Did you or any of your subordinates have anything to do with that at all? A No, sir.

Q Did any of the employees of the Lehigh Valley have anything to do with the unloading of these explosives? A No, sir.

Q Reference has also been made in this case to the warehouses which are indicated on the map under certain letters, A to R inclusive. State generally what they were used for? A They were used for the storage of all classes of freight with the exception that no dangerous or inflammable articles could be placed in these stores.

Q And how would the deliveries be made of freight from the cars to those warehouses? A At times by lighter; other times direct to car; and at other times by consignees trucks.

Q Well, there was a roadway which extended a certain distance along the front of these warehouses, I believe, wasn't there? A Yes, sir.

Q And what was that used for generally? A That was used for the National Storage Company's delivery to trucks.

Q And also for deliveries to the warehouses? A Also for deliveries to the warehouses; yes, sir; by truck.

Q Now, referring particularly to cars containing explosives or inflammables, will you describe in detail the method of handling such a car and unloading its contents from the time—well, let us say from the time that the Lehigh Valley first had possession of it, either on its own line or at some connecting point. A Well, the car would come into Claremont with a road crew, what they call a road engine, a regular train, regular freight train; and accompanying the train would be car cards in the custody of the conductor, who would deliver those car cards to one of my yard clerks, who would check up the train to see that the cars correspond with the tickets, and he in turn would bring the tickets down to my office where the arrival notices would be sent.

Q And where was your office located at that time? A At that time on Pier 4.

Q What would be the next step? A The train would be classified at the various commodities contained in the train and placed in the various parts of the yard; that is, we classified—meaning by that we used certain sections of those yards for cer-

tain kinds of freight, so that we knew just where to go to get them.

Q When the cars containing explosives or inflammables arrived at Claremont, were they in separate trains, or were they trains with other cars containing general freight? A Trains with other cars containing general freight.

Q In other words, they were not sent over the line in separate trains, were they? A No, sir.

Q You referred to the car cards. Was there anything on the cards which indicated the contents of the cars in any detail? A Yes, sir.

Q Well, what was on them? A The car cards would show the car initial and number, the commodity, the point of origin, destination, consignor and consignee, the weight of the car and contents for engine rating, and so forth, signed by the agent who issued the cards, and the date of issuing.

Q Now, with particular reference to explosives and inflammables, did the cards indicate the class of explosive or inflammable? Take TNT, for instance, that has been mentioned in this case. Was that so described on the cards? A No.

Q How was it described? A "High explosive."

Q And take ammunition for cannon. Do you recall how that was described on the card? A That was classified as ammunition for cannon with or without explosive projectile, whatever it happened to be; but that was classified properly.

Q How about fuses? Were they so named? A They were so named, combination fuses, and the nitrocellulose was so named, and so forth.

Q When these cars were received at Claremont, indeed, for that matter, when they were received by the railroad in the first instance, were they usually sealed? A In all instances; yes, sir.

Q How were they sealed? A By a seal running through the hasp of the car door, attached to a hasp on the frame of the car door, or the frame of the sill, rather; and these seals that came through the two holes in these hasps were sealed with a press, in some instances; others with a lock seal.

Q And were those explosives handled in carload lots? A Yes, sir; exclusively.

Q That is, there was no other kind of freight placed in the same car? A No, sir.

Q Now, who had charge of the placing of the various cars of explosives on the North Pier when the time came to unload them? A I did.

Q And which of your men, if any particular men, were assigned to that work, would do the work of placing them there? A I would give the order to the yardmaster at that point, and he in turn would issue instructions to one of the train crews; that is, the train crews were in various parts of the yard having charge of certain sections.

Q The arrangement then was under your general supervision? A Yes, sir.

Q Well, how would you know, or how did you know when a particular car of explosives or inflammables was required to be placed on the North Pier? A By notice from the consignee that he desired certain cars.

Q Giving the numbers? A Giving the numbers; yes, sir.

Q You usually identified them by numbers rather than by any other description? A They are always identified by numbers.

Q And then when you received word from the consignees with regard to certain numbered cars, how would you tell or know which barge or which lighter was entitled to have those cars delivered to it? A The captain of the barge would have an order in his possession, which he in turn would hand to my representative.

Q Do you recall what the capacity was of the North Pier at that time? A Well, twelve cars on the north track.

Q Well. A That is, if there were thirty-six foot cars; only about eleven cars if they were thirty-four or forty foot cars.

Q Was there sufficient water on the north side to have the barges come there and take the load? A Yes, sir.

Q At all times, either high water or low tide? A Nineteen feet at low tide.

Q Never had any difficulty, then, on account of the tide so far as the north side of the pier is concerned? A No, sir.

Q Well, did you have anything to do with the furnishing of those barges or lighters? A No, sir.

Q Were any of the barges or lighters owned or operated by the Lehigh Valley at that time? I mean those that took these explosives from time to time? A No, sir.

Q Was there any particular rule or practice as to when you would place these cars at the North Pier for delivery to the barges? A Yes, sir.

Q What was your practice? A During the noon hour and after the closing hour at 5 P. M.—5:30 P. M. on all days but Saturday, and that would be 5 o'clock.

Q What was the closing hour for the work in that yard? A Same hour; 5:30 on all days with the exception of Saturday, which would be 5 o'clock in the evening.

Q Was any work done in the yard at night? A Absolutely none; no, sir.

Q Were there any engines allowed in the yard at night? A No, sir.

Q And the employees who had been working there in the day time, what were they supposed to do at night? A Go home.

Q And what were your own hours? A I would get there at 8 o'clock in the morning and stay all day; sometimes later.

Q And then were you relieved at 5:30? A Relieved at 5:30.

Q Did you usually leave at 5:30? A Oh, I usually left at 5:30; yes, sir.

Q Was there any particular hour of the day when these cars would be brought into the Black Tom Terminal? A Yes, sir.

Q And when was that? A First thing in the morning, when the first yard crew came in, which was usually about 7 o'clock.

Q Where were they brought from? A Brought from the Claremont yard.

Q And then they would be placed in the part of the yard you already pointed out; that is, tracks 13 to 16, and would stay there until you got word to put them on the North Pier? A Yes, sir.

Mr. Hobart. You do not mind my leading him?

Mr. Stallman. No.

Mr. Hobart. It will save a little time.

Q How far was this Claremont yard from the Black Tom yard? A The entrance to it was about a mile and a quarter, I judge.

Q Was it all a part of the same general terminal? A Yes.

Q Do you know what companies usually furnished the lighters or barges to handle these explosives? A The Moran Towing Company, the Ackerman Lighterage Company and the Johnson Lighterage Company.

Q Were any of these companies in any way connected with or directed by the railroad company? A No, sir.

Q Were they entirely independent concerns? A Yes, sir.

Q Now you have already told us about the car cards that were on freight cars while they were being transported over the line of the Lehigh Valley. Did the cars that contained the explosives or inflammables have anything else on them besides the car cards? A Yes.

Q What was that? A The necessary placards on both sides and both ends of the car, also a card on the inside of a car to indicate that it had been thoroughly inspected before loading, and that it was in first-class condition to handle that class of commodity.

Q Well, the latter was a separate card or separate paper from the former, wasn't it? A Oh, yes; that was tacked on the inside of the car.

Q But the placards of so-called explosives and so-called inflammable placards, were they placed on the outside? A Yes, sir.

Q And you have heard the description of them that was read yesterday, and is that your recollection of what they were? A Yes, sir.

Q How many were posted on each car? A Four.

Q Do you remember where? A On each end, three feet above the coupler as a general rule—it has to be three feet

above the car floor, on the outside of the car, and on the sides of the car it would be on each door.

Q In addition to those placards and the other papers you have mentioned, were there any other papers or documents that accompanied these cars? A The way bill would not accompany the car, but would come overhead, but also covered the car.

Q And of course there were the usual bills of lading? A Usual bills of lading, but they were not handled by the receiving agents.

Q Now, coming down to the date of this fire and explosion, I believe that was on a Saturday, was it? A Yes, sir.

Q Were you on duty that day? A I was.

Q What time did you go to work? A The usual hour, 8 A. M.

Q What time did you go home that day? A I left Black Tom 5 P. M.

Q Been there all that day continuously? A With the exception of about two hours in the morning when I went to the bank to get funds to pay off the laboring help down there.

Q Up to the time that you had left at 5 o'clock in the afternoon, had anything out of the ordinary occurred other than the usual routine? A No, sir.

Q Where did you live at that time? A 22 Gautier avenue, Jersey City.

Q How far is that from your office at the terminal? A In a direct line I should judge about three miles, three and a half.

Q You were at home the evening of the 29th, were you? A I was when they phoned me.

Q What was the first word you received about the fire? A Phone call from watchman Sloan telling me that the North Pier was afire.

Q And about what time was it? A It was about 12:50.

Q That is shortly after midnight? A Shortly after midnight.

Q Did you give him any instructions what to do? A I asked him if all—if every one had been notified—such as the New

York Fire Department, the Jersey City Fire Department, Lehigh Valley dispatchers.

Q Are you sure it was Sloan that telephoned you? A Positive, yes.

Q Did Kane telephone you at any time? A He did not talk to me.

Q Did you ask Solan, or whoever it was that telephoned, anything about the locomotives? A I asked him if he got hold of the dispatcher to get hold of the locomotives down there, and he told me it had been arranged for.

Q Where were the locomotives kept at night? A In our Jersey avenue yard, down in Jersey City.

Q How far from this terminal, about? A About two miles.

Q Well, did you ask Sloan whether at that time the Jersey City Fire Department had received any word?

Mr. Stallman. Now, if the Court please, I have not objected to Mr. Hobart showing by this witness that such things were done, but it does seem to me he ought not to prove conversations between these two employees of the company. I do not think that it would be binding on us.

A I have already stated that he had told me—

The Court. One minute. What is the conversation that is objected to? Some conversations might be permissible.

Mr. Stallman. He is asking Mr. Dickman, having this conversation over the telephone with Mr. Sloan, did you tell him about this, and did you tell him about that, and so forth, and so on, and I think that that is certainly hearsay, and it is certainly not binding upon us, a phone conversation.

The Court. It would seem to me, Mr. Hobart, is not what did Mr. Dickman tell them to do, but what did they actually do?

Mr. Hobart. I thought in view of the fact—this is what I had in mind—in view of the fact that Mr. Dickman was the agent superior to all of these men, than any instruc-

tions or directions that he might have given them what to do would have a bearing on whether what he did was negligence, or otherwise, under the circumstances. That is the only thought I had.

The Court. Well, the difficulty is, that the question is not what directions were given, because he might have given them a most complete and adequate set of directions, but unless the directions were pursued it would be negligence.

Mr. Hobart. But one of the plaintiffs claims here is that we were negligent because we did not do what we should have done after the fire.

The Court. Exactly; and now your argument seems to be, in logic, that because you told a man to do what he should have done, that that apparently is equivalent to performance.

Mr. Hobart. Oh, no, I do not urge that at all. But suppose Dickman had said nothing, just "Go home and forget it."

The Court. What they did makes an awful lot of difference; but for the purpose of this case I am going to permit you to prove it, because I think that once the alarm of fire had been communicated to Mr. Dickman, and he having charge of the disposition of things in that yard, with respect to the extinguishment of that fire, that what he said to the man is a part of the *res gestae,* of the effort on the part of the company to extinguish that fire.

Mr. Stallman. I will withdraw my objection.

The Court. So I think I will permit it to go in.

(Question repeated by stenographer.)

A Yes, sir.

Q Did you send any word yourself to the Jersey City Fire Department? A No, sir.

Q Why not? A I took it for granted that had been done when I was informed, and my main object then was to get down there.

Q Who informed you it had been done? A Sloan.

Q Then of course, you went there yourself? A Yes, sir.

Q Had you retired for the night? A I had just about retired; I was entirely undressed.

Q You had to dress yourself? A I had to dress myself. Well, I called up a taxi before I started to dress, and before I finished dressing the taxi was at my door.

Q And you traveled by taxi? A Yes.

Q How long did it take you to go those three miles or so? A I don't think it took me ten minutes to go down there. I sat on the driver's seat and told him to go as fast as he dared to, and he went.

Q When you arrived at the terminal where did you stop your taxi? A In front of Pier 4 I dismissed the taxi there.

Q Was that in the driveway? A Right on the drive—in the roadway.

Q Did you see anybody there? A I saw—

Q I mean when you first arrived? A When I first arrived, no, and I walked down the roadway.

Q How far did you go before you met anybody? A Pier 5, that is the driveway entering into Pier 5, down the roadway to the driveway.

Q You mean the driveway between the piers, or in front of the piers, the storehouses? A The driveway right in front of the tracks from—head end of the pumping station there.

Mr. Stallman. We tried the last time to avoid confusion by calling the long road the roadway and the side roads the driveway.

A Well, that is the way we call them down there. We call the long road the roadway and those entrances into the various piers, we call them driveways.

Q That is the roadway or driveway? A This was at the junction of the roadway and the driveway.

Q On both? A Yes, sir.

Q All right. Who was it you saw there? A I met Kane.

Q And did you give him any instructions as to what to do? A Not at that time.

Q What was it? A I asked him if there was any tugboats —if any tugboats had arrived—that is—

Q Well, did you find any tugboats of the company around there? A Yes, sir.

Q Where were they? A Down on the southwest corner of Pier 7.

Q Did those tugboats, as far as you saw, get up into the slip between 6 and 7, up here near the corner, or up here half way or so between the southwest corner and the corner opposite Pier 7? A No, sir.

Q Where was it you saw them? A On the extreme end.

Q At the point I am indicating way down here at the southwest corner? A Yes, the southwest corner.

Q What were those tugs? A "Slatington" and the "Geneva."

Q And did you give them any instructions? A I did. Told them to go around and get out that three-masted schooner we had in there, and any grain boats that might be laying down around that neighborhood, because we usually tied the grain boats in around the South Pier if we were filled up in the basin in front of the elevators.

Q Do you know whether in fact there were some grain boats around the South Pier that night? A I do know there was, yes.

Q And this schooner that you refer to, do you remember the name of that? A Elsey.

Q That was in fact lying alongside of the North Pier? A Alongside of the North Pier, yer, sir.

Q On this map, Plate 1, Exhibit P. 11, which has been already mentioned, it appears the legend "Schooner." Is that the schooner you refer to? A That is the schooner, only it is wrong end about, that is all.

Q That is the approximate location of it? A The exact location of it, yes.

Q And you spoke of some grain boats. There are a couple of boats marked Canal Boats, at the south side of the South

Pier. Were they grain boats? A They were grain boats, yes, sir.

Q After you gave these directions to the men on the tugboats did they start around as you instructed them? A They did after they hesitated for a little while. I told them they better go around, and they went then finally.

Q After you had given those orders and actually seen the men started, where did you go? A I came up the west of 7 to the bulkhead on the south side of the last block of stores, walked around there up to opposite Pier 6, in through that driveway, out on to the road again.

Q Why did you go there? A Well, I wanted—just naturally came up out of there, that is all.

Q Yes, what next? A Then I met Julian.

Q Who was he? A Lehigh Valley fire marshal.

Q Now up to that time—that was up to the time you met Mr. Julian, had you seen anything of the Jersey City Fire Department? A No, sir.

Q After you met Mr. Julian, where did you go? A Kane joined us and the three of us walked down the roadway to where it ends, crossed over those tracks, and met Con Leyden, Lehigh Valley chief of police.

Q How far did you walk? A Down to opposite that gravity tank.

Q That is the one known as the 100,000-gallon tank? A 100,000-gallon tank, yes.

Q Just to the east of Store R? A East of Store R, yes.

Q How long did you stay there? A Stayed there talking to Leyden for a few minutes, and he told me that I couldn't do a whole lot of good down in that section, and that I ought to get back.

Q Where did you go? A We walked directly north then to the seawall track.

Q When you say you were referring to— A To Julian, Kane and myself.

Q Was the fire burning at that time? A Extensively, yes.

Q Where? A Down at the head end of the North Pier—that North Pier appeared to be on fire, that is the North Pier was on fire at the head end—those cars all down at the lower end of the bulkhead yard were on fire.

Q By the lower end of the bulkhead yard which end do you mean? A The easterly end.

Q That is nearer the North Pier? A Yes, the end to where the North Pier joins the land—right there.

Q Had you seen the fire before that time, see it before you got out opposite Store R? A Yes, sir.

Q When you had first seen it? A Saw it as I came over the hill down into the Claremont yard.

Q You mean while you were still in the taxi? A While I was still in the taxicab, yes.

Q Where did it appear to you to be when you first saw it? A Right out at the North Pier.

Q When you got out of the taxi and sent your taxi away, did you then see the fire from where you stood? A Yes, sir.

Q Where did it appear to be then? A North Pier and end of the bulkhead yards.

Q Had it spread any from the time you first saw it? A Well, I wouldn't say it had spread very much, but it was spreading right along.

Q Was there any shooting or popping of shells? A Yes, sir.

Q When did you first notice that? A As soon as I got out of the taxi.

Q How extensive was that? A Just like rapid-fire guns—going off very rapidly.

Q Now there were some other grain boats, were there not, at other parts of the yard? A Yes, sir.

Q Where were they, do you remember? A Up in the basin, to the west of Pier 4, south of the grain elevators.

Q And did you go there at any time? A Did I go there that night?

Q Yes. A Yes.

Q Were you there before the first explosion? A No, I didn't go there before the first explosion.

Q Now to go back for a moment to the time when you and Kane and Julian were on the track on the north side, can you fix the point where you were? A Yes, sir.

Q Can you show us on the map? A I can. (Witness goes to the map and indicates.) Right there.

Q You are indicating the point on the seawall track or track 18 almost directly opposite—

Mr. Stallman. Immediately north of the westerly edge of the high water mark.

Q Now what time was it when you were at that point? A I should judge about 2 o'clock or a couple of minutes after that.

Q What happened while you were there? A The explosion happened.

Q Did anything happen to you? A Yes, sir.

Q What? A I was blown down among the rocks at the west edge of that seawall. That seawall is a lot of rocks piled up, and I was blown down to the edge of the—

Q How long were you there before you picked yourself up? A I believe I got up immediately.

Q Were you injured? A Slightly; my back was wrenched considerably; that is—I got over it, though.

Q Did you see anything of this explosion at the time it let go? A Yes, sir.

Q What did you see? A A tremendous blast of flame going in the air.

Q Where did it appear to be? A Down off the north side of the North Pier.

Q You had been out on the North Pier at other times, I suppose? A I had been there twice daily every day I was down there.

Q Did the explosion appear to you to be from some point on the pier or some point near the pier? A Some point up there, right near the pier, in the water.

Q Was there any noise? A Well, there was a tremendous roar; I really do not remember the noise very much at that; I

know that I was slightly stunned, but not unconscious at any time.

Q And at the time of that explosion was Julian with you? A Yes, sir.

Q How close to you? A Not more than two feet away from me.

Q And how about Kane, where was he? A He was right there, too.

Q Was anybody else near you? A There was a train man on the ground on the other side of a train on a car directly over my head, that is, on a car that I was standing alongside of.

Q Do you remember who that was? A John Walsh was on top of the car.

Q What was he doing there, if you know? A Giving signals to the engineer to pull out a train.

Q And do you know whether the locomotives were there at that time? A Oh, yes.

Q How many of them? A I had seen three.

Q Do you know whether up to that time they had pulled out any cars? A I do. They pulled out quite a number.

Q Well, what did you do after you picked yourself up? A Came up the bank and guided myself out of the yard there by this train that I mentioned before.

Q You mean you felt alongside of it? A Felt alongside of the train until I came to an opening, and then crossed over to the roadway.

Q How do you fix the point where you were at that time? A I was leaning against a telegraph pole, alongside of that telephone pole was a pile of ties. Julian was leaning up against those ties.

Q Did you see the pole or the ties any time the next day? A Yes, sir.

Q Anything happen to the pole? A No, sir; it stood there just as straight as ever; so did the pile of ties.

Q Is it there yet? A The pole is there yet, yes; the ties are not.

Q Now, which way were you facing at the time of the explosion. A Directly east.

Q That would be towards the North Pier? A Toward the Statue of Liberty—well, yes, toward the North Pier.

Q Now, did you see any boats or barges in or around the North Pier just before the explosion, or at any time shortly after the explosion? A No.

Q Did you know at the time you got there—did you know about midnight—did you know what boats were there? A No, sir.

Q It appears from the evidence that there were certain boats there known as the boats of the Ackerman Company—the "Paulina," the "Thompson" and the "Rockwell"; did you know that they were there that night? A No, sir.

Q Did you give them any permission to be there that night? A None whatever; no, sir.

Q Did any one of your clerks or other subordinates have any authority to give those boats or any other boats permission to come to the North Pier? A No, sir.

Q Do you know whether any of those three barges received any load on that Saturday from the Lehigh Valley? A I know they did not.

Q How do you know that? A From my own personal observation and from my own records.

Q Had you seen those boats there at any time during that Saturday? A Yes sir.

Q I mean, of course, the same three boats whose names I mentioned? A That is what I thought you meant.

Q Had you ever given permission to the Ackerman boats to stop at the North Pier or anywhere around there unless it might be for the purpose of receiving a load? A No, sir.

Q Had they or any of their captains ever asked any such privilege? A No.

Q Have you ever prior to this occasion warned any of the Ackerman men away from the pier when they were not loading there? A Yes, sir.

Q When did you do that? A On a number of occasions. The last time being about a week prior to the explosion.

Q And how did you warn them, in writing, personally, or what? A I wrote to the captains themselves and called up the Ackerman Lighterage Company on the phone, also the Thompson people, and then followed it up with a letter.

Q Was there anybody with you when you spoke to the captains of the Ackerman boats? A Yes, sir.

Q Who was it? A My man who had charge of the North Pier—that is, who supervised the records of the cars that were unloaded, and so forth—Frederick Fox.

Q Was Mr. Campbell with you at any time—the inspector? A Yes, he had been with me at various times, when I had warned these men away—told them to keep out of there and get out of there.

Q When was the first time that you saw the Jersey City firemen? A I saw them, I should judge, about 15 minutes prior to the explosion but not to talk to them.

Q Where were they when you first saw them? A They were about opposite Pier 5 at that time.

Q Did any of them ask you about the hydrants or the water supply, or anything of that kind? A No, sir.

Q What were those firemen doing when you first saw them? A Standing there, looking at the fire.

Q Looking at the fire? A Yes.

Q Well, did they have the hose on? A I saw no hose.

Q Did they have the hose attached to the hydrant? A I did not see any; that is prior to the explosion. They worked like beavers after the explosion.

Q That is what I am speaking of, prior to the explosion. A Yes.

Q Do you remember Chief Gately being there? A I remember him—remember his being there?

Q Yes. A No, sir.

Q Well, can you identify the five men that you saw there prior to the explosion? A No, sir.

Q You knew them by their uniform, I suppose? A That is all, just knew they were firemen.

Q What did they have there by way of appliances? A At that time, nothing but hose carts.

Q Did you see the fire engines come sometime after that? A After the second explosion.

Q Well, that was what hour, about? A That was about 2:38, I should judge, or 2:40; about a half hour after the first explosion.

Q And up to that time you had not seen any fire engines at all? A Sir?

Q Up to that time you had not seen any fire engines at all there? A Fire engines? No, no.

Q Did any of these firemen that you saw prior to the first explosion say anything to you about the water supply or ask for any directions as to how to handle the hydrants? A No, sir.

Q How close to the nearest point of the fire were these firemen prior to the first explosion? A The nearest I saw prior to the first explosion was Pier 5—that is the roadway opposite Pier 5.

Q Now, did you have a number of grain boats in and around the terminal at that time? A Yes, sir. On that particular night we had 160 to 175 grain boats up in the grain basin.

Q And did you do anything in the way of getting them out? A Not until after the first explosion.

Q And after that happened, what did you do? A After I got out and got onto the roadway and finally got my wits about me, I came down the roadway again. I then saw that the last block of stores were burning, also the second block, just about, and I could see that Pier 6 was on fire; it seemed to be eating its way up that way, so I just got back to where we had those grain boats moored and ordered them all off—assisted in getting the women folks off, and so forth. They each have a family on those boats; and we got them all off.

Q Then you sent them off—away? A I told them to go out of the roadway to the Claremont avenue hill and stay up there.

Q Where were you when the second explosion happened? A Just behind Store 3, which is attached to Pier 4, there on the westerly side—shore end.

Q Which way were you facing them? A That is when I was getting these people off the grain boats, and the second explosion happened.

Q What did you see of the second explosion? A Nothing but the flareup, that is all.

Q During the time between the first and second explosion, were there other explosions? A Yes, small, minor explosions, yes.

Q Could you tell from what you saw of the flare of the second explosion the direction in which it was? A Yes.

Q In which direction was it? A It appeared to come from the bulkhead yard.

Q Just what do you mean by the bulkhead yard? A That lower yard down there, that is all known as the bulkhead yard; from tracks 1 to 18 is known as the bulkhead yard.

Q That includes the tracks on which the explosives or ammunition cars were? A Yes, sir.

Q Then after the second explosion did you see anything of the Jersey City firemen? A Yes.

Q What were they doing then? A Playing water on the two stores.

Q Where did they get the water? A I do not know; I do not know whether it came from the pipes or whether it came from the sea.

Q Was there apparently any difficulty in getting the water? A Not a particle; the New York fire boats were getting it and the Lehigh Valley tug boats were all getting it.

Q Did you notice if any of the firemen at that time had any of their hose connected up to the hydrants? A No, I did not.

Mr. Stallman. Well—

Mr. Hobart. You may cross-examine.

Albert M. Dickman, cross.

Cross examination by Mr. Stallman.

Q Now, Mr. Dickman, I understand you to say that all of the traffic that was brought by the Lehigh Valley Railroad on into the Black Tom yard, that is, including all of the tracks on Pier 7, as well as those leading out to the North Pier and South Pier, was all delivered to the consignees by boat? A Except a car that may be consigned to the National Storage Company, might come down into that neighborhood; if it did, it did not belong there, but all that place down there was to be delivered to boats.

Q If it got into there by mistake you would have to drill it out again? A Have to drill it out again.

Q And put it in these warehouses? A Exactly.

Q And on this particular day there were about 230 cars in that yard all filled, weren't there? A Yes, sir.

Q And does that include the cars down on the tracks near the channel? A Well, I would have to count them over again to see whether it does include those, but I believe it does—228 cars in that territory right there.

Q Now, I see those tracks are not all filled; that is, about an average day's run of cars for that yard? A What do you mean, that we handle that many cars down there?

Q Yes. A No; we did not handle that many cars down there every day.

Q How many cars did you deliver on an average at that time, including explosives and borax and salt and malt and— A Down in that place?

Q Yes. A I guess we would handle, including explosives, 50 or 60 cars, perhaps it would run as high as 80 to 100.

Q A day? A Some days, not every day.

Q And all that stuff had to be loaded on to boats which had to come somewhere around those yards in order to have the contents put on to them? A Yes, sir.

Q And this float bridge—the two float bridges were designed to have car floats come up and have the cars run out on the boat? A Never handled a car float there, Mr. Stallman.

Q I say, that is what the float bridge was designed for? A Oh, yes.

Q Originally, but you did not use it for that purpose? A We did not use it, no.

Q So this slip, then, was not used for bringing in or taking out car floats? A No, sir.

Q It was not? A No, sir.

Q And those car float slips were not designed or available for the transfer of less than carloads—for the transfer of package freight from cars to a lighter or a scow? A Those float bridges were not available—were not equipped for that?

Q Yes. A Transferring from car to boat?

Q Yes. A No; they were not equipped for that.

Q No; and as far as the float bridges are concerned, they had no part in the delivery scheme, as you were then operating the yard? A No, sir.

Q Now, so far as the delivery of the contents of cars is concerned, it was your duty as the agent of the Lehigh Valley Railroad Company, or the duty of the company, to place all cars for delivery on tracks either on the North Pier or somewhere on the lower tracks on Pier 7 or on some track right next to it, to the latter, is that right? A Some would go in on Pier 5 or Pier 4, truck across the pier and deliver to the boat.

Q I am speaking now of the cars consigned— A To the lower section?

Q —and placed down in the bulkhead yard. A Are you distinguishing between explosives and this other commodity? A What do you want me to say, that we had to put the cars on the tracks alongside the piers in order to deliver to these boats?

Q Yes. A Yes; in some instances. That space there where you see Pier 7 marked, that blank space, that was used for unloading open car freight on to the ground, and we would load that place up there, keep us pretty well filled, in any spare moments we had, and then we would use a locomotive crane to run that there. That is what you wanted me to say?

Q That was a storage place? A A storage ground, yes.

Q But it went to Lehigh Valley property, did it, to be loaded into cars again and then transferred to the boat? A No.

Q How did it get away from there? A Locomotive crane lifts it off that open space on to a boat, or the boom of a boat or lighter would do that.

Q With the exception of stuff that was unloaded by hand and then transferred from the cars by crane over to the boat, all carload stuff for immediate delivery had to be placed on some track near the water, there to be transferred directly into a boat? A Yes, sir.

Q In other words, you did not place any cars on any of these tracks from No. 1 to No. 17 inclusive, or on the tracks numbered 1 to 6 inclusive, in what you call the bulkhead yard, for immediate delivery? A No, sir.

Q There was not any way of taking delivery there, was there? A No.

Q Now, talking about the warehouses, cars being consigned into these warehouses, that is, the three blocks of stores between Pier 7 and Pier 4—those were the warehouses which were owned and operated by the National Storage Company; were they not? A Yes, sir.

Q And the Lehigh Valley Railroad Company did not operate those stores? A Well, it is a subsidiary of the Lehigh Valley Railroad Company, the National Storage Company is.

Q But it was all known and operated as National Storage Company? A As a separate business; yes.

Q Now, as I understand it, when explosives—explosive material was consigned to some point that would require it to be brought through Black Tom, these cars invariably were placarded with the placard prescribed by the Interstate Commerce Commission, which showed the nature of its contents; is that right? A Yes, sir.

Q That is each car. And TNT, for example, was marked "High explosive"? A Yes, sir.

Q On the placard. That was the official designation of TNT as far as the railroad company was concerned? A That would not show on the placard.

Q No. It said "High Explosives" on the placard, didn't it? A No; it just said "explosives" on the placard. That would

require an explosives placard, but it is not marked "High explosives" the car card is marked "High explosives."

Q The car card is marked "High explosives"? A Yes, sir.

Q That is where you and the other railroad men got their information? A Yes, sir.

Q And the car cards similarly showed ammunition for cannon when a car was loaded with shells? A Yes, sir.

Q And it also indicated on the car whether the shells had the explosive projectile attached or whether it did not have it? A Yes, sir.

Q That was all indicated on the outside? A That was; yes, sir.

Q You did not have to break open the cars to find out those facts, did you? A No.

Q And similarly fuses, and wet nitrocellulose, were indicated on those cards? A Yes, sir.

Q Now, you say the cars were sealed, and by that I understand that the seal is either a piece of wire, soft wire, the ends of which are brought together and fastened with a little lump of lead, or in another case it is a little piece, strip of tin about three-eighths of an inch wide, which is fastened through a little bolt or button, but won't come apart; is that right? A That is right; yes, sir.

Q Those are what you call car seals? A Yes, sir.

Q They are very easily broken? A Broken?

Q By a spike?—or screw driver or something of that sort? A Oh, yes; they are easily broken.

Q Now, you have explained to the jury on Mr. Hobart's question about cars arriving in Claremont yard, which was practically the end of the railroad haul; is that right? A That is right.

Q And what were the occasions then for bringing them from the Claremont yard down into what you call the bulkhead yard? A So they would be available for whatever pier we were going to handle them.

Q That is, they were brought down there before you had disposition orders? A Oh, yes.

Q And they were brought down into this yard, and if you did not get orders for disposition you would have to hold them in that yard for two, three and four days, sometimes a week or more? A Yes, sir.

Q Now, you say that there was nineteen feet of water at low tide on the north side of the North Pier. Did you ever measure the depth of water on the south side of the North Pier? A No; I know how much water was there, though.

Q Did somebody tell you? A No, from the draught of different vessels we got in there.

Q I see. Well, now, what was it? A How much was it?

Q Yes. A Same as the north side of the North Pier.

Q Nineteen feet? A Nineteen feet.

Q That takes pretty big boats— A Well, we have them go ashore there, though, just the same. The Wolcott was aground there.

Q Now, you commonly left there at 5:30 and in your absence —I mean at night after you had gone home, who was representing the Lehigh Valley Railroad that was in charge? A Kane.

Q Edward J. Kane, the man who was on the stand here yesterday? A Edward Kane, yes.

Q And under whose immediate supervision or instruction was he? A He was under me directly.

Q Under you? A Yes, sir.

Q You were his immediate superior? A Yes, sir.

Q And you were familiar with his duties? A I was, yes.

Q Now, when this fire happened, when you got word of it at home, you asked Mr. Sloan, I think it was, whether he had notified the fire department or someone else to notify the fire department and had sent over to Jersey City for locomotives; is that right? A Yes, sir.

Q And had notified, I think, the New York City Fire Department? A The New York Fire Boat Department, yes.

Q If they would send some tugs over. Now, are those all the subjects that you discussed with him? A That is all I discussed with him over the phone.

Q Yes. Those are all the facts that occurred to you at that time? A No.

Q I mean to discuss with him. A Well, that is all I did discuss with him. There were other facts that occurred to me but I did not discuss them with him, I thought he knew them.

Q Now, how far away from the fire were you, or just about where were you when you first saw this fire? A When I first saw this fire I was coming down on Claremont avenue.

Q And how far is that from the bulkhead yard? A Well, coming up that roadway and across this way it would be about two miles.

Q That is, you were first traveling on a line, we will say, paralleling the Bay? A Coming south first, and then I had to come east.

Q East? A Yes.

Q When you first saw it you were about two miles away? A Yes; I saw the reflection before that, but I saw the fire when I was about two miles away.

Q I see. And when you saw that were the cars flaming at that time? A Yes, extensively.

Q Then when you stepped out of the taxicab in front of Pier 4, you then observed that shells were going off? A I had seen them going off; I heard them when I got out of the taxi.

Q Now, when was it when you got your best impression as to the location of this fire? When you got down here at Pier 4, or after you had walked down further? A The best impression of that fire was at Claremont avenue hill. I had an unobstructed view of it.

Q That is, when you were two miles away? A No, no, no. I said Claremont avenue hill. That is the hill leading into the—what you have heard mentioned here as the gate leading into Claremont yard.

Q It is about a mile away? A It is about a mile away; it is an elevated hill—elevated spot.

Q When you were about a mile away and you had a sort of birdseye picture of it, of what lay down before you, you got the

best impression as to just where the fire was? A That was my first best view of it. When I came down and walked along the seawall track and stood there by that telegraph pole, after leaving Con Leyden, I had the finest view in the world of it, right there.

Q Yes. And these cars were out on the end of the North Pier on fire? A I could not see them burning.

Q Were any of the cars on the North Pier on fire? A I know that the cars on the north—on the west end of the North Pier were burning.

Q Well, now, there are two empty cars on the west end. Were they on fire? A If they are the two cars that appeared there, I saw that the cars on the west end of the North Pier were burning. I could not say how many. I could not see through the fire, but I could see the cars on the west end of the North Pier burning.

Q Well, now, apparently there were not any cars on tracks 17 and 18 east of the pile stockade. There were four empties here. Were they on fire? A No, they were not on fire.

Q Well, there were cars on track 16. Were they on fire? A Track 16 at the extreme end?

Q Well, anywhere? A The easterly end they were, yes.

Q How many? A Also that trestle and the shanty that we had down there; that is the dock foreman's office that we had right there; that was all burning. Those cars I should judge, on 13, 14, 15 and 16 were all buring on the easterly end.

Q On 13, 14, 15 and 16? A Yes, sir.

Q Were all on fire? A Yes, sir.

Q And you know that to be a fact? A I say I judge that to be a fact. I know that the cars on the—I know that the west end of the North Pier and what appeared to me to be the east end of the bulkhead yard was burning. I could see that without and obstruction whatever.

Q Did you see Zeke's house? A I saw Zeke's house, yes.

Q And you are sure that was not on fire? A That was not on fire, no.

Q The fire was to the south of Zeke's house? A Yes, sir.

Q Sure of that? A That is, it was on the southerly direction.

Q Southerly direction from his house? A Yes, southerly direction from his house, but not directly south of his house.

Q I understand. I did not mean to say exactly in a plumb line from that. Did you fix the time of the first explosion by looking at your watch, Mr. Dickman? A No, sir.

Q You say you were there with Mr. Leyden and James Julian. What happened to Mr. Leyden at the time of that explosion? A I don't know what happened to him at the time of the explosion. I know that he was killed that night.

Q Isn't it a fact that you afterwards discovered his body in the place where you said you were? A I told them where to dig for his body and we found his body there.

Q They had to dig for it? A Yes; they had to uncover a lot of cars, axles, wheels, the contents of cars. It took us about three days to finally get him out.

Q Now, you said that on some occasion, a week or so before the fire occurred, you had told certain boat captains that you did not want them down there. Why did you do that? A I didn't tell them I did not want them down there. I told them to get out of there.

Q Yes. A And told them that if they did not we would prosecute them; that is all.

Q Well, had they been in the habit of coming there? A They had been in the habit of coming there, yes; they had been in the habit of getting their load somewhere else in New York Harbor and coming down there and tying up at that pier; and I had been after them right along to stop it; and finally I got the Bureau of Explosives Inspector after them.

Q What is that? A Finally got the Bureau of Explosives Inspector after them.

Q Now, you said when you got down to Pier 6, I think it was, on your way back after the first explosion, Pier 6 was on fire? A After my first—after coming back from the first explosion.

Q Yes. A That entire section. I didn't go through. I could just see fire coming from the roadway. I saw stores all burning, and I judged Pier 6 was burning; that is right.

Q No question about Pier 6 being on fire, was there? A No question about it.

Q And that was before the second explosion? A That was before the second explosion; yes, sir.

Q And was Pier 5 on fire at that time? A I didn't investigate. I hurried right back then when I saw which way the flames were coming.

Q At that time was the second block of stores damaged? A Yes, sir.

Q They had the tops all knocked off of them? A Yes, sir.

Q Pretty well wrecked? A Pretty well wrecked.

Q Now, as a matter of fact, you have not any knowledge where the second explosion came from, have you? A No.

Q Now, all you saw was a flare in the sky which was momentary, and you could not tell us within fifteen degrees in what direction it was, could you? A No, only the general direction. That is what I gave you—or Mr. Hobart—the general direction is what I intended to give him.

Q It would be just as accurate to say that it came from about the same direction as the other, wouldn't it? A Positively.

Mr. Stallman. I think that is all.

Mr. Hobart. Just one other point I would like to ask Mr. Dickman about while he is on the stand.

By Mr. Hobart.

Q Have you prepared, Mr. Dickman, a memorandum showing the dates of arrival and dates of the sending of the notices of arrival of these various cars of explosives, and so forth, that were in the yard on the night of July 29th and 30th? A Yes, sir.

Q Is this paper which I show you that memorandum taken from your various records? A Yes, sir.

Albert M. Dickman, re-direct.

Q And this is intended, as I understand it, to cover the cars in the yard. It was used in another case, I believe? A Yes; that is it.

Mr. Hobart. Now, by consent of counsel instead of offering the original records in this suit, which would be almost interminable, I would like to offer this statement prepared from the records.

Mr. Stallman. I object to the introduction of this proof, not in the form, because I agree with this as a most convenient way of having this information made of. I object to the proof of the time when the railroad company, defendant, gave notice of arrival to the consignees of all of the cars mentioned; because the time when notice of arrival was given to the parties, not including the agents of the plaintiffs, is of no consequence in this case. It does not seem to me that it binds the plaintiffs in this case at all as to when the railroad company gave notice to Jones and Smith and Robinson as to the arrival of their cars.

So far as it relates to giving notice of arrival to the clients we represent or their agents, I have no objection to the proof going in in this shape, subject to our right to check up the accuracy of the statement.

Mr. Hobart. Well, I ought to explain as to the latter point, or latter part of the notice, that it is not included in this memorandum. We will make a stipulation or have it testified to later.

Mr. Stallman. About what?

Mr. Hobart. About the notice of arrival sent to the plaintiffs in this case.

Mr. Stallman. That does not include those?

Mr. Hobart. No; this includes only the cars in the yard.

Mr. Stallman. And does not include any cars consigned to the plaintiffs?

Mr. Hobart. Except possibly the benzol.

Mr. Stallman. Then I object to it.

The Witness. And the wet nitrocellulose, doesn't it include that also?

Mr. Stallman. Well, your Honor catches the point, whether our cars are on here or not, I do not object to counsel proving them when he sent notice of arrival to the agents of our clients; but as to other parties in whom we have no interest, and whose cars the railroad company was holding there awaiting delivery, I object to it as being utterly immaterial.

The Court. Well, what is your point about it, Mr. Hobart.

Mr. Hobart. Let me correct myself in one regard. This does include the cars of your clients, Mr. Stallman. As I understand, there is no objection to that.

Mr. Stallman. All right.

Mr. Hobart. Now that record of the other cars that were in the yard, not consigned to the plaintiffs or any of them, the plaintiff has offered in evidence answers to interrogatories showing that these cars arrived on certain dates, or, rather, that they were in the yards for a certain length of time. Now it may well be that if we just allowed them to accumulate there without any attempt to dispose of them by way of informing consignees of arrival, we might be chargeable with nuisance or with neglect of duty or with some violation of the regulations; and in fact, he specifically alleges in these complaints that we violated one of the regulations about not sending the cars back, and consignees did not take them.

The Court. What do you say about that, Mr. Stallman? That seems to be a relevant circumstance in the case.

Mr. Stallman. Well, if the railroad company notified these consignees that their cars had arrived, and there was something in the law which said that if you don't get them—if they don't take delivery, then you have got to take them somewhere else—I do not see that that affects

the question of their liability to exercise due and reasonable care for the protection of those cars, in so far as they may be dangerous in any set of circumstances, to somebody else. It certainly does not relieve—

The Court. Apparently you have not heard what Mr. Hobart just said, because you are not arguing to that point. The point he makes has nothing whatever to do with what you are talking about now.

Mr. Stallman. I understand Mr. Hobart's argument is that they may have violated one of the regulations by keeping these cars there after they had notified these consignees of their arrival. That is what you said, isn't it.

Mr. Hobart. That is what you claim in your complaint.

The Court. That is what you claim, he says. He did not say that is what he contends.

Mr. Stallman. All right; and he concedes that they may have been there, and I understand, and the offer is to shift the responsibility for the presence of those cars, and therefore the care of those cars, to the consignees while they were in the possession of this railroad company, merely because they had told them that they were there and ready to deliver them.

The Court. I think perhaps you misunderstand then what Mr. Hobart's point is, or, to state it probably more accurately, you do not understand what his point is.

Mr. Stallman. Well, I do not, probably.

The Court. Perhaps not. So I think, so far as the objection that you have urged is concerned, I will overrule that objection. You may have that objection entered on the record.

Q You have identified this, Mr. Dickman, and just to clear up any possible misunderstanding which I was really chargeable with, I just want to make sure that this statement you have prepared does cover the so-called French cars which were in the yard? A Yes, sir.

Exhibit D. 10.

Q And those are the last cars that appear on the statement, I believe, are they not? A Yes, under wet nitrocellulose and benzol.

Q As to one of those cars, 90340, you have the notice of arrival, but you have not anything to show—I mean, you have the date of arrival, but you haven't anything to show the giving of notice of arrival of that car? A Exactly.

Q As far as you know there was not any notice of arrival given on that car which arrived on July 28th? A Yes; there was no record of any notice of arrival being issued on that car.

Mr. Hobart. That will be exhibit D. 10.

(Paper marked exhibit D. 10.)

Mr. Hobart. That is all. Was there anything else of Mr. Dickman?

Mr. Stallman. No.

Explosives, Wet Nitro, Ammunition and Fuses on Hand, Black Tom, 5:00 P. M., July 29th, 1916. Car Arrivals and Arrival Notices.

Int	No.	Arrived	Date & Time Notice Sent	How forwarded	Contents
C N W	137046	July 27th	5:40 P M July 27th	U S Mail	High Explo
C N W	131112	July 27th	6:05 P M 28th	U S Mail	"
Omaha	32452	July 27th	6:05 P M 28th	U S Mail	"
C N W	129112	July 27th	6:05 P M 28th	U S Mail	"
C N W	135762	July 27th	4:00 P M 28th	Delivered by mssgr.	"
C N W	139900	July 27th	6:05 P M 28th	U S Mail	"
Omaha	30484	July 27th	6:05 P M 28th	U S Mail	"
C N W	126960	July 27th	4:00 P M 28th	Delivered by mssgr.	"
Omaha	32194	July 27th	6:05 P M 28th	U S Mail	"
Omaha	30832	July 27th	4:00 P M 28th	Delivered by mssgr.	"
Omaha	33602	July 27th	6:05 P M 28th	U S Mail	"
P & R	12275	July 18th	8:00 A M 18th	Messgr. to N. Y. then via U S Mail	Ammunition
P R R	14537	July 20th			"
P R R	11832	July 25th	8:00 A M 25th	Messgr. to N. Y. then via U S Mail	"
N H	77254	July 23rd	8:00 A M 25th	Messgr. to N. Y. then via U S Mail	Fuses
N H	84321	July 23rd	8:00 A M 25th	Messgr. to N. Y. then via U S Mail	"

Exhibit D. 10.

Int	No.	Arrived	Date & Time Notice Sent	How forwarded	Contents	
Erie	102070	July 25th	8:00 A M July 25th	Messgr. to N. Y. then via U S Mail	Ammunition	
P L	517981	July 25th	8:00 A M 25th	Messgr. to N. Y. then via U S Mail	"	
P L	536124	July 25th	8:00 A M 25th	Messgr. to N. Y. then via U S Mail	"	10
Big 4	54578	July 25th	8:00 A M 25th	Messgr. to N. Y. then via U S Mail	"	
C E I	61659	July 25th	8:00 A M 25th	Messgr. to N. Y. then via U S Mail	"	
P L	517930	July 26th	8:00 A M 27th	Messgr. to N. Y. then via U S Mail	"	
P R R	84422	July 26th	8:00 A M 27th	Messgr. to N. Y. then via U S Mail	"	
N C St L	10194	July 26th	8:00 A M 27th	Messgr. to N. Y. then via U S Mail	"	
H V	32020	July 26th	8:00 A M 27th	Messgr. to N. Y. then via U S Mail	"	
G T	26434	July 26th	8:00 A M 27th	Messgr. to N. Y. then via U S Mail	"	20
B & A	37330	July 26th	8:00 A M 27th	Messgr. to N. Y. then via U S Mail	"	
L V	85282	July 28th			Ammunition	
P R R	84146	July 29th			"	
P M	52932	July 26th	8:00 A M 27th	Messgr. to N. Y. then via U S Mail	"	
Wab	67166	July 23rd	7:00 P M 24th	U S Mail	Wet Nitro	
C P	128766	July 23rd	25th	Delivered by	"	
P L	517708	July 23rd	7:00 P M 24th	U S Mail	"	
N Y C	90340	July 28th			Benzol. tr 13	
C W R R N	10729	July 11th	11 A M 11th	U S Mail	" 16	30
A T S F	49825	July 17th	17th	U S Mail	" 16	
Mo Pac	19657	July 17th			" 16	
C I L	2888	July 10th			" 16	

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RALPH VAN DUZER, sworn.

Direct examination by Mr. Hobart.

Q Mr. Van Duzer, you are the general land and passenger agent, I believe, of the Lehigh Valley? A I am.

Q And have you examined the records of the company to see by what right or title the company owns or exercises control over the so-called Black Tom Island and the North Pier extending out from the bulkhead? A I have.

Q And have you with you the original deeds showing the title? A I have.

Q And will you please state what the deeds are, and if you have any map that will assist us in identifying the property—I will ask you—unless Mr. Stallman objects—I will ask you to resort to the map also.

Mr. Stallman. Yes, that is all right.

A The National Storage property was acquired under two deeds—under three deeds, one of them being in the northerly end of the yard, where I will not make reference to.

Q That is way off from the piers? A That is way off from the piers.

Q You need not pay attention to that? A The property shown as purchase number 2, and outlined in brown.

Q On the map in front of you? A On the map in front of me, was acquired by deed dated September 1, 1877, from the American Dock and Improvement Company to the National Storage Company, the deed being recorded—

Mr. Hobart. That is this one, Stallman?

Mr. Stallman. Yes.

A —in the office of the Registrar of the County of Hudson, on December 4, 1877, Book 316 of Deeds, Page 733, etc.

Q You have the original deed? A I have.

Mr. Hobart. I offer the deed, and by consent of Mr. Stallman I will substitute for the original a typewritten copy.

Mr. Stallman. An abstract.

Mr. Hobart Well, I have a complete copy of it, so I might as well offer the copy.

(Paper marked Exhibit D. 11.)

A The property shown colored in purple, and designated as parcel number 3, was acquired by indenture dated December 18, 1877, from the American Dock & Improvement Company to the National Storage Company.

Mr. Stallman. Pardon me a minute, that is shown in yellow.

Mr. Hobart. Yes, that is number 3.

Mr. Stallman. You said purple.

A It should have been yellow. This deed was recorded in the office of the Registrar of the County of Hudson on the 15th day of January, 1878, in Book 319 of Deeds, Page 132, etc.

Q Have you a copy of that deed with you? A I have.

Mr. Hobart. I offer the original deed, and by consent substitute the copy, and ask that that be marked Exhibit D. 12.

(Paper marked Exhibit D. 12.)

Q Now the map which you have been referring to and which is in front of you, has these different colors indicated in the manner you have stated? A It has.

Q With reference, or a legend on it to indicate the two purchases that you have described? A It has.

Mr. Hobart. I offer the map.

(Map marked Exhibit D. 13.)

Q Calling your attention, by way of explanation of Map D. 13, does the map have indicated on it the so-called exterior line for solid filling that we have been referring to as the bulkhead line? A It has. The exterior line for solid filling as adopted by the Riparian Commission for the State of New Jersey, on October 27, 1883.

Q And it is so marked on this Exhibit D. 13, isn't it? A It is.

Q Are there other lines also marked on the same map? A The exterior line for piers as adopted by the Riparian Commissioners on the same date.

Q That is also so indicated on the map? A Yes.

Q And merely for the purpose of illustration or explanation will you state whether or not this exterior line for piers is outside of the line of the so-called North Pier? A Slightly to the east of the easterly end of the North Pier.

Q And from that point does it extend in a straight line for some considerable distance as shown on the map? A It does.

Q Can you tell how much beyond the end of the North Pier? It is very close to it? A Oh, approximately fifteen feet.

Q And of course some considerable distance beyond the end of the South Pier? A Approximately 150 feet.

Q About how far beyond the bulkhead line? A Approximately 400 feet—approximately 500 feet.

Q So that according to these maps and records the North Pier did not extend all the way to the exterior line for piers as shown by the Riparian Commissioners records? A It did not.

Mr. Rockwood. Did your Honor hear that testimony on that? I just want to call your attention to it—that the pier line was about fifteen feet inside of the line fixed by the Riparian Commissioners as pier head line; that is, it could have been extended as fifteen feet further to reach the pierhead line.

Mr. Stallman. Is that all Mr. Hobart?

Mr. Hobart. Just a minute.

Q Now have you another map?

The Court. Does one of the jurors want to go out? All right, we will adjourn a minute.

Q Referring again for a moment to this map, Exhibit D. 13, the scale, I believe, is a hundred feet, isn't it? A One hundred feet to the inch.

Ralph Van Duzer, direct.

Q Was that prepared for any particular purpose? A That is our most modern map prepared by our valuation department.

Q For the purpose of reports to the— A To the United States Government.

Q And so far as you can tell it is accurate? A To the best of my knowledge and belief it is accurate.

Q Now, referring to another map which you have produced and which is apparently on a much larger scale—covers a much larger territory—that is 400 feet to the inch, I believe? A Four hundred feet to the inch.

Q Does that also show these various lines you have mentioned? A It does.

Q And does it show any other official lines, either state or federal? A Shows the exterior line of piers established by the Department of War in 1915.

Q Where is that line as indicated on this map? A In front of the National Storage property, it is approximately 400 feet out into New York Bay.

Q By further out you mean further out than the exterior line of piers established by the Riparian Commissioners? A That is what I mean.

By Mr. Rockwood.

Q The witness says National Storage property. That is the property of the Lehigh Valley? That is the property it occupied? A Yes.

Q The two piers in question? A Yes.

By Mr. Hobart.

Q Now referring to this second map, are there any other lines other than the ones you have mentioned, 1,200 feet out; I mean any other additional lines besides those that appear on D. 13? In other words, what I want to make sure is, is this exterior line for solid filling or the pierhead line—I do not mean that. Strike that out. Is this pierhead line which was established 1,200 feet out, is that the furthest line outward established by any authority? A That is the furthest line established by any authority.

Q And when you say established by any authority you are referring to the Secretary of War? A The Secretary of War, or the former Board of Riparian Commissioners, now the Board of Commerce and Navigation.

Q This line 1,200 feet has been only established by the Secretary of War of the United States? A Only by the Secretary of War.

Q Does that mean as far as the Secretary of War is concerned the piers might be extended 1,200 feet further?

Mr. Stallman. I object to that.

The Court. I sustain the objection.

Mr. Hobart. All right.

The Court. In fact I do not see how this witness can give any evidence as to what the Secretary of War established. The regulation or order or whatever it was, is the best evidence of what he established.

Mr. Rockwood. There was no objection.

The Court. There was no objection. I am only indicating offhand that I do not see that it amounts to anything at all yet, because we do not know why it is established, or what he established it for, why the regulations were adopted or when it was adopted, or anything about it, except mere hearsay of a witness that did happen to creep in without objection.

Mr. Hobart. I offer the second map, and ask that it be marked Exhibit D. 14.

Mr. Stallman. Just wait a minute.

Cross examination by Mr. Stallman.

Q Mr. Van Duzer, I understood you to say that you were connected with the real estate department of the Lehigh Valley? A I am the general land and tax agent.

Q Are you an engineer by profession? A By profession, yes, sir.

Q A lawyer? A I am not.

Ralph Van Duzer, cross.

Q Have you made either one of these maps? A I did not.

Q Of course there is nothing out there to indicate where the exterior line for piers is? A Not to my knowledge.

Q And anything that is shown on these maps is shown as a result of somebody else's knowledge, or the work was done by somebody else beside yourself? A That is correct.

Q And you have never made any surveys out there to determine where any of these lines are? A No.

Q Or ought to be? A No.

Q And you don't know whether or not the bulkhead lines shown on first map is coincident with the existing bulkhead or not? A Only from plotting from our deeds, and comparing the blue prints which I have brought with me with the official map of the Riparian Commissioners, and by a chart prepared by the engineers of the Department of War.

Q But you do not know that by having run the bulkhead line yourself and knowing just where it goes? A I have not.

Q And the same is true as to both the old pierhead line and the new pierhead line? A That is correct.

Q And then you produce the first map—has it got a number?

Mr. Hobart. D. 13.

Q —D. 13—which shows the North Pier and the South Pier and the land which is marked "exterior land for piers"—whether that is fifteen feet at the end of the pier or fifteen feet inside the pier is purely a matter of information which you have derived from somebody else or that you scaled from the information put on this map by somebody else? A That is correct.

Q Yes.

Mr. Stallman. I have no objection to Exhibit D. 13, so far as it shows the boundary lines of the land conveyed to the National Storage Company by the American Dock & Improvement Company, or so far as it shows the general location of the piers, but I object to so much of it as purports to show the exact location of the exterior lines of piers with reference to the head of the pier itself, and

I also object to the other map because it is not properly proven.

Mr. Hobart. We will withdraw the offer of the second map.

The Court. Won't you read his first objections?

(Stenographer reads the above statement by Mr. Stallman.)

The Court. Is that the first map?

Mr. Hobart. The second one is this larger map.

The Court. You withdraw that?

Mr. Hobart. That we withdraw. I think his point is well taken.

The Court. What I wanted to find out, was whether there was any objection to the first map.

Mr. Hobart. Not at all. Not at the time it was offered.

Mr. Stallman. I did not object—he offered the map to show the general location of the lands conveyed. I had no objection to it for that purpose. Then he asked him about that map—

The Court. It is in for the purpose he offered it?

Mr. Stallman. Yes.

The Court. Then it is not offered for anything else so far as I can see.

Mr. Stallman. He asked him whether it showed certain things, and I do not want to take the witness' mere guess or derivatives on that.

The Court. I am not called upon to rule now as to the effect of those particular things, they having been asked and answered. The map is in.

Mr. Hobart. Anything further with this witness, Mr. Stallman.

Mr. Stallman. No.

Mr. Hobart. That is all.

John M. Julian, direct.

JOHN M. JULIAN, sworn.

Direct examination by Mr. Rockwood.

Q Mr. Julian, where do you reside? A 2129 Hudson boulevard, Jersey City.

Q What is your age? A My age will be 38 years old the twenty—

Q What is your business? A My business at present?

Q Yes. A I am supervisor, telephone, telegraph and electrical equipment in the Lehigh Valley Railroad, New York Division.

Q What was your business—or by whom were you employed on the 29th and 30th of July, 1916? A By the Lehigh Valley Railroad.

Q And what was your position then? A I was fire marshal for the New York Division.

Q Fire marshal of the New York Division—for the New York Division. Where were you stationed? A My headquarters were at Jersey City at the terminal.

Q That is how far from the Black Tom Terminal? A That is about three miles by railroad route.

Q And as fire marshal you had various other properties under your control, had you? A Yes, sir, I had Jersey City, New York, Black Tom and Newark.

Q Are you familiar, so that you can state to the jury, the facilities which the Lehigh Valley Railroad Company had at the Black Tom Pier on the 29th of July, 1916, for fighting fire—Wait a minute—you are familiar? A Well, I am in a general way. I could not describe it in detail as to the exact detail, just offhand.

Q I show you a statement which counsel have agreed upon, and ask you to look that over and see if it is correct?

Mr. Stallman. Is this the one that was used before?

Mr. Hobart. Yes.

A If that is the one that was used, it is correct, because I compared this myself from records myself and of my own knowledge.

Q Your answer is, it is correct? A This is correct, yes—yes—that is correct, sir.

Mr. Rockwood. Now, with the Court's permission—I do not want to read all of this, but I would just like to comment on it to the jury for a moment. It is a statement that counsel have agreed upon as to the fire facilities at the yard.

The Court. Is there any objection to commenting on it as a resume?

Mr. Stallman. Not if it is confined to a mere resume. I do not want to have an argument on it.

Mr. Rockwood. No argument at all.

The Court. Very well.

Mr. Rockwood. I won't read it all to you; it would take too long. The witness says this is the description of the fire facilities at the Black Tom Yard on the day in question:

"Three pumps as follows: One electric pump at the tank at the east end of Store R, which would pump 1,500 gallons of water per minute; a steam pump at Store F, which would pump 1,200 gallons of water per minute; a steam pump at the oil yard at the west end of the premises, which would pump 1,500 gallons per minute. All of the said pumps were connected with a twelve-inch fresh water main. All of the said pumps were also equipped so they would pump salt water into the said twelve-inch main in case the same was found to be necessary. The two 1,500-gallon pumps were connected with the American District Telegraph Company system in the following manner: If the electric current supplying the power for the 1,500-gallon per minute pump located at the east end of Store R were in any manner interfered with or shut off, a signal to this effect would be recorded at the central office of the American District Telegraph Company at No. 75 Montgomery street, Jersey City, N. J. Likewise, if the steam pressure which furnished the power for the

1,500-gallon per minute pump located at the Oil Yard at the west end of the property dropped below fifty pounds per square inch, a like signal would be recorded at the said central office of the American District Telegraph Company. Attached to the said 1,500-gallon electric pump were six outlet manifolds, each with an outlet of two and one-half inches in diameter, to each of which a standard fire hose also of a diameter of two and one-half inches could be attached. Both of the steam pumps were similarly equipped. With reference to the buildings of the National Storage Company, the said pumps were located as follows:—"

Q When you say buildings of the National Storage Company, do you mean the warehouses? A The brick stores, yes, sir.

Q As shown on the map? A Yes, sir.

Q In which grain was stored and other— A Grain, sugar, and so forth.

Q Salt and other articles of merchandise? A Yes.

Mr. Rockwood (continuing). "The 1,500-gallon electric pump was located in a brick building near the easterly end of Store R, and about thirty feet easterly therefrom. The 1,200-gallon steam pump was located in a steel and corrugated iron building at the easterly side of Store F and immediately adjacent thereto. The 1,500-gallon steam pump was located in a brick building, at the west end of the said premises, and about 200 feet west of the westerly side of Warehouse BB.

"There were twenty-four three-way standard Corey hydrants, each outlet having a diameter of two and one-half inches, to which could be attached a standard fire hose also of a diameter of two and one-half inches. Each hydrant could throw one, two or three streams of water at the same time, according as hose was attached to one, two or three of the outlets. All of these hydrants were connected with a twelve-inch water main which was in turn connected with the Jersey City water supply, also

with a salt water supply through the pumps hereinbefore described; also with a steel tank located on top of a tower eighty feet high at the easterly end of Store R, the said tank containing 100,000 gallons of fresh water at all times."

Q You did have 100,000 gallons of fresh water on the night in question? A It did, according to the records of the telegraph company—it was full.

Mr. Rockwood (continuing). "The said twelve-inch water main had also five two-way steam tug boat connections into which connection salt water could be pumped by either fire boats or tug boats.

"With reference to said buildings the hydrants were located as follows—"

Mr. Rockwood. Now, without my reading all of that to you, gentlemen, I will just state to you that the agreed statement of counsel shows that there were twenty-four separate hydrants located at and about the warehouses mentioned on the map. (The statement shows the location of these hydrants as follows:"

"The first hydrant was located northeast of Store R and about the middle thereof, about five feet from the wall of the same.

"The second was located directly north of the said Store R, and about eighty feet from the wall thereof.

"The third was located in the driveway to the north of Store P, and about eighty-five feet from the wall thereof.

"The fourth was located in the driveway northeast of Store M and northwest of Store N, about eighty-five feet from the northerly walls of the said stores.

"The fifth was located east of the north end of Store M, about twenty feet from the northeast corner of said store.

"The sixth was located at the southeast corner of Store M, about ten feet from the corner.

"The seventh was located in the driveway, eighty-five feet from the north wall of Stores K and L, and about midway between the said stores.

"The eighth was located in the driveway about eighty-five feet from the northeast corner of Store F and the northwest corner of Store G, and midway between the said stores.

"The ninth was located between the northeasterly end of Stores F and G, about twenty feet from Store G and sixty feet from Store F.

"The tenth was located at the southwest corner of Store G and about twenty feet therefrom.

"The eleventh was located in the driveway about eighty-five feet north of the north wall of Store C.

"The twelfth was located in the driveway about eighty-five feet north of the office of the Lehigh Valley Railroad Company located on the northerly end of covered Pier 4.

"The thirteenth was located in the driveway about twenty-five feet from the northwest corner of Store No. 3.

"The fourteenth was located on the open ground to the west of Store 3, about ninety feet from the west wall of the same.

"The fifteenth was located in the open space to the south of the driveway, about ninety feet from the same and about forty-five feet north of the northwest corner of Grain Transfer Elevator.

"The sixteenth was located in the open space about forty-five feet north of the northwest corner of the Grain Transfer Elevator.

"The seventeenth was located about fifteen feet to the north of the north wall of the New Grain Elevator, and about sixty feet west of the northwest corner of the same.

"The eighteenth was located directly west of the carpenter shop, and about ten feet from the westerly wall thereof.

"The nineteenth was located in the driveway, at the north side thereof, about 300 feet southeast of Warehouse BB.

"The twentieth was located southeast of the pump located near Warehouse AA, and about seventy-five feet from said pump.

"The twenty-first was located near the southeast corner of Warehouse BB, and about seventy-five feet therefrom.

"The twenty-second was located near the northeast corner of Warehouse BB, and about 100 feet therefrom.

"The twenty-third was located southwest of Warehouse AA and west of Warehouse BB, and near the driveway entering the premises. Said hydrant was located about 100 feet west of Warehouse BB and twenty-five feet east of the said driveway.

"The twenty-fourth was located northwest of the northwest corner of Warehouse AA, and about sixty feet therefrom."

Mr. Rockwood (continuing). "All of the said hydrants described as being located in the same driveway were equi-distant, the approximate distance of one from the other being about 160 feet.

"There were also nineteen two-way two and one-half inch hydrants, each outlet having a diameter of two and one-half inches, to which could be attached a standard fire hose also two and one-half inches in diameter. All of these two-way hydrants were connected either with a six-inch fresh water main (which was connected with the Jersey City water supply), or with a six-inch salt water main (which was connected with the steam pump located at Store F as hereinbefore described). The said fresh water main was also connected by means of valves with the said 100,000-gallon tank hereinbefore described. Each hydrant could throw one or two streams of water at the same time, according as hose was attached to one or two of the outlets."

Mr. Rockwood. And then follows in the statement a description of the location of those nineteen additional hydrants, which I will not take the time to read.

(The location as shown by the statement is as follows):

"The first two of these hydrants were located at the southerly end of the Pump House containing the 1,500-gallon electric pump, and about 5 feet from the wall thereof.

"The third was located northeast of the northeast corner of Store R, and about 100 feet therefrom.

"The fourth was located north of Store P and about seventy-five feet from the wall thereof.

"The fifth was located at the southwest corner of Store N, and about twenty-five feet therefrom.

"The sixth was located at the southeast corner of Store M, and about five feet therefrom.

"The seventh was located at the northeast corner of Store M, about five feet therefrom.

"The eighth was located about fifteen feet from the driveway, and about seventy feet from the northeast corner of Store M.

"The ninth was located about fifteen feet from the driveway, and about seventy-feet north of the northeast corner of Store I.

"The tenth was located southeast of the corner of Store F, and about five feet therefrom.

"The eleventh was located northeast of the corner of Store F, and about five feet therefrom.

"The twelfth was located fifteen feet from the driveway and about seventy feet north of the northwest corner of Store F.

"The thirteenth was located northwest of the corner of Store A, and about twenty feet therefrom.

"The fourteenth was located at the northwest corner of Store 3, and about five feet therefrom.

"The fifteenth was located west of the southwest corner of Store 3, and about five feet therefrom.

"The sixteenth was located in the open space north of the Grain Transfer Elevator and about forty feet from the north wall thereof.

"The seventeenth was located near the north wall of the Boiler House of the Grain Transfer Elevator, and about three feet therefrom.

"The eighteenth was located southwest of Warehouse BB, and about ninety feet therefrom.

"The nineteenth was located near the southwest corner of Warehouse AA, and about fifteen feet therefrom."

Immediately prior to the fire of July 30th—I do not know whether you want me to read that or not?

Mr. Stallman. No, I do not think we do.

Mr. Rockwood. I will not read that.

"There were also fire fighting appliances as follows:

"3,600 feet of two and one-half-inch standard fire hose on ten hose carts located as follows:

"Two at the easterly end of Store M, each carrying 400 feet of the said standard hose.

"One at the northerly end of Pier 6, carrying 300 feet of the said hose.

"Two at the easterly end of Store F, each carrying 400 feet of the said hose.

"One at the north end of covered Pier 5, carrying 300 feet of the said hose.

"Two at the easterly end of Store 3, each carrying 400 feet of the said hose.

"Two at the steam pump located near Warehouse BB, each carrying about 300 feet of the said hose.

"The said hose carts were equipped with nozzles, with spanner wrenches and with hydrant wrenches. Each set of hose was equipped with the standard couplings used by the Jersey City Fire Department.

"On the roof of block of Warehouses N to R inclusive, there was 100 feet of standard hose equipped with nozzles, wrenches and couplings similar to the hose carried on the

said hose carts; there were also 100 feet of hose with similar equipment on the roof of the block of Warehouses G to M inclusive; there were also 100 feet of hose similarly equipped on the block of Warehouses A to F.

"On Pier 6, there were 200 feet of said standard hose equipped with three nozzles, with spanners and with couplings.

"On Pier 5 there were 200 feet of said standard hose, similarly equipped.

"On Pier 4 there were 1,100 feet of said standard hose, also similarly equipped.

"In Store 3 there were 100 feet of said standard hose, similarly equipped.

"In the building known as the Grain Transfer Elevator, there were 550 feet of said standard hose, with similar equipment.

"There was also a 100-gallon two-wheel chemical engine located east of Store F and at the northerly end of Pier 5, equipped with 100 feet of hose and charged with a solution of bicarbonate of soda and sulphuric acid.

"In Storehouse AA there were 400 feet of two and one-half-inch hose, equipped with nozzles, spanners and couplings; in Storehouse BB there were 500 feet of two and one-half-inch hose similarly equipped.

"On the ground floor of each Store, from A to R inclusive, was located one three-gallon Child's fire extinguisher. On Pier 4, five of the said fire extinguishers were located. In the building known as the Grain Transfer Elevator, seven of the said fire extinguishers were located, and in the building known as the New Grain Elevator there were five one-quart Pyrene fire extinguishers.

"Four of the said Child's fire extinguishers were located in Storehouse AA, and seven of the said extinguishers in Storehouse BB. Two of the said extinguishers were located in the pump room at the westerly side of Warehouse BB.

"At the Pump House adjacent to Store F there were two poles, each nineteen feet long—"

Mr. Stallman. May I interrupt you there, Mr. Rockwood—the paragraph you are now reading is in reference to certain buildings which do not appear on this map which is before the jury.

Mr. Rockwood. Shall I read it or not?

Mr. Stallman. Ask the witness.

Mr. Rockwood. You mean—

Mr. Stallman. AA and Warehouse BB, and so forth, those are west of the grain elevator and do not show on this map.

Mr. Rockwood. Then I do not care about those.

Mr. Stallman. Then, won't you strike it off?

Q Storehouse AA and BB are not shown on the map? A No, sir.

Q But they are part of the Black Tom equipment? A Part of the Black Tom Equipment.

Mr. Rockwood. If there is anything else call my attention to it.

Mr. Rockwood (continuing reading). "At the Pump House adjacent to Store F, there were two poles, each nineteen feet long; six hook poles, each thirteen feet long; two hooks, with chains and ropes; one length of hose twenty feet long, with two and one-half-inch connections at one end and one three and one-third-inch connection at the other end, with nozzles; two nozzle holders; three hose slings for dragging hose; one hose roller for dragging hose over the edge of roofs of houses and cars; four nozzles attached to hose, and three revolving cellar nozzles.

"On Pier 6 there were four fifty-gallon water barrels filled with water, and eighteen 3-gallon iron pails, all filled with water; one ladder thirty-eight feet long; and one ladder thirty feet long.

"On Pier 5 there were four fifty-gallon barrels and nine three-gallon iron pails, all filled with water; one ladder thirty-eight feet long; and one ladder thirty feet long.

"On the ground floor of Warehouse R there were two fifty-gallon barrels and five three-gallon iron pails, all filled with water.

"On each Warehouse known as N, O, P and Q respectively, there were two three-inch water pipes, one being at the front and the other at the rear, and extending from the ground to the roof, each pipe being equipped with two two and one-half-inch hose connections. In each of said warehouses there were twelve fifty-gallon water barrels and thirty-six three-gallon iron pails, all filled with water. The block consisting of these warehouses was equipped with four metropolitan fire ladders, two at the front and two at the rear, extending from the ground to the roof, and with platforms connected with each floor.

"In the block of warehouses consisting of stores known as G, H, I, K, L and M, there were ten fifty-gallon water barrels and thirty three-gallon iron pails, all filled with water, in each store. In said block there were six metropolitan fire ladders, three at the front and three at the rear, extending from the ground to the roof and with platforms connecting with each floor of each of the said stores. There were also twelve three-inch water pipes, six in the front and six in the rear, extending from the ground to the roof, with two and one-half-inch hose connections."

"In the block of warehouses consisting of stores known as A, B, C, D, E and F, there were ten fifty-gallon water barrels and twenty three-gallon iron pails, all filled with water, in each store. There were also six metropolitan fire ladders of the same construction and relative location as set forth above in block consisting of Stores G to M. There were also twelve water pipes of the same construction and relative location as described in the block consisting of Stores G to M.

"In the building known as Store 3 there were three fifty-gallon water barrels and six three-gallon iron pails, all filled with water; one ladder twenty-seven feet long; one ladder twenty-two feet long; and one hook pole twenty-one feet long.

"In the building located on Pier 4 there were twenty-four fifty-gallon water barrels and seventy-six three-gallon iron pails, all filled with water; one ladder thirty feet long; and two ladders, each 27 feet long.

"In the building known as the Grain Transfer Elevator there were thirteen 50-gallon water barrels and fifty-two three-gallon iron pails, all filled with water; thirty-one hand fire grenades; an open sprinkler system consisting of a four-inch water pipe running the entire length of the roof and with sprinklers at regular intervals, and connected at each end by water pipes with the six-inch water line system hereinafter described. There were also fire escapes at each end of the building with a platform landing at each floor.

"In the Warehouse known as BB, there were fourteen fifty-gallon water barrels and fifty-four three-gallon iron pails, all filled with water.

"In the Warehouse known as AA, there were eight fifty-gallon water barrels, and thirty three-gallon iron pails, all filled with water.

"There was also an electric fire alarm, with eighteen stations, connected with the Railroad Office at Pier 4 and with two steam pump stations hereinbefore referred to; also two fire alarm stations, Nos. 671 and 672, connected with the Jersey City Fire Department. There was also a watchman's electric time detector with eleven stations connected with the Railroad Office and Stores A to R, inclusive, and a separate similar detector with several stations connected with Warehouses AA and BB.

"All of the Lehigh Valley Railroad Company's tug boats, fifteen in number, were equipped with steam fire pumps, hose and nozzles, and were subject to call in case

of fire. All of the Lehigh Valley Railroad Company's steam lighters, five in number, were also equipped with steam fire pumps, hose and nozzles, and were also subject to call by telephone in case of fire. The steam tugs belonging to the Standard Oil Company and serving the Eagle Oil Works immediately adjacent to the premises hereinbefore described were equipped with steam fire pumps, hose and nozzles, and were subject to call by telephone or by fire whistle. The tugs of the Central Railroad Company of New Jersey, whose property is immediately adjacent to the premises hereinbefore described on the northerly side thereof, were also likewise equipped with steam fire pumps, hose and nozzles, and were by arrangement subject to call by telephone or fire whistle. All of the drill engines serving the yards of the Lehigh Valley Railroad Company on the premises referred to and adjacent thereto were equipped with hose and nozzles, and were subject to telephone or telegraph call, or other orders, in case of fire.

"The said premises were supplied by the following mains:

"A twelve-inch main connected with Jersey City Water supply at the Pump House at the westerly end of the premises. The said twelve-inch main extended from the point mentioned along the southerly line of the driveway north of the said stores to the 100,000-gallon water tank located east of Store R. A ten-inch main connected with the said twelve-inch main at a point northwest of Store 3, about seventy feet therefrom. The said 10-inch main parallels the twelve-inch main to a point about fifty feet from said 100,000-gallon steel tank, whence it takes a southerly direction and is connected directly with electric pump located east of Store R, as hereinbefore described.

"A six-inch main connected with a six-inch main of the Jersey City Water Supply at a point northwest of Store AA, and about 175 feet therefrom. The said main extends in a southerly direction to the southerly side of the

said premises, and extends from thence in an easterly direction, paralleling the said ten and twelve-inch mains, to a point directly north of the electric pump located east of Store R; thence in a southerly direction to the said pump. The said main is connected with the said pump and with the 100,000-gallon tank hereinbefore described.

"A six-inch salt water main began at the Pump House at the westerly end of the said premises, running south therefrom to a point near the southerly line of the premises; thence in an easterly direction paralleling the six-inch, ten-inch and twelve-inch mains to a point directly north of the Pump House east of Store R. The said six-inch salt water main connected with the steam pump located east of Store F.

"The twelve-inch main hereinbefore described supplied all of the three-way standard Corey hydrants and the ten-inch main, the hose connections on piers, and the open sprinklers on Piers 4, 5 and 6; the ten-inch main supplied the sprinkler system hereinbefore described protecting all of the piers and warehouses. The two six-inch mains supplied all of the standard two-way hydrants.

"In addition to the water supply furnished by the water mains and pumps hereinbefore described, a primary water supply was furnished by three steel gravity tanks located as follows:

"(1). A 100,000-gallon tank was located on an eighty-foot steel tower east of the easterly end of Store R, and about seventy-five feet therefrom. This tank was filled with water. This tank furnished a primary water supply to the twelve-inch main with a pressure of about forty-five pounds to the square inch.

"(2). A 50,000-gallon steel gravity tank was located on the top of Store P. This tank furnished a part of the primary supply for the automatic sprinkler system in stores and piers hereinafter described. This tank was filled with water.

"(3). A 50,000-gallon steel gravity tank was located on top of Store E. This tank furnished a part of the primary water supply for the automatic sprinkler system hereinafter described. This tank was filled with water.

"American District Telegraph Co.'s Fire Protection System.

"The said premises were protected by the American District Telegraph Company's fire protection system. This system was installed in March 1915. All the stores and piers on the said premises were connected with the central office of the American District Telegraph Company at No. 75 Montgomery street, Jersey City, New Jersey, by two independent pairs of wires. One pair of these wires was called the water flow circuit, and was connected with the dry alarm valves and the manual fire alarm boxes. The other pair of wires, called the supervisory circuit, was connected with the different supervisory devices at all gate valves, dry air pressure valves, steam pressure valves, tank floats, tank thermometers, and the electric pump."

Mr. Rockwood. Now, instead of my reading all that, I will ask you to explain to the jury what that system did, what it was.

The Witness. The American District Telegraph System is a system whereby the valves, and apparatus of that sort is supervised. In the event that there is low water in the tank, low steam pressure, or current is turned off, The American District Telegraph is immediately notified of that fact.

Q By what method? A By a little mechanism that is connected with the various points, and they are electrically notified, and they in turn notify us whether it is a low water signal, or whether the current supply is cut off, and to immediately look the matter up, and if they get no reply from us, within, I think it is fifteen minutes, they send a man down.

Q And was that system in good working order on the night in question? A That system was in good working order on the night in question.

Q How do you know that it was? A Because they made a low water test. I ascertained that from one of the men who were down there. In the afternoon, he said it was—

Mr. Stallman. This is purely hearsay. I object.

The Court. I will sustain the objection.

Q Well, it was in good working order to your knowledge? A It was to my knowledge, yes.

Q If the water in one of the tanks was reduced, would that electrically show at their office? A It would immediately show at their office.

Q If the valve did not work would that show? A If the valve was turned or touched.

Q Then if there was any part of the mechanism out of order it showed electrically at their office? A It showed immediately. A valve could not be turned or shut off without they were notified.

Q Then there were electrical supervisory transmitters, were there? A Yes, sir.

Q And was there a number of clock signals? A Clock mechanism and clock signals.

Q Now, as I have not read all of this—was there also a complete sprinkler system? A Sprinkler system was installed throughout the warehouses and piers, known as the Rockwood outfit.

Mr. Rockwood. I see it was called a Rockwood outfit, so it must have been all right. Now, inasmuch as I have not read all this, I ask to be allowed to offer it in evidence so that it may go in the record.

The Court. That is an agreed state of fact. It may go in evidence.

(Description received in evidence is as follows):

American District Telegraph Co.'s Fire Protection System.

The said premises were protected by the American District Teregraph Company's fire protection system. This system was installed in March, 1915. All the stores and piers on the said premises were connected with the central office of the American District Telegraph Company at No. 75 Montgomery street, Jersey City, New Jersey, by two independent pairs of wires. One pair of these wires was called the water flow circuit, and was connected with the dry alarm valves and the manual fire alarm boxes. The other pair of wires, called the supervisory circuit, was connected with the different supervisory devices at all gate valves, dry air pressure valves, steam pressure valves, tank floats, tank thermometers, and the electric pump.

In addition to these circuits there was installed on the premises in connection with the water flow circuit a transmitter, which consisted of a clock mechanism and an individual number wheel. Then actuated electrically by any of the devices connected with the sprinkler system, this transmitter sent signals to the central office of the Company located at No. 75 Montgomery street, Jersey City, N. J.

Also in connection with the supervisory circuit, there was a transmitter containing five different clock mechanisms, each with an individual number for the different classes of devices, and when any of the supervisory devices operated, the transmitter was electrically actuated and also transmitted a signal to the central office designated above from the particular clock mechanism that had been operated by any of the devices. At the central office these circuits were connected to their own individual registers, and when the signals above described were sent in they were automatically recorded on a tape showing the number of the transmitter mechanism that had been oper-

ated. The five clock supervisory mechanisms controlling the buildings indicated were as follows:

(a) One five-clock supervisory transmitter controlled the different devices in the following buildings and at the following places:

One clock signal, No. 34 controlled all gate valves in Warehouses N, O, P, Q, R and on Pier 6; also eight post indicating valves; also one outside stem and yoke valve in the Pump House at the east end of Store R.

Signal 43 controlled the dry air pressure on the alarm valves in Buildings N, O, P, Q and R.

Signal 35 controlled the gravity tank floats in the tank located on Storehouse P, and in the 100,000-gallon tank located east of Warehouse R.

Signal 153 controlled thermometers—one in the tank on Storehouse P and one in the steel tank east of Storehouse R.

Signal 521 controlled the electric pump in the Pump House east of Storehouse R.

(b) One three-clock supervisory transmitter controlled the different devices in the following buildings and at the following places:

Signal 321 controlled all gate valves in Warehouses G, H, I, K, L and M and on Pier 5; also nine post indicating valves.

Signal 421 controlled the dry pressure alarm valves in Warehouses G, H, I, K, L and M.

The other clock on this transmitter was not in use.

(c) One four-clock supervisory transmitter controlled the different devices in the following buildings and at the following places:

Signal 313 controlled all gate valves in Warehouses A, B, C, D, E and F; also in Pier 4; also Warehouse No. 3; also ten post indicating valves.

Signal 514 controlled the float in the steel gravity tank located on Storehouse E.

Signal 315 controlled the thermometer in the gravity tank located on Storehouse E.

Signal 322 controlled the air pressure in the dry alarm valves in Buildings A, B, C, D, E and F.

(d) A two-clock supervisory transmitter controlled the different devices in the following buildings and at the following places:

Signal 133 controlled all gate valves in Warehouse AA, also one gate valve in the pump house located near Warehouse AA, also one post indicating valve.

Signal 223 controlled the dry air pressure valves in Warehouse AA.

(e) A one-clock supervisory transmitter controlled the following devices at the following location:

Signal 433 controlled the steam pressure in the steam pump located near Warehouse AA.

The clock mechanisms and individual number wheels controlling the water flow circuits were as follows:

Signal wheel 135 controlled Warehouse AA.

"	"	141	"	"	A and B.
"	"	45	"	"	C and D.
"	"	62	"	"	E and F.
"	"	44	"	"	G and H.
"	"	43	"	"	I and K.
"	"	63	"	"	L and M.
"	"	54	"	"	N and O.
"	"	312	"	"	P and Q.
"	"	134	"	"	R
"	"	142	"	"	Pier 5
"	"	53	"	"	3 and Pier 4
"	"	52	"	"	Pier 6

In addition to the above automatic signals there were installed the following manual fire alarm boxes:

Five boxes on Pier 4, Signal 453, located as follows:

One near the office, on the north end of the pier.

One on the east platform of the pier, near the center.
One on the west platform of the pier, near the center
One on the south end of the pier.
One on the balcony, or second story, west side, center of pier.

Two boxes on Pier 5, Signal 534, located as follows:
One on north end of pier.
One on south end of pier.

Two boxes on Pier No. 6, Signal No. 65, located as follows:
One on the north end of the pier.
One on the south end of the pier.

Four boxes in Warehouse AA, Signal No. 434, located as follows:
One on west side of the building.
One on east side of the building.
One on north side of the building.
One on south side of the building.

The sprinkler system upon which the mechanism above described operated was known as the Rockwood Dry Pipe Valve System. This system was installed in all of the warehouses and on all of the piers. It consisted of soft steel pipes attached to the ceilings of each floor of the warehouses by wrought iron hangers. The said pipes traversed the entire length of each ceiling, and were located in accordance with the rules of the National Board of Fire Underwriters. The construction of the said sprinkler system was in accordance with the rules of the said Fire Underwriters. Attached to the pipes referred to above were Esty Sprinkler Heads, made of fusible metal. These were arranged at regular intervals on said pipes in all of the warehouses and piers, and the total number thereof was about 15,000.

Q Mr. Julian, were you down there the night of the fire at Black Tom? A I was.

Q Will you state to the jury just how you happened to get there, all about it? A I was called by telephone shortly after twelve o'clock. The exact time I could not state. My watchman came, I imagine it was about twenty minutes past twelve, from my best recollection, and he stated to me over the telephone that the explosives dock was on fire, and I asked him then what he had done, and he said he had—I asked him if he had notified the fire department and everybody that was necessary to notify, and he said yes, and hung up.

Mr. Stallman. Who is he talking about?

The Court. Kane.

The Witness. Kane.

Q What time did you get there? A I left the house—I was just going to retire and I put my shoes on again; it must have been about—oh, taken me possibly three or four minutes, and I left the house and started over Black Tom. Now, I live about—oh, I dare say about three miles from there, on the other side of the boulevard on Claremont avenue.

Q What time did you get there? A I arrived at Black Tom possibly half past one.

Q Half past one? A 1:20 or 1:30.

Q Where did you go first? A I went directly down the roadway and into the pumping station where Mr. Sloan was in charge of the fire pump, to ascertain if the fire pump was in working order.

Q And what did you learn about it? A I learned the fire pump was in order and he had water pressure up; his fire pump was—

Q Was what? A Turning over, pumping against the line.

Q You saw it yourself? A I saw it myself.

Q And Sloan was there? A And Sloan was there. I asked where Mr. Dickman was and where Kane was, and he said Mr. Dickman had just arrived and had gone down by the warehouses, and Kane must be outside. So I left Sloan and when I got by Store G I met Kane. Kane told me then that the fire—

Mr. Stallman. I object.

Q You cannot say that. When you were in the pumping station did you notice the pressure? A I did.

Q What was it? A His pressure then was about seventy-five pounds on the water gauge.

Q Did you subsequently meet Mr. Dickman? A I met Mr. Dickman, yes, around Store H.

Q And did you walk down with Dickman to any point? A We crossed over just above Store H, and walked down the roadway to a point almost opposite Store R.

Q Where were you? Tell the jury just where you were? A This is store R, in the roadway opposite Store R.

Q In the roadway? A In the roadway.

Q And who was with you at that time? A Kane and Dickman.

Q Where did you go from there? A We met Mr. Leyden right there in the vicinity where the trains were drilling and he told us to go back. He said we could not do much good down there, and we went directly then across the track to the sea wall, and direct out here to a point almost opposite the gravity tank.

Q This gravity tank where my pencil is? A Yes, where your pencil is.

Q And were you on the sea wall where my pencil now is? A Exactly.

Q And you were almost opposite this tank and on the sea wall with Dickman? A With Dickman and Kane.

Q Now, that was about what time in the morning? A That must have been close to two o'clock.

Q Was there any fire burning in the direction opposite Store R? A At that time?

Q Yes. A No, sir; there was not.

Q There was not? Were there any cars standing there in front of Store R as testified to by the officer—

Mr. Rockwood. What is his name, Closterson?

The Court. Closterman. You have the name wrong. It is Closterman.

Q Closterman. Were there any cars there burning in front of Store R? A At that time, no, sir; there was not.

Q Now, tell the jury when you stood on the sea wall just what you saw—and where it was. A Well, Dickman and I and Kane stood on the sea wall. We faced towards the North Pier, and the fire appeared to be then at the inshore end of the North Pier, in that vicinity.

Q At the inshore end of the North Pier? A Yes, sir; that is the end of the pier attached to the land.

Q That is whereabouts? A Further in.

Q What? A Further in.

Q This way? A The other way; right in around there.

Q The fire appeared to be in there? A It seemed to be right in there; yes, sir.

Q I do not want to put the pencil anywhere. You put it. Come down here and do it.

(The witness leaves the witness stand and goes to the map on the blackboard.)

Q Put the pencil where you say the fire was. A We stood facing here. The fire seemed to be in this vicinity. We were up here.

Q Pointing—? A Well, anywhere from here, covered quite a ways over this end of the North Pier, and right between these tracks.

Q Pointing to the three cars BBB near the end of the line? A Yes.

Q All right. How much of a fire was it at that time? A Well, it was quite a fire at that time.

Q How many cars were burning? A That I could not say.

Q What is your best recollection? A Well, there was quite a few cars burning in this section, quite a good sized fire.

Q Did you notice any explosion? A Small explosions, yes, popping of shells and quite a few other things went over our heads; that is, pieces or parts of shells, primers or something like that; I don't know exactly what they were at that time.

Q Now, in your own language, without any suggestion from me, go on and tell what happened, and what you saw and all about it. A Well, Dickman and I and Kane were facing that North Pier and watching and trying to work in among those parts of flying debris, whatever it was, going over our heads, and as we worked in closer Mr. Dickman passed and Mr. Dickman said—

Mr. Stallman. I object.

The Court. I sustain the objection.

Q Tell what you saw. A Well, we faced that and all of a sudden there was a terrific flash. It seemed to come right up the side of the North Pier, from the water, it come right down directly on top of us, and in my estimation it appeared like a blast furnace turned right loose on us.

Q You said it came from the side of the North Pier? A A From the north side of the North Pier. That is where it seemed to come from.

Q This is North Pier. Did it seem to come from the south? A From the south.

Q From the water side? A From the water side.

Q Describe that to the jury. A That intense flash seemed to come right down on me like a blast furnace. All I remember doing was turning away from it and going down on my knees behind a pile of ties and holding my ears, and cinders and everything else went over my head, and right after that I came to, came to my senses and everything was dark. I could not even see as much as a cigarette light, the light of a cigarette or anything, and I thought to myself—my first thought was, "It had blown itself out. Thank God it is over." While I was standing there trying to get myself together it lit up again, and then it seemed to light up at various places throughout the yard. The entire section seemed to be lit up after that explosion.

Q Now, after this explosion and after you recovered your senses, you were still on this sea wall, were you? A I was right within a few feet of where I was standing when the explosion occurred.

Q You and Dickman and Kane? A Me and Dickman and Kane stood there together before the explosion.

Q Now, at that time tell the Court and jury if after that explosion these cars here were still burning? A It seemed to—the yard seemed for the time being to be all wrecked and everything started to burn.

Q Were they burning? Was there fire in through here? A After the explosion?

Q Yes. A There seemed to be. It seemed to light up in half a dozen places.

Q Now, did there come a second explosion? A There did.

Q What time? A About possibly 2:38.

Q And can you tell where that came from? A Well, as I recall that, I was down at the grain transfer elevator; I had just taken a brakeman by the name of Johnny Walsh. I picked him up after I started back after the first explosion and took him back to a patrol wagon, and he was badly injured, and in a dazed condition, and while we were down there, that is when the second explosion took place.

Q Where did that come from? A That evidently from my view seemed to come from the yard itself.

Q From the yard? A It came more to the right of the first explosion, from the way I faced it, right at the roadway from the grain transfer elevator.

Q What part of the yard? A It seemed to come right from the center of the yard. I stood down the roadway here, facing from the grain transfer elevator.

Mr. Stallman. Point it out there.

The Witness. Here is where I stood, right here; about opposite the grain transfer elevator.

Q Where? A In this section, right in this section. I could not exactly designate the exact point, but right opposite the grain transfer elevator; and I stood facing—

Q Between the time of the first and second explosion you had walked from the sea wall down to the point you now describe? A Down here.

Q How long did it take you to walk down there? A Oh, I don't know. That man I had to help him along. It took me possibly ten or twelve minutes, maybe longer; I would not say.

Q And the second explosion seemed to come from where? A Seemed to come here.

Q Put your hand on it. A Right in about that section, in the center of the yard.

Q You put your hand on the territory surrounding the brass tack? A About in that neighborhood. That is where it seemed to be.

Q Now, is there any doubt in your mind that the first explosion came from the side of the North Pier? A Well, that is where it seemed to come to me. I would almost take my oath on it—my dying oath, I would say, that it came from the North Pier.

Q If I may suggest to you, you are taking your oath. A Well, I understand that; I understood that after I spoke. I mean I would take my dying oath on that, that that came from the north side of the North Pier.

Q Now, did you see Mr. Hanley down there? A I don't recall him. I don't recall Mr. Hanley that night. I saw quite a few of the trainmen in that neighborhood.

Q What did you see them do? A Shifting cars and drilling out cars.

Q That is, were they taking the burning cars out? A Taking out the cars, away from the section of the yard; they pulled cars down to get them away from the fire.

Q It was not your duty to put fires out, as I understand it? A No, sir; it was not.

Q Then you had no supervision of that? A I did not.

Q What was your specific duty? A To maintain and inspect the fire fighting appliances, keep them in order, see that they were in order.

Q See that everything was in good working order? A Yes, sir.

Q And do you say that the fire apparatus, fire equipment in this terminal, Black Tom, was in good working order that night? A It was.

John M. Julian, cross.

Q Did you see the Jersey City firemen there? A They arrived there about the same time as I got there.

Q Then you did see them? A I saw them; yes, sir.

Q How many did you see? A Oh, I could not say offhand how many there were; there was a truck, probably a couple of hose carts arrived there about the same time I got there.

Q What did you see them doing? A I didn't see them doing anything.

Q Were they putting the fire out or attempting to? A No, sir; not when I got there.

Q What were they doing? A They just rolled in as I came there, rolled right up behind me as I was facing up the roadway. They passed me and stopped in front of the grain transfer elevator.

Q Well, were they actively doing anything? A Not that I seen.

Q Did you talk with any of the firemen? A No, sir; I did not.

Q Did any of them speak to you? A No, sir; they did not. I went right on down towards the scene of the fire.

Cross examination by Mr. Stallman.

Q Did you have in mind then seeing anything was done to put the fire out? A The fire department arrived there; it is their duty to take charge of it and not the duty of a private fire brigade to take charge of a fire.

Q You thought it was up to the Jersey City Fire Department to do whatever could be done? A It is when they arrive there, yes.

Q Did you see anybody else making any effort to put the fire out? A No, sir; I did not.

Q Did you see any part or parcel or detail of this elaborate description that you have just given us of the fire protection devices employed to put out that fire that night? A I saw the pumps working and the line pressure up, and the—

Q What is that? A I saw the pumps working and the line pressure up, and there was pressure in the lines. The fire had

made such headway when I got there it would be impossible for anybody to do much.

Mr. Stallman. I move to strike that out.

The Court. Yes, I will strike it out. It has nothing to do with the proper response to the question. I am only striking out that part of it in which he draws the conclusion that nobody could do anything.

Mr. Stallman. Yes, that is what I was objecting to.

The Court. Where he said he saw the pressure up and the lines working, I think I will let stand.

Mr. Stallman. Yes.

Q Outside of the fact that you saw the pump working did you see any of the hydrants, the hose or the carriages or the buckets or the fire extinguishers or anything else being used in or about that fire? A No, sir; I did not.

Q Now, you place the fire somewhere near the east end of the bulkhead yard? A Yes, sir.

Q Will you kindly tell the jury what of this long list of fire apparatus was available for putting out a carload of explosives at the point where you saw the fire? A There was four barrels located right at the racks of the float bridges, on the west end of the float bridges.

Q There was what? A Four casks, fifty-gallon casks of water and a pail on each.

Q Four fifty-gallon— A Fifty-gallon casks of water and a pail on each.

Q Anything else? A (No answer).

Q Anything else? A No, sir.

Q That was all of this stuff that you have detailed to us that was available for putting out a fire then that occurred in cars of explosives near the east end of the yard? A Right at that vicinity, in the east end of the yard, but at Store R—

Q That is what I am asking you; right there? A Yes.

Q That is all that was available? A Outside of tugboats that could get in there.

Q Were any of these hydrants shown in red between Store R and the gravity tank available for putting out a fire anywhere in the yard? A There was hose sufficient, and the pressure to reach anywhere in the yard, yes, sir.

Q And in order to use the hose and hydrants and pressure, what else would you have to have, men? A Have to have men to man it, certainly.

Q Yes. And assuming now that you had fire somewhere in the vicinity of the thumb tack or between the thumb tack and the pile stockade, how would you get water on such a fire? A Would have to bring a hose carriage around there and run your hose over.

Q Run your hose over what? A Over the tops of the cars, or—

Q Over the tops of all these freight cars? A Can be done, yes.

Q Yes. How many would that take? A About seven or eight men.

Q How long would that take them? A Well, it may take them three minutes, may take them five minutes, may take a little longer, depends on how fast they work.

Q If there was an engine drilling cars over these tracks what would they do about it? A If they were drilling cars they would have to take them under the track.

Q How would they do that? A Take a pick and dig away the cinders and pull the hose underneath the rail.

Q How long would it take to dig under, we will say, eight or nine tracks? A That I couldn't say.

Q Never did that, did you? A Yes; we have done that. We done it right across that Jersey City yard.

Q How much of a gang would you have to have to handle these picks and shovels to dig these trenches? A Well, they are not trenches. It would take three men to go and dig that across in very little time.

Q Didn't see anything of that kind done down there that night, did you? A No, sir; I did not.

Q Now, all of this list of fire extinguishing devices are principally shown by the red and green and brown lines on the map? A Yes, sir.

Q There is nothing that you have described that is not on this map, excepting some fire apparatus in buildings off the west end of the map? A Yes, sir.

Q And this description that you have given us included the hydrants and water pipes down around the grain elevators and grain transfer elevator, and down on the piers? A Yes.

Q And it includes all fire extinguishing devices inside the storehouses? A Yes, sir.

Q As a matter of fact there is no water hydrant or pipe line in that yard east of the gravity tank? A Not in that yard, no sir.

Q Now you say that you walked down the driveway until you got opposite Store R? A Well, almost opposite Store R, that is, across the tracks at the point opposite Store R. The driveway does not reach quite to Store R.

Q Didn't you say you walked down and you stood in front of the driveway in front of Store R? A I don't think I said I stood in the driveway. I said I walked down opposite Store R.

Q The driveway does not run that far? A I don't think it runs quite to Store R. There is a switching point in there.

Q Yes; and the warehouses then in front of— A You mean in the driveway, when I was in the driveway?

Q Yes; and how far east did you go when you walked down this driveway? A As far as the driveway would go and then around opposite Store R.

Q Don't you know the driveway stops in front of O? A That may be.

Q Is there anything on the front of these buildings to tell whether it is M, or Q or R, or something else? A Yes, they were all lettered.

Q It was very dark there, wasn't it? A Yes.

Q You did not turn around to read the letters on the front doors of these buildings? A Store R is a one-story affair, and the others are five stories.

John M. Julian, re-direct.

Q Did you stop to notice that you were standing in front of a one-story building? A Certainly.

Q While you were on the driveway? A The track runs around that gravity tank, and I turned at the gravity tank and directly opposite Store R.

Q Were you on the driveway at that time? A No, we were on the track at that time.

Q How close to the North Pier—you said the explosion came right off the North Pier. Ten feet away from it? A Seemed to come right down from the water side of the North Pier, the north side.

Q You have been giving us distances. Close as you are to me? A Well, it may have been that close.

Q You were right alongside the pier? A It came right from that section of the pier—right down the water's edge.

Q That is a very strong impression that you now have in your mind, that that is where it came from? A That is certainly where it came from in my impression.

Q I think that is all.

Re-direct examination by Mr. Rockwood.

Q Didn't you tell me when I talked to you about this that one of the firemen made some remark to you as to why you didn't go down and put the fire out? A I did.

Q Now, don't answer this. It may be objected to. What did the fireman say to you?

Mr. Stallman. I object to it. I do not think it is competent or material or has any binding effect upon us.

The Court. I do not think it does at all, in the light of the witness' statement that he said after the firemen got there it was their duty to handle it, and he did not conceive he had any duty to perform in that respect. So I do not see what possible difference it made what the fireman said to him, or if he said anything to him; surely he would not act under the circumstances.

Mr. Rockwood. I was showing why the fireman didn't do it.

The Court. That would be a hearsay statement.

Mr. Rockwood. That is why I asked him not to answer.

The Court. I will sustain the objection.

Q At the time you were there and the firemen were there were these shells popping about or these explosives? A They were, quite a good deal.

Q Was it a very dangerous place for a man to go to? A It was—

Mr. Stallman. I object, as it calls for a conclusion. If he means this man did not want to go down, that is another matter.

Mr. Rockwood. You can state your own opinion.

Mr. Stallman. I object to him giving an opinion.

Q State your own opinion of the character of the place as you saw it there? A Well, it appeared to be a very dangerous place to me, and we worked down, the nearer we got to it, the longer we were there the less afraid of it we were. We kept working on closer to it.

Q For what reason? A All of these shells bursting, small minor explosions, and then everything flying around through the air.

Q That is all.

FRANK DECKENBECK, sworn.

The Court. Did you gentlemen hear the last answer of the last witness?

Mr. Rockwood. No, I did not.

The Court. Well, I didn't know.

Mr. Rockwood. Was there anything said while we were away.

The Court. I can state it. He said the nearer they worked down to the fire the less afraid they were.

Mr. Stallman. I heard that.

The Court. I didn't know whether you understood it.

Mr. Rockwood. The less they were?

The Court. The less afraid they were.

Mr. Rockwood. Is that what you meant, Mr. Julian?

Mr. Julian. That is what I meant, yes.

Mr. Rockwood. The nearer you got to it the less afraid?

Mr. Julian. The less fear we had for it.

Mr. Rockwood. That is often so. The nearer you get to danger sometimes, the more calm you get.

The Court. I do not dispute the truth of it. I only wanted to know whether you heard it.

Direct examination by Mr. Hobart.

Q In July, 1916, were you employed by the National Storage Company? A Yes, sir.

Q What was your position? A Maintainer of the sprinkler equipment.

Q How long have you been employed for that purpose? A I started with the National Storage December 9, 1915.

Q From that time to the time of this explosion were you continuously employed? A Yes, sir.

Q As the inspector? A In the same capacity.

Q In the same capacity that you had been? A Same work.

Q And this sprinkling equipment and the apparatus was on the warehouses and piers, was it not? A Warehouses and piers, the hydrants were around the property.

Q You know of course the general location of the warehouses and the piers and the tanks and pipes, and so forth? A Yes, sir.

Q I won't go into that further; that has already been described. But calling your attention particularly to the 100,000-

gallon tank, do you remember what that was connected with? A That was connected with the twelve-inch line, hydrant line, but could also be used on the ten-inch and the six-inch fresh water line.

Q Was it the twelve-inch line that had the Corey hydrant attached to it? A Yes, sir.

Q And where did the water come from for that line? A From the tanks?

Q The twelve-inch? A From the tanks?

Q No, the twelve-inch line; was that connected up with the city supply? A That was connected up with the city supply on the west and with the tank on the east end.

Q So it could get water from both places? A Both directions.

Q Now were these Corey hydrants the Lehigh Valley hydrants or city hydrants. A Why, they were in connection with the system that was installed along in 1914 and 15, they were, you might call them, city hydrants. You could use city water through them.

Q When was that installed? A It was in when I went to work for the company; it had been put in in 1914 and 15.

Q Well, when was this sprinkler system put in active operation as far as you know? A The sprinkler people were still there, that is, maintaining it, up until the time I came, but it had been in operation quite a while before that, I understood.

Q Now, what was your duty in the way of supervising this system? A Keeping the tanks full, testing out the pumps, inspecting the hydrants and valves, keeping up the air pressure, making a general inspection as though there wasn't any supervisory system on it at all.

Q And how often did you go there for that purpose? A That was done every day, every morning.

Q How long did it take you to make your rounds? A Well, it would depend on how much work I would have to do; might take me two hours, might take me half a day.

Q You don't spend your entire time in the supervising or inspection? A Most of my time was spent in taking care of these sprinkler and water supplies.

Q You were there every day? A Every day, except Sundays and holidays.

Q Will you state generally what your inspection consisted of? What did you do there? A Well, the first thing I would do going there in the morning, I start at Warehouse AA, and inspect the valves, that is to see whether the valves were open, see what the air pressure was, if the air pressure was below or wasn't near thirty pounds, pump it up. Once a week I would test out all the alarms, that is, test the water riggings and the dry valves; after going through that Warehouse AA, start in at Pier 4, looked at all the valves in through Pier 4, the upper block of stores, Pier 5, middle blocks, Pier 6, and the lower block, and then take a walk around the yard, and see that the valves were in proper condition.

Q How about hydrants? A The hydrants would be right along with the valves, and we could observe them as I looked at the valves.

Q In other words, when you tested the valves, that would serve as a test of hydrants also? A I would not have to test the valves. They had indicators on showing whether they were open or closed.

Q All I want to find out is whether you could tell whether the hydrants were in working condition? A The hydrants were in working condition. We did try them out, not every day, but occasionally we would blow them out to get them all clear, get mud or any other thing there, blow them out.

Q Now coming to the occasional Saturday, the 29th of July, 1916, were you at Black Tom that morning? A Yes, sir.

Q What time did you get there? A My work started eight o'clock.

Q What did you do after you got there? A I made the usual inspection, pumped up the air, if it was needed.

Q Would that inspection that day include any examination of the 100,000-gallon gravity tank? A That includes an examination of all of the three tanks. The low water signal came in sometimes during the day, along about noon time, I believe, and I pumped all three tanks, and went up all three tanks. The

American district man came down there, because he had to come down to wind his instruments up. One of the transmitters was operated usually when their men would come down, and set it up for the next operation.

Q What time did he get there? A He got there around two o'clock, I think it was around that time, and he stayed there until I gave him the O. K.—he would get the O. K. signal that the tanks were full. I overflowed all three tanks.

Q Did you do anything in the way of pumping water in the tanks? A Yes.

Q In the yard? A I started the pump and pumped water in all three tanks.

Q Which tank was it? A This was the 1,200-gallon tank, that tank near Storehouse F.

Q How was the pump working? A It was working good. I removed those three by-passes on the check valves, and found that by-pass valve closed every time.

Q Did you make any particular inspection of this one down near Store R? A I overflowed that tank.

Q How do you know that? A Well, the pipe discharge from the top.

Q You could actually see the water? A Water comes right over the top. When you get to the top it runs over.

Q Did you do that that day? A Yes.

Q What time? A That was along about two o'clock, between two and three o'clock.

Q When did you leave there? A I left there somewhere between three and four, the best I can remember.

Q Was your inspection of that Saturday any different from what you made any other days? A Yes; I was going out of town and I had asked permission to go out of town.

Q Over Sunday? A Over Sunday, and I made a second lap over the whole system to see that everything was all right.

Q You mean you went around twice instead of once? A I went around the second time to see if all the valves were open, just as though it was not supervised at all.

Q Now going back to this pump where Sloan was in charge, had you ever given him any instructions how to operate the pump? A Sloan was an engineer and knew how to operate the pump as well as I did. I knew that, because I had seen him operate it.

Q There was another pump known as the electric pump? A The electric pump, the lower end of that connected with the twelve-inch, could also be started up, and it would go into the sprinkler.

Q Who had charge of that? A I made inspection of that pump.

Q Who ran it? A A man by the name of Garrity was to operate it nights, and a man by the name of Tanner was to operate it day times.

Q Had you given Garrity instructions how to operate it? A Yes.

Q Had he operated it? A Yes.

Q Did he know how? A Yes; I asked him to show me how he would start it, and he did.

Q How long before the explosion was that? I mean was it every day or several days before? A No, it was before that. It might have been around about ten days.

Q Now you know the watchmen who were on duty that night, I suppose, Kane and these other gentlemen that have testified? A Why, I think I know them all. I don't think there are any new ones there.

Q Did you ever have anything to do with giving them instructions? A Yes.

Q How? A About the same time that I had Garrity to start the pump—along about that time. It may have been a day or two before that, Mr. Davidson, the superintendent of the National Storage, had me take the night watchmen and go through with them over all the outside valves, and show them how to shut down the sprinklers in the stores in case the head would come off and stop the water damage, and to show how to stop it outside in case there should be a break in the underground line.

Frank Deckenbeck, direct.

Q How about the hydrants? A That would be in connection with them both.

The Court. I think we will adjourn until quarter past two. You can go right ahead if I should not happen to be here at quarter past two.

RECESS.

AFTERNOON SESSION.

June 10th, 1920, 2 o'clock P. M.

By Mr. Hobart.

Q During the several months that you were inspecting and supervising the water protection at the Black Tom Terminal prior to this fire on July 29th and 30th, 1916, did any representatives of the Jersey City Fire Department come to the terminal? A Yes, sir.

Q And do you remember when it was that they came? A About the month—the latter part of June or the first part of July.

Q 1916? A Yes, sir.

Q How many came? A I know there were two there, with a red car, one of the big red cars; there may have been three or more.

Q Well, you mean three or more cars? Or three or more individuals? A No; men; there was a party came up; I am not just sure of the number.

Q Do you remember the names of any of them? A. I did not know the names of them at the time. I understand one of them was one of the chiefs of the Jersey City Fire Department.

Mr. Smith. Do you know the name?

Q Do you know the name? A I understood it was Boyle or Doyle.

Q That is something you heard afterwards? A Yes; I heard afterwards.

Q Were you there when they came? A Yes.

Q Did they do anything in the way of examining the plant? A When I first met them I met them in the office of the National Storage Company, small office, superintendent's office. They had a large plan showing the entire water equipment, fire pump, and the underground piping and hydrants, location of stores, piers and all about the property; and we went over the plant there, the representatives from the fire department went over the plant and asked questions about it, the sources of supply and the capacity of the pumps and in regard to the valves. We explained it to him and then went around the outside, went down Pier 5, out to the dry valves.

Q Did you go with him? A Yes, sir. Mr. Davidson was along with the party.

Q Did you point out the location of the hydrant? A Went to the valve house, looked at the dry valves, explained to him about the American District Telegraph instructions by fire or accident, in case the air got out of the pipe, or reduced pressure where the valve would trip.

Q Did you show them where the hydrants were located? A Yes, sir.

Q How long were they there? A Why, they were there—I don't know just how long. They were there quite some time. It was in the afternoon.

Q Did any of these firemen make any suggestions to you in the way of additional precautions? A I do remember when talking about the equipment in Store H—we were up on the second floor—he wanted to go up through the stores to see with regard to aisle space, to see if there was aisle space to enter in case of fire, and he went up to the second floor of this store, and while we were in there Mr. Davidson, the superintendent and the fireman spoke about the fire pumps and pressure, and so forth, and he agreed that they had lots of pressure there. Mr. Davidson said, "We need men to handle streams," but he said, "We got the pressure," and he agreed that that was a fact.

Q Well, did they suggest anything in the way of additional precaution or— A No, no; I don't remember anything being said in that line.

Q Did you show them the pumps? A Yes, sir; we did.

Q And operate them? A I don't remember whether we operated the electric pump or not.

Q Well, now, how often in fact were the pumps operated? A The pump at the oil yard, as we class the oil yard—that is the west end of the property—that was tried once a week by the Johns-Manville people. Once a week they tried the pump out, see it was working and the pump at the Store F, that was worked probably two or three times a week. They used that pump to fill the tank. The electric pump I tried every week.

Q And the one at Store F is the one that Sloan had charge of? A Yes.

Q And at the time when these Jersey City firemen were there, was the apparatus the same as it was on the night of July 29th and 30th? A As far as I know, yes; there was nothing wrong.

Q I mean, was it the same construction, same hydrants, same pumps and so forth. A No; nothing had been changed from that time on.

Mr .Hobart. Cross examine.

Cross examination by Mr. Smith.

Q You were employed by the National Storage, weren't you? A Yes, sir.

Q Are you still employed by them? A No, sir.

Q This visit of the Jersey City firemen was a visit to the National Storage plant? A It was a visit, as I understood it, to see about the water supply and the fire protection.

Q To the National Storage plant? A Well, I don't as they came particularly about that plant, about the whole property.

Q Well, you took them up in the plant, in the storehouse? A Yes, sir.

Q Inside? A Yes.

Q Yes. Now, you say you tested out every morning, did you? A I supplied the air, if any was needed, on the dry valves.

Q Well, will you tell us just what you did every morning in the way of inspecting? A The one thing to be sure of—that valves were open, that needed to be done.

Q Valves where? A Valves on the water equipment, hydrant lines, water gravity tanks, water pumps, into the sprinkler system and to the hydrant lines, to see whether they were opened.

Q Whether they were open hydrants? A No, to see whether they were open in case one might be closed by somebody working around there. Of course, that would go into the American system, but yet still I would examine them to see that they were opened as they should be, and then the dry valves; there were a number of dry valves throughout the property, and those had to be examined because the air did not feed into those valves automatically; that was manual; and I would feed it as the air got low. The air might drop to five pounds. In some it might do it in a week; in others in a couple of days. I could not go above thirty-five pounds. If I gave them more air the American District would get a high air signal. If I let it go below twenty they would get a low signal, and I had to work in between those signal points.

Q That is what you did every morning? A Every morning.

Q Will you tell me how often you opened the hydrant? A Why there was no set time; it was not every day or every week; it was occasionally we tried them out.

Q Well, approximately? A Why, it would be safe to say that the hydrants were all tested once a month.

Q Once a month? A Yes, sir. Some of them were tested probably three or four times.

Q Do you know when the last test was made of hydrants prior to this time? A No, not the particular day, I don't.

Q It might be a month? A It might have been practically pretty near a month.

Mr. Smith. That is all.

Mr. Hobart. That is all.

(Witness excused.)

ABRAHAM A. FOX, sworn.

Direct examination by Mr. Hobart.

Q At the time of this fire and explosion, July 30, 1916, were you employed by the Lehigh Valley? A Yes, sir.

Q What was your position? A Foreman of tallymen or checkers.

Q And where did you work? A Lehigh Valley, National Dock.

Q Whereabouts, where? A Lehigh Valley, National Dock.

Q What we call the Black Tom Terminal? A Sir?

Q What we have been calling Black Tom Terminal? A Black Tom; yes, sir.

Q You recall the fact of the fire and explosion, do you? A Yes, sir.

Q Do you remember any occasion before the fire and explosion when any attempt was made or any orders given to men who were on the barges to keep the barges away? A Yes, sir. I used to send a man down to tell these barges where to go.

Q I mean in regard to loaded barges, barges that had been loaded up on the premises? A Barges that come in there that I would not allow—and that had no business there—we would order away. Other barges we would locate a place for them.

Q Which barges would you make a place for? A Boats that come in for freight, or to deliver freight.

Q Did you know which particular company the barges belonged to, such as the Ackerman Company, or the Johnson Company? A Why, I knew of them, but I don't remember their names?

Q Well, you cannot place any particular boats then— A No, sir.

Q —as belonging to one company or the other? All right. that is all.

Mr. Stallman. That is all; no questions.

(Witness excused.)

MR. DICKMAN, recalled.

By Mr. Hobart.

Q Mr. Dickman, I forgot to ask you whether or not on the morning after this explosion you observed the crater or lake that has been described in this case? A Yes, sir.

Q And did you observe the location of that crater or lake? With reference to the telegraph pole and pile of ties where you say you were standing? A Yes, sir.

Q How far away was the nearest point of the crater or lake from the place where you were standing? A Twenty-five feet.

Q How do you fix the distance? A We measured it.

Q When? A The Tuesday after the explosion, three days later.

Mr. Hobart. Cross examine.

Mr. Stallman No questions.

(Witness excused.)

MICHAEL A. MULLIGAN, sworn.

Direct examination by Mr. Hobart.

Q Mr. Mulligan, at the time of this fire and explosion you were employed by the Lehigh as superintendent, I believe? A Yes, sir.

Q Of the New York Division? A Yes, sir.

Q And at the present time where are you employed? A Employed as superintendent at Easton, New Jersey and Lehigh.

Q Another division of the same road? A Yes, sir.

Q And as superintendent of the New York Division, did that include the territory known as National Dock and Black Tom? A Yes, sir; that took in that property, yards, and docks and so forth.

Q Are you familiar generally with the location of the various railroad terminals about New York harbor, particularly on the Jersey side? A Yes, sir.

Q How does the Black Tom Terminal compare with the other terminals around New York harbor with respect to the distance from the inhabited part of the city? A Why, it is the greatest distance from the inhabited part of the city of any of the terminals on the river.

Q About how long a time prior to July 30, 1916, had explosives or inflammables been carried over the line of the Lehigh into the Black Tom Terminal? A About one year. The great portion of that year it was in small quantities, they were shipping the contents daily that would arrive, cleaning up all the business.

Q Were you familiar generally with the men who were employed there by the company? A Yes.

Q The watchmen and the other employes? A I had known them, was familiar with them and their duties and so forth.

Q Referring particularly to the men who worked at night—Kane, Kelly, Sloan and Garrity? A I knew they were engaged there, and, of course, they come under the agent that I had there, and the police captain.

Q Well, do you know how long they worked there, generally speaking—were they old men or new men? A Oh, they were old men; were regularly assigned watchmen.

Q About how long had they been working for you? A Well, some of them had been working for us ten or fifteen years, while others were eight or nine years. In fact we had one man there that I believe was working for us some thirty years.

Q Had you ever had any complaints about their ability or character, or anything of that kind? A No, sir; to the contrary, why, they were highly recommended by those coming in contact with them.

Q Now, do you recall anything about other men being assigned to work in the Black Tom Terminal in addition to the Lehigh Valley watchmen? A Yes, sir. After the shipments got very heavy and were coming to us from other lines, the chief clerk of the vice-president in charge of transportation called me up one day and advised me—

Mr. Stallman. I object to hearsay testimony.

The Witness. That is not hearsay.

The Court. I think I will sustain the objection to it because it is hearsay.

Mr. Hobart. His Honor says you cannot tell what the conversation was Mr. Mulligan. The question is—

Q Did you know of any other men being sent to work at the terminal? A Yes, sir.

Q As watchmen, I mean? A Yes, sir.

Q Were several other men sent there? A Yes, sir.

Q And do you know when they were sent? A Why, they were sent there about the latter part of 1915.

Q And do you know how many were sent? A Yes, sir; there was eight new men.

Q Well, were they all of the same—did they all work the same time or different times? A No, sir; four of them took the day shift and four on night shift.

Q Do you know where they came from? A They came from—

Mr. Stallman. If the witness knows of his own knowledge.

The Court. He is asked if he knows. The answer is yes he does know, or no if he does not.

The Witness. Yes.

Q Where did they come from?

Mr. Stallman. Wait a minute.

Mr. Hobart. If he knows of his own knowledge.

The Witness. They came from New York.

Q Do you know of your own knowledge who sent them? A Yes, sir.

Q Who sent them?

Mr. Stallman. Now, just a minute.

Michael A. Mulligan, cross.

Cross examination by Mr. Stallman.

Q Where did you derive this knowledge that you say you have as to who sent them there? A Why, I derived the knowledge from a Mr. Healey, who instructed me.

Q A Mr. who? A Healey.

Q And who is Mr. Healey? A Why, at that time he was engaged as chief clerk to the vice president in charge of the transportation.

Q Of the company? A Yes. He instructed me by telephone.

Mr. Stallman. If the Court please I think that is also hearsay. I object to it.

The Court. I think it is, too.

Mr. Hobart. All right. Never mind.

By Mr. Hobart.

Q Well, were those four men who came during the day, and those other four who came during the night—were they employed by the Lehigh Valley? A No, sir.

Q Do you know what these men did from the time they were assigned to work at the Black Tom Terminal? A They watched the ammunition that was in cars on the tracks awaiting delivery to the North Pier.

Q And which tracks were they? A They were assembled on the northerly tracks of that yard, known as 13, 14 and 15. That was parallel to the pier on which they were to be loaded to boats.

Q Something has been said about a shanty near the North Pier. Do you know anything about that? A Yes, sir; there was a small shanty put up there for the shelter of these men that was sent there from New York, that is, they constructed it themselves for their benefit, with our permission.

The Court. Where was the shanty, Mr. Mulligan.

Mr. Mulligan. That was about 200 feet from the shore, the river; on the north side of the track which leads to the pier that the ammunition was loaded on, known as the North Pier.

The Court. When you say 200 feet from the river, from the river which way?

The Witness. Why, that would be naturally west of the river.

The Court. Do you mean west of the easterly end of the North Pier, or what?

The Witness. I mean from the land end of the North Pier, 200 feet.

Q The bulkhead line? A The bulkhead line; yes, sir.

The Court. All right.

Mr. Hobart. Cross examine.

Cross examination by Mr. Stallman.

Q Mr. Mulligan, you say these men worked four on the day shift and four on the night shift? A Yes, sir.

Q Do you know what time they went down at night? A No; I could not say that, not to the time that they exchanged or relieved one another on the ground.

Q Were you ever there after six o'clock in the evening during the month of July? A Well, not down on that territory. I come up by there on a tug boat, and I was up further on the ground around the grain piers and freight piers, but I was never down on the ground on that territory after six.

Q You would not care to testify today that at any time within thirty days before this explosion you personally saw any of these four men on the grounds after six o'clock at night? A No, sir; I would not care to testify on that. While I had been down there periodically at various times I could not place that to memory, that I was there after that time; but I was down there—

Q And you cannot testify, then, from your knowledge as to what the four men were doing, assuming that they were there in and around the shanty? A Except from the reports that I received from the captain of police who reported to me.

Q Yes, I understand— A Yes.

Q —but I say you cannot testify from your own knowledge? A Not personally, no.

Q And it is a fact, is it not, that some time after these men came to the station, to the place where you have put them, that is where you have said they were, that you instructed Con. Leyden to release Kane and his men from watching the explosives on tracks 13, 14, 15 and 16? A No, I never instructed them to that effect.

Q Did you not testify in the case of the Royal Indemnity Company and others against the Lehigh Valley tried just about a year ago, as follows: "Instructions I gave Mr. Leyden was that the Dougherty Agency was to take over the watching and guarding of the explosives in that territory"? A Yes, sir; I did do that, and I still say that.

Q And did you not testify as follows: "Q And your men were relieved? A That was my belief, yes, from the conversation that I had with Mr. Healey." A That is true; they were relieved of watching the ammunition.

Q That is what I meant. A Yes.

Q That is all.

Mr. Hobart. That is all.

JESSE BYRNES (or Burns) sworn.

Direct examination by Mr. Hobart.

Q On the 30th of July, 1916, by whom were you employed? A The Dougherty Detective Agency.

Q And what was your position with that agency? A I was what they call a captain of the squad.

Q How many were in your squad? A There was three besides myself.

Q How long had you been working for that agency prior to July 30, 1916? A About three months, I think.

Q Do you recall being sent over to Black Tom? A Yes, sir.

Q Do you remember when it was you first went there? A Somewheres, around, I think, the 15th of June, I could not just name the date—near that.

Q Who sent you there? A Mr. Dougherty.

Q He was the head of the agency? A Yes, sir.
Q Were you on duty during the day or night? A I was on duty at night.
Q And all of the time that you were there down to July 30th, were you there at night? A Yes, sir.
Q Were you there every night? A Yes, sir.
Q Do you remember the names of the men that were with you? A Yes, sir.
Q Who were they? A A man of the name of James Gibson, Bert Scott and Ryan.

Mr. Smith. Ryan?

The Witness. Yes, Ryan.

Q What time did you go on duty that night? A Six o'clock in the evening.
Q Coming down to the date of July 29th, on Saturday, did you go there at six o'clock that evening? A Yes, sir.
Q And how long were your hours? A To 6 A. M., in the morning.
Q You know where this shanty was located that has already been mentioned? A Yes, sir.
Q The little shanty out somewhere near the North Pier? A Yes, sir.
Q Who put it up? A Our day men put that up.
Q And the night men used it? A The night men used it also, yes, sir.
Q And where was that, if you remember? A That was about seventy-five feet west of the pier on the outside track, what they called the North Pier.
Q And by the outside track you mean the northerly track? A Yes, sir.
Q Were the other three men with you that night on July 29th? A Yes, sir.
Q Now, do you recall some time around midnight meeting a Mr. Eiseman. A yes, sir.
Q About what hour was it? A As near as I can remember, it was right around twelve o'clock.

Q Twelve o'clock midnight? A Yes, sir.

Q Up to the time you met Mr. Eiseman, had you seen any other men around there, any strangers, or anything? A No, sir.

Q Where had you been during the time you went on duty at six o'clock up to around midnight, when you met Eiseman? A I had been between the shanty—around the shanty and up, say, maybe a hundred yards from the shanty and the end of the pier.

Q Do you mean the North Pier? A Yes, sir.

Q And when you speak of being a hundred yards from the end of the shanty, which direction? A What?

Q That is towards the— A Toward the warehouses.

Q Toward the warehouses? A Yes, sir.

Q Where did you meet Eiseman? A I met Eiseman about a hundred yards from the shanty, west of the—

Q Where was he when you first saw him? A When I first saw him, he was right opposite the warehouses, although I could not recognize him at that distance.

Q Did you know who he was? A I did not until he came up close. I walked up to meet him.

Q You had seen him before, hadn't you? A Yes, I knew who he was.

Q Well, at the time that you met Mr. Eiseman, where were your other three men? A They were two of them inside the shanty, and I could not say whether the third man was inside the shanty or outside the shanty at the time.

Q Did you wait for Mr. Eiseman to come up to you or did you go up to meet him, or how did you happen to— A I walked up to meet him. When I saw him coming I walked up to meet him.

Q Which way was he coming? A He was coming down toward the pier.

Q And on which track, did you notice? A On the north track.

Q Well, after you found out who it was did you do anything—did you have anything to say to him—did you talk with him? A We had a few words—conversation—yes, sir.

Q Will you please, place, as nearly as you can, just where you were standing when you were talking with him? A Well, probably seventy-five or one hundred feet, when we first started the conversation, from the shanty—north—or west of the shanty.

Q In the direction of the warehouses? A Yes, sir.

Q And which way were you facing? A Sir?

Q Which way were you facing as you stood there talking to him? A I was facing towards the warehouses.

Q Did you notice anything out of the ordinary? A Just after Mr. Eiseman started down on the pier I noticed—I heard a kind of cracking noise, and I looked over in the direction of the warehouses, and I saw a reflection of light—of fire—and I called his attention to it.

Q And then what did you do? A We walked up a little ways to where we could get a better view of it.

Q Who walked up? A Eiseman and I, and then Mr. Eiseman turned and went back towards the piers, and I went down to the shanty and called the men out, and to get everybody out of the piers and get away.

Q Why did you want to get away and have the men get away? A Well, I knew that there were explosives in these cars.

Q How did you know that? A By the placards on the outsides.

Q You had seen the cards there, had you? A Yes, sir.

Q You had been down in that direction, then, in the course of your tours? A I walked by there, or somewhere near there.

Q Or somewhere near there in going to the tracks? A Yes.

Q What did you do next? A Well, I made for what they called Pier 6 then, it was the closest fire alarm there—walked up the tracks west until we came opposite the first storehouse, and went in what we called Pier 6—it was between the two first warehouses.

Q How near was the fire alarm? A The fire alarm was just inside of the pier, on the pier—on Pier 6.

Q Do you know whether that was a city alarm or not? A I think it was, yes, sir.

Mr. Rockwood. Where was the fire when you first saw it?

Q Where was the fire, so far as you could tell, when you first saw it? A When I first saw it, it was between me and the warehouses, from where I was standing, somewhere, and then in going up, then I noticed it was in a box car on south of the track we walked up—probably two or three tracks; I did not just count the tracks; it was in the end car west.

Q At that time was there any fire on the ground? A No, sir; not at that time there was not, not that I know.

Q When you speak of the fire being in the car, could you see inside the car, or what was it you saw? A No, sir, but I could see the fire coming out of the side door of the box car—coming out around the edges and the top of the door.

Q Can you tell us on which track that car was? A Not exactly, no sir; I did not count the tracks. It was not far from this what we call the North Track, but it was about two or three tracks south of that when we—I could not just exactly say how many.

Q Well, could you tell us where it was with reference to the ammunition cars? A Well, I was right in there, close to there, or amongst them; I could not just say which, because I did not—

Q Well, would you say—when you saw the fire coming out of the car the way you have described it, what did you do in the way of giving an alarm? A I went into this pier, broke the doors and turned in the fire alarm.

Q Now, in order to get to the pier did you have to walk past the car that was burning? A No, sir, not exactly past the car; I did not go over to the car. I had to walk apast the car but not very close to it.

Q Could you see the car plainly from where you were? A Yes, sir; I could see it plainly after I got up on the end of the freight cars.

Q And were the doors sealed? A I could not see from where I was whether the door had slid open or it was closed.

Q You know what time it was when you broke the fire alarm? A I could not say exactly, it probably was not over fifteen min-

utes past twelve; it may have been more than that; I could not say exactly.

Q How long was it after you talked with Eiseman that you sent in the alarm? A I do not think it could have been over twenty minutes from the time I met Eiseman until I sent in the alarm, or hardly that.

Q And on your way to Pier 6 to send in the alarm, did you walk or run or what? A We walked rather fast.

Q When you say we, you mean who? A Well, the other boys that were with me—along with me.

Q That is, the rest of your squad? A Yes.

Q Did you notice whether this car from where the fire was coming, whether that had any kind of a sign or card upon it? A Why, from the light that it gave, I could see that there was a placard on the end of the car.

Q Did you notice the shape of the card? A It was a diamond shaped card—placard.

Q How close did you get to the car—I mean up to the time you sent in the fire alarm? A I do not think it was ever any closer to the car than a couple hundred feet.

Q Did you make any effort to put out the fire outside of sending in the alarm? A No, sir.

Q Why not? A Well, I was satisfied within my mind that there was explosives in those cars, and I thought that while it was time to get away it was better for me.

Q Now, at the time you turned in the fire alarm, did you notice whether there was any noise of explosions or anything of that sort? A When we came out from turning in the alarm there were some shells starting to bust.

Q Did you do anything else in the way of notifying about the fire other than sending in the alarm? A I did not myself, but when I went in there to turn in the alarm, I sent one of my men up to the Pump House where the telephone was to telephone and notify the railroad company and also the Jersey City Police.

Q Did you do any telephoning yourself? A No, sir.

Q After you got through turning in the alarm where did you go? A I went on the outside and walked up toward the grain elevator.

Q And why did you go there? A I thought that was a safe distance.

Q You thought it wise to get some distance away? A I thought it wise to get away from there, yes, sir.

Q Where did your men go? A Two of them went ahead, as I say, to telephone, and the other one walked with me.

Q Did you notice where the men who had been to telephone—where they went? A I did not meet them until I got up to near the Pump House and met them there, together with—

Q While you were walking up to the grain elevator after turning in the alarm, what about the shells, did they continue, or had they stopped? A They still continued.

Q Did you walk or run? A We walked, but rather fast.

Q And did you stay around there later—all the rest of the night? A I was around the elevator then all the rest of the night.

Q Did you see anything of Mr. Sloan? A Mr. Sloan, no, sir; I did not know Mr. Sloan personally.

Q How about Mr. Garrity, did you know him—the watchman? A Yes, sir; I saw him just inside the pier when I went inside of the pier to break the glass.

Q Were you there when the Jersey City firemen came in? A Yes, sir.

Q Did you notice how far they went towards the fire? A They went down towards the fire—I do not know just how far they went down.

Mr. Rockwood. Cross examine.

Cross examination by Mr. Smith.

Q Mr. Burns, your duties confined you to the pier, didn't they? A Yes.

Q You had absolutely nothing to do with the cars of explosives in the yard, did you? A No, sir.

Q Nothing at all to do with them? A No, sir.

Q And this night there were four men on the pier? A Yes, sir.

Q But three of them were in the shanty, weren't they? A I could not say whether there was two—I know there were two in there—there might have been three of them in there.

Q So far as you know you were the only man outside the shanty on the pier? A Yes, sir.

Q Your duties extended up to the end of the pier—from one end of the pier to the other? A Yes, sir.

Q As a matter of fact, you had absolutely no charge of any of the cars in that yard? A (No answer).

Q Now, you were standing there, and you say you saw Eiseman coming down? A Yes, sir.

Q And when he got down to you you and he began to talk? Yes, sir.

Q And after you had talked for a little while and he left you then you heard this cracking noise? A Yes, when he was leaving, and I called his attention to it before he got away.

Q Now, when you heard this crackling noise you speak of, you were down here on the pier near Jersey City? There was a shanty here? A I was a little west of the shanty, yes.

Q Just a little west of it? A Yes, sir.

Q And the crackling noise and the flame that you saw was up between you and the warehouses? A Between me and the warehouses, yes.

Q Then you went on up along the north sea wall? A Yes, sir.

Q You came up here and then came across? A Yes, sir.

Q And then you looked down; is that right? A Yes, sir.

Q And you think you did not get any distance, any nearer than a couple of feet to a car that you thought was on fire? A No, sir.

Q And what you saw was a flame, you thought it was coming out from the door of the car? A The side of the door; yes, sir.

Q And you say that placard you saw on the car there had a diamond shape to it, was it? A It was a diamond shape, yes.

Q Was it a diamond or a square? A Well, it was—looked to me like a diamond shape.

Q You might be mistaken about it; might have looked to you like a square shape at another time? A Well, both kinds of cards, it might have been either.

Q Might have been either one; is that it? A Yes.

Q You don't know the exact time, do you, that you saw this thing? Might have been 12:15 or 12:30; is that right? A I hardly think it was that late; it was between 12:00 and 12:30, around there somewhere.

Q Could your mind be refreshed, Mr. Burns, if I called your attention to the testimony in the case of Howell Insurance Company *et als* against the Lehigh Valley? Do you remember this question being asked you (the page is 823)—"About what time was it when you turned in the alarm?" and you answered: "We turned in the alarm, I should judge about half past twelve." A Well, it was near that time.

Q Near half past twelve, yes? A Yes.

Q I think that is all.

Mr. Hobart. That is all, Mr. Burns.

LUKE EISEMAN, sworn.

Direct examination by Mr. Hobart.

Q You are the gentleman that has just been referred to by Mr. Burns as being on the pier that night? A Yes, sir.

Q What was your occupation at that time, Mr. Eiseman? A Captain of the Paulina.

Q What company was running the Paulina? A Ackerman Lighterage Company.

Q You are not working for that company now, I believe, are you? A No, sir.

Q Where are you working? A Working for the International Motor Company, New Brunswick.

Q How long had you been captain of the lighter for the Ackerman Company prior to July 29th? A Well, about—I went to work for the Ackerman the first part of November.

Q What kind of a boat was this? A Scow, deck scow.

Q Have any power? A No, sir; no power.

Q Had to be pulled around by tugboats? A Yes, sir.

Q Did you have any crew or were you the whole crew as well as the captain? A The mate.

Q You had a mate? A Yes, sir.

Q What was his name? A Fred Dube.

Q Do you know where he was on the night of this fire and explosion? A Well, he told me he was going up to Haverstraw, that is where he belonged—Haverstraw, New York.

Q That is where he lived? A That is where his people lived.

Q Where was your boat tied up that night? Where was your boat that night? A Black Tom.

Q Whereabouts with reference to the North Pier? A On the south side, the third boat out.

Q That is, there were some other boats between it— A Two boats between.

Q And you were fastened to the nearest boat? A My boat, the Paulina, was fastened to the Jet on both ends.

Q By means of a rope? A Yes, sir.

Q Or two ropes, rather? A One rope on each end.

Q And the Jet was next to you? A Jet was inside.

Q And then came the Moran-20? A Moran-20—or Moran—I don't know what her number was—was up against the dock, and then the Jet and the Paulina.

Q The Jet was not an Ackerman boat, was it? A Yes.

Q How about the Thompson, was that an Ackerman boat, too? A Yes.

Q So you had three Ackerman boats there lying alongside of the Moran boat? A Yes, sir.

Q Or at least one fastened to the Moran and then the other two in the way you have described? A Yes, sir.

Q Does this map which has been offered P. 11, show the situation fairly accurately? A Well, fairly, yes.

Q With the Moran next to the pier? A There was a Moran boat, but I don't know the number.

Q You don't know what number? A No, sir.

Q The Jet next to it? A Yes.

Q How was that fastened? A On both ends.

Q With a rope? A With a rope on each end.

Q You were fastened to the Jet by ropes? A Yes, the same.

Q And the Thompson—you remember that? A Well, I don't remember the Thompson coming in there.

Q You don't recall whether that was in there? A No, I don't recall.

Q Dld they come in after you had gone away? A Yes.

Q What time did you leave your boat that night? A About five o'clock.

Q In the afternoon? A Yes.

Q And at the time you left the Thompson was not there, was it? A No, sir; not at that time.

Q And you remember whether the Rockwell was there when you left? A Yes, the Rockwell was there.

Q About these other boats, Johnson-17, do you know whether that was there or not? A Well, I couldn't say about Johnson-17. I could say about the—

Mr. Stallman. Speak up. I can't hear you.

A I could say about the Frank. I don't know about the Johnson-17, but the Frank was there. I know the Frank was there.

Q When you left the boat there about five o'clock in the afternoon was your mate there at that time, or had he already gone away? A He had gone away.

Q Intending to stay over night? A Yes.

Q And had he asked your permission to go? A Yes.

Q You gave him permission? A Yes.

Q Now you had on board certain ammunition, I believe, on the Paulina, was there not? A Cordite and smokeless powder.

Q Do you know where Dock 19 is of the Jersey Central? A Yes, sir.

Q Is that where you got the load? A Yes, sir.

Q Did you at that time know where the government anchorage grounds were? A What is that?

Q Did you know where the government anchorage grounds were? A Well, I heard something about it, but I wasn't sure really where it was.

Q Who took you over from Dock 19? A Ackerman tugboat.

Q A tugboat of the Ackerman Company? A Yes, sir.

Q And after the tugboat took you over, did it stay there or go away? A The tugboat went away.

Q Was there any tugboats of the Ackerman Company around the North Pier at the time this fire started?

Mr. Stallman. I object to that. The witness was not there when the fire started.

Mr. Hobart. Oh, yes he was.

Mr. Stallman. I beg your pardon. I withdraw that.

A I did not see any.

Q Now, when you left the Paulina about five o'clock that afternoon, where did you go? A To Newark.

Q On some private business of your own? A Yes.

Q How long did you remain in Newark? A I left Newark on the 12:01 train from Broad Street of the Jersey Central.

Q What station did you get off from in Jersey City? A Communipaw.

Q How long did it take the train to make the run from the Broad street station to Communipaw? A I guess about twenty minutes.

Q Was anybody with you? A No.

Q On the train, I mean. A Well, there was people, I didn't know who they were, but not going my direction.

Q There wasn't any friend or companion of yours with you? A No, sir.

Q Of course there were other people on the train, I suppose going home. A Yes.

Q After you got off the train at Communipaw Station where did you go? A Walked down to Black Tom.

Q How far was Black Tom Pier from Communipaw station? A About a mile and a quarter.

Q Did you walk all the way. A Yes.

Q How fast did you walk? A Well, as fast as I could.

Q I mean were you in a particular hurry for anything? A No; only just wanted to get down to the boat.

Q Was there any one left on board of the boat that night after you left it at five o'clock? A Well, I left—I asked the captain of the Jet and the captain of the Rockwell to look out for the boat while I was gone.

Q But there was no one on board of your boat? A No, sir.

Q Was there any fire hose on your boat? A No, sir.

Q Or fire extinguisher? A No, sir.

Q Or any kind of fire apparatus? A No, sir, only pails—water pails.

Q Or did they have any water in at the time you left? A Well, we always had a barrel of drinking water, and cooking, and we used—of course we always call that water.

Q Eh? A In case of any trouble, why, we would have to use it, that was all.

Q Do you remember whether there was any water in the pails when you left your boat that afternoon? A I don't think there was any water standing in the pails.

Q All you had on board was a water barrel? A Yes.

Q How much water did it hold, about? A Oh, we had a couple of barrels.

Q Two barrels? A Two or three.

Q Well, how big were they? A Well, whiskey barrels.

Q Whiskey barrels? A Whiskey barrels.

Mr. Stallman. I don't know how much that is yet.

A No whiskey.

Q Sure there was water in them? A Water in them, sure.

Q Where were these barrels kept? A In the hold.

Q Now, in order to get to the Paulina, whereabouts in the Black Tom Terminal was it necessary for you to go? A Well, right down the roadway and down on the north track.

Q Then you had to go out on the pier? A Go out on the pier, yes.

Q Then walked from one boat to the other until you reached your boat? A Yes, sir.

Q Is that the way you started to go that night? A Yes, sir.

Q About how long did it take you to walk this mile and a

quarter from the station? A Well, I should judge about twenty or twenty-five minutes.

Q And when you got to the entrance to Black Tom did you walk along the track or along the driveway, or where? A Along the roadway.

Q Roadway? A Yes, sir.

Q That is the one that is in front of the warehouses? A Yes, sir.

Q Did you continue on that road until you came to the end of it? A Yes, sir.

Q And the end of it I believe is shown on this map as opposite one of the warehouses marked on the map O—Warehouse O, somewhere in there? A Somewhere around there, yes.

Q After you got to the end of the roadway where did you go? A Out on the north track and down along the north track.

Q The north track, is that the one next to the water? A Yes, sir.

Q Well, now, as you were walking along the north track did you see anybody? A Not until I met Mr. Burns.

Q Up to the time you met Mr. Burns had you seen any one else in the yard? A No, sir.

Q Did you know Burns? A Yes, sir.

Q When you saw Burns what did you do? A We stopped and talked a little while.

Q Where was it you stopped to talk with him? A Right by the bulkhead.

Q How long did you talk? A Oh, I don't know, about five minutes, I guess.

Q Then what did you notice, if anything? A Then I was going down to the boat, and Mr. Burns said there was a fire there up in the yard.

Q Well, now, in order to get to the point where you met Mr. Burns, you walked along the track you told us, the north track? A Yes, sir.

Q As I am indicating on the map now. As you walked along the north track in the direction of the North Pier, and before

you met Burns, did you see anything of a fire anywhere in the yard? A No, sir.

Q Or in any of the cars? A No, sir; I didn't see anything of it.

Q Now, when Burns spoke to you and said something about a fire what did you do? A Well, we tried to get a better view of it, and then Mr. Burns said he would go up and see what it was, see if we could put it out and told me to wait, and then he hollered and the rest of the Dougherty men and myself we started to run up, and as we came up close to the car he says to get away from the car, it is a car of ammunition.

Q How close did you get to the car? A Well, I guess I got on that second track.

Q You mean the second track from the car? A No, from the north—the north track, and then the next track.

Q How far would that bring you to the car? A Well, it is over a couple of tracks.

Q Could you see the car from where you stood? A No, sir; I couldn't see the car.

Q Couldn't see the blaze? A I could see the blaze up over the car.

Q Was there any blaze on the ground? A I didn't see any.

Q What kind of a car was this? A A box car.

Q Did you notice whether the doors were closed? A I didn't see it, so I couldn't see the doors.

Q You didn't pay any attention to the doors? A No.

Q Did you continue to look at it or what else did you do? A I kept on going.

Q Fast or slow? A Well, pretty fast.

Q Well, why? A I was afraid, because Mr. Burns said it was ammunition, and I knew there was ammunition in the yard, and I thought I better get to safety.

Q Now did you notice where Burns went? A He went up—he was ahead—he looked to me as if he was over by the warehouse, and then when I met him again he said he had turned in the fire alarm.

Q What had you been doing in the meantime? A Well, I ran up toward the elevator and then Scott, Burt Scott, he called up Dougherty, at least he said so, and I said I would call up Ackerman and tell him about the fire.

Q Did you call up Ackerman? A Yes.

Q Did you ask for a tug?

Mr. Stallman. I object to counsel leading the witness.

Mr. Hobart. That is leading.

Q What did you say to Ackerman? A I told him there was a fire on Black Tom, and it wasn't very bad at present, but we didn't know what it would amount; if he had a tug to get the boats out of there it would not be a bad idea, or to stand by, and he said he didn't have any men on the boat or he could not get any tug at that time.

Q Well, do you know whether in fact your boat, the Paulina, was pulled out at any time by an Ackerman tug? A No, sir; I don't know.

Q What is that? A I don't know.

Q Where did you next see the Paulina? A I saw her at the Lehigh Valley dock in Jersey City.

Q Well, that is not the Black Tom terminal? A No, sir; that is above Jersey Central ferry.

Q That is some distance from this Black Tom Yard? A Yes, sir.

Q Do you know how she got there? A No; only I was told a tugboat pulled her.

Q Never mind what you were told. You didn't take her there? A No; I didn't take her there.

Q You were not on board when she was taken? A No, sir.

Q Well, when you last saw the Paulina, that is to say after you were talking with Burns, and had started to walk up to look at the fire, where was your boat at that time? A Down at the south side of the North Pier.

Q Same place where she had been? A Yes, sir.

Q Up to that time had she been moved away from that position? A Had she been moved?

Q Yes. A No.

Q Where did you finally go after you seen Burns by the warehouse and spoke to him again, where did you go then? A After I telephoned?

Q Yes. A Well, we stood there awhile, and then Mr. Scott and I walked down the roadway a ways.

Q Well, how far did you go? A I don't just really know how far I did go. I don't remember where I did stop.

Q Well, did you keep right on going? A No, I stopped; we stopped when we got down—

Q Where were you when the explosion came? A Where I stopped.

Q Do you know where that was? A I think it was around the second warehouse.

Q Where? A Around the second warehouse.

Q Had you got Mr. Ackerman on the phone before the first explosion occurred? A Before the first explosion; yes, sir.

Q Where were you when the second explosion occurred? A Way back at Black Tom.

Q Well, after the first one you started to go away again, did you? A Yes, sir.

Q And this time you kept going? A I got a good distance away.

Q A little further than the first? A Further.

Q Do you remember what time it was that you got Mr. Ackerman on the phone? A Well, I don't know; probably around one o'clock; I am not sure of the time.

Q But it was around one o'clock? A I think it was around one o'clock.

Mr. Hobart. Cross examine.

Cross examination by Mr. Stallman.

Q You went out that night to see a girl, didn't you? A Yes, sir.

Q And you were coming right back to your boat? A What is that?

Luke Eiseman, cross.

Q You were coming right back to your boat? A I was coming right back to my boat, yes.

Q And you say you left the captain of the Rockwell and the captain of the Jet in charge of your boat when you went away? A Yes, sir.

Q Now, you say when you came back to Black Tom you met no one. Did you meet any watchmen or gatemen down at the entrance to Black Tom? A Not that night.

Q Anybody want to know what your business was there? A Anyone know my business?

Q Yes. A No.

Q You just walked in that yard without anyone asking you where you were going? A Well, that night I did.

Q I am speaking about this night. A Yes, sir.

Q Is there a gate at one end? A Well, there was a gate there.

Q This night? A No, it was not closed.

Q There was a gate there and it was open? A Yes, sir.

Q And you did not see anybody, watchman or anybody else, around that night? A No, sir.

Q Now, how far did you walk before you saw Eiseman? A Before I saw Burns?

Q I mean Burns, yes. A All the way down the dock.

Q That is about three-quarters of a mile, isn't it? A I guess it is.

Q And during all that time you did not see any watchman of any kind? A No, sir.

Q And you did not see anybody else? A No, sir.

Q Nobody stopped you to ask you where you were going? A No, sir.

Q Now, you say that you knew Burns? A Yes, sir.

Q How did you happen to know him? A Well, from meeting him at the powder dock, as we call it.

Q Meeting him at the powder dock? A Yes, sir. Black Tom at Dock 19.

Luke Eiseman, cross.

Q Did you meet him very often at Black Tom? A Well, every time we went there, when we went there. We used to stay at Dock 19 for a while, used to meet him there.

Q How long had you known Burns before the fire? A Oh, I guess about four or five minutes.

Q How long had you known him? A Oh, I had known him before I met him on the powder dock, Dock 19 or Black Tom.

Q Well, I am saying, how long had that been, a couple of months or a couple of days? A Four or five months.

Q You had known Burns four or five months? A Yes.

Q And during that period had you met him frequently in and about Black Tom? A Oh, yes.

Q Were you at Black Tom frequently? A Well, once in a while we used to tie up there over night.

Q Well, you mean two or three times in four or five months. A Yes.

Q And you had a good speaking acquaintance with Burns on those few occasions? A Oh, yes; we used to stop at the shanty and talk to him if I was not going anywheres in the evening.

Q And did you make the acquaintance of any of the Lehigh Valley men? A No.

Q Did you see any of them? A I did see them, yes; but never to speak to.

Q They never came down to your boat? A No, sir; that is, night men.

Q How many times would you say before this fire you had been at Black Tom? A Oh, a number of times.

Q Well, about how many? A A dozen.

Q At least a dozen? A Yes.

Q Probably more? A Well, maybe more.

Q And on those occasions were you laying over there or loading munitions? A Well, I laid there a few times, and other times went to Dock 19, Jersey City.

Q And laid over there? A Yes, sir.

Q Had anybody ever told you to go away from there? A Not that I can remember.

Luke Eiseman, cross.

Q You say you talked with Burns about five minutes? A Yes, sir.

Q Now, it was about—It must have been about a quarter to one when your attention was called to this fire, wasn't it? A I should judge about that time.

Q Yes. You say that you went down with Burns nearer to the fire. Now, at the time that you stopped to make an observation, was Mr. Burns with you? A No; Mr. Burns was ahead of me.

Q Ahead of you? A Yes, sir; he went down first to see.

Q And you went down alone, then, afterwards? A No; with the other three Dougherty men.

Q Where did they come from? A I don't know whether they came out of the shanty or not; I cannot say.

Q But you started with these three men down and you walked past the place where the fire was and didn't stop to see just what it was that was burning? A Kept right on going, and Mr. Burns said it was a car of ammunition.

Q And all you could see of the fire was that it was at some point beyond a number of intervening cars? A Yes, sir.

Q There were several cars on several tracks between you and the fire. A Yes, sir.

Q And when you went there it was then blazing up above the roofs of the cars? A Yes, sir.

Q When you saw the Paulina—at Jersey City Terminal of the Lehigh Valley, did you say? A Yes, sir; just about the ferry—Jersey Central ferry.

Q What condition was she in then? A Well, she was all burned all over.

Q I see. Did you see the Thompson at the same time? A No; not at the same time.

Mr. Stallman. I think that is all Mr. Eiseman.

Mr. Hobart. That is all, Mr. Eiseman.

Mr. Stallman. Let me ask you one question, if I may.

(*By Mr. Stallman.*) I do not think you indicated on the map where that fire was. You see where the float bridges are? A Yes, sir.

Q And where the tank is? A Yes, sir.

Q And the warehouses? A Yes, sir.

Q Are you generally familiar with the location of those structures at Black Tom? A Well, I don't know as I can say that; I don't know as I can say I am so familiar.

Q Well, you knew where they were? A Yes, sir; I knew where they were.

Q Now, can you by referring to any structure on the map indicate about where you think the fire was? A Right around that —third or fourth track.

Q From where? You mean from the top of the map? A Yes, sir.

Q Well, now, those tracks are quite long. Here is the first, second, third and fourth tracks at this particular place. Now, should I move to the west or towards the east? A I think towards the east.

Q Towards the east? A Right in around there.

Q Somewhere near this first yellow car on the fourth track? A I think that is about it.

Q You think that is somewhere in that neighborhood? A Somewhere in that neighborhood, yes.

Mr. Stallman. I see. That is all.

Mr. Hobart. That is all.

(Witness excused.)

Mr. Hobart. By consent I will read the testimony of a witness, Raymond Carinne from a record in another case, Royal Indemnity Case, page 975.

Mr. Hobart. Reading.

"RAYMOND CARINNE, sworn.

Direct examination by Mr. Hobart.

"Q Are you the young man referred to by the last witness as the one who kept the powder book? A I am.

"Q You kept this at the office of the Johnson Lighterage Company? A Yes.

"Q Made entries in it from day to day? A Yes.

"Q State generally what it shows. A It shows my record of just what is on the boat for future reference.

"Q A record of the loading of the boats? A Yes.

"Q And how do you get the record? A I got them from the railroad company—reports of the Lehigh.

"Q You kept the record of it in the regular course of business, did you? A Yes.

"Q I observe certain pages have been turned down here with notes at the top marked No. 17 and Frank—Frank—there may be some others—now, does that show the lading? A Yes, sir.

"Q Of the different barges? A Yes, sir.

"Q I show you this typewritten sheet to which I have already called the attention of Mr. Johnson. Have you seen that before? A Yes, sir.

"Q Who made it up? A I did.

"Q Made it up from what? A Made it up from the records in the book.

"Q Now, will you show us the records in the book from which you prepared this typewritten memorandum? A I will.

"Q Where are they—any pages in the book? A Yes; that is why I did not have them—

"*Mr. Garrison.* Have him read the items from the book.

"Q Can you refer to the book and pick out the item?

"*Mr. Skinner.* Tell us what it is; perhaps we can agree on it.

"Q Was it made from the book? This memorandum? A Yes.

"*Mr. Skinner.* Mr. Johnson says that the book this was taken from is a record of the contents of the barges kept by this young man, and if the young man says the paper you have is a copy, that is all right; use it.

"*Mr. Hobart.* That is all we want.

"Q Now, refer to the memorandum and tell us by reference to the memorandum what cargo was on the barge Frank?

"*Mr. Skinner.* On—?

"Q On July 29 and 30—I mean to include—1916. If you have taken this memorandum from the books it will save time if you just look at the memorandum and then if Judge Skinner or anybody wants to look at the book later they can.

"*Mr. Skinner.* Can't you see the memorandum now?

"*Mr. Hobart.* Yes; I am willing to if you agree to it.

"*Mr. Skinner.* I am willing to shorten it up.

"Q Look at the memorandum and tell us what was on the barge Frank? A There was three cars of explosive projectiles and five cars of TNT.

"Q How do you determine from your records or from your memorandum based on the record that the cargo was there on the evening of July 29? That is what I want to know. A I have no idea. I was just keeping that record, that is all.

"Q Does the record show that? A The records show the exact date the boat was loaded.

"Q You give so many cars? A Yes.

"Q How do you tell the number of cars? A By the car numbers.

"*Mr. Garrison.* Does he know where he got them?

"Q Is there anything to show where they came from? Does your book show? A Yes.

"*Mr .Garrison.* Tell us from your book what railroad the car came from.

"Q Take the barge Frank, the first car number is, according to this memorandum, 562724. Is there anything to show where that came from? A Jersey Central.

"Q And that had what? A 378 boxes of explosive projectiles.

"Q The next car is 24788. Where did that come from? A From Jersey Central.

"Q What did that have? A 520 boxes of explosive projectiles.

"Q Now 6964. Where did that come from? A Jersey Central.

"Q And what did that have? A 227 boxes of explosive projectiles.

"Q That makes three cars. You spoke of five. I said three cars of explosive projectiles and five cars of TNT.

"Q Five cars of TNT? A Yes.

"Q I do not see any car number for TNT. Is there anything to show the car number or where those cars came from? A Yes.

"Q Where did they come from? A Lehigh Valley.

"Q On what date? A On July 29 they were loaded.

"Q July 29th? Anything to show the hour or the time, or anything of that sort? A No, sir.

"Q Where is the record of that, please, in the book? A There is a part of it right there, and of course we did not have room enough there so I put it on this page.

"Q On those two separate pages? A Yes.

"Q You have got this marked 'Czaritza.' What does that indicate? A That is the steamer it was intended for.

"Q This barge Frank you are speaking of now all the time? A Yes.

"Q Now, turn to the barge known as Johnson 11. What have you got as to Johnson 11? A Three hundred barrels of wet picric acid.

"Q Where did that come from? A New Haven Railroad, Harlem River.

"Q That is all that was on that one? A Yes.

"Q Now we come to—

"*Mr. Garrison.* Where was that to go?

"Q Indicate where that was to go? A Yes; that was intended for the steamship Novgorod.

"Q Is that a Russian boat, do you know? A Yes.

"Q Now, come to Johnson 17, what is the record that you have of that? What is the record of that?? A 1,005 cases of TNT.

"Q Now, where did that come from according to your memorandum? A West Shore Railroad, Weehawken.

"Q Is there anything there to show the consignee of that? A Why, no—it was the orders from the Russian government, that is all.

"*Mr. Garrison.* Where was that to be delivered?

A For Gravesend Bay, intended for the steamship Novgorod.

"Q Before you leave the TNT, is there anything to show the car number or numbers? A Yes, sir.

"Q How many cars were there? A Two cars.

"Q Both of them according to your record loaded at what point? A At West Shore Railroad, Weehawken.

"*Mr. Garrison.* Give the numbers of those cars.

"Q Have you the numbers of them? A Yes.

"Q Read them, please? A C. R. I 37511; C. & N. W. 109022.

"Q I notice opposite those cars in your memorandum some name that looks like C. J. Med. A That is the shipper. His name is C. J. Medjakowski. I could not put it in there.

"Q It was too long to write in? A Yes.

"Q Do you know what his position was? A Why, he was attached to the Russian Embassy.

"*Mr. Garrison.* Is he the person to whom it was shipped?

"A No; that is the person that ordered it shipped.

"Q Ordered it— A Ordered us to deliver alongside steamers in Gravesend Bay.

"Q Was there anything else on Johnson 17 according to your memorandum? A 417 cases of detonators.

"Q You marked them exploders on your typewritten memorandum? A Yes, sir.

"Q Is that the same as detonators? A Yes, sir.

"Q Where did you get those? A From the Erie—Erie Railroad Company, Weehawken.

"Q Have you the car number? A I have C. P. 201681.

"Q Is there anything to show who gave you the order for those? A It was received from the Newcastle Construction Company.

"Q Where were they going according to your record? A Overseas to Russia—intended for the steamship Czaritza.

"Q There was only one car in regard to those? A That is all—417 cases.

"Q And you have given us the car number? A I have.

"Q Was there anything else on Johnson 17 according to your records? A That is all.

"Q Now, according to this memorandum you have got here at the bottom of it—you say this was written by you—'Statement of cases, etc., received by Johnson Company and on board at the time of the explosion.' How do you determine, or how do you know whether they were on board as far as your records show? A According to the records."

Mr. Hobart. The colloquy is omitted.

(Continues reading.)

"Q Can you tell by your records now—you spoke of some cars containing TNT that had been loaded on the barge Frank—does your records give the numbers of those cars? A Yes.

"Q Refer to them and give us those car numbers.

"*Mr. Garrison.* He said Lehigh Valley cars. That is how I know they were loaded at Black Tom.

"Q Look at that so that we will not have any question. A C. & N. W. 141052; C. & N. W. 139326; C. & N. W. 121346; Omaha 29468; Omaha 30764.

"Q Those are the five cars you have already mentioned?

"*Mr. Garrison.* I do not want to consent that they were out of the yard. They are not; they are still in in the yard.

"Q Now, does your record show that those five cars whose numbers you have just given us, were loaded from the cars on to the barge on July 29th? A Yes, sir.

"*By Mr. Skinner.*

"Q Just one question. Can you tell whether these memoranda show the barges that are mentioned to have been completely loaded, was there a barge still incomplete, something more to be added to it? A There was, the next day.

"Q You mean that there was more to go into those barges the next day? A Yes, sir.

"*Mr. Skinner.* That is all.

"*By Mr. Hobart.*

"Q Do you know which of the barges were to have more the next day? A I do not; I was only keeping the record. I had no charge of the supervision of the lighters.

"Q The records show that the barges were to have something more put on the next day. Does that apply to all three of those barges that you have mentioned, or to some of them or two of them or all of them—according to your records, of course; that is all you know about it, I suppose? A Well, as far as I know about how much a boat would carry, I know she didn't have a full load.

"Q Well, do you know that any of them had a full load? A I don't know all of them.

"Q Well, which is the one that didn't have a full load?

"*Mr. Skinner.* He doesn't say it was one.

"Q Well, which were the two, or which were the three? A You see; I only kept the records; I don't know.

"Q You really don't know about that, do you? A No, I don't know; I just kept records, that is all.

"*Mr. Hobart.* That is all."

Mr. Hobart. Again by consent—it is well I should explain why this is done; the witness whose testimony I am now about to read has sent word he is sick in bed and not able to get out, and the parties have kindly consented that the testimony may be read—page 446—

"CAPTAIN JOHN McCAFFERY, sworn.

"*Direct examination.*

"Q Captain, where do you reside? A Port Richmond, Staten Island, 124 Jewett avenue.

"Q What is your occupation? A Captain of the municipal ferry.

"Q Were you in the same position in July, 1916? A No, sir.

"Q What were you doing then? A I was quartermaster.

"Q On any particular boat? A Ferryboat Richmond.

"Q What was her run? A From New York to St. George.

"Q Were you on your boat the night of the 29th or 30th of July, 1916? A Yes, sir; I had charge of it.

"Q Do you recall seeing a fire on Black Tom Island that night? A I do.

"Q When did you first notice that fire and from what place? A Well, I was laying in New York slip, loading passengers, I was going to make the twelve o'clock trip down there, and I was laying over my wheel on the outshore pilot house, and the other man was in the in-shore pilot house, and I was waiting for signals, and I looked at my watch, it was just about 12:02, and I was laying over the wheel and I was gazing around and I looked over and I seen between Liberty Island and Ellis Island, I saw a small fire burning there.

"Q Were you familiar with New York Harbor and the location of the different points around the harbor? A I am. I am seventeen years on the ferry alone.

"Q Were you able to know from your acquaintance with the harbor and your observation, where that small fire was? A I do, yes, sir.

"Q Where was it? A Why, it was on Black Tom Island, and it appeared to be about—two or three hundred feet inland, off the—

"Q Did you observe that fire from the time you named? A I observed that fire until it was out and until it was daylight in the morning.

"Q Could you see it during your run from New York to St. George? A I could see it all night and I run by it and I ran over—I would stand out of New York slip—we would stand out of there, we stand west by south.

"Q What did you notice about that fire on your first trip down? A Well, I noticed the fire was burning there; it was quite small, and as I came off—I came off and got abreast of Liberty Island, we hauled down there, and I had the fire on my side, you could see it getting bigger and bigger, and when I got to St. George we left it behind us then, the boat would leave it behind.

"Q How long does it take to make the run? A Make the run twenty-four to twenty-five minutes. I left St. George—I came between—on the off-shore pilot house and looked up the bay and the fire was burning quite briskly then. We left St. George at 12:30. We came up the bay and we passed by it, and the fire had a good start. You could see everything then, you could see the outline of the barges laying there and schooners laying there, and everything—

"Q Did you make another trip? A We made trips all night. Then we left New York at one o'clock.

"Q Still see the fire? A Fire was still burning.

"Q Was it on your return trip? A Seen it on the return trip; see it all night.

"Q Go back again at two o'clock? A Yes.

"Q Notice anything special on the two o'clock trip? A We noticed the explosion after two o'clock.

"Q Now, had you noticed prior to the explosion any appearance of shooting of shells, bursting of shells? A No; we couldn't notice that, we couldn't notice any shells bursting.

"Q Can you tell us about the explosion? What was the effect in your immediate neighborhood, and what did you observe? A Well, the explosion went off, the whole sky, the whole bay was illuminated. You could see everything, could see Staten Island, Brooklyn, and the whole place; the whole place was illuminated up, the whole bay.

"Q You could see where the explosion was? A Oh, did we see where it was?

"Q Yes. A We could see it. Could see in there among the barges—the explosion went off among the barges.

"Q Was it where you first saw the fire? A Oh, no, no, no. It was up more towards—up more towards Ellis Island than what—where the fire was—where the explosion was, the explosion that done the illumination.

"Q Did you notice any fragments of fire around anywhere in your neighborhood? A Oh, yes, yes.

"Q Was there more than one explosion that night? A Yes, sir.

"Q How long after the first explosion was the second? A About thirty minutes.

"Q Now, after the second explosion did you see any of the barges drifting around on fire? A Yes, sir.

"Q What neighborhood? A Why they drifted up toward Ellis Island.

"Q See more than one? A Why, yes; I seen two or three of them drifting—I see two or three of them around there.

"Q How long after you first saw the fire before you noticed any explosion, any appearance of shells coming out of the fire?"

Then there was some objection. It is not necessary to read that, I suppose.

"*Cross examination.*

"Q What was your schedule, what time did you leave New York? A We were scheduled to leave on the hour.

"Q And leave Staten Island? A On the half-hour; round trip an hour.

"Q Yes. Is that your memory of the first time you saw this fire was on your twelve o'clock trip? A Yes, sir.

"Q Are you sure it was not on your one o'clock trip? A No, sir.

"Q You are not sure? A No, sir; it was twelve o'clock trip.

"Q You are not sure or you are sure? A I am sure is was on the twelve.

"Q First time you saw it on your twelve o'clock trip? A Yes, sir.

"Q What is your route—between what docks? A What is my route, between which docks?

"Q That is what I asked you. Between which docks is your route; where do you land one place and where do you land at the other place? A I land at St. George one place, and then at the foot of Whitehall street the other place.

"Q That is at the Battery? A At the Battery, yes, sir.

"Q At one o'clock you were back in your New York slip? A Yes.

"Q At that time there was a very large fire, was there? A Yes, sir.

"Q A very huge fire at that time? A Yes, sir.

"Q At one o'clock? A Yes, sir.

"Q And the explosion did not come for an hour after this large fire, did it? A No, sir.

"Q And the explosion was in among the barges, wasn't it? A The one that I saw, yes.

"Q Looked as though a barge was blowing up? A Yes, sir.

"Q Where were you at the time of the second explosion? A At St. George, Staten Island.

"Q Of course you couldn't tell much about that then? A No, sir.

"Q That is all. Just one word. The time that you saw the barges drifting around there after the second explosion? A We seen them drifting around after the second all morning until—until I was relieved.

"Q You did not see them drift around after the first explosion, but you saw them after the second explosion? A After the second explosion.

"Q That is all."

HARRY A. CAMPBELL, recalled.

Direct examination by Mr. Hobart.

Q You have already testified here on the subpoena of the plaintiff. I want to ask you one or two matters now that were not covered in that examination. Did you give any instructions or warnings to the barge captains and particularly captains of the Ackerman Lighterage Company prior to July 30th, 1916, relative to the anchorage grounds in the New York Harbor?

Mr. Stallman. I think, Mr. Hobart, I shall have to object to that, because you went into that yesterday—go on.

A I gave the instructions to the foremen in charge of the work.

Q And you notice my question related particularly to the Ackerman Company. Does your answer include the Ackerman Company? A Yes, sir; I gave it to all the foremen of the various companies.

Q You were present on one occasion with Mr. Dickman a few days before the 30th of July at Black Tom Terminal? A I was, but it might have been a week; it might not have been days.

New Jersey State Library

Q Your recollection is it was about a week? A Yes, sir.

Q Well, what instructions or directions were given then, either by you or Mr. Dickman, or by both of you together?

Mr. Stallman. Wait a minute.

A I gave the instructions to the foreman.

Mr. Stallman. Are you identifying the person to whom this was given?

Mr. Hobart. I am going to try to.

Mr. Stallman. I think you ought to identify the persons first, because if this is not connected, I want to object to it.

Q Referring to this occasion, and withdrawing that question for the present, were there any of the Ackerman barges there at the time? A There were.

Q And do you know which barges they were? A I do not.

Q Do you know which individuals they were? A Well, the foremen's names, you mean?

Q Yes. A The foreman was only known to me as Jim. He was a big fellow; he always wore a blue woolen shirt. He was in charge of their work.

Q That is, the Ackerman work? A Yes, sir.

Q And were there some Ackerman barges there at the time? A They would—there would have to be Ackerman barges there at the time in order for him to be there, because he had charge of their work.

Q You do not recall, however, any name of any particular barge at that time? A I do not.

Q Did you give any instructions, or did Dickman in your presence give any instructions to this foreman of the Ackerman Company on that occasion.

Mr. Stallman. Before that question is answered, I would like to cross examine this witness as to just how accurate his knowledge is that the man he was speaking to was—

The Court. You may ask him.

Cross examination by Mr. Stallman.

Q You say you gave some instructions to a man by the name of Steve? A No; Jim.

Q Jim? A Yes, sir.

Q And what was he employed in doing, as far as you observed? A He was a foreman in charge of the loading of the lighters and unloading of the cars for the Ackerman Company.

Q You saw him supervising the unloading of munitions, I suppose, from these cars into the barges? A No; onto the decks of barges.

Q Well, onto barges. Do you know whether or not he was employed by some stevedore or stevedore corporation, or by the Ackerman Lighterage Company directly? A He was employed by the Ackerman Lighterage Company.

Q You do not know that, do you? A If he did not, he was a liar.

Q Well, your information is from something that he said? A Yes, sir; he told me.

Q Did you ask him? A Well, when I first went on the job, I asked them all where they came from, each lighterage company, I asked them for their foremen.

Q You got hold of the foreman that was supervising the work of transferring the cargoes? A That transferred from a car first to a boat.

Q Yes; but you have not any knowledge of your own that this man you are speaking of, this Jim, was an employee of the Ackerman Lighterage Company, have you? A Other than what he said. Do you mean did he come down with their gangs, do you mean?

Q No; that he worked for them and was on their payroll? A Oh, I never saw their payroll.

Q Do you know whether or not he was working for that company or whether he was the stevedore that was employed to move the stuff out of the cars and put it on the barges? A He was

employed by the Ackerman Company, that is, had charge of the unloading of the ships.

Q How do you know he was employed by the Ackerman Company? A He told me himself; you see, when I went on this job—

Q I do not want to fence with you; what I am getting at is this: You understood that he was employed there for the particular purpose of transferring these packages of munitions out of cars and placing them on Ackerman barges? A That is right.

Q But you do not know whether in doing that work he was acting as an employee of the Ackerman Lighterage Company, or some stevedore or stevedore corporation to perform that kind of service, do you? A I do not know just how to interpret your question. How will I go into this thing to find out?

Q Well, I am only asking of your knowledge whether or not you knew that he was an employee working all the time for the Ackerman Lighterage Company and nobody else, or whether he was working for one of these companies who conducted a business of transferring cargo from ship to docks and from docks on to ships? A Maybe the best way for me to answer your question is to find out how I found out who he was—will that be better?

Q You do not know his name, only Jim? A He undoubtedly told me his name.

Q You do not remember? A No.

Mr. Stallman. It seems to me the identification is hardly sufficient to connect this man up with the Ackerman Lighterage Company in such a way that anything that was said to him would be binding upon the Ackerman Lighterage Company or upon the plaintiffs in these cases.

Mr. Hobart. Suppose we ask the witness how he ascertained the fact?

Mr. Stallman. I might have said this further—

The Court. I understand your point. I see it with perfect clearness. I do not have to be trophined to have

this point insinuated. I understand it, and I think the objection is well taken, but if you insist on arguing it with me, you may convince me to the contrary. I think your point is perfectly well taken. I think all that appears in the case so far is that this man has said twice that all he knows about the man's connection with the company is what the man told him; and that is hearsay, because, under Clifford versus Landrine, 10 Stewart, and all the cases in this state, the law is perfectly settled that the declaration of a man as to agency will not establish the agency; so I am prepared to sustain the objection if you make it.

Mr. Stallman. I object on that ground.

The Court. All right; I sustain it.

By Mr. Hobart.

Q Aside from anything which this man Jim told you, did you observe in fact what he did? A He directed the work entirely; he had supervision of the work.

Q For what barges—for the barges of what company? A For the Ackerman Lighterage Company.

Q How did you know the barges were those of the Ackerman Lighterage Company? A Each company had distinctive coloring markings.

Q Were you familiar with those markings? A I was at that time.

Q And how often had you seen this man supervise the work of those barges that had that coloring? A I used to see the same crew at all the different piers which I visited where explosives were unloaded; I did not only see them at Black Tom; I saw them at Dock 19, or Harlem River, or West Shore, or wherever they might be taking on explosives. The same crews did the work each day.

Q How often had you seen this particular man supervise the work of loading on to those barges? A Maybe three or four times a week.

Q I am speaking, of course, of prior to July 30th? A Yes.

Q You have that in mind? A Yes, sir.

Q Three or four times a week for how long a period before that time? A Maybe six months.

Mr. Hobart. Now, I respectfully submit that this should be sufficient to identify him with the Ackerman Company.

By Mr. Stallman.

Q Just one other question. All the work that you saw that man do had to do with the transferring of cargo; you did not see him do anything in connection with the movement or navigation of the barges, did you? A Oh, no, he just had the jurisdiction, as far as I know, over the work.

Q When the boats were still and the cargo was being transferred or loaded? A That is the only kind of work—

Q That is the only kind of work you saw him have anything to do with? A Yes; I did not see him operate a tugboat, if that is what you mean.

Mr. Stallman. I still insist it does not appear yet that anything said would be binding.

The Court. I think your objection is still good, because the statement to a man who has not any duty to perform with respect to communicating that statement to his employer is not notice.

Mr. Hobart. May not such duty be inferred if the evidence shows that this man was apparently in charge or supervising the work of loading?

The Court. I do not think so at all, because the only relevancy of what he said would be with respect to moving boats, and that apparently has nothing to do with what you are trying to show, that he was notified to get a boat out of the way. There does not appear the slightest scintilla of evidence in the case yet that he had any business to perform with respect to moving boats, so under the

circumstances it would appear to me to be plain there was no notice.

By Mr. Hobart.

Q Where did this man work, this man Jimmie, where did he do his work? Where was he when you saw him? A I saw him on the various jobs.

Q Was he on the dock or in a freight car? A He was all over everything; he was in charge of the—of all the—

Q Did you observe any of these Ackerman barges when they were moved away from the dock? A Yes; I have seen them moved away from the dock.

Q Where was this man Jimmie when the barges were moved away from the— A Well, he would stand on the pier and shout his orders to the boats.

By the Court.

Q What kind of orders? A Where they used to conduct the conversations from a pilot house on the boat to the pier he would tell him they wanted so many empties, or so many—to take away so many loaded ones from here and there.

Q Oh, well, the question is where he would tell them where to go and what to do, the boat, that is. A Where to go with the loaded boat?

Q Yes. A Only one place to go, your Honor.

Q I don't care whether there were a million places or one or none; I asked you whether you heard him indicate to them by order what to do with the boats? A Just say, "Take the loaded boat out."

Q All right.

By Mr. Hobart.

Q Well, did he indicate where they were to take it? A He would not have to; that is a known fact.

Q Well, as far as you can recall, do you remember whether he did indicate in any way? A I don't recall ever hearing him say directly, "Take it here," or "Take it there.'

Harry A. Campbell, direct.

By the Court.

Q Well, would they ever move, as far as you saw, in his presence, without his giving them directions for them to go? A No, I think not.

Q All right.

By Mr. Hobart.

Q May I put that same question a little differently. When this man Jimmie did give directions or did say something to the men on the barges, were the boats moved after he gave the directions? A Oh, yes; they were moved?

The Court. I don't see that that makes any difference, because they never did move unless he gave orders, and it follows necessarily they would not move unless he did.

By Mr. Hobart.

Q Do you know whether or not, or did you observe whether or not the instructions this man gave were in fact followed by the men on the boat? A Yes, they were followed.

Q And particularly the instructions as to where the boat was to go, where it was to be moved? A Well, I did not follow the boat.

Q You did not go along with the boat? A No.

Q When this man—let me put it this way—did this man tell the men on the Ackerman boats whether or not they should move from the pier? A Whether or not they should move?

Q Yes. What did he tell them? A He would say, "Take that boat out and shift in an empty one."

Q And when he said that, to take the boat out or shift it, or whatever it might be, did the men do what he told them to do? A Yes, they did.

Q How often have you observed that? A Well, every time I saw them working he had to give them their orders.

Mr. Hobart. It does seem to me, your Honor, that we have enough.

The Court. I haven't any doubt about it now, unless there are further questions to be asked on the other side. I think it is established, first of all, that the barges on which this work was done were barges of the Ackerman Company, and that it will be presumed that if they were the barges of the Ackerman Company, that the persons on the barges were the employees of the Ackerman Company, because in our own state, in the case of Edgeworth against Wood, 29 Vroom, we have it settled clearly that if the name of a company appears on a wagon, and it is proven to be the name or the device of that company, that from that fact the boat or wagon would be presumed to be the wagon of that company, and to be in charge of its employees.

I have no doubt, furthermore, that the law is perfectly settled in this state—I think the case of Richie against Winnerman to the effect that you can prove agency by showing the facts indicating that the man actually performed work of a certain kind which indicated he was occupying a certain office or a position. Now in this case it seems to be quite clear from the evidence that the jury may infer that this man was actually engaged as a foreman in the loading of these boats, and in the directing of these boats as to where they should go and when they should go and how they should go, and I think therefore that inasmuch as it may be inferred from the evidence already in the case, that they were the boats of the company, and that these were the agents of the company, that the direction given by such an agent would be a direction which he would be under an obligation to notify to his principals, and therefore it might be held to be notice to the principals. I have stated my reasons merely because the question has been discussed so much here that I thought it ought to be written down in the record, the ground on which I have decided it. The other side may have an objection entered to that ruling.

Mr. Stallman. Take it.

Harry A. Campbell, re-direct.

Re-direct examination by Mr. Hobart (resuming).

Q Well, did you give any instructions or directions or warnings to this man Jimmie as to what should be done with the Ackerman boats after they were loaded? A I gave it to all of the foremen, not only this particular one, but I gave it to everybody.

Q I am calling your attention particularly to Jimmie? A Oh, yes. Yes; I spoke to him also.

Q What were your instructions or warnings? A I told him that the Coastguard regulations forbid them to tie up at piers between sunset and sunrise, the boat must be taken to the powder anchorage. They were familiar with that.

Q Did you tell them where the powder anchorage was? A You mean nautically?

Q Yes. Where it was located? A Well, I just told them general directions. They knew where it was.

Q Did they ever ask you where it was, or did Jim ever ask you where it was? A He did not.

Q Did he ever indicate he did not know where it was? A He did not.

Q Were you present on this occasion—going now back again to where we started—an occasion about a week or so before the explosion when Mr. Dickman was present? Was any warning or instruction given at that time to Jimmie, either by you or Mr. Dickman? A Yes, I think the week before was when Mr. Dickman was with me. I did the warning and he substantiated my remarks.

Q Dickman was with you? A Yes, he repeated it.

Q Now, calling your attention to the morning following the explosion, that is to say the morning of Sunday, July 30, 1916, were you at Black Tom or in that vicinity that morning? A I was.

Q And were you at that time in the vicinity of the anchorage grounds? A On Sunday morning?

Q Yes. A Well, I was about Black Tom on a tugboat.

Q Can you see the anchorage grounds from that point? A You mean see ships on the anchorage ground?

Harry A. Campbell, re-direct.

Q You are familiar with the location of the grounds? A I was.

Q What time were you there that morning? A You mean what time was I at Black Tom or what time was I on a tugboat?

Q Well, did you go over by tug? A I came to Dock 19 by automobile and got on a tug at Dock 19, and then I got on a tug at various times during the day.

Q What time did you get to Dock 19? A Around four o'clock in the morning.

Q You had heard of the explosion, I suppose? A Yes, the railroad company telephoned me. I was on a tugboat, I guess, three times. I think the last time I was on a tugboat was towards noon time, on Sunday.

Q All right. Was it daylight around four o'clock or so in the morning when you first got there? A No, it was not daylight.

Q When was it that you first observed or first could observe any boats at the anchorage grounds that morning? A It was after I got outside of the smoke; I suppose it was after eight o'clock, I guess, around eight o'clock.

Q Did you see any boats at the anchorage grounds? A Yes, I saw boats on the anchorage grounds.

Q About how many, that you have any recollection of? A No, I don't know how many there were; there were more than four there.

Q Do you know what boats they were, or what company? A No, I don't know what company they were.

Q What kind of boats were they, what kind of boats? A Boats with explosives on board, barges, I suppose, of course.

Q Red flags on them? A Oh, yes, they had to have a red flag on them.

Q Could you see that flag? A That is what you can determine an explosives boat by.

Q Do you know whether those boats that were at the anchorage grounds were damaged to any extent by either of these two explosions? A Well, I do know that they were, but not on this Sunday, I did not know it.

Q Well, you made some inspection of them? A Subsequently.

Q Well, to what extent, if at all, were those boats that were on the anchorage grounds damaged? A Well, the side towards the Black Tom Island was—on two boats were slightly blown in; the door sort of pulled away from their fastenings and the glass was broke.

Q And was that all? A Yes; that was all.

Q Any evidence of any explosion or any fire on the boats themselves? A Oh, no, there was no explosion on those boats.

Q You said there wasn't any indication of an explosion on any of the boats that were on the anchorage grounds; was there any indication of fire on any of them? A There was not.

Q How far are those grounds from the North Pier on the Black Tom Terminal?

Mr. Rockwood. From this point (indicating on map).

Q The end of the North Pier? A Well, I should think they were probably a mile.

Q Reference has been made in the case to a detonating fuse. Are you familiar with their appearance? A I am.

Q And construction? A I am.

Q What are they made of? A A detonating fuse is made of either brass or cast metal.

Q How big are they? A Are you talking about a point detonating fuse, or base detonating fuse?

Q Point fuse? A A point detonating fuse is—varies from about three-quarters of an inch in diameter to two inches in diameter. For a shell like is concerned in this case it would be about an inch in diameter, be about eight inches long, cylindrical in shape, conical, pointed at the top.

Q What do they look like after they are exploded? A They don't look like.

Q You mean they disappear? A They all go into minute fragments, except sometimes the conical top stays intact.

Q Does that same thing apply to this other kind of fuse, the base fuse? A Yes, but the base fuse does not go into as many

fragments, because it is made of brass and it is not so readily fragmented.

Q What is the contents? What is the explosive material? A There are two types of explosive material used in detonating fuses; they vary from mercury fulminate fuses to a combination of mercury fulminate, and tetronitromethylanilin, but mercury fulminate is confined usually in a copper tube about a quarter of a inch in diameter, and an inch and a half or an inch and a quarter long, and upon impact the mercury fulminate in this tube rides up to a point, and explodes. The explosion of that occurs inside this tetronitromethylanilin.

Q What are those fuses used for? A They are used to detonate high explosive projectiles.

Q And they do not always come as a part of the projectile itself, do they? A Very rarely do, it is not good practice to put them in a shell until you get them on the field.

Q And then they are put into the gun or fastened to the shell that is exploded? A They screw it into the projectile.

Q Now is there any difference between those detonating fuses and what has been described in this case as a combination fuse? A Yes, sir.

Q What is a combination fuse? A The combination fuse ignites the propelling charge of a shrapnel, that is, not the propelling charge of the projectile, but the propelling charge of the shrapnel balls. A combination fuse only serves to ignite powder. A detonating fuse serves to explode a high explosive.

Q Is there any difference in the outward appearance of them? A Oh, yes; a combination fuse is approximately two and a half to three inches in height, and on the outside of it it will have marked seconds or numbers which indicate seconds or fractions of the second at which this fuse may be set to function after it leaves the gun.

Q How long did you say the detonating fuses were? A Oh, detonating fuse is eight inches long, cylindrical in shape.

Q Just one other question. When you observed these different barges at the various piers, and particularly the barges of the Ackerman Company, did you notice whether they had any appar-

atus on them, such as fire extinguishers or fire hose, or anything of that kind? A I didn't notice that.

Q You didn't see any? A No, sir.

Q I will ask one other question, which do not answer until we see whether Mr. Stallman objects. Do you know what the reason was for the anchorage regulations about having loaded boats to anchor at a certain point in the harbor rather than remain at piers? Do you know what the reason for it was? A Shall I wait for you to object?

Mr. Stallman. You can say yes or no. I cannot object to his asking you if you know.

Q Do you know what the reason was? A Yes.

Q You do know? What was the reason? A The Harbor Line Board ruled that they were an unnecessary risk.

Mr. Stallman. Go ahead.

Mr. Hobart. You may cross examine.

Re-cross examination by Mr. Stallman.

Q If a boat, steamboat or something, Mr. Campbell, would run into a barge loaded with wet nitrocellulose, what would be the risk? A You mean from an explosive standpoint?

Q Yes. A There would be no explosion.

Q And the risk would be in the way that barge got in the way of the steamboat, wouldn't it? A I don't follow what you mean.

Q I say, if a barge loaded with wet nitrocellulose, would get in the way of a steamboat it would probably be risky for the barge, wouldn't it? A Yes.

Q Her physical structure? A Yes; she would sink.

Q There would not be any explosion? A No, not with wet nitrocellulose.

Q How about smokeless powder? A Friction developed between metal may create sparks, and the breaking of packages like smokeless powder, there would be no explosion—just a flare.

Q And that is so of cordite? A Well, cordite is just a trade name for British smokeless powder.

Q That is smokeless powder of certain specifications? A Yes, that is true.

Q Now, how about dynamite? A Will you tell me what kind of dynamite you are talking about, and I will tell you the answer?

Q Well— A Dynamite covers a multitude of sins.

Q Yes, but there are explosives, are there not, which if loaded on barges, and the barge would be in a collision with another ship, that that collision might cause an explosion; isn't that so? A There are explosives of that nature, it is true.

Q There are explosives of that type? A Yes.

Q But wet nitrocellulose and smokeless powder are not of that type, are they? A No, not of that type.

Q That is all.

By Mr. Hobart.

Q There has been a copy of the regulations offered in evidence and I want to make sure that the one that is in evidence is the one to which you have been referring, Mr. Campbell?

Mr. Stallman. Well, now, the witness has not referred to any particular regulation.

Mr. Hobart. The anchorage regulation. I simply want to know whether the regulations to which his attention has been directed are the regulations that are on this exhibit that is in evidence.

Mr. Stallman. The objection I make is this, your Honor. All the witness testified to is that at the request of the Coast Guard, as I understand it, he told a man whom he supposed to represent the Ackerman Lighterage Company that they wanted him to go away from the pier. Now, at that time the witness did not identify any regulations or refer to any printed regulations, but stated what he had told this man at the request of the Coast Guard. Now, it does not seem to me that this witness can identify

a set of regulations in connection with that testimony. He is not connected with the bureau.

The Court. I do not think he can, either. I do not think it has any connection with his remarks at all. Certainly they cannot prove offhand that way.

Q You referred to the Coast Guard. Were there any regulations in regard to the anchorage of vessels, either of the Coast Guard or anybody else, outside of those issued by the Department of Commerce and Labor.

Mr. Stallman. I do not think he ought to ask Mr. Campbell that.

The Court. I will sustain the objection.

Q Were there any Coast Guard's written regulations?

Mr. Stallman. I make the same objection, if the Court please.

The Court. I will permit him to testify just yes or no, that there were or were not. What they were I will not permit him to say.

A Yes.

Q And do you know what department issues them? A The Coast Guard is under the supervision of the Treasury Department.

Q Well, reference has been made in some of your testimony to some of the anchorage regulations. Do you know those regulations? I mean the ones that were in effect July 30, 1916. Do you know those regulations when you see them? A I do.

Q And is this exhibit, which has been marked D. 11, the anchorage regulations to which you referred in your testimony?

Mr. Stallman. Now, if the Court please, I object to the question. I had no objection to the counsel introducing the anchorage regulations long before this witness went on the stand; but this witness certainly did not testify at the time of the conversation he had with the boatmen—

The Court. Well, you need not go any further. I will sustain the objection.

Mr. Hobart. Exception.

The Court. You may have it.

Mr. Hobart. Now, let me put one other question which do not answer until his Honor rules upon it:

Q Was there any regulation in relation to the anchorage of boats containing explosives other than the regulations entitled "Rules and regulations relating to the anchorage of vessels in the Port of New York," which is the title of Exhibit D. 11 and dated June 15, 1911?

Mr. Stallman. Well, I think I object to that because he is asking him a matter that Mr. Campbell—

The Court. Are those regulations in evidence?

Mr. Stallman. Yes, sir.

The Court. Well, what is the point of this question? I do not yet see it.

Mr. Hobart. I simply want to make sure that the regulations that the witness has referred to are the regulations that are in evidence, and that there are not any other regulations.

The Court. What difference does it make, if he did not tell the man that? What difference does it make what he referred to? We do not care what his intentions were. The only validity of his evidence is that he told it to somebody, and what he had in his mind or back in his party somewhere, we do not care for that. It has nothing to do with the case. I will sustain the objection.

Mr. Hobart. All right. That is all.

Mr. Stallman. That is all.

(Witness excused.)

Mr. Rockwood. Your Honor said the other day it did not make any difference any way; that they were supposed to know the law.

The Court. If you will look at what I ruled you will find you are entirely mistaken.

Mr. Rockwood. Am I?

The Court. Yes. Look it up.

Mr. Rockwood. I am sorry.

ALEXANDER DAVIDSON, sworn.

Direct examination by Mr. Hobart.

Q Mr. Davidson, what is your occupation? A Superintendent National Storage Company.

Q And how long had you been so employed at the time of this explosion on July 30, 1916? A From 1913.

Q Where were you when this explosion happened? A In Fulton avenue.

Q That is your home? A No, sir, I was coming towards Black Tom when it happened.

Q Well, what was the occasion of your going to Black Tom? A I was notified from the American District Telegraph that there was a fire on Black Tom.

Q Did you get the message by telephone or how? A Yes, sir.

Q About what time? A Well,—12:55.

Q When you got the message did you start for Black Tom? A No, sir.

Q What did you do? A I called up the watchman to find out what was the matter, because they had told me it was no concern of ours.

Q Who told you that? A The A. D. T. I called up the watchman, Mr. Sloan. He told me he would let me know what it was afterwards.

Q Then did you get some further word from him? A Yes; I got word from him about—I judge about half an hour from that.

Q Then what did you do? A Started for the docks.

Q Now, how far were you away from the terminal when the first explosion occurred? A I was at Ocean avenue and Fulton avenue, in Fulton avenue, near Ocean.

Q Well, how far is that? A I should judge it is a mile and a half or two miles; something like that.

Q Now, did you see or hear anything when the first explosion occurred? A Yes.

Q What did you see and what did you hear? A Saw three great balls of flame go up in the air; one central—like a big globe—and two smaller ones; then the explosion followed shortly after.

Q Tell us whether that flame appeared dirty or clear, or otherwise? A Clear as the sun.

Q Did you see the second explosion also? A Yes, sir.

Q Where were you when that occurred? A In the yard beyond the bridge that crosses over the oil works, which is before you go in.

Q And how did that appear as compared with the first one, I mean as to whether it was clear or dirty or otherwise? A Oh, I see a whole mess of dirty rubbish thrown up in the air.

Q Where did the second explosion appear to come from? A Well, I could tell it was below the building, but I could not see direct to it; because I was a little to the right of the opening.

Q When you say below the buildings, what buildings do you refer to? A I mean the brick buildings.

Q The warehouses? A Yes; I could see them from where I stood.

Q Now, you have referred to dirt. You noticed some dirt on that second explosion. Was there any large quantity of it or small quantity or what? A Oh, it looked to be thousands of tons of it up in the air.

Q How far did you get down the pier, either shortly before or shortly after the second explosion? A I did not hear that.

Q How far did you get? Did you get down as far as Pier 5? A Yes.

Q When did you get there? A Oh, shortly after that second explosion. How close I really could not tell.

Q Were you in the roadway? A In the roadway, yes.

Q And did you see anything about the effects of the explosion upon the warehouses? A Yes; the walls were all fallen out.

Q Which way did they fall? A All outward.

Q What is that? A All outward. ?

Q And in which direction? A One I saw fell, of course, towards the north; that is the face wall fell toward the north, and the end wall went toward the east.

Q Both of them had apparently fallen outward? A Fallen outward.

Q And which block of warehouses did you observe that condition in? A I was close to the middle block, but I could see the same thing in the block further along; so I didn't go down there. I saw some there.

Q Did that same condition exist as to both of those blocks of warehouses? A Yes.

Q And you are referring now to what we call the middle block, G to M, was it? A G to M was the block I was standing alongside of, between there.

Q That is what you mean by the middle block? A Yes.

Q And the other block was the— A That block there.

Q N to R. Now, did you a day or so after that observe anything about that gravity tank which had been located near Storehouse R? A Yes.

Q What did you notice about that? A That the gravity tank laid on top of the wall. It had fallen east and the gravity tank had been blown over it.

Q And what was that tank made of? What was the material, if you know? A Steel. The tank was not on the wall, but the structure was on the wall. The tank had fallen straight down. The structure laid over the wall.

Q What do you mean by the structure? A What supported it.

Q Well, what were they, steel beams? A Steel beams.

Q Which was on top, the steel beams or the material of the tank itself? A The tank was on top of the structure before the

explosion. The structure had been blown out from under the tank and the tank fell down straight.

Q Yes. And then what became of this structure consisting of the steel beams? A It laid over the wall of Store Q, on top of Store R.

Q Did all the walls of the warehouses fall in those two structures; that is to say, the middle block and the block next to it? A No.

Q Which walls did fall out? A There were only sections of walls.

Q From which side did that fall? A For instance, the walls of I and H were both pulled out totally.

Q Take the middle block, for example. Of course, there are four walls. Which of the four walls had fallen out? A The walls that I saw there at that time were only on the north side and at the east end.

Q Now, take the other block right next to it, N to R, which of those four walls had fallen out? A I could see Store O from where I stood. I could see the second floor of Store O.

Q You mean that the wall had fallen out? A Taken right out to the second floor.

Q Which way had it fallen? A Towards north.

Q All right. Anything about the rest of that block? Did you notice the walls of any of the other warehouses in that block? A No.

Q How about R? A Well, of course, I could not see R until after that. What I am talking about was the first of the explosions.

Q Did you see them afterwards? A Yes, sir.

Q Well, which way did you notice that they had apparently fallen when you noticed them afterwards? A The end wall of Store Q had fallen over the roof of Store R.

Q And which end wall? A You mean the end next to R? The east end.

Q The east end. How about Store R itself? Did any of that fall? A Well, that was only one story high; that was only one story high.

Q And Q was several stories? A Q was six.

Q Well, did any part of the wall of R fall, either then or within a day or so? A Well, that wall would be crushed down; I couldn't tell you anything about that; because the brick—

Q Well, that had apparently been crushed by the falling of the wall next to it? A Yes.

Mr. Hobart. That is all, cross examine.

Cross examination by Mr. Stallman.

Q You say you were about a couple of miles from Black Tom at the time of the first explosion? A Well, approximately a mile and a half or two miles.

Q And where were you at the time of the second explosion? A Right outside the gate where that bridge crosses going into the property.

Q And that is about a mile from the end of the North Pier, isn't it? A I don't think it is quite a mile.

Q What is that? A I don't think it is quite a mile.

Q Three-quarters of a mile? A Probably around that.

Q So that at the time of the second explosion you were considerably west of the property shown on the western edge of this map? A I cannot see that map.

Q Well, now, this map shows the new grain elevator. A The new grain elevator?

Q Yes. A Oh, yes, I was west of that, I was outside of that property, outside of that property—

Q You were as far the other side of the new grain elevator as the grain elevator is from the North Pier, weren't you? A No; I don't think so; no.

Q Isn't it about as far again— A No.

Q Just about as far from the North Pier to the grain elevator as it is from the grain elevator to the oil works? A I don't think so.

Q Well, at any rate, you were about three-quarters of a mile to the westward at the time of the second explosion? A I could not really tell the distance. I was about—I should say one hundred yards outside the property line.

Q One hundred yards beyond the west gate? A Yes, yes. That brings me to the right of a straight line, see?

Q Yes. And instead of being in a straight line with the driveway you were off to the south— A No, north—

Q North? A South, yes, but facing this way. See?

Q Let us see. That road turns—you go down—what is the name of that road, Claremont avenue, isn't it? A No; I don't come down that way. I come through the yard, come through the yard.

Q Yes; but before you got to the gate you were about one hundred yards the other side. Surely you were this side of it; you were to the south of it, and the driveway was over on your left; the gate was over on your left? A No; I was not near the gate. I was near the railroad, where the railroad goes through the bridge there.

Q And if you kept on going you had to turn around to your right to go into Black Tom, hadn't you? A No, no; I was coming facing east, coming all the way towards the east.

Q Yes. A And then when I come around in the yard—the yard is not straight there at all; that bridge which goes across, I was a little to this side of it; when I come to that railroad bridge there was a straight line down to the end of the pier.

Q Now, isn't it a fact that the new grain elevator and the old grain elevator, and all of the various storage houses, and all of those buildings were between you and the North Pier at the time of the second explosion? A Exactly.

Q Yes. And all you could see was out above the tops of these buildings a flare in the sky? A No, no, no flare; a lot of dirt thrown up.

Q What is that? A A lot of dirt thrown up.

Q None of it fell near you, did it? A Well, I was very cagey of it, any way. I saw it was—

Q Well, now, isn't it true that there was not any of that stuff that fell on the ground one hundred yards to the westward of Black Tom gate? A I didn't see any.

Q You didn't see any. You did not go and feel of it, did you? A Feel of what?

Q Anything that fell down after that explosion; and you do not know whether it was dirt or black powder or TNT or what; do you? A Oh, I could see forms of something up in the air, falling—forms of boxes.

Q Yes; boxes of stuff? A No, no, like a car or something like that.

Q Well, how do you know it was not boxes, wooden boxes, tin boxes, and other things? A Oh, it was too big for me—at the distance I was away it was too far for me to see the tin boxes.

Q Was it as big as a scow boat? A What?

Q Was the pieces you saw as big as a scow, as big as a boat? A No.

Q How do you know how big they were? You were three-quarters of a mile away, weren't you? A Well, my judgment, all I could see; it seemed to be like earth and dirt, and parts of some beams, or something like that.

Q What different appearance is there, if you please, between dirt and black powder to your vision at a distance of three-quarters of a mile? A Well, there would not be much, but—

Q I do not think so. A There looked to be thousands of tons there.

Q That is all.

Mr. Rockwood. That is all.

SAMUEL J. SLOAN, recalled.

Direct examination by Mr. Rockwood.

Q You testified on the plaintiffs' side of the case yesterday, didn't you? A Yes, sir.

Q I think you testified in substance that you got steam on your boiler and had the pressure of 130 pounds at the time of the fire? A Yes, sir.

Q And that no water was taken? A No water was taken.

Q Did you have an indicator to indicate whether water was taken or not? A Yes, sir; you could see it on the pressure gauge.

Q And you looked at that? A Yes, continually.

Q So that you saw no water was taken by any hose that night? A Yes, sir.

Q Do you remember the time after the fire started when two men came to see you or spoke to you? A Yes; there was two men came into the pump room and asked for the use of the phone.

Q What time was that? A Well, I should say, around, as near as I can put it, about between quarter past one or a little later.

Q Don't be exact about it; put it as near as you can. A Well, I will say quarter past one.

Q Do you know who the two men were? A They were two of the Ackerman Lighter men.

Q They were two men? A Yes.

Q And they were Ackerman men? A That is what they said. They called up—

Mr. Stallman. I object to that.

Mr. Rockwood. That is a good objection, if he does not know.

Q Do you know whether they were or not? A Yes.

Mr. Stallman. I would like to cross examine him to see on what he bases his knowledge.

Mr. Rockwood. I will ask a question that will satisfy you, I think.

Q Is one of the men in the court room? A No, sir; he was on the stand.

Q What is his name? A Wiseman, or Eiseman.

Q He was one of the men who came and asked to use the phone? A Yes.

Q And there was another man with him? A Another man, I think he was a Swede.

Q Who used the phone? A I think it was Wiesman, I think.

Q Eiseman? A Eiseman.

Q Did you hear the conversation? A He asked for the Ackerman Lighterage people.

Mr. Stallman. I object.

Q Just say if you heard the conversation? A Oh, yes, I partly heard it.

Q That is, you were there and heard Eiseman call somebody up on the phone? A Yes.

Q State to the Court and jury what you heard Eiseman say?

Mr. Stallman. I object to it. I do not think it is proper or competent. That is, I do not think conversations that this man overheard between Eiseman and whoever he was talking to can in any way be binding upon the plaintiffs in this case. It certainly is not in rebuttal of anything that Eiseman has testified to.

The Court. I do not think he is trying to rebut anything. What happened was, that the fire was on and Eiseman was the captain of one of these boats. The property of the plaintiff, or one of the plaintiffs, was on the boat, and Eiseman, under pressure of acting talked and what he said under such circumstances, would be a part of the *res gestae* of his act, and I think it is clearly competent testimony. You may have an objection to it, if you desire.

Mr. Stallman. Thank you.

Q Now, will you state to the Court and jury just what you heard? A He called up the Ackerman Lighterage people. He was some few minutes there before he got the answer, and he asked them to send a tugboat as quick as they could, as the boat was afire and the pier where he was tied up. And that is the conversation I heard him say.

Q As the boat was afire and the pier? A And the pier.

Q That is all.

Mr. Stallman. That is all.

Samuel J. Sloan, direct.

By the Court.

Q What time did you say this was, Mr. Sloan? A About quarter past one, your Honor.

Q That was after the explosion? A No, sir; before. The explosion was somewhere around two o'clock.

By Mr. Rockwood.

Q That was before the explosion? A Yes, sir.

The Court. Mr. Stallman, what will your rebuttal take in the matter of time. Practically, what will it take?

Mr. Stallman. About five minutes.

The Court. Oh! Mr. Hobart is asking—

Mr. Stallman. What I mean was—I asked Mr. Hobart for permission to read into the testimony, testimony that was taken—

The Court. Taking that into consideration, how much time will the rebuttal take?

Mr. Stallman. I do not think over half an hour at the outside.

The Court. The reason I am asking you is this: Mr. Hobart desires, while you are looking up to see whether you want to permit evidence to be read or not, he thinks it is wise to let the case go over until tomorrow, and he thinks that the whole evidence, his continuation of his evidence, and your rebuttal, will be concluded in two hours or so. If that is so, as I of course assume he believes it is, we can easily finish the case up. What I wanted to do, out of fairness to everybody, was to get the evidence through by, say, half past twelve, anyhow, so as to give you an opportunity to prepare for your summing up and everything before two o'clock—give you ample time. If we can do that, I am perfectly willing to adjourn now—it is not for my benefit; I am willing to sit here until I do not care what time tomorrow night—but it is more fair for

the jury to go out in a fresh frame of mind than at the tag end of a weary day to consider the case.

Mr. Stallman. I get most of my rebuttal on the direct examination.

Mr. Hobart. Without my objection.

The Court. If that is the situation, I think we can adjourn now, with the understanding that these slight vacations that are taken between the answer given and the next question asked be curtailed as much as possible tomorrow morning.

We will adjourn until ten o'clock tomorrow morning.

Mr. Rockwood. What is the rule as to the length of time in summing up?

The Court. I always fix that, and I try as much as possible to not curtail counsel in that, and I ask them beforehand how much they need. If their requests are moderate, I grant them; if they are immoderate, I fix it myself.

Mr. Rockwood. About how much?

The Court. In a case of this magnitude, how much do you think?

Mr. Rockwood. These cases—I should think an hour and a half—

The Court. What do you think about that, Mr. Stallman?

Mr. Stallman. I think that is enough. I would like to know in advance how it is going to be divided up.

Mr. Rockwood. I dislike to feel that I am under restraint.

The Court. You will be working alone for the defense?

Mr. Rockwood. Yes.

The Court. There will be no division about that. He takes an hour and a half; he comes first. You are entitled to as much as he takes.

Mr. Rockwood. I probably will not take it, but I do not like to feel under restraint.

Mr. Stallman. If we start summing up at two o'clock, that will be five o'clock before we finish summing up.

The Court. If we finish the evidence rapidly in the morning we go to lunch as soon as we finish and give ample time for that and come back a little earlier than two o'clock—because I know from experience what a jaded jury will do with a case; they hurry it up and get home, and if you get it to them earlier, the better it will be for you.

ADJOURNED UNTIL 10 O'CLOCK, FRIDAY, JUNE 11TH, 1920.

TRIAL CONTINUED.

Friday, June 11th, 1920, 10 o'clock A. M.

Mr. Hobart. I want to make some formal offers of proof to save a little time.

The defendant offers in evidence charter of the American Dock & Improvement Company as found in the Pamphlet Laws of New Jersey of 1864 at page 683.

(Marked D. 16.)

Mr. Hobart. I also offer in evidence the lease between the Lehigh Valley Railroad Company of New Jersey and the Lehigh Valley Railroad Company, dated June 17, 1914.

(Marked D. 17.)

Mr. Hobart. I now offer in evidence the map of New York Harbor, with Hudson and East Rivers, from West 62nd street to Blackwell's Island, being the United States Coast and Geodetic Survey.

Mr. Rockwood. Let us see what that shows, so the jury will get that in their heads. Have you got the idea, gentlemen? Where is Bedloe's Island?

Mr. Hobart. Bedloe's Island is out here at the bottom of the map.

Mr. Rockwood. There is the bottom of the map. Where is Robbin's Reef?

Mr. Stallman. Robbin's Reef is down below Staten Island.

Mr. Rockwood. Here is the Statue of Liberty and here is the pier we are talking about, not quite three-quarters of a mile from Bedloe's Island—the Statue of Liberty. That is the North and South Pier. Give them the exact distance there. As you stand and look at the Statue it seems to be very close to you.

Mr. Stallman. The scale is 1 10/1000.

Mr. Rockwood. We agree, about three-quarters of a mile.

Mr. Stallman. Six inches to the mile on this scale.

Mr. Hobart. Six inches to the mile?

Mr. Stallman. Yes. A mile would be six inches, and there is roughly between two and one-half and three inches; that would be somewhere between four-tenths and five-tenths of a mile.

Mr. Rockwood. Yes; not quite half a mile. I want to show you something further while I have the map here.

Mr. Stallman. Why don't you wait until you argue your case?

Mr. Rockwood. There is the long pier we are talking about. Now, the Jersey Central pier, where do you admit that is? Put your hand on it, please.

Mr. Hobart. A little to the north.

Mr. Rockwood. Right out in here.

Mr. Stallman. I think they call this yard in here Dock 19.

Mr. Rockwood. That is Dock 19.

A Juror. Is that the furthest pier south?

Mr. Rockwood. No, no.

The Juror. Where is Jersey City?

Mr. Rockwood. Jersey City is in here (indicating).

Mr. Hobart. Are you taking down what everybody is saying?

The Stenographer. Yes, why not? There may be a claim later on in the case that part of the time allotted for argument was consumed at this stage of the case, and the record will show it.

(Marked D. 18.)

Mr. Hobart. I offer in evidence certain photographs which I understand are to be received—

Mr. Stallman. Are these the same photographs that were used at the last trial?

Mr. Hobart. The same ones.

(Photograph known as 5-Harrison.)
(Marked D. 19.)
(Photograph known as 6-Harrison.)
(Marked D. 20.)
(Photograph known as 7-Harrison.)
(Marked D. 21.)
(Photograph known as 8-Harrison.)
(Marked D. 22.)
(Photograph known as 9-Harrison.)
(Marked D. 23.)
(Photograph known as 10-Harrison.)
(Marked D. 24.)
(Photograph known as 11-Harrison.)
(Marked D. 25.)
(Photograph known as 12-a-Harrison.)
(Marked D. 26.)
(Photograph known as 12-c-Harrison.)
(Marked D. 27.)
(Photograph known as 1-Harrison.)
(Marked D. 28.)

(Photograph known as 1-a-Harrison.)
(Marked D. 29.)

(Photograph known as 3- Harrison.)
(Marked D. 30.)

(Photograph known as 3-a-Harrison.)
(Marked D. 31.)

(Photograph known as 4-Harrison.)
(Marked D. 32.)

(Photograph known as 5-Harrison.)
(Marked D. 33.)

(Photograph known as 17-Harrison.)
(Marked D. 34.)

(Photograph known as 19-Harrison.)
(Marked D. 35.)

(Photograph known as 18-Harrison.)
(Marked D. 36.)

One that I overlooked—2-Harrison.
(Marked D. 37.)

(Photograph known as 3-Underwood.)
(Marked D. 38.)

(Photograph known as 4-Underwood.)
(Marked D. 39.)

(Photograph known as 6-Underwood.)
(Marked D. 40.)

(Photograph known as 7-Underwood.)
(Marked D. 41.)

(Photograph known as 3-Barth.)
(Marked D. 42.)

(Photograph known as 6-Barth.)
(Marked D. 43.)

By consent I will now read the testimony of a witness by the name of Kenneth Owen.

Mr. Stallman. Which record are you reading from?

Mr. Hobart. Howell case, 906 (printer's copy).

"*Direct examination.*

"Q What is your occupation? A Civil engineer.

"Q Employed by whom? A At present I am employed by Springfield Asphalt; formerly with the Lehigh Valley.

"Q When were you last with the Lehigh Valley? A October, 1917.

"Q And from what time? A From April, 1914.

"Q Did you make some soundings in the vicinity of the North Pier, National Docks Terminal? A Yes, sir.

"Q Do you remember when you made them? A In October, 1916.

"Q This is a blue print of them? A Yes.

"Q What is the paper I hand you? A It is a map plotted from the notes which I made at the time of taking the soundings.

"Q Does the map show just where the soundings were taken? A Yes, the figures on the map give the location of the soundings.

"Q That is, of course, true, but does it show whereabouts you took the soundings, whereabouts you were when you took the soundings? A I do not quite—

"Q For instance, I put my finger anywhere; there is one; 5.9—indicating a certain point on the map, which will will be offered directly—now how would anybody know where it was, that it was 5.9 deep? A You will notice a small mark in front of your finger, that gives the point at which those soundings were taken.

"Q The point on what? A The point on this area covered by the map.

"Q The map shows a long projection marked North Pier; that is the North Pier of what? A The North Pier of Black Tom.

"Q And on the left side of the map there is a straight line marked bulkhead; what is that the bulkhead of? A That is the bulkhead line established by the United States Government.

"Q There are some three little things marked transfer bridges; are those what are called the float bridges between the North and South Piers? A Yes, sir.

"Q Then all this that you did was taken north of the North Pier? A Yes.

"Q What is your scale? A Fifty feet to the inch.

"Q And anybody by measuring fifty feet to the inch from any point here can find out how far it was north of the North Pier? A Yes.

"Q Does this correctly show what you found the soundings to be? A Yes.

"Q As delineated on this map throughout everything shown on this map? A Throughout that area, yes.

"Q Is this a blueprint taken from that? A Yes, sir.

"Q Now, Mr. Owen, these figures that appear all over the face of the map indicate what? A Indicates the depth of the water.

"Q In feet or inches? A In feet.

"Q For instance, where it is 5.4 that is five feet and— A And four tenths.

"Q And four tenths? A Yes.

"Q And of course the little point in front does not mean a decimal point? A No; that is simply to indicate the point where the sounding was taken.

"Q So when you want to find out where the sounding was taken you measured your point? A Yes.

"Q And the figure there shows what the depth was at that point? A That is the depth below mesne low water.

"Q When the U. S. Government Bureau takes soundings and puts them on its map, what is their datum line—mesne low water, too? A It varies, but the datum which they use is generally given on the maps.

"Q Will you please look at Exhibit D. 9 and tell me what the datum line was as shown by that map? A Yes; it shows—there is a note on this map saying the soundings are expressed in feet and show the depth at mesne low water.

"Q Then that is the same as on your map? A Yes.

"Q Which you measured at the same time? A Yes—not exactly at the same time, but during the same—

"Q I mean the same period of the tide. Of course I do not mean the same day; but the same period of the tide. If you took it at mesne low water and they took it at mesne low water, they did take them at the same period of tide? A They are not taken that way. They are taken at any time, but the stage of the tide is noted at the time they are taken and the variation is given.

"Q Then the two, what we will call the assumed heights, are identical? A Yes.

"Q Between yours and the government? A Yes.

"Q And if there is a variation between yours and the government map it would show an actual variation in the water? A Yes.

"Q As disclosed by the soundings? A Yes.

Mr. Hobart. Then the map is offered in evidence. I ask that it be marked D. 44, map entitled 'Plan showing soundings,' etc.

(Map marked D. 44 in evidence.)

Mr. Hobart. I might at this point, gentlemen, explain, or call your attention to the map so that you will understand the references in the testimony. There are various points which the witness said indicated points where he took the soundings, indicated by a dotted line, and the depth is indicated by the figures such as 5.9, in-

dicating five and nine-tenths feet at that particular point, and so on at the other places marked on the map.

Mr. Stallman. Yes; I admit it.

"Q How do you arrive at mesne low water? What is tide that you deem to be the regular tide? A The mesne low water has been established by the government through observations on the tide covering a number of years and they have established monuments. When soundings are taken we refer to those monuments to get an elevation from a government monument and refer all the soundings from the surface of the water to that monument, taking the relation of the surface to the monument at the time you take the sounding.

"Q Then it is a monumental figuring and not a figuring on the exact state of the tide? A It is not taken from the tide itself, no.

"*Cross examination* by Mr. Skinner.

"Q This map, Exhibit D. 12, shows a line called 'Bulkhead line'. That is an imaginary line? A Yes, all imaginary except at the end of Pier 7 at Black Tom, which is this point, this line along here, what is generally known as the end of Pier 7—in that case it is an actual fixed line of the bulkhead.

"Q You mean that so much of this line as shown solid running southerly, or at least to the bottom of the map, with the inscription 'Bulkhead line,' is the real end of Pier 7? A Yes.

"Q But from that point on towards the top of the map it is imaginary? A Imaginary, yes.

"Q And of course you do not know how long the depths that you found on this day had been there, do you? A No; we can only take them as being at that time."

JOHN WALSH, sworn.

Direct examination by Mr. Hobart.

Q At the time of the fire and explosion on Black Tom on July 30, were you employed by the Lehigh Valley? A Yes, sir.

Q And what was your position? A Trainman.

Q On the night of July 29th, were you on duty? A Yes, sir.

Q Where were you working? A In the Scale House, Jersey City.

Q How far is that from Black Tom? A About a mile and a half.

Q Did you receive any orders from your superior to go to Black Tom that evening? A Yes, sir.

Q And from whom did the order come? A Mr. Hanley, yardmaster.

Q He was the yardmaster at Black Tom, or over the entire territory of Jersey City? A Oh, he was yardmaster at the Scale House.

Q At the Scale House? A But he was the general yardmaster at that time.

Q What time did you receive the order? A Well, it was somewhere around one o'clock, I guess, or a little before one.

Q And did you go over to Black Tom in response to those orders? A Yes, sir.

Q Who went with you? A Well, the whole crew; my brother and myself, a fellow named Oakes, the trainman, and the engineer and the fireman.

Q Your brother is Mr. Thomas Walsh? A Yes, sir.

Q I believe he has since died? A Yes, sir.

Q How did you go? A Why, we went by way of National Dock and went up what we call the high line, past C. S. Tower.

Q Did you go in a locomotive? A Yes, sir.

Q Did you notice how many locomotives went? A Well, there was two went over before us, but I don't know what two they were; there were two—one from Jersey avenue and one from River avenue—what we call Washington street.

Q And how long did it take the locomotive on which you were to get to the terminal at Black Tom? A About fifteen minutes, I guess; about ten or fifteen minutes.

Q Now, do you remember which track you went in on? A When we went down there?

Q Yes. A First we went on the sea wall track, and we seen we could not do anything in there; so my brother told me to go up and cut the engine off, and to come in on track we call the middle float track.

Q What you call the middle float track? A Yes, sir.

Q Now, do you think you could point out on the map which track that was? A Why, yes, sir; I think I can.

Q Suppose you look at it and see if you can identify that track.

(Witness leaves the stand and goes to the map on the blackboard.)

Q Just mark on the map that you are looking at. A There it is, the middle float track.

Q The middle float track is so marked on the map, and it is a little to the south and adjacent to the sea wall track? A Yes, sir; between the sea wall and the eastbound.

Q Between the sea wall track and the track called the eastbound float track. Now, you may go back to the stand.

(Witness resumes the witness chair.)

Q Now, by going in on the middle float track you could get to practically any track of the yard? A Why, yes, sir; you could get to practically all those tracks down in towards the water front there.

Q Did you notice how many cars there were on the middle float track itself, if there were any on that? A In the middle float track I guess there were about six or eight cars. We coupled up to those cars; then I walked down toward the rear of the train.

Q Did anybody else go with you toward the rear of the train? A Well, my brother was there and Oakes.

Q Now, did you get any other cars fastened to the train before the explosion occurred? A Yes, sir.

Q And where did you get them from? A Well, we kicked them down towards 14; we got hold of about four or five cars, maybe more.

Q On track 14? A Well, around towards track 14, I really don't know the yard very good; I didn't really know the yard very good at the time.

Q Well, you are not sure whether it was track 14? A No, sir; I am not sure what track. It was down in that vicinity, anyhow.

Q It was in that vicinity? A We pulled up and on that track was a few cars on fire. We kicked them cars back in towards another track, and my brother said to me—by that time I was up on top of the train—

Q Just a minute. The cars that you kicked back. You said they were burning at that time? A Yes, sir.

Q Well, were they on the same track on which the engine and the rest of the train was? A Yes, sir, at that time.

Q And in order to kick them back, did you have to uncouple them? A Yes, sir.

Q Who uncoupled them? A Sir?

Q Who uncoupled them? A My brother.

Q And were they burning at the time— A Yes.

Q —they were uncoupled? And who gave the signal to kick them back, you or your brother? A I did; but I was up on the top and he was on the ground.

Q Well, then, after those burning cars had been kicked back, what was the next thing that occurred? A Well, he asked me if I could see down towards the yard and see which was the track which was—look to be the best to get the cars out of, where there was the least fire, and I told him. So then we backed down towards—it was around 13, I think, down towards around 13, which was one or two tracks over, anyhow. I couldn't just see what track it was.

Q It was one or two tracks to the south, was it? A Yes, sir.

Q All right. Then did you hook up to any other cars? A Yes; we hooked up to this here track that I told him looked to be all good, and when we coupled up to that track we started to pull out and couldn't pull them; there were too many cars there.

Q About how many cars did you have on? A Well, I don't know how many cars was on that track.

Q Well, do you know how many were fastened to your engine at that time? A Yes, sir; there must have been at least—well, there was fourteen that we had hold of, after we got off the eastbound—middle float—before we got up 14, and we pulled up over the switch to go down this here middle track, and I don't know how many cars there were on that track.

Q All you know is, there were certainly more than fourteen? A Yes, sir.

Q Now, while you are doing that, did you notice if the other engines were doing anything? A Well, there was one engine on the eastbound—on the middle—on the small track; that was the track that we came off of. They could not work while we were working there, so he rode over toward Pier 6 and 7; there were two engines over there. I believe one was handled by a fellow named Gaffney and the other was handled by a fellow by the name of Mr. Voorhees.

Q What were they doing, if you saw? A They were getting the other cars out of the other side of the yard.

Q Now, coming down to the time when you had got the cars coupled up on track 13, or whatever track it was, next to the one where you had just been, where were you standing just before the explosion? A On top of the car.

Q And where was your brother? A He was on the ground.

Q Now, while you were making these movements and giving these directions, was the fire burning? A Yes, sir.

Q Was there any popping of shells? A Yes, sir.

Q To what extent? Did you notice that? A Why, every once in a while you could see something shoot up in the air where I was, you know, on the left hand side; there is water there. Something would burst in the air and you could see it

just drop in the water or dropping on top of the box car. It put you in mind of pebbles there.

Q Did any of them come near you? A Well, they were dropping all around there. What I mean—I wasn't unfortunate enough to be hit by any of them.

Q You were not hit by any of them at that time? A No, sir.

Q Do you know whether your brother was hit? A Well, no; he was not hurt then.

Q Did you see anything of Officer Leyden around there at that time? A Yes.

Q What was he doing? A Why, he was on the ground when we coupled up this here last track. I thought that the reason we could not pull them—I thought there was brakes on the hind end. So I was going to walk back and knock the brakes. He stopped me. He said, "Walsh!" I said, "Yes, sir." He said, "You better not go back there any further because we are going to have another engine hooked on here and pull you out of here." Then Mr. Leyden crossed over and he started to walk down a ways, and that was the last I seen of Mr. Leyden.

Q That was all before the explosion, was it? A Yes, sir.

Q Did you see anything of Mr. Dickman around there? A Yes, sir.

Q Where was he? A He was out doing the same, but I don't know which way he walked. They were down there walking around, you know, looking different things over, and giving directions.

Q Well, where were you when the first explosion occurred? A On top of the car.

Q And which car was it? Was it the middle car, the last car, or some other car on the train? A Well, I was, say, about four or five cars from the engine. I had to be up there so the engineer could see me.

Q Could you tell us where you were with reference to that big water tank that stood up on steel stilts? A Just before the explosion?

Q Just before the explosion. A Oh, before the explosion I was down towards the hind end.

Q Before the explosion you were down towards the hind end of the train? A Yes, sir.

Q You know where the big water tank is? A Yes, sir.

Q Where were you with reference to that water tank? A How near was I to it?

Q Yes. A Well, I was opposite what they call Pier 7, and that is a little the other side of Pier 7, but in more towards the middle of the yard.

Q You know where Store R is, the last warehouse? A Yes, sir.

Q And do you know where the big water tank is? A Yes, sir.

Q Almost next to Store R? A Yes, sir.

Q Well, what we want to find out is if you can tell us where you were when the first explosion occurred with reference either to Store R or to the big water tank? A Well, I was just opposite Store R—well, not just opposite, but pretty near opposite Store R, and a little this side of the water tank.

Q And in which direction? Were you towards the north or toward the south, or, to put it another way, were you toward the sea wall track, or were you towards the opposite direction? A I was up this way further.

Q Well, would that be towards the sea wall? A Well—

Q Perhaps you could point out on the map just where you were, as nearly as you can.

(Witness leaves the witness stand and goes to the map on the blackboard.)

Q I call your attention to the various tracks with numbers on them, and Store R, with various numbers, 13, 14 and so forth. Here is the water tank, this round object a little to the east of Store R.

Mr. Smith. Showing the sea wall.

Q The sea wall was to the north. A That is the water tank, isn't it?

Q Yes, that is the water tank. A I was about over here, down by the middle float track.

Q On the middle float track? A A little to the—

Mr. Smith.—Mark it W.

Q A little to the west of the water tank and almost directly opposite Store R? A Yes, sir.

Mr. Stallman. At that point where I mark W?

The Witness. Yes, sir.

Mr. Stallman. Is that about right?

The Witness. Yes, sir.

Q Now, what happened when the first explosion occurred? A I was standing on top of the car when Mr. Leyden told me not to go back any further, why, I stood there, and my brother started to walk up towards the yard, and he said to me, "We can't do any more here. We might as well," he said, "Walk up ahead." So I said, "All right." So I turned around and I started to walk, and I guess I just walked about one car length when the explosion went off.

Q Were you on the ground or were you still on the top of the car when the explosion occurred? A Well, I was on top of the train when the explosion happened.

Q Did it do anything to you? A Why, yes, it blew me off the car.

Q Did it hurt you any? A Sir?

Q Did it hurt you any? A Why, yes, sir. Well, when I woke up I was down on the roadway there. My face was all bleeding, and, in the meantime why I didn't know where I was.

Q Well, did you lose your senses for a minute or two? A Yes.

Q Did anybody help you up or did you walk along the roadway yourself? A A man by the name of Mr. Julian got me and—

Q And where did you go after that? A To the City Hospital.

John Walsh, cross.

Q You were not at the place at the time when the second explosion occurred? A No, sir.

Q Well, when that first explosion happened, could you tell, or did you notice where it seemed to come from? A Why, no; but the fire and everything, where I thought it should come from, down toward the back of the—

Mr. Stallman. I object to his telling where it ought to come from.

Q Do not go into that. All I want to know is whether you noticed where the blaze or the flame of the flare, whatever it was, seemed to come from? A Why, yes; it was all down towards the back of the water.

Q And what kind of a flare or flame was it? A Why, at first it would be a big bright fire, and then it would get dark, like, all dark; and when the smoke would clear away another big flame.

Q How high up in the air did this big blaze go? A How many feet?

Q Yes. Could you judge that at all? A Why, no, sir; I wouldn't judge that.

Mr. Hobart. Cross examine.

Cross examination by Mr. Stallman.

Q Mr. Walsh, just what were you doing at the time of the explosion? A Sir?

Q What were you doing at the time of the explosion? A Before the explosion? I was standing on top of the cars.

Q Signalling to the engineer to pull out? A Yes, sir.

Q You were looking toward the engine of your train, weren't you? A Looking toward the engine?

Q Yes. A No sir; I was looking the other way.

Q Weren't you signalling the engineer to pull ahead? A No, sir; there was another man on top of the cars up near the engine.

Q I thought you just told me you were signalling the engineer to go ahead? A I had to be up here for him to get a signal; there was another man up near the engine, a switch tender.

John Walsh, cross.

Q Where was your engine at that time? A The engine, well, he was by—I should judge up around Pier 4 and Pier 5.

Q How many cars were between the engine and the car you were standing on at the time of the explosion? A Why, at the time of the explosion? Well, I just don't know how many cars. There was fourteen cars we had before we backed in towards—when we came in off the sea wall track and went in on the middle—there was eight cars there, and six we had got off of I think it was number 14, and then we pulled off over the switch and kicked two off, and then we backed down towards this track that we thought was a solid track, was a good track, the cars that wasn't burning.

Q Now, you answer me, how many cars do you think it was between the cars you were standing on and the locomotive? A Well, about eleven cars.

Q Yes. Had you walked up towards the head end of your train after you had done the coupling that you had done? A No, sir.

Q Was your train in motion at the time of the explosion? A No, sir.

Q You had not walked up toward the engine at all after you coupled up the train? A No, sir.

Q So when the explosion occurred you were as near to the fire then as you ever were? A Well, no, sir; I was not. I was nearer to the fire before the explosion, because I started to walk back towards the fire when Mr. Leyden stopped me.

Q Yes. Then did you walk back towards your engine? A Well, I started, I started to walk back toward my engine.

Q How far did you go before the explosion occurred? A Well, I had walked two or three car lengths, see.

Q About two or three car lengths? A And then I met Mr. Leyden and he said, "You can't do any more here."

Q Just a minute; I am not asking what was said, I am asking what you did. Did you get on top of your train at that point? A I was always on top of the train.

Q You were always on top of the train; you were not down on the ground? A No, sir; not when the explosion happened

I was not. From the time we started to work until the time the explosion happened I was on top of the train.

Q Do you happen to know whether you pulled out any cars containing explosive material? A No, sir; I don't know what was in the cars.

Q You don't know that? A No, sir.

Q That is all.

Mr. Rockwood. If the Court please, I offer in evidence Section 7 of the River and Harbor Act, approved March 4, 1915.

(Paper marked Exhibit D. 45.)

Mr. Stallman. That is an act of Congress.

Mr. Rockwood. Yes.

The Court. You do not have to offer that. If it is an act of Congress we take judicial notice of it.

Mr. Rockwood. I know. I did not want to offer the whole law.

The Court. You do not have to offer any of it. The Court is bound to judicially notice any act of Congress, because the Constitution provides that precise thing. It is the supreme law of the land.

Mr. Rockwood. Yes, sir. I want to call your attention for a minute, to the part marked "Provided". It will take but a moment.

(The Court examines the paper.)

The Court. Yes, I see it.

Mr. Rockwood. Yes, sir.

Mr. Hobart. I will now read the testimony of a deceased witness, Thomas Walsh, given at another trial, page 774 of the Royal record—(reading).

"Q You are employed by the Lehigh Valley, Mr. Walsh? A Yes, sir.

"Q What is your position? A Freight conductor,

"Q How long have you been a freight conductor? A About five years.

"Q Were you working for the company on the night of this explosion? A Yes, sir.

"Q Were you on night duty? A Yes, sir.

"Q Where were you working on that evening before the fire? A Scale House, Washington street.

"Q How far was that from the Black Tom Terminal? A Oh, about a mile, a mile and a half.

"Q What was the first you knew of any fire at the Black Tom? A I went up to Jersey avenue to get some water on the engine and the yardmaster told me to go over to the Storage there was a fire over there.

"Q That is Mr. Henley, that has just testified? A Yes, sir.

"Q What engine did you have? A I forgot the number now; I think it is 3456.

"Q Do you remember about what time Mr. Henley told you to go over to Black Tom Terminal? A About 1:30.

"Q And who were in your crew? A John Walsh, brakeman, a brakeman named Oakes—Mr. Oakes—

"Q And your engineer and fireman, who were they? A The fireman's name was Campbell, the engineer's name McLaughlin; there was a switch tender sent over with us also, named McGuire.

"Q Did Mr. Henley go with you or on another engine? A I couldn't say for sure; there was three or four engines going over. He might have went over with me. I don't know though.

"Q Where were you when you first saw any sign of a fire? A Well, of course when we got there to the Storage, the way the tracks lay there, as soon as we pulled on there I seen the engines there. That is quite a way from the—where the fire seemed to be, so we backed on down. I believe it was then I met Mr. Henley and he told me to go down and render whatever assistance I could in regards to getting cars out.

"Q At that time when you first pulled into the Black Tom Yard where did the fire appear to be? A Well, as

I worked my way down the fire did seem to be on the back end of the island, over toward the North Pier. The place was all lit up.

"Q Now, can you recall what you did in the way of clearing the tracks and of pulling out the cars? A Yes, sir; we crossed over and backed down the middle float.

"Q Middle float track, is that? A Yes, sir.

"Q That is right next to the sea wall track? A That is between the sea wall and the east bound float.

"Q All right. A I thought it was clear but when we got down there there was about ten cars on there, seemed to me about ten; might have been eight. So we coupled up to them, and we shoved on down further towards the fire, and when we got down there of course those shrapnel and bullets, well, in fact everything was flying all around there and made it disagreeable, and you couldn't do much business.

"Q What were these things that seemed to you to be flying around? A The big ones would whistle past, make a big noise like these propellers do. Of course the little ones just like rain hitting on a tin roof. This brakeman was a brother of mine, and the position he was in, we would have coupled up by working on the ground, we would have made these couplings, for to get the cars out, but the shrapnel and shells was coming from the side where the show was on, so that made me get on the opposite side where the engineer was on, so I asked this hind brakeman, which was—he was my own brother, of course—I asked him would he get up on top so we will get the signals, because I had to get on the other side for to protect myself from this small stuff, that I figured was flying around, and he got up—I didn't tell him to get up, but he got up himself, because I wouldn't get up there myself, and I felt afterwards that I shouldn't have asked him, but he got up anyway, and we started to couple up and get out whatever cars we could.

"Q What track did you back into? A Well, I wasn't positive sure at the time, but it must have been in around 14. We backed in there with these cars that we had hold of.

"Q Which way was your engine headed? A Our engine was headed toward the main line of the Central.

"Q Towards the shore? A No; our engine was headed toward the Jersey Central tracks, of course.

"Q All right. A We was backing up, of course, to get the train; we had hold of about eight or ten cars that we coupled up to on the middle floats, backing down; we backed in on 14, and I guess we opened the knuckles, and took a chance, because you couldn't go in there, and when we coupled up we pulled ahead and we had about six, and then we pulled out again and we backed in 15 with what we still had.

"Q How far did you pull out? A Well, we had to pull out about six or seven car lengths, we backed up, you understand.

"Q So as to clear switch for 15? A So we could back up again. We backed in on 15, I think it was and got about five or six, and the hind car was blazing.

"Q Where were you while that was being done? A I was standing alongside the switches leading into 15.

"Q What were you doing, giving signals, or coupling the cars, or what? A Well, I was giving signals to my brother and he was passing them to the head man, or I was watching—I was making out with the couplings or something like that, because you couldn't go down with the cars, so I was just standing there, there was nothing else to do, only taking the sights, as the man says.

"Q Then you started backing into 15, is that it? A Then went into 15 and we made the couple again—what I mean we opened the knuckle and took a chance—when you do a thing like that you are only taking a chance, and sometimes try to adjust the knuckle.

"Q You mean sometimes they would not couple? A But in this case it did couple, so we pulled ahead. When we hit them we pulled ahead, and we made coupling, and when we got the hind end out there was one car blazing. I don't know whether it was Mr. Dickman or Mr. Henley was there then or Mr. Leyden, but there was some one of them around there then, and I proposed to him to kick it back; I didn't want to pull it out in the yard, because it was blazing.

"Q That is, you mean the rear car? A Yes, sir; so we did; somebody cut it off, I don't know just who it was, and we kicked the car down the track again; and I know Mr. Leyden was there at the time. So then there was another track, I guess it must have been 16, looked pretty full, and I think Col. Leyden, because I knew him pretty well, he said to me that don't look a good track, why don't you hook on to them, and I said I think we will, so we couple on to them, and we made a coupling again, and Mr. Henley was there, and we gave the engineer a sign to go ahead, and he had about all he could handle.

"Q How many cars did you have at that time? A I don't know, must have had about thirty or thirty-five.

"Q Whereabouts were you then with reference to the train? What part of the train were you? A I was standing—while this was going on, I was standing around the switches, because you couldn't go no other place. My place was not on the head of the train, and where my place was was on the hind end, because I couldn't get there, because it was around the North Pier where the fire was. I guess the reason we couldn't pull the cars there was a brake on the hind end of the cars and nobody could go down there to knock it off; we gave the engineer the signal to go ahead and he couldn't pull it, and Sloan said he would go up and get another engine, and about that time the thing let go.

"Q Where were you when it let go? A I must have been around switch 14 or 15, or somewhere in that vicinity.

"Q On which side of the train were you? A I was on the side near the storehouses.

"Q Do you think you could show us on the map where you stood? A Yes, sir.

"Q Please do so? A This is number 4? Yes, sir, I was in around here.

"Q Indicating what switch—the switch on what track? A I was in around here, where the switches are.

"*Mr. Skinner.* Indicating a point right opposite the track.

"*Mr .Hardin.* That point leads on to the sea wall.

A I was on the transfer, so I was down in here, down here.

"Q Name the track? A I came down on the float and I went in on 15 and 16.

"Q You are indicating now— A Yes, now, down here. Came in here. Well, of course there it where I must have been. I couldn't have been no other place.

"Q Just name it; what is the name of the track you were on at the time of the explosion? A What is the name of the track?

"Q 14, or 15 or 16? A Yes, the point of the switch around 14, 15.

"*Mr. Hardin.* Middle float track.

A That is right out here, because these switches we were using. Here is one. We made three or four doubles. I wouldn't watch over here.

"*Mr. Garrison.* Better indicate it.

"Q Describe a little better, first by reference to the track and then by reference to the big tank? A Yes, I remember the tank being across here.

"Q You could see the tank? A Yes.

"Q Was that about opposite you, or what? A Well, I couldn't say in the big stone, the big pier

was across from me, Pier 7, of course at that time I didn't notice it, but I came down this track, here is where I got the seven cars, on this float. There was a man named Voorhees pulled up the sea wall track with a number of cars about the same time, and went in on 14 and doubled out, and then on 15 and doubled out, and then I gave the signal, and got hold, and I thought the engineer got it, and the explosion happened, so there was no other place to be only there, because that man was up here and my brother was in that same place.

"Q When you went in there, indicate on the map, will you please but describing it, by the track number or some other number so we will know just what you mean? A Well, if I took the middle float—does that indciate switches?

"Q Yes.

"*Mr. Campbell.* He indicates the lever.

A The handle. Well, if this is 14 or 15 there must be only a difference of a few feet in the switch going to 14 and the switch going to 15, and the switch going to 13, so I must have been say at 14 switch or 15 switch, or 13 switch; it is only a matter of a few feet, I don't know just whether—I was on this side of the car—that is our cars, that was blocked here, because the stuff was coming that way and I couldn't work on that side; if I had to work in that stuff there would have been no reason to get on the lines and get the cars out, there would have been no necessity of that at all. We couldn't work on that side, therefore I had to come over here, and he had to get up on top, because the engine to be working—

"Q When you said on that side you mean on the northerly side? You have indicated the top of the map. A That is New York side, isn't it? This is the water side, this is the pier side and this is the brick side. This the side we were working on, the left hand side from the engine.

"Q These shells of those shrapnel— A They were coming from here, so it seemed to me. You couldn't stand over here at all. When I got these cars on 15 at screened me. The bullets were rattling like that (rattling the map). Just like rain on a tin roof.

"Q Now, you have said you were on the switch, either 13, 14 or 15? A Or, 15, I done whatever work I done there.

"Q But you have not yet told us so we can get it on the record, just where you were? Take the tank here. Do you know where the tank was? Could you tell where you were with reference to that tank? A Well, I was in the vicinity of the tank. I seen the tank, but—

"Q Well, take the cars on track 16? A 16? This is 15?

"Q Yes. A Well, yes. Yes, I must have been right here.

"*Mr. Hardin.* You remember this middle float track all the time?

A I understand. I came down on the float. See, if I came down the middle track I couldn't get on the middle float, so it posititvely proves I must have gone on that track, come down the middle.

"*By Mr. Garrison.*

"Q There are switches, and there are switches, and there are switches. A Yes, but that is a switch would not lead you on to 15. Well, I was at a switch on 14, see, opposite the tank.

"*By Mr. Hobart.*

"Q Tell us as near as you can recall it. A Yes.

"*Mr. Garrison.* Won't you please measure from the dotted line where he says he was.

"*Mr. Hardin.* Two inches.

"*Mr. Garrison.* Little over two inches on the map from the edge of the crater as shown by the dotted line.

"*Mr. Hardin.* Two inches and two-tenths.

(Interrupted.)

"Q When the first explosion occurred, what happened to you, Mr. Walsh? A When the first explosion—well, I was blown down I guess, that's all I know about it—knocked down.

"Q And how long was it before you got up again? A Well, I don't know; I believe I was not unconscious but I—I might have been unconscious; it was—but there was a conductor that picked me up afterwards some time, found me sitting there, I don't know how long—five minutes, or it might not have been a minute.

"Q Do you remember what conductor that was? A Yes, sir; Voorhees.

"Q And where did you go after that? A I don't know. They took me up to the ambulance, I believe.

"Q You were taken home or taken to the hospital? A No; I went to the City Hospital.

"Q Then you were not there when the second explosion occurred? A No, sir.

"Q And of course you did not do anything further after that, after you were knocked down? A No, sir.

"Q Except you were removed to the ambulance? A That was all I done, yes, sir.

"Q Now, you referred to your brother as being on top of the car? A Yes.

"Q You asked him to go on top of the car? A Yes; I asked him.

"Q Did he go? A Yes.

"Q Do you know where he was when the first explosion occurred? A Yes, I was backing that car at the time.

"Q How far was he away from you? A He was directly on top of the car, I was underneath him.

"Q You were on the ground alongside of the car on which he was standing? A Yes.

"Q You stood on the ground and he was on the car? A Yes, sir; he was on the car.

"Q When the explosion occurred did you observe what happened to your brother? A No, sir; not then; but I woke up; I was sitting down; something had hit me on the small of the back. When I got my senses a little bit together I tried to get up and I could not get up and I knew that something had happened, but I could not quite —I did not really know what happened after that had gone off. I remembered that my brother was there and I looked up and I—I looked up on the car and shouted to him to save me. I remember that very much; and then I thought—

"Q Did you see your brother? A No, sir; there was nobody there. After the explosion everything seemed to go away; there was no one around there. Right a minute or two before that there was different people around there, Mr. Dickman and Mr. Henley and Mr. Leyden, and—

"Q Do you remember how you got to the ambulance, did anybody carry you there or did you walk there? A No; after I got on my feet with the help of Voorhees and I think there was the city firemen or somebody, or I believe Marty Henley was there helping me—I was only hurt across the back. I could walk after I got on my feet.

"Q You walked to the ambulance? A Yes.

"Q Do you remember how far you walked? A Yes; while I was sitting there maybe I waited ten or fifteen minutes in the ambulance and the ambulance was as near as I can judge, around the grain elevator, that is where the whole crowd was, everything was there.

"Q On your way to the ambulance did you have any difficulty in walking, did you have to climb over anything or climb out of anything? A No, sir; we walked along the train that we had hold of.

"Q Alongside the same train which was still standing there? A I believe so, yes.

"Q And after you got to the engine then where did you go? A When we got to the engine then of course we had to keep walking, I should judge, ten or fifteen car lengths before we came to the ambulance.

"Q Did you walk along the roadway after that? A Along the track, the middle float I suppose. The reason I say I might have been unconscious five minutes, when I got up there the ambulance was there.

(Cross examination read by Mr. Stallman.)

"*Cross examination* by Mr. Skinner.

"Q You were familiar with the Black Tom Yard of course before this night; you have been working around there? A Yes, sir.

"Q And you know where Zeke's shanty is, don't you, the shanty— A No, sir; I did not exactly know—I know just about where it was.

"Q Do you remember the bunch of piles or stockade of piles there? A No, sir; I did not. I was not thoroughly acquainted with it. I just—in fact I did not work there; I worked a mile or a mile and a half from there, but I have worked there at different times, but there was some of them moved three or four or five months previous to this.

"Q In any of those times don't you remember seeing a shanty off on the north side of the sea wall on some piles? A No, sir; I did not; but I have seen it since the explosion.

"Q You mean you have seen what is left of the piles? A Yes, sir.

"Q And you spoke of the fire that you saw as being over towards the North Pier? A Yes, sir.

"Q Did it seem to you to be in the neighborhood of that bunch of piles? A I could not say to say truthfully. When I looked down there, of course, there was more or less excitement that night, and there was smoke and the glare of the blaze and this stuff flying around. To tell the

truth, I did not bother much at all making an observance--an observation of anything.

"Q So that you could not locate the fire with any exactness or certainty? A No, sir; only that it seems to be in the back.

"Q You spoke of kicking a car down the track; that was more than one car, wasn't it? You said you kicked down a portion of what you already had hooked on? A No, sir; there was one car, I think.

"Q And which track was that kicked on? A I think it was 14.

"Q Was that right before the explosion? A Yes; that was a few minutes before the explosion.

"Q And was anybody on that car? A No, sir. We did not kick it exactly; I put it in the clear so that it would go to 15.

"Q That means you sent it back under momentum and without anybody on it to control the car? A Yes, sir; but we had hold of that car and I would say twenty other cars so we could not go on at any speed. We just started back to make the coupling to get the car in the clear. I do not know how far she rode, maybe a car length or two.

"Q You did not see how far it went? A Well, I watched the car stop.

"Q Did you watch it stop? A Yes; she stopped about two or three car lengths in the track.

"Q And that was on track 14? A Yes.

"Q And why did you kick it back on track 14? A Because if I had pushed it back nobody would have gone in there to cut the car back, uncouple to cut it back, we call it. I wouldn't go in and I wouldn't ask you to go in.

"Q That is why you kicked it back instead of pushing it back? A Yes, sir; for safety.

"Q Why did you send it back at all? A Because the car was on fire and I did not want to leave it with the cars that were not on fire.

"Q This was a car that was on fire? A Yes; the end of it was burning.

"Q And it was one of those you had gone in onto track 14 and hooked up to? A Yes.

"Q How many cars were altogether on track 14? A I couldn't—

"Q Well, did you get them all? A I could not say that.

"Q Did you get them all? A I could not say; we took what come.

"Q You spoke something about the knuckles, you took a chance that the knuckles worked; what was that? A Well, a coupling will couple up itself, understand, if it is adjusted properly. There is ofttimes, though, when the knuckles gets a little bit out of place and they don't work; some one has to be there to make them straight.

"Q You mean you took a chance as to whether that would work? A Yes; it did work.

"Q And when the explosion took place I think you said that the rear end of your train was down near the North Pier where the fire was and that you did not go down there where all the fire was; do you remember? A Previous to the explosion taking place I coupled up on 15.

"Q Yes? A And we had ahold of that—we had as many as we could pull anyway.

"Q Well, at that time you could not go down to the extreme rear of your train? A No, sir.

"Q Because it was too near to the fire; isn't that so? A Yes; and stuff flying around; we just backed in and coupled up to it.

"Q How far away from the rear end of the train were you? A Right at the coupling; I had the switch; the cars just lay in the clear.

"Q I mean how many cars were there back of you, east of you towards North Pier? A I could not say.

"Q A good many? A I could not say; I do not know whether the track was full.

"Q I mean on your train. Did you have six or eight or ten cars back of you towards the North Pier? A Towards North River—that is what I say; I cannot tell if I had known that we could have gone down and coupled up or counted the cars.

"Q Was that where you were standing when the explosion occurred? A No, sir; I was on the switches that would lead me on to 15. I dare say I was on 14 switch.

"Q At the time the explosion happened were you at the rear end of the train or not? A No, no.

"Q You were a good ways up on the train, weren't you? A At the time it happened I was in the vicinity with the exception of the difference of the switch that would lead on to 15. Of course, I walked down the cars and I told the man helping me to walk ahead so we could keep out of the shot. That would throw him in the same place, so I was still around the switches.

"Q I am only asking you where you were with reference to the rear end of your train—how far from the rear end were you? A I do not know how far the rear end lay; I do not know the number of cars.

"Q To the best of your judgment at least how many—six or eight? A I cannot say. I could only see a certain distance in the track.

"Q Well, isn't it your recollection, however, without being able to tell the exact number of cars that east of you at the point where you stood there was a considerable portion of your train, including— A The cars that I coupled up to?

"Q Yes. A Do you mean the cars that I went in on 15 with?

"Q The cars you went in with and the cars that you got there. I just want to know if you can tell me how many of those cars there were that laid to your east towards North Pier? A I cannot say.

"Q Can you say four with safety or six or eight? At least how many? A I went in with my train off 14. I

backed it on 15. I can count four or five, but whether there was more than that, whether it was fifteen—

"Q You can say there were at least four or five and might have been more? A There might have been more; there might have been fifty if the track would hold that many.

"Q At the time of the explosion was Henley standing near you? A I do not know just where Henley was at the time of the explosion, but he was there a minute before the explosion, because when we made the coupling it was him that suggested to get me a pusher, to get some one to help me out. I spoke to him and told him we could not pull them.

"Q Did the explosion seem to you to come from the place where you had seen the fire? A Well, it came so quick that I never gave it a thought. The only thing I thought, I felt afterwards, that I thought there was something going to happen; everything got still, a smothering stillness, and then the thing happened; I could not tell where it came from or what direction; in fact, I knew nothing about it."

Mr. Hobart. By consent I read the testimony given in another case, of Charles A. Gamble, page 929, Royal case (printed copy):

"Q Where do you reside? A In Brooklyn.

"Q And where were you employed on the 29th and 30th of July, 1916? A New York Sugar Trade Laboratory, 80 South street, New York.

"Q Was there some sort of an instrument used there in connection with a thermometer? A Yes.

"Q And just describe generally what that instrument was? A It is just a recording thermometer that works by clockwork, and we keep it there to keep a temperature record.

"Q Yes; and what made the record? A Why, it is a pen that works by an expansion of metal. As the temperature rises and falls the metal contracts or expands and moves this pen, recording it.

"Q And is that pen open to the air or is it enclosed? A It is enclosed in a clock—just like the face of a clock.

"Q Practically airtight? A Yes.

"Q Have you got the sheet that was in this recording clock or whatever you call it on the night of July 29 and the morning of July 30, 1916? A Yes.

(Witness produces it.)

"Q I call your attention to a line, a thick red line runing parallel to the irregular circular line that runs around this disc and ask you to tell me about what time that mark was made as indicated by the things on the face of that piece of paper. A I would say that this was made—the first mark was made about quarter after two.

"Q When would you say the second right angle line was made? A The second line I would say would be about quarter of three, according to this.

"Q Are those marks such as would be occasioned in the normal operation of this machine by temperature? A No, sir.

"Q What, among other things, would cause such irregular right angle lines to appear? A A very severe shock or a jar.

"Q Such as an explosion might make? A An explosion would cause it, might shake the building and might jar the clock.

"Q You removed that from the disc when? A I removed it from the disc I think it was on the morning of August 5. It will show there. The dates I have written on it; I show it there.

"Q And those two marks made at the time indicated, and given in your testimony appear to have been made on what date? A Why, it was made on the night of the—

"Q You would better look at your paper here. A That was made on the morning of July 30.

"Q Now, I notice in the part of this disc that is marked 'Wednesday noon' and then a '2', some more similar right angle marks. Can you tell us what caused those? A Yes; those are caused by jarring the table. This clock frame sets on a table between our two polariscopes and we are working there continually through the day, and during this hot weather we operate an ammonia compressor which also causes vibration during the day.

"Q Is there anything working there at night? A No, sir.

"Q Is there anything to cause a jar there at night? A No, sir; the room is locked up.

"Q Nothing in there at all? A No, sir; nothing in there. This room is insulated. It is padlocked so that no one can get in there.

"Q What do you mean by insulated? A Insulated so that there is no radiation of heat. We keep the room at a constant temperature."

(Counsel pauses.)

Mr. Stallman. That is the exhibit?

Mr. Hobart. Yes—the clock. Some of this which I am about to read was cross examination, but I will go right on with it to save time. Agreeable, Mr. Smith?

Mr. Smith. Go right ahead.

"Q (By the opposing counsel): Mr. Gamble, turning to the sector of this circle that is marked in pen and ink July 29th, I notice irregularities in the red line? A Yes.

"Q Does that indicate to you some disturbance of this recording instrument? Yes or no? A Well, yes.

"Q Now, then, again turning—going to the next sector to that one that has the inscription July 29th, it is colored green? A Yes.

"Q What period of time is that supposed to represent? A That from 6 P. M. to 6 A. M.

"Q On the 29th? A Yes.

"*Opposing Counsel.* Well, no; it is 29th and 30th.

"*The Witness.* 6 P. M. July 29th to 6 A. M. July 30th.

"Q And the line that is—and then the next sector which is a black and white, and not colored, has the figure 30 in it? A That is July 30th.

"Q That is July 30th, from 6 A. M.? A To 6 P. M.

"Q So that the entire period of time between 6 P. M. on July 29th and 6 A. M. on the morning of the 30th is supposed to be represented here covered by this green sector? A Yes, sir.

"Q And in that green sector and on the red line I notice a mark at right angles almost to the red line? A Yes, sir.

"Q Do I understand you that that indicates some disturbance? A Yes, sir.

"Q And there is nothing else in the red line within that green sector to indicate any other disturbance ,is there? A No, sir.

"Q So that this red line apparently—this record that you produce here shows one disturbance by explosion or shock of some kind in the period of time here mentioned? A Well, it really shows a slight one annexed to that; there is really two there, if you notice it.

"Q Where is it? A Right next to this one; you can see it if you look at it closely. It is very slight, but it is there.

"Q In red, is it? A Yes, sir.

"Q You mean that other—that slight thickening of the line? A That slight thickening of the line. There was a slight jarring of the instrument there that caused that.

"Q Now, these sectors have on the margin under the different points in these various hours, 6 P. M., 9 P. M., 12 o'clock at night and 3 A. M. Apparently this red line that marks disturbance— that is the large one—is somewheres between 12 and 3, isn't it? A Yes, sir.

"Q Midnight and 3 A. M.? A Yes, sir.

"Q Does this record with any exactness as to when it was? A I would not say exactness;; but I say approximate.

"Q Yes. And each one of these lines then read an hour, don't they? A Supposed to represent an hour, yes, sir.

"Q And according to this there was a severe shock by explosion, very very close to 2 o'clock and a little after it; isn't that right? A I would say that; yes, sir.

"Q Not—

"*The Court.* Why do you say it represents a severe shock by explosion?

"*The Witness.* I did not say that. I say it represents a severe shock.

"*The Court.* You just did answer it. He asked you if it represented a severe shock by explosion and you said yes.

"*Counsel.* Well, I think he has already said that.

"*Counsel.* —again. I think he said it was a shock that might be caused by explosion. He did not say it was.

"Q Now, this mark that is here—where was the other one you found, Mr. Gamble? A Down there (indicating).

"Q The mark that shows in the sector marked 2, do you know what caused that? A Yes, sir.

"Q You think that was caused by some person jarring the table? A Yes, sir; we were working around there at that time; or caused by a jar of the ammonia compressor, which causes vibration.

"*By Opposing Counsel.*

"Q Judge Skinner asked you about some irregularities that appeared during the day time of July 29th in the day time record? A Yes, sir.

"Q What causes those? A Why, this was caused where I changed the chart.

"Q This irregularity? A Yes, this is caused—

"Q Now, you are going too fast. That is, this irregularity between 9 A. M. and afternoon, as indicated there, on July 29th, was caused by what? A No; that is caused by us working around that instrument, jarring it. This break in the line is caused where I changed the chart."

Shall I go on Mr. Smith?

Mr. Smith. Go right ahead, please..

Mr. Hobart (reading). "Well, then, if these are caused by—these in the sector marked July 29th—are caused by your working around the instrument, it is not a fact, Mr. Gamble, that just walking around the room will disturb that instrument? A No, sir; I don't think it is delicate enough for that.

"Q Well, what did you mean when you said 'we were working around'? A We were working on that bench and we were handling our sets of tubes there and jarring the table, perhaps.

"Q Now, that indicates, does it not, to you a jarring condition of that table from 9 A. M. on the 29th to 3 P. M.? A Well, that line is not broken there; that is a steady line from there on.

"Q Well, from 9 A. M. to sometime around half-past one. Do you mean then that you were—that men working there were continuously jarring that table at that time? A No; I don't say they were continually jarring it. We were working around there and we were very apt to jar it.

"Q Working around it might disturb it, then? A Yes.

"Q It is quite susceptible? A It is, to a jar on the table, yes.

"Q Well, wouldn't it be to anything on the table; if there were a jar on the floor? A That would perhaps do it, yes.

"Q So that this second marking that you point out there may have been caused by just some slight jar of

the room or the building? A Well, it would take quite a jar to jar the pen that much.

"Q Well, it didn't take much of a jar to jar it on the 29th, did it, between 9 A. M. and half-past one? A Well, as that jar there is not anything like that; that extends to at least a quarter of an inch there.

"Q But the jar on July 29th between 9 and half-past one, as indicated here, was a good deal more severe than the one on the 30th; wasn't it? A Well, for this particular time; this particular time was perhaps just one great big jar.

"Q No; I mean the little one. A The little one, yes.

"Q Yes. These on the 29th indicate a very much more severe jar, don't they? A Well, that is a jar probably jarring the clock. We are right there. We may have hit the clock.

"Q But the indication is on a very much more severe jar? A Yes.

"Q Given to the instrument between the hours of 9 to half-past one? A Yes, sir.

"Q And that was just due to the men working around? A Yes, sir; that is all these jars were.

"Q Now, when you speak of these jars, I notice that the line coming up to 9 A. M. of the gray part, which means day time— A Yes.

"Q July 29th—comes up a little below 80? A Yes.

"Q And then there was a drop below 70? Yes.

"Q Was that drop caused by some artificial physical means, or was there a drop in temperature? A That was a drop in temperature.

"Q Well, what portion of that on the 29th was due to your changing a pen? A Just this point here; this break in the line.

"Q Indicating a point where it begins to drop downward? A Drop downward; yes, sir."

Then the record was offered in evidence, and I will offer it now.

(Marked D. 46.)

At this point I will show this so that you will see what we are talking about. You see the red line and the various changes in its position as indicated by the change in the direction of the line. You can study that at your leisure, of course, later.

The examination is continued.

"Q Where was this clock or recording instrument located in the building? A On the fifth floor.

"Q And where with reference to the front of the building? A Well, it was toward the rear of the building.

"Q Rear of the building. And what direction or point of the compass would that rear of the building face? A Well, let's see. That faces away from the East River; it faces across Manhattan; that would probably be west.

"Q Faces west. Where was the building, the trade laboratory building? A 80 South Street, New York."

Mr. Hobart. In order to save time in the case counsel are about to place a stipulation on the record to save the work of calling a witness.

The Court. Very well.

Mr. Hobart. It is stipulated between the parties that the firm of J. P. Morgan Company, as the commercial agents in this country of the British Government at the time of this fire and explosion and for some months prior thereto had made an arrangement with Lunham & Moore, the shipping agents of the British Government, whereby the Dougherty Detective Agency would be advised of the arrival of ships from England that were to carry munitions for the British Government and ammunition destined for those vessels, and that there was set up an automatic arrangement by which the Dougherty Agency was to meet and search and guard these ships and supervise the loading of ammunition, starting at the docks at the terminal, including the Black Tom; and also they were to supervise the loading of the ammunition—that is the loading from the cars that brought it in, starting at the

docks at the various terminals, including the terminal in question, and that this arrangement also included the various articles that were destined for the British Government which are described in the contracts that are in evidence in this case.

Mr. Stallman. And it also ought to appear, Mr. Hobart, that there was no stuff consigned to the British Government in the Lehigh Valley Yard at that time.

Mr. Hobart. Oh, yes. Put that in. Did you take that?

The Stenographer. Yes.

Mr. Hobart. All right; that is satisfactory, with this additional qualification: That as far as relates to any of the British Government claims involved in the present suit, none of those goods was in the Lehigh Valley Yard at the time of the explosion.

I now offer in evidence under stipulation that no objection will be made to the method of proof, a map entitled "State of New Jersey, Board of Commerce and Navigation." Map showing riparian lands and conveyances of New York Bay and Jersey City from Morris Canal Basin to Caven Point, Hudson County, "drawn July 1916, and signed B. F. Crosson, Jr., Chief Engineer" and "John C. Payne, Assistant Chief Engineer."

Mr. Stallman. I object to the offer of the map on the ground that it is not competent or material in this case as showing any grant to the defendant in this case. The only thing on the map I think that Mr. Hobart takes to be material are the original bulkhead lines and the original exterior line for piers. It does not show any grant of any kind to this defendant. I do not know just what the particular relevancy of it is in this case.

Mr. Hobart. Well, the grant to this defendant comes through a chain of title starting with the charter of the American Dock and Improvement Company; that has been offered in evidence; and under the terms of it whenever the lines are extended the property of that company or its grantees—

The Court. Automatically goes out.

Mr. Hobart. Out with it, yes; that is the way we connect it up.

The Court. Well, I do not see any serious objection to it, Mr. Stallman.

Mr. Stallman. No; I do not either.

The Court. And I do not see as a matter of law any particular advantage in it. I think I will let it go in.

Mr. Hobart. All right.

(Map marked D. 47 in evidence.)

FREDERICK C. FOX, sworn.

Direct examination by Mr. Hobart.

Q You are employed by the Lehigh Valley? A I was at that time; not now.

Q You are not now in their employ. What was your position on July 29th and 30th and for some time prior thereto? A Checker.

Q On the Black Tom Terminal? A Yes, sir.

Q Were you present on any occasion when Mr. Dickman gave any notice or instruction to the men on the barges, particularly the Ackerman barges? A Yes, sir.

Q When was that? A Oh, on several occasions; very often.

Q Well, do you recall any of these occasions as having been prior to July 29th and 30th, 1916? A Oh, yes, sir.

Q And what warnings, or what instructions were given, so far as you observed?

Mr. Stallman. I object. I would like to find out first the identity—

Mr. Hobart. Oh, you mean of the men? All right. I was trying to save time. I did not.

Q To whom were those warnings given? A To whom were they given.

Q Yes, to what man, or to the men on what barges? A To the different captains on the different barges, mostly all of them, every day.

Q Did you know the Ackerman barges? A Yes, sir.

Q Well, were any of these warnings given to the men on the Ackerman barges? A Yes, sir.

Q Well, who were the men on the Ackerman barges? A I cannot recall their names; I never noted any of their names.

Q What were they doing on the barges? A They were helping loading the boats, ammunition from the cars on to the boats. Foremen—men that I would speak to would be the foremen of the ship.

Q What were their jobs, if you know? A Foremen of the gang that had charge of the loading of the boats.

Q Now, calling your attention particularly to the Ackerman barges, do you remember any warnings given either by you or Mr. Dickman? A I gave warning, and Mr. Dickman gave warning.

Q To the men on the Ackerman boats? A Yes, sir.

The Court. Those were boats that were then being loaded?

The Witness. Yes, sir.

The Court. They were.

The Witness. Yes, sir.

Q What were the warnings or instructions?

Mr. Stallman. What boats were being loaded at this time?

The Witness. Well, I cannot recall any particular boat; but every day—

The Court. You say they were the Ackerman boats that were being loaded. I was interested in hearing what warnings they did give to men on the Ackerman boats then being loaded at this dock.

Mr. Stallman. I do not know what boat this was?

Frederick C. Fox, direct.

The Witness. I don't know what boat it was.

Mr. Stallman. You do not know what date it was?

The Witness. It was mostly every day they were loading. We had to do that.

Mr. Stallman. All right.

By Mr. Hobart.

Q State what the warnings were and what the instructions? A Well, I asked them to pull out so as to give the other men a chance to get in and load their boats. Sometimes they would do it, and sometimes they would not, and then I would have to call up Mr. Dickman, and on several occasions he came down to try to get them out and called up the different offices in New York to get them out.

Mr. Stallman. I move to strike that out. It is purely hearsay.

Mr. Hobart. It is admitted, it may go out.

The Court. Strike it out.

Mr. Hobart. Cross examine.

Mr. Stallman. No questions.

(Witness excused.)

The Court. Just one question.

(Witness recalled.)

The Court. You were there every day?

The Witness. I was checking every day.

The Court. Every day. And were these the only warnings that you ever heard given by Mr. Dickman or anyone else to the men on the Ackerman barges?

The Witness. Mr. Dickman and myself.

The Court. Those were the only ones?

The Witness. Those were the only ones.

The Court. That was the nature of the warning?

The Witness. Yes, sir.

The Court. All right.

(Witness excused.)

Mr. Hobart. It is agreed that the testimony of Martin T. Henley may be read to the jury, being his testimony given in a former case, the Royal Indemnity Company against the Lehigh Valley.

Mr. Stallman. It is Martin T. Henry in the record. That should be Henley.

Mr. Hobart. Yes. It is agreed that that should be read, to save time for all of us, page 756.

"MARTIN T. HENLEY, sworn.

"*Direct examination* by Mr. Hobart.

"Q You are employed as yardmaster of the railroad? A I am.

"Q At what point? A Located at Jersey City at present.

"Q Where were you located on the occasion of this fire and explosion in July 1916? A At Washington street, Jersey City, Lehigh Valley Yard.

"Q Were you on duty on the night of July 29th? A I was.

"Q You were the night man then? A I was night yardmaster.

"Q How far is Washington street, where you were located, from Black Tom Terminal? A About two and a half or three miles by railroad.

"Q What was the first that you knew of anything out of the ordinary at Black Tom that night? A Well, I was called up about one o'clock by our terminal dispatcher and notified there was a fire at Black Tom.

"Q You mean called up by phone? A Called up by phone, yes.

"Q Is that a railroad phone? A Railroad phone, yes.

"Q When you got the notice, what did you do? A Well, I took one engine with me and I stopped about a

quarter of a mile and got another and phoned on up to Jersey avenue to have two more there.

"Q How many did you get altogether? A I had three leaving and one about five minutes after. The other one was not quite ready.

"Q You had four altogether? A Four all told.

"Q Did you get on board of one of the engines yourself? A Yes, I was on the first one going down.

"Q Do you remember which one that was? A 3428.

"Q Did you take any crew along with you? A Yes —that was Conductor Gaffney, and train crew, two men.

"Q Were they working nights at that time? A They were working nights.

"Q At the Washington Street yard? A They were working on both Washington Street yards, and I got them at Jersey avenue.

"Q At any rate they were not working at Black Tom yard? A No, sir; they were in Jersey City. Two engines were working in Jersey City, and I took them down there.

"Q There wasn't anybody working at Black Tom? A No engines working at Black Tom, no.

"Q How soon did you get to the Black Tom Terminal with your engine 3428 after you had received the message? A Well, about twenty-five or thirty minutes. We had to stop and get a tank of water on all engines. That consumed seven or eight minutes.

"Q Did your engines all get there about the same time? A Yes, with the exception—three got there the same time; the fourth engine was about five minutes later, I judge.

"Q Which track did you run on when you first arrived? A Well, I sent—one engine went down 2 or 3 bulkhead, that was 3428; 3426 went right on the sea wall, pulled a string of cars out of the sea wall, and 3143 went down to the floats at 12 bulkhead.

"Q By 12 bulkhead you mean a track which appears on this map under the name of 12? A Yes, sir.

"Q Well, as you were approaching the terminal and after you got there did you see anything of the fire? A Saw a fire when we were leaving Jersey avenue, Jersey City.

"Q Did you notice anything in the way of noise or explosions or anything of that kind? A Well, the shells were popping when we were leaving Jersey City. I could hear them.

"Q Could you hear them from that point? A We could hear them pretty plainly.

"Q Could you tell what part of the terminal the fire was when you first saw it? A Not from Jersey avenue, I could not.

"Q When you got nearer, where did it appear to be? A Then it located at the rear of those tracks—from, I judge, 13, 14, 15—over there.

"Q When you speak of the rear of the tracks, what do you mean? A Towards the North Pier.

"Q Did you know at that time where the ammunition cars were located? A Well, I knew they kept the ammunition from fourteen to sixteen, I knew that was a classification for it.

"Q Were there any cars on fire when you got there among those tracks, where those cars were? A Yes.

"Q Was there any pcpping of shells? A Yes.

"Q Could you tell how many cars seemed to be on fire among the ammunition cars? A No, I couldn't tell, I could only—

"Q Was there more than one? A There was more than one. There was more than one track?

"Q You mean there was a car burning? A On more than one track.

"Q On more than one track? A Yes; you could see that, but how many I couldn't say.

"Q Did you succeed in getting any of the cars out? A Well, we pulled 12, 13, 14, had hold of 15 when the explosion occurred.

"Q You speak of pulling 12, 13 and 14? A We just pulled them over the switch and backed down, just double tracks.

"Q You mean twelve cars? A No, track 12. We had a total of about twenty-three cars on the four tracks when we pulled.

"Q How far did you pull them? A Well, only a few feet. The explosion occurred as we were starting with the 15.

"Q That was when the first explosion occurred? A Yes.

"Q One of the engines was fastened to some cars on track 15? A Yes.

"Q Do you remember which engine that was? A 3143, Conductor Walsh, Thomas Walsh.

"Q Were you on the engine? A No; I was on the ground, the rear of the train.

"Q Did you remain on the engine at all or did you direct the work? A I directed the work from the ground.

"Q Well, one of the engines was tied up to some cars on track 15, did you observe whether any of those cars that were in that string were then burning? A No; we had cut away from the burning cars.

"Q There were cars afire on 13, 11 and 15? A We cut those off as we pulled out. The cars that were afire we pulled out and shifted back.

"Q Who cut them off? A Thomas Walsh cut out one track and I cut the other—I cut two tracks in fact.

"Q After you had cut them were the cars that you cut loose, were they actually burning? A They were burning.

"Q Of course you had to go right alongside of them to cut them? A Had to go between, you know, and raise the cutting lever.

"Q By cutting I suppose you mean uncoupling? A Uncoupling, yes.

"Q When these shells were going off did they make very much noise? A No; just a hissing sound; they did not seem to be traveling very fast.

"Q Well, did anything travel from them outside of flame or fire? A No, no; I didn't see.

"Q Anything hit you or come anywhere near you? A Well, one hit me, a brass top struck me in the groin here.

"Q Did it hurt you any? A Well, it knocked me down. I dropped.

"Q Were there many of them? A Oh, yes; there was —every second—like a bunch of firecrackers.

"Q Well, did you stop work when you noticed those shells popping around? A No, no; we all kept working.

"Q Kept right on? A Kept right on.

"Q Did you see anything of Mr. Leyden? A Yes, I saw him, he was with me in fact most all of the time.

"Q Where was he when you last saw him? A I saw him last just as we cut up to 15.

"Q Where was he then? A Probably a half a minute. Well, he was within fifteen feet—ten feet of where I was —five feet, I imagine.

"Q That is before the first explosion? A Yes; less than a minute before the first explosion.

"Q You did not see him after that? A No, I did not see him after that.

"Q Did you notice whether when these shells went off there was any part of the shell that would fly around? A No; only these—this brass top of the shell, is all I see—those that dropped in my vicinity.

"Q Just the one? A No; I saw plenty of them drop around me, just the brass top, not the entire shell, just the brass top.

"Q Only one hit you? A Yes; they probably weighed six or seven, eight or nine ounces, the weight of them.

"Q How did you dodge those? A Well, they wasn't going so fast.

"Q Did you dodge them? A Yes, you could dodge them. They were going just like a baseball pitcher would throw a ball.

"Q Now, when this first explosion occurred, you have already said you had some cars fastened to your engine on track 15? A Yes.

"Q Do you remember about how many cars there were? A About twenty-three.

"Q. And whereabouts were you with reference to those cars? A Well, I was about seventeen cars from the engine. I should imagine we probably had six, maybe it might have been five behind us.

(Mr. Hobart continuing.)

"Q That would be, of course, in the direction of the North Pier? A Yes.

"Q Near the rear of the train? A Yes.

"Q Which side of the train were you on, do you recall? A I was on the shore and side towards the stores.

"Q That would be the south side? A The south side, yes.

"Q Do you recall where you were with reference to this big water tank that has been called the 100,000-gallon gravity tank? A Yes, about one hundred feet east of that.

"Q One hundred feet nearer the North Pier? A Nearer the North Pier.

"Q And how close were you to track 15 at that time? A To track 15?

"Q Yes. How close were you to track 15 at that time? A I was standing between 14 and 15.

"Q Before the first explosion occurred; I mean immediately before; did you see anything in the way of flame or fire; did you see anything in the way of flame or fire; anything extraordinary? A Well, the air became

very dead, and there was a flare for just a fraction of a second; and then everything got as dark as pitch; you could not see anything. That is all I remember at that time.

"Q Was there any noise? A There was an awful roar; it seemed to come from a distance.

"Q Where did this appearance of flame or flare appear to be, in which direction? A Off towards the river.

"Q Well, in which direction from you? A West—I should think—the left side of me—north.

"Q To the north of you and towards the river? A Towards the river.

"Q Are you able to form any judgment as to how far away it appeared to be from you? A No, not the least idea.

"Q Well, are you able to form any judgment as to whether or not it was right alongside of you or whether it was some appreciable distance off? A It was some distance away.

"Q What happened to you? A Well, I was throwed against the side of a car.

"Q Were you injured? A Well, shook up pretty well, that is all.

"Q Were you knocked out? A For three or four minutes, I imagine.

"Q What did you do then? A I started out; it was very dark; you could not see where you were going; everything was just as black as pitch.

"Q Which direction did you go? A Well, I went in the direction of the elevator.

"Q How did you know the direction? A I did not know.

"Q Well, in other words you did not know at the time that you were going towards the elevator? A I did not know at the time which direction I was taking.

"Q You just wanted to get out? A Get out, that is all.

"Q When you started out did you have to climb out of a hole or a crater or anything of that kind? A No; I fell over parts of cars.

"Q Where did you go to? A I went out until I came to the end of this string of cars before I knew where I was at. The engine was attached; that is how I got my direction; the engine was still attached to the cars.

"Q Was the engine blown up? A No; the engine was not damaged at all. In fact, we used the engine.

"Q What is that? A The engine pulled cars afterwards,

"Q Did you afterwards see the part of the yard where this so-called crater was found? A Yes, I did; about two weeks after I saw it.

"Q Have you any way of telling where you were at the time of the first explosion with reference to the edge of the crater? A Well, I was about a hundred feet east of the crater, I would imagine, towards the North Pier.

"Q One hundred feet east? A Toward the North Pier.

"Q East of what part of the crater? A Well, about one hundred feet east of that tank.

"Q Do you remember how big the crater was? A Why, no; it was a pretty big hole, though.

"Q Well, it was two or three hundred feet long? I think that is admitted. A It was more than one hundred feet long.

"Q When you speak of being one hundred feet east of it, all I want to do is to make sure whether you meant you were one hundred feet east of the east end of it, or one hundred feet from some other part? A One hundred feet east of the west end of it.

"Q That would bring you pretty near to the middle of it, wouldn't it? If the crater was 200 feet long and you were one hundred feet east of the west end of it? A That would bring me about in the center of it.

"Q Were you in the center of the crater when that explosion occurred?

"*Mr. Stallman.* I object to that because the witness does not know. The crater was not there.

"*The Court.* He does not know; the crater was not there.

"Q Well, were you anywhere near the center of what you afterward located to be the position of the crater? A Yes; I imagine I was about there.

"*Mr. Garrison.* Fix the time he was there.

"*The Witness.* I can show you where I was on that map; I can locate myself on that map.

"Q Were you at that place at the time of the first explosion? A Sir?

"Q Are you referring now to the instant of the first explosion? A Yes; yes.

"Q Now, after the first explosion you started to get away, and how far did you go? A Immediately after the first explosion I went up to this string of cars where our engine was.

"Q You did not stay around there, did you? A Yes, I waited; looking for the men that was with me.

"Q Did you find any of them? A I found Gaffney first and stationed him at the end of the cars and told him if anybody showed up to hold them right there so we could check up and locate ourselves; see?

"Q You wanted to find out if any of the men were hurt? A I wanted to find out where they were. I was more interested then in that than anything else.

"Q After you spoke to Gaffney, did you find anyone else? A Then I met Tommy Walsh.

"Q Where was he? A He was coming up within fifty feet of that string of cars when I met him.

"Q And what did you do after that? A Then I walked down. I could not find anybody; and they had

his brother, John Walsh, and Conductor Voorhees was there.

"Q Did you do anything else in the way of pulling cars out after the first explosion? A After we got them to the hospital then we pulled the string of cars off No. 9.

"Q Did you go back anywhere near where you had been? A No, I just went to the head end of No. 9, and pulled a string of cars out and the rear car was all shattered very badly. I used that same engine with another engineer. Conductor Voorhees was on at that time.

"Q Did you see anything of a crater or hole in the ground after that first explosion? A No; I never got down that far after the first explosion because you could not; the fire was very bad down there.

"Q What kept you from going down? A The fire.

"Q Where were you when the second explosion occured? A I was up toward the new elevator.

"Q It is marked on the map new grain elevator? A The new grain elevator. Probably within a hundred feet of that.

"Q Where did that seem to come from? A Well, that seemed to come from down those tracks.

"Q Which tracks? A That we had been pulling. There was no flare to that second one that I saw; very loud report; and it did not shake the ground I was standing on even.

"Q You spoke of going to the hospital, or one of the men going to the hospital; did you go to the hospital? A No; I did not go to the hospital; I was only shook up.

"Q Who was sent to the hospital? A Thomas Walsh, William Walsh, John Oakes and Harry McGuire.

"Q They were some of your men? A Yes.

"*Mr. Hobart.* Cross examine."

Cross examination read by Mr. Brogan, as follows:

"*Cross examination* by Mr. Stallman.

"Q Mr. Henley, did you look at your watch when you got down to Black Tom? A I looked at the watch at the head end of the yard and it was 1:28 exactly.

"Q What do you call the head end of the yard, the oil yard? A As we were approaching the yard near the oil yard, just south of the oil yard, on the west end of the sea wall.

"Q That is about a mile from the bulkhead, isn't it? A No; less than half a mile from the bulkhead—these bulkhead tracks I speak of, that is the last I looked at my watch.

"Q And when you got down there you say that the cars were on fire on tracks 13, 14 and 15, as near as you could tell? A Yes, as near as I could tell. The tracks are very close together; they are only twelve-foot centers, and with the rear of the cars burning it is hard to distinguish just which tracks, but I know positively it was on two of the tracks anyway.

"Q Are you, or were you familiar with the bulkhead yard before the time of this fire? A Yes.

"Q You as yardmaster had been down there before? A I had been there before, yes.

"Q Where these tracks are numbered how far does the identity of numbers remain with the tracks, up to the block where it goes into the lead track? A Yes, I believe they are about the same. I have not been down there since that explosion, since the yard was remodeled, I have not looked it over since it has been finished.

"Q My questions are all directed to the time of the fire, not what the yard is at the present time. Now, for instance, I notice on the map that track No. 12 is the extension of the ladder track and track 13 and 14 and 15 are all connected with the same lead. Now, what do you call that lead track from which 13, 14 and 15 run out and

of which No. 12 is the extension; what do you call it? A I call it the bulkheads. It is known as the bulkhead tracks.

"Q And does that designation refer to that part of it that is used as a ladder track? A The ladder track, no.

"Q What do you call that track out of which 13, 14, 15 and 12 run? A What do I call it?

"Q Yes. A Well, the sea wall is the lead to those tracks; the sea wall is the lead to those tracks.

"Q I am not speaking of the sea wall, Mr. Henley, at all. The map shows that track 12 and track 13 and track 14 and track 15 all lead off the same lead track. A Yes, all off the same ladder.

"Q All off the same ladder track? A Yes.

"Q Do you call that a ladder track? A Yes.

"Q And how do you identify which ladder track that is? A Well, you can identify it from going over to the North Pier, going over to 18, and around over the tracks from 18, 17, 16, 15.

"Q Yes, you identify the tracks but I see there is another ladder out of which 18, 17 and 16 run. A Yes.

"Q Now, how do you distinguish between those two ladders? A By becoming familiar with the yard. I could see approaching—count from the North Pier over; tracks 18, 17, 16 and 15. We went in on 12, 12 blocked 13; I could see 12 sticking up.

"Q Just a minute. Supposing I did not know anything about this map or this yard and you wanted to tell me you went down the second of those leads, embracing 12 to 15, and not the first one. How would you designate it? A That would be known as the middle float yard.

"Q That ladder track would be the middle float lead? A Yes, the middle float yard.

"Q Now, what was the first track that you pulled when you got down there? A 12.

"Q So you came down this middle float lead then, did you? A Yes.

"Q And went down on track 12? A 12.

"Q Do you know how many cars you hooked up? A We took about 7; it might have been 8.

"Q Did you go clear out to the bulkhead to couple up those cars? A Yes, over the switch; we pulled those seven over the switch.

"Q No; I mean when you ran your engine down in on 12 track, did you go personally any further than the switch? A On 12?

"Q Yes. A Yes, sir.

"Q How far did you go? A About three car lengths.

"Q Three car lengths? A Yes.

"Q Was there any car nearer the switch? A Any car near the switch at 12?

"Q Yes, on 12? A Yes, there was a car on the switch.

"Q Was it following 13? A Fouling 13.

"Q And was there another car near that—behind it? A There was another car coupled up to it.

"Q Coupled up to it? A They were all coupled together.

"Q You went down, then, how many cars down that string? A About two or three cars.

"Q About three cars? A About two or three cars.

"Q About two or three. That took you, then, about seventy or seventy-five east of the switch where 12 enters the lead? A Yes, sir.

"Q Now, when you went down there with your engine, did you see the fire? A I saw the fire on the rear end of the tracks.

"Q Where was the fire from where you stood when you were coupling up these cars on No. 12 track? A It looked to me to be about on the rear of 13, 14 and 15.

"Q It looked like they were on adjacent tracks east of where you stood? A Yes; east of where I stood.

"Q As your engine backed into the yard and pulled out again you crossed then between the 100,000-gallon

tank and the place where the fire was, didn't you? A Yes.

"Q Did you know at that time whether there was any fire hose or any fire fighting apparatus at any place to the northeast of the tracks that you— A No, sir; I did not.

"Q Well, if there had been would you have known it?

"*Mr. Garrison.* I object.

A No.

"*Mr. Stallman.* I think that is proper, to ask this witness that.

"*Mr. Garrison.* It is not cross examination. It is not cross examination. This witness was not asked anything about fire fighting apparatus. We will concede there were no hydrants there, if that is what you want. You need not ask anything else. But this witness was not asked that and it is not cross examination. The map shows where all the fire hydrants were, Mr. Stallman. There is no use asking were there any anywhere else. It shows every one of them.

"Q Do you know how long it took, Mr. Henley, for you to drill 12 and 13 and 14 tracks? A Well, from the time we started getting hold of them it was about twenty minutes, about twenty minutes, sir, from the time we started on 12 until we got 15 out.

"Q That is until the explosion occurred? A Yes, about eighteen I should imagine, eighteen or twenty minutes.

"Q You had been working, then, as I understand it, about eighteen minutes until the time of the first explosion? A Well, we were working a little longer. You know, there were cars on the sea wall track that had to be removed before we could get down in there. You see?

"Q I thought the first thing you said you did was to pull No. 12? A After we got off the sea wall. The 2436, I said, took the cars off the sea wall. I had to wait until

she got off with these cars before I could bring the 3143 down into that yard. See?

"Q Did all of your engines come down on the sea wall track? A No, no; the other engines went over on the other side. See?

"Q Yes. Well, now, while this engine was drilling the sea wall track why couldn't you have gone in on 12 by way of the middle float track? A Well, I had to let her pull out. I had the other two engines going in that way. See? To pull over the other side of the yard. Some of them had to wait a little. We all couldn't move at once—not four engines.

"Q Now, did you after you pulled No. 12 track head out towards the—in front of the stores and then drill back on No. 13, and then head out again and then back again into No. 14? A Yes, sir.

"Q And then out again and back into 15? A Yes, sir.

"Q You were leading right back and forth over that ladder track all the time? A Yes, sir.

"Q And was the total amount of cars that you had in your train these twenty-three? A Twenty-three cars.

"Q Or does the twenty-three include the cars on track 15? A The twenty-three cars we had hold of with the engine, twenty-three cars all told when we got through pulling.

"Q Including those on 15? A Including everything, yes.

"Q Now, in uncoupling any of these cars from others —these cars were all equipped with United States safety appliances, weren't they? A Yes, sir.

"Q And, therefore, you didn't have to go in between the cars— A No.

"Q —to uncouple them, did you? A Just raise the lever at the side of the car.

"Q You could stand alongside of the car and close to it and grab the uncoupling lever? A Yes, sir.

"Q Now, when you say that you were seventeen cars from the engine at the time of the explosion, do you mean that you were seventeen cars east of your engine? A East of my engine; yes; towards the North Pier.

"Q Towards the North Pier? A Yes, sir.

"Q Now, do you know where your engine was at the time of the explosion? A Well, she was seventeen car lengths west of 15 there, the west end of 15.

"Q I know you can probably figure it out, but do you know where she was? Can you tell me where she was, whether she was opposite Pier 5 or Store K or anything of that kind? A Well, you could locate yourself by figuring it out.

"Q No; I don't want to figure it. I want to know whether you know where she was? A No; I don't know unless I figure it.

"Q Now, when you went down there did you know what was in any of these cars? A I knew those were the explosives; I knew that was where the explosives were kept.

"Q What is that? A I knew the explosives were kept in those cars down there; I didn't know just what explosives were in it.

"Q You didn't know specifically what kind of explosives? A No, I did not.

"Q Of course, you knew when you saw the shells shooting they were shells? A I knew they were shells, and knew from the location of the fire that is where we kept our high explosives, was down there.

"Q Now, when you say the brass top hit you, do you mean the projectile end of a shell, the brass top end? A The timer, I think, you would call it, has a combination on it, something similar to the knob of a safe.

"Q You mean the nose? A Yes, the brass nose.

"*Mr. Garrison.* He means the very extreme end of the brass projectile, which has the timer on it, which comes off.

"*The Witness.* Probably weighs six or seven ounces.

"Q What was it, a three-inch shell? A Three-inch shell.

"Q Now, at the time of the explosion, where were you with reference to the switch or track No. 15? A I was right there.

"*Mr. Garrison.* Won't you put your pointer on there so we can tell where that is.

"*Mr. Stallman.* My pointer is pointing to the sea wall track, and the lead that comes down.

"*The Witness.* I was right by the switch, probably a few feet east.

"*Mr. Stallman.* There is the point. I am pointing now at a place where two tracks diverge, the one coming to the south leading into float bridge No. 2, and the one continuing straight on being the lead to No. 15.

"*Mr. Garrison.* Where is the switch?

"*Mr. Stallman.* I have got my pointer now right on No. 15 switch, No. 15 track goes into that ladder track.

"*The Witness.* I was probably fifteen or twenty feet east of that, towards the North Pier, on that side, out towards the switch.

"Q Fifteen or twenty feet further east? A Yes, sir.

"Q That would be— A Because I walked just a few feet after we coupled up on that track.

"Q Then you were down about the point, about half way between the switch and the frog? A Yes, I was about at the frog.

"Q Now, you know, Mr. Henley, that on those frogs, the No. 8 frog—you got about sixty feet between the point of your switch and the frog? A About seventy-two feet, isn't it? I was about half way between the—

"Q Switch and the frog? A Yes, switch and the frog; about thirty-six feet; something like that.

"Q About half way between the switch and the frog on 15's lead? That is the point you were standing when the explosion occurred? A Yes, sir.

"Q Now, you were conscious of a deafening roar, were you? A Yes, sir.

"Q And some debris flying around through the air? A No, no debris, not before the explosion; just a flare up for a fraction of a second.

"Q The first conscious act that you performed was to go away from there, wasn't it? A Yes, sir.

"Q And you didn't come back to that exact spot until two weeks afterwards? A About a little over two weeks; about in the neighborhood of two weeks.

"Q And when you came back you found a hole there that was filled with water; is that right? A Yes, sir.

"Q And was that—and from that you judged that you were somewhere around in that neighborhood at the time of the explosion? A Sure.

"Q Now, as a matter of fact, Mr. Henley, were the tracks directly— A Torn up then?

"Q —twisted and knocked around and one thing and another? A Sure were. There was hardly any location to them. Where the crater was, you mean?

"Q Yes. A Yes.

"Q And tracks Nos. 13, 14, 15 and 16 were all twisted weren't they?

"*Mr. Garrison.* You mean where the crater was.

A Yes.

"*Mr. Garrison.* Where the crater was you could not see any track at all.

"*The Witness.* The track wasn't there at all where the crater was.

"Q What is that? A The track wasn't there at all where the crater was.

"Q Well, on the edges of the crater when you went back a couple of weeks later, were the tracks all twisted? A Well, they had them pretty well straightened up.

"Q Mr. Henley, when you went down there on—

"*Mr. Stallman.* I will withdraw that question.

"Q Did you pull out any of the cars on track 16? A No, no; we did not.

"Q Was there any particular reason why you started on 12 instead of 16? A Well, 12 stuck out and fouled the other tracks, see? Twelve fouled the other tracks, so we had to start in on 12. See? The track stuck out over 12.

"Q Well, 12 was the ladder track, wasn't it? A Yes, but the cars stuck out on 12 and 13, so we pulled along—

"Q You mean there were cars on that ladder track that followed the approach to 13 and 14, and so on? A Yes, sir; yes, sir.

"Q And the—at the time you got there? A At the time I got there, yes.

"Q Now, if I understand you correctly, you were near one of these blocks of stores at the time of the second explosion? A The time of the second explosion—no, I was near the elevator.

"Q Oh, down near the elevator? A Near the elevator; probably about one hundred feet east of the elevator.

"Q And you didn't feel any concussion of the ground at the time of the second explosion? A No, not a bit, not a jar at all."

HUDSON MAXIM, sworn.

Direct examination by Mr. Rockwood.

Q Mr. Maxim, where do you reside? A Borough of Hopatcong, N. J.

Q And have you had a lifetime of experience in scientific study of explosives? A I have studied explosives a good deal during the past thirty years, since 1888.

Q Have you written books upon the subject?

Mr. Stallman. Oh, we concede Mr. Maxim's qualification as an expert in any line of explosives.

Mr. Rockwood. All right.

Q What inventions of your own have you patented, Mr. Maxim? A In explosives and torpedoes and war inventions, do you mean?

Q Yes, sir. A I invented and patented a moulded perforated smokeless cannon powder grain in use by the United States Government. I invented a high explosive called Maximite, which was bought by the Government in 1901—that is to say, the secret of its composition and manufacture was purchased of me by the Government in 1901. I invented a safety delay-action detonating fuse, which was bought by the United States Navy in 1908, and during the war I invented a magnetic mine or influence mine for blowing up submarines or other enemy war vessels which might come within from forty to seventy-five feet of the mine.

Q How many kinds of explosives are there? A Well, there are many kinds of explosives, but broadly speaking, with respect to their manner of exploding, there are two—high explosives and low explosives; that is to say, explosives such as gun powder while a high explosive, may be characterized as one which is detonated or may be detonated by a suitable detonator.

Q That is, a high explosive is one that may be detonated by a suitable detonator? A Yes, sir.

Q And right there, what is a detonator? A A detonator is a small body of explosive material suitable of detonating from ignition. The detonator is generally set on fire and that detonates and explodes the high explosive in which it is imbedded. The composition of the detonator varies. It may be fulminate of mercury, which is the most common of all detonators, or some compound of fulminate of mercury.

Q Now, you say there were two general divisions of explosives—high and low. And how many kinds of high explosives are there—broadly speaking? A Well, there are the commercial dynamite used for blasting and the war explosives used for torpedoes and for bursting charges for projectiles in war, and then there is black gunpowder used as a propellant, for throwing projectiles from guns—smokeless gunpowder, which may be of varying composition—the most common, however, is the smokeless powder made of pure nitrocellulose, which is the form of guncotton made into smokeless powder by dissolving it and drying it—dissolving it, and working it, and then drying it.

Q What is TNT? A TNT is a nitro compound of toluol and is quite sensitive—in fact, as compared with most other high explosives, it is comparatively—it is comparatively—it is very insensitive, and it is a very stable compound—that is to say, chemically stable.

Q Name its qualities—say, first, as to inflammability? A When set on fire it will burn like pitch in any quantity without exploding.

Q To come right to my other point that I want to make. Is TNT exploded by detonation? A Yes, sir, it is exploded by a suitable detonator.

Q But not by burning? A But not by burning; that is to say, by inflammation.

Q Am I correct in saying that a car containing TNT set on fire would burn up like pitch and would not explode? A It would burn up; it would not explode.

Q But if TNT does come in contact with a proper detonator, then it would explode, would it? A Yes, sir,

By the Court.

Q By a detonator, you mean an explosive? A I mean a small explosive for setting off a big one.

Q A small explosive for setting off a big one? A Yes.

By Mr. Rockwood.

Q A small explosive for setting off a big one? A Yes, sir.

Q What is wet nitrocellulose? A Wet nitrocellulose is dry nitrocellulose in a wet form, compressed, as a rule, in dense shape, and which is incapable of being exploded by fire, and it will not burn except very slowly, and it is more difficult to detonate than TNT or more difficult than almost any other high explosive.

Q That will burn, also, will it, without explosion? A It will burn in a building that is burning down around it, or something like that, but a pile of it would go out if it was set on fire and there was no external fire to keep up the burning.

Q What is benzol? A Benzol is a product obtained generally from the manufacture of gas, street gas.

Q Is that an explosive? A No, sir.

Q If that is set on fire what does it do—simply burn? A Burn.

Q What is smokeless powder? A Smokeless powder, like that used by the United States Government, is, as I have already stated, a colloid made by gelatinating or dissolving nitrocellulose—shaping it into grains and drying it.

Q And will that explode— A No, sir; it will not detonate.

Q —if set on fire? A It will not detonate when set on fire in the usual form; but if a nitrocellulose smokeless powder be pulverized or reduced to a very fine state of division, then it will detonate, just like dry guncotton.

Q What is the effect of heat on TNT? A It melts it, and if the heat be great enough, it will set it on fire?

Q What is a detonating fuse? A A detonating fuse is a fuse used to explode a high explosive in a projectile—generally in a projectile.

Q In this case, one of the witnesses has testified that upon the deck of the barge where he was located, small irons, hot irons fell, which he threw overboard. What would you say that means—that is, that some of these shells went in the air—about an inch wide and six inches long of red hot metal fell down on his boat? A I could not tell.

Q You could not tell? A I may say in that connection, if you will allow me, that a piece of metal shot from a gun, or

thrown by a glass of high explosives, is not heated except it be torn or disrupted and worked done on the metal itself—unless the metal be worked under the force of the blast.

Q Describe the width and length of the ordinary detonating fuse? A I cannot do that, sir, because they vary so much.

Q Well, can you give a general description to the jury? A The detonating fuse that I made for the United States Government for a twelve-inch shell would be about nine inches long, I should think, including the base plug, and for a five-inch shell it would be half that.

Q Four and one-half inches? A Yes, sir.

Q These in question were made for the Russian Government. Have you any of those specifications in mind? A No; I never saw one; I never saw one.

Q You never saw those? A But I am familiar more with the character of them, how they are made. I think they are—tetronitroaniline, I think they use for detonator in them, and they are capable of being handled quite roughly without exploding; that is to say, they are safe to shoot from guns, but when the tetronitroaniline is ignited, it detonates and detonates the high explosive in which it is imbedded.

By the Court.

Q Are they cuneiform; do they look like a railroad spike? A They are rather in a tubular form, and the detonator in the front end of them.

Q Do they resemble a railroad spike? A That is what the man said those things looked like?

By Mr. Rockwood.

Q Yes, he said they resembled a railroad spike? A Well, they would be round, and probably would be made of brass, and they would not look like a railroad spike. I do not see—I think it would be a bad resemblance.

Q The same general size, would they be? A They might be of the length of a railroad spike, and a man in his excitement

might mistake these for a railroad spike, but it would not look like it.

Q And still it might be a detonating fuse? A It might be a detonating fuse, and a man would think it looked like a railroad spike.

Q Now, at the request of the Lehigh Valley Railroad, did you make a study of this Black Tom explosion? A I did; yes, sir.

Q And how much of a study did you make of it? A Why, I went down to the site of the explosion—looked over the ground, and then I called on Captain Dunne, who had also studied it and written upon it, and got what he had produced; then I got the—

Q Captain Dunne was the government inspector? A Pardon me—yes; the government inspector—and then I obtained some of the original chart fom the duPont Powder Company in which the experiences of vast numbers of explosions all over the world had been tabulated and the distances at which different effects were produced were determined, and which formed the basis in a large measure for the determinations of the Bureau of Explosives, of which Captain Dunne is the head.

Q Now, given the detonation of a large quantity of TNT, what is the immediate effect as to the—may I call it—it would not be a cone of depression, but the cone of extension, maybe—describe it in your own language? A When a mass of TNT or other high explosive is detonated, the gases lurch out in all directions, and if it be free to act in all directions the action is equal in all directions, but if the mass at the instant of detonation be adjacent to some firm body capable of offering great resistance, like the earth or the surface of water, or a piece of armor plate, the mass of explosive will rebound, will bound away from the plate and exert a blasting effect upon the plate or body—resisting body. And in that case, as upon the earth, the mass of explosives will rebound up from the earth, forming a crater in the earth, and as they go up, they will go up in the form of an inverted cone.

Q Then where is the effect mostly produced of the explosion—where is the greatest effect noticeable? A The visible effect is on the object on which the explosive rests, or with which it is in contact.

Q Given an explosion of TNT within a certain distance of a building, what would be the effect noticeable upon the building—would it affect the roof, or would it affect the lower part of the structure? A It would depend upon the distance and the quantity of explosive; if you will allow me to explain—a body of explosive detonated at a long distance from a building will exert a pressure upon it, a wave of pressure, which acts in the same way that a sound wave acts; in fact, it is a big sound wave and it travels with the speed of sound, and it presses in the wall of the building, bends it in, and then the pressure being relieved from the outside and a partial vacuum formed—if I may use that expression—and the pressure inside of the building at that moment exerted outward—throws the wall—or is liable to throw the wall of the building outward in the direction of the explosion. This is well exemplified in the breaking of glass windows from an explosion where the glass is generally found blown out into the street instead of being blown into the building.

Q That is blown out in the direction towards the explosion? A Blown out towards the explosion, almost always.

Q And in this particular case have you been informed of the fact that there were eight cars of TNT at the north end of the pier on track 16? A Yes, sir.

Q Containing about 400,000 pounds of TNT? A Yes, sir.

Q Have you also been informed of the fact that on the north side of the North Pier was a barge containing about 100,000 pounds of TNT, and 25,000 detonating fuses? A Yes, sir.

Q Known as the Johnson 17? A Yes, sir.

Q You went down there after the explosion and examined all this pier and the railroad yard, did you? A I did.

Q And did you talk with the various men who helped there at the scene of the explosion? A I did.

Q And, as you said, with Capt. Dunne, who was government inspector? A Yes; I did.

Q And were you then familiar with the facts that at the north side of the North Pier after the explosion was found a large crater under the water, showing that the earth under the water had been excavated by the explosion? A Yes; I so learned.

Mr. Stallman. If the court please, I think counsel is going a little too far in his assumption of the fact, in stating that the earth there was presumably excavated in the plate which was offered in evidence, was excavated by the explosion. I think that is a conclusion of counsel.

Mr. Rockwood. Leave out the words "by the explosion," because counsel is sensitive about that.

Q There was a depression there, a large crater formed under the water, wasn't there? A I understood that there was. I did not see the crater. I did not make any examination myself personally, but I understand there was such a crater there.

Q But you were so informed? A So informed; yes, sir.

Q And did you yourself see the crater that was formed by the eight cars of TNT? A I did.

Q And did you see the falling warehouses? A I did.

Q And the part that had been affected by the explosion? A Yes.

Q And did you make a special study in the place of the accident and of the facts incident thereto, with the object of forming in your mind an accurate opinion as to whether the first explosion came from the Johnson 17 on the north side of the North Pier, or from the eight cars of TNT on the land? A I did.

Q And did you arrive at a conclusion satisfactory to yourself? A I did.

Q Now, I can ask you—

Mr. Rockwood. May I speak to counsel?

The Court. You may.

Mr. Rockwood. I can ask him a long hypothetical question or ask him for his conclusion, whichever you wish, to shorten the time.

Mr. Stallman. Just ask him his conclusion.

Q Counsel consents that you may state to the Court and jury just what your conclusion was as to where the first explosion happened? A Entirely aside from that conversation with the gentlemen with whom I conversed at the time I visited the place, excepting with respect to the one particular, I decided that the barge must have been the seat of the first explosion.

Q That is the Johnson 17? A Yes, sir.

Q Yes. A The wall of the warehouse was thrown down bodily and in the direction of the scene of the—in the direction of the explosion; and the under structure of the water tank, the steel structure which held up the water tank, was blown forward from under the tank and lay on top of the fallen wall; and the water tank itself, concrete tank, had fallen down upon its own foundation. Consequently the wall must have fallen down before the structure was thrown from it. If the eight cars had been the first to explode the wall would have been blown down in the form of a lot of disconnected brick instead of being thrown down as it was bodily, and it would have been thrown away—it would have been projected like a projectile from the blast instead of falling down in the direction of the explosion; and the under structure must have been —this steel structure that held up the tank—must have been thrown forward by the blast of the eight cars; because the explosion from the distance of the barge would not have had the necessary local pressure or propelling effect to carry it forward. The pressure from the barge would have been more in the form of a wave, while the atmosphere from the car was carried forward bodily, not in an explosive way, but as a projectile.

When a large mass of high explosive is detonated the air in the immediate vicinity is first carried away from it in the form of a projectile, and the air acts literally like a projectile, and after it had traveled a certain distance then comes in the reaction, at which point it takes on the form of a sound wave; but at that distance at which those warehouses

were, that first wall of the warehouse, the atmosphere would certainly have been propelled forward exactly as a projectile and would have blasted down the wall just like any other blasting effect would be produced.

Q Did you learn that there were no detonating fuses in this yard, that the only ones were on the barge 17? A I so understood it.

Q What is the importance of that fact to this jury? A The importance of that fact is that the barge, being the first to explode, or the seat of the first explosion, the fuses were certainly thrown in all directions from the blast, at least, a large number of them must have been; and it is very highly probable that some of them fell in the vicinity of the eight cars, and the cars having been for some time on fire and the liquid TNT running out of the cars, it afforded all of the necessary conditions for the production of a detonation by one of the fuses falling into the fire and detonating in the presence of the TNT.

Q Wouldn't it have been possible, Mr. Maxim, for the eight cars of TNT which were on fire to have exploded without a detonating fuse? A They would not have exploded without a detonating fuse for this reason: When TNT is set on fire the heat of the flame is automatically regulated by the volatilization of the TNT, and the more rapidly it burns, the further away from the TNT is the zone of maximum intensity of heat of the flame removed; so that it makes no difference how much or how large a body of TNT is set on fire, it cannot explode from combustion.

Q Did you learn in the course of your investigations that the so-called South Pier was wholly uninjured? A I do not remember about that.

Q You do not remember? A No; I do not remember about that.

Q Did you learn that cars on the North Pier were thrown towards the south? A Yes, sir; I saw the wreckage.

Q And the photograph shows that? A Yes, sir.

Q What does that indicate to this jury? A That there was an explosion at the north, or northwesterly.

Q On the north side? A Yes, on the north side.

Q Did you learn that cartridges were found in the north side of the South Pier? A I understood so; yes.

Q Imbedded in the wood? A I understood so; yes, sir.

Q As if shot there from a cannon? A Yes, sir.

Q What would that show to this jury? A Show they were thrown from the barge that exploded north of there, or from some air explosion.

Q North of the Johnson 17? A Yes, sir.

Q Did you learn at the time of the explosion several of the Lehigh Valley men were standing on the sea wall? At or near the location of the eight cars of TNT? A I was so told.

Q And did you learn that they survived the explosion? A Yes, sir.

Q What do you say about that to the Court and jury? A It would have been impossible for them to survive had the explosion of the cars been the first explosion.

Q If these men had been standing on the sea wall when the eight cars of TNT exploded— A They would have been blown to fragments without any question at all.

Q No escape from that? A Absolutely none.

Q Did you also learn of the registration of the thermometer in lower New York? A I was told about that.

Q Well, you have seen it, haven't you? A Yes, sir.

Q Well, I show it to you now. That is the disc of a registering thermometer. Where do you understand that that was located? A Somewhere in the lower end of Manhattan Island, I understand.

Q And what does that show to you? A As I understand it and from the instruction that I had in examining it, it indicates that there were two explosions, and that the first one was the more intense of the two.

Q Does it indicate lots of time between the two? A Yes.

Q What does it show?

Mr. Stallman. Doesn't it speak for itself, Judge?

Mr. Rockwood. I think so, yes. I just want to get it on the record. It will take but a minute.

A The first one was con iderable larger and the other one is so small that I cannot see very much of it. I can see a little of it.

Q It indicates two explosions? A Yes, sir; two explosions.

Q About how far apart in the length of time? A Length of time? Well, now, I cannot see this. It is 3—4—6 A. M.—3 A. M., well, I do not understand this thing well enough to tell.

Q The other witness said about half an hour, is that your recollection? A At this time I do not remember.

Q However, it shows two explosions? A Yes.

Q Now, the first explosion having occurred upon the barge 17 containing 100,000 pounds of TNT, and the second one in the eight cars of TNT where there were 400,000 pounds, explain to the jury the relative difference in the force of the explosions.

Mr. Stallman. I do not think counsel ought quite to make that broad statement. I think we might concede that that is Dr. Maxim's opinion.

The Court. Do you think anybody is going to be misled by it? We all know that is what the contention of the defendant is, and we all know what the contention of the plaintiff is, that that is not what happened at all.

Mr. Stallman. I assume that is so.

The Court. Yes.

A The 100,000 pounds exploding in the barge a thousand feet, as I understand it, was nearer New York than the cars, the eight cars, and the fact that it was in the water so that the explosion acted directly upon the water of the bay, would have produced a very much more intense action on Manhattan Island and consequently upon the instrument which recorded the two explosions, than the explosion of the 400,000 pounds in the cars could possibly have done. The 400,000 pounds of explosives in the cars was four feet above the ground, being in cars; and that would cause the force of the explosion to act less directly upon the ground and expend more of its force in a lateral direction or sidewise; and again, the character of the earth under the cars was such as would not tend to facilitate the transmission of a wave of sound or compression, being cinders or

gravel, and so forth; while water being a non-elastic or largely non-elastic medium, would transmit a wave of compression with much greater force and distinctness than will a wave transmitted through the earth.

Q Did you learn that there were four barges on the south side of the North Pier at the time of the accident; that is among others, four up near the end of the pier? A I understood there were.

Q Did you get their names? A No; I did not.

Q The Moran 20, the Jet, Paulina and the Thompson. Does that refresh your recollection? A Yes; I seem to remember something about them.

Q Now, assuming those barges had been down there what would have been the effect upon those barges of the explosion upon the other side, of the Johnson 17? A What would have been the effect?

Q Yes. A If—

Q The Johnson 17 exploding, what was the effect upon the four barges upon the south side.

Mr. Stallman. If the Court please, I think I shall object to that question unless counsel gives Dr. Maxim a definite location of the barges. South of the North Pier may be—

Mr. Rockwood. I am not particularly anxious to press it. I am just trying to shorten it.

A Well, the effect would be if there was any intervening material it would be blown on to the barges—

Q There is an intervening pier. A —and the pier would to a certain extent protect those barges; but any structure lying between the explosion and the two barges—I understand the pier was between the barges and the explosion—

Q Yes. A Would be blown towards the barges.

Q And would the detonating fuses on the Johnson 17 have been blown down? A They would have been blown on the barges.

Q On the barges to some extent? A Yes, very likely to be.

Mr. Rockwood. That is all, sir.

Cross examination by Mr. Stallman.

Q Mr. Maxim, is TNT known as a high explosive? A Yes, sir.

Q None of us are, I suppose, very familiar with explosives; but we have some notion of the explosive quality of dynamite. How does it compare with blasting dynamite? A It depends upon the kind of dynamite. It is about equal to a sixty per cent. gelatin dynamite in force, I should think.

Q Is that dynamite of some explosive property? Is that a rather high explosive? A It is a high explosive. It is a high explosive containing 60 per cent nitroglycerin absorbed in some absorbent or of some other equivalent of nitroglycerin of that quantity.

Q Well, is it not a fact that TNT was very extensively used during the war on account of its high explosive properties? A Yes.

Q Was there any other explosive that was more extensively used for the same purposes? A In the latter part there were, yes. There was a mixture of TNT and nitrate of ammonia being used, about twenty-five per cent of TNT and seventy-five per cent nitrate of ammonia.

Q How about the year 1916? A I don't know to what extent they had used it. I know on the naval consulting board we were recommending the use of nitrate of ammonia on account of its cheapness and availability.

Q But at the time of this fire, isn't it a fact that TNT was one of the most powerful explosives then in use—in general use? A Not one of the most powerful, but it was for its power the most available; that is why it was used in the war. Picric acid is more powerful, but the British Government, for example, could not get the necessary picric acid, so they had to come down to TNT, and then later they had to come down to mixture of TNT and nitrate of ammonia in order to get the material.

Q Now, while we are getting the properties of some of these explosives, I understand you to say that smokeless powder would burn, but was not easily detonated? A Yes, sir.

Q Are you familiar with the kind of smokeless powder that is manufactured by the du Pont companies? A Yes, sir.

Q And that is also susceptible to combustion but not easily to detonation? A The cannon powder, you refer to, I presume?

Q Yes, sir? A Yes, sir; it is susceptible to combustion but not to detonation.

Q And you are familiar with cordite? A Yes, sir.

Q That is also more of a combustible commodity, isn't it—when not confined, I mean, in— A It will not detonate when it is well made, and it contains fifty-eight—that is, cordite, fifty-eight per cent nitroglycerin and a mixture of guncotton or guncotton and vaseline, and it won't detonate under a pressure of thirty-five to fifty thousands pressure in a square inch in a gun, but when piled up in a large quantity, as they piled it, quite a number of tons of it once near Willetts, and it began to decompose a little and set it on fire, and it detonated with great violence— more susceptible to detonation, in other words, it will make a detonative compound by less subdivision than will ordinary smokeless powder.

Q Well, a package of it set on fire would burn, wouldn't it? A It burns more rapidly. It burns in a gun twice as fast as nitrocellulose.

Q I am not speaking of a gun at all, but taking the packages in which packed at the factory and set it out in the field and put a light to it, it will burn up? A It would burn up and would not detonate unless it was a very large quantity, in which case it would very likely detonate, that is to say, cordite will do so.

Q Now, the benzol, of course, would not explode, would it? A No, sir.

Q And wet nitrocellulose would not explode? A Not explode from ignition or from fire.

Q Yes, ignition. Are you familiar with what is meant by cannon ammunition with explosive projectiles? A Yes, sir.

Q What do you understand it to mean? A It means a projectile with high explosives in the shell, in the projectile.

Q And that high explosive was usually TNT, wasn't it, during the war? A I cannot say usually. I think TNT entered more largely than any one explosive into the shell charges, but it was picric acid, mixtures of picric acid and other substances, mixtures of TNT and nitrate of ammonia mainly, and I think to some extent ammonal, that is to say, a mixture of nitrate of ammonia and alluminum, but alluminum got so scarce they could not use the alluminum.

Q And the shell which is described technically by the manufacturer as cannon ammunition with explosive projectiles contained the explosive mixture or commodity which you have just described—if the projectile was heated up to a sufficient heat, would that not cause the detonation of that shell? A If it was plugged, it would, yes. It would surely detonate if it was heated up without any escape for the gases from the enclosed high explosive.

Q Supposing it was closed up and the shell got red hot? A It would not have to get red hot to detonate.

Q Would not have to get that hot? A No; if it were TNT the TNT would inflame to a little above 300 degrees centigrade, and if it were confined, the pressure would quickly melt and the temperature with it, and detonation would follow.

Q And that would mean the bursting up and breaking up of that projectile? A It would be blown into fragments, yes, sir.

Q You stated you had arrived at your conclusion largely by an examination and also—but that you had excluded from consideration most of what was told you down to Black Tom with the exception of one particular. What was that particular? A I beg your pardon. I do not think I just said that. I think I said for the purpose of this answer. If it did not I meant to say so. That I would exclude the other things. The other incidents and what I was told by the men about other things, influenced my judgment very largely, but this one thing alone was sufficient for me to determine it must have been the barge

that was first to explode, and that it was only necessary to refer to that alone.

Q What was that particular thing? A That was the fact that wall had been blown down in the direction of the explosion bodily—had been blown down bodily, and that the steel structure that held up the tank had been thrown forward upon it after it had been blown down. Now that could not possibly have happened—that sequence of events could not have happened had the cause been the first explosion, because there would have been no wall and tank to co-operate with each other in such respects.

Q Now, let me ask you right there Mr. Maxim: I do not assume that you or any other manufacturer or investigator ever set off 400,000 pounds of TNT to see what effect it would have? A It would be a little too large an experiment to justify—the expense would be too large, but it has been done without intention.

Q You have never made that experiment or never knew of it to have been done? A Yes—not in that quantity.

Q With that volume of TNT? A Well, with half of it—206,000 pounds burned up in a mass, if I may continue, at the Hercules Powder Company.

Q I may not have made myself clear. Did you ever detonate 400,000 pounds of TNT or have you ever known of an experiment of that magnitude to have been made? A No, sir; not intentionally.

Q Yes. Now you said that if there were some men standing within a certain distance of the place of the explosion of these eight cars of TNT they would have been blown to fragments? A Yes, sir.

Q What would have been the effect of this barge containing 100,000 pounds of TNT and the 25,000 detonators if it had exploded? A What would have been the effect, in what respect?

Q On the barge, on the boat itself? A It would have blown it all to pieces. 100,000 pounds of TNT exploding in a barge, it would have eliminated the barge.

Q Simply blow it into splinters, wouldn't it? A Yes.

Q Now, a few of those splinters would probably be found? A Well, might some of them be found, but if—for instance, if the barge had been supported on one side—some of the iron parts might be found quite intact, because they could not be blown to fragments by being supported by some adjacent bodies, but the chances are that the barge was pretty well blown to fragments, but resting on the water some large pieces might be found in the bay afterwards, because it was supported by the water.

Q And supposing that there was a tugboat within ten or fifteen feet of the barge containing that volume of TNT and detonators, would not that also have been blown to fragments? A That is somewhat doubtful about—within fifteen feet is pretty close, but I am not certain that even if fifteen feet is absolute that it would be blown to fragments, because the action of the explosive was to blow a crater down in the water, you understand, and then the water—this crater would act just exactly like a mortar and the gases themselves would act as a projectile, and the great volume of 100,000 pounds of gases would go up into the air, extending as they went up, in the form of an inverted cone—it would be a much sharper cone exploding into the water than it would from the land, and just as happens in respect to craters formed by exploding—the exploding of large shells on the battlefront, when they go down into the soft earth a man might stand quite close to a crater and not be injured for that reason.

By the Court.

Q Which explosion do you say blew the roofs and upper stories off of these warehouses? A The barge. That is exactly what would happen at that distance.

Q That you think would go up like an inverted cone? A It would go up like an inverted cone, but as I explained in a previous statement, the barge was also on the water, these buildings were high, were on the land, and the tops of the buildings still higher up, and they would lie on the line of pressure of the air's displacement, you see—this inverted cone goes up, the building did not have to be reached by the actual gases of the

explosion themselves, because the vast quantity of air was thrown out in all directions to let this great cone go up.

Q Well, but one of these buildings was only one story high? A That would not make any difference.

Q Then why— A The higher buildings would be more seriously affected.

Q Then why would not that knock the water tank over that was higher than the buildings? A Because the water tank was a heavy structure and it was a skeleton frame underneath it.

Q Well, but it was a substantial construction above, containing 100,000 gallons of water? A Yes.

Q Which is a very substantial line of resistance? A Yes, but that very reason would protect it, just exactly as you have it in connection with the wall of the building. Take a frame house, for instance, and the glass of that house could be all blown out—see, the building will stay there, because the glass—the wall of the building is more rigid than the glass is, that is the answer.

Q Well then, why did the buildings get blown down? A Because the vast area of pressure on the walls of the building was such as to press them in, and then the internal pressure reacts when there was a release of the outward pressure, would throw that out at that distance, but had the barge exploded close to the buildings they would have been all blown to fragments.

Q What would have happened to the men on the adjacent barges or on the pier or on the sea wall from the explosion on the barge? A Well, probably would have been knocked down.

Q Wouldn't they have been blown to flinders? A No, not at that distance.

Q What distance? A I understand about 300 feet away.

Q But supposing there were men on the barges, very, very much less a distant away than 300 feet, what would have happened to him? A It depended on the proximity of the men.

Q Well, let us say they were within a hundred feet? A If a man was within a hundred feet I should say that the shock would be dangerous. But here is a thing that will illustrate the

action that does take place in that connection. When an explosion occurs adjacent to objects, as on water, the upward blast of the explosion will draw toward the explosion by the inrush of air that goes up with it, you see —just on the principle of the jet—we use a jet to suck in air—consequently the man outside of that would tend to be sucked in toward the upward going explosive, but the man would not be killed unless that happened to be near enough so that the shock, the instantaneous percussion on the men was sufficient to kill them.

Q Well, why then would a man on the sea wall be blown to pieces from the explosion by the cars? A Because the cars are higher above the ground; the cars were four feet above the ground and would consequently explode much more strongly in a lateral direction; and then again the ground offers much greater resistance, well, considerably greater resistance than the water. The water acts as a rigid solid, but the mass or weight of the gravel is greater than the weight of the water. In cases like that the weight counts a great deal. Consequently the weight of the mass under the cars and the cars being four feet above the surface of the ground, the action in a lateral direction would be much greater, much greater.

Q Isn't it a fact that it is quite impossible to predict what the result of an explosion will be? A Depends upon the knowledge of the person that does the predicting.

Q Well, take the knowledge of any living man today; isn't it a fact that it is impossible for him to predict with any reasonable degree of certainty what the effect of a great explosion will be on a subjacent and the adjacent and the circumjacent property? A I think it can be very readily determined, sir, if sufficient care is taken to examine the surroundings. For instance, in a gun we explode a large quantity of explosives, and we know exactly what happens to a great nicety.

Q I am not asking about a gun? A I mean in mining, as in a battlefront, they put a great quantity of explosives, and we know exactly what it will do, and when they blasted Hell Gate up they knew what it was going to do.

Q Isn't it a fact that sometimes you have discovered after an explosion has taken place that a straight railroad rail will be found blown into a position, for instance, of an S—half of it blown one way and half the other—one single track? A Yes, sir.

Q All through the one explosion? A Yes, sir.

Q Now, I understood you to say that your opinion with respect to this matter was based largely upon what you were told by those with whom you communicated at the plant? A Yes, sir; as to what had happened, and my judgment is based upon the assumption that those things did happen.

Q Exactly. So that if what they gave you was not the truth, your conclusions would be correspondingly infirm? A Certainly, my conclusions would fall down with respect to the conditions of that wall and of the structure being on top of the wall.

Q All right.

Mr. Stallman. That is all.

Re-direct examination by Mr. Rockwood.

Q You spoke of 200,000 pounds of TNT burning up at some other place? A Hercules Powder Company.

Q When was that? A On the 14th of August, 1918.

Q Did that 200,000 pounds burn— A 206,000 pounds.

Q 206,000—did that burn up without exploding? A It all burned up without exploding. The men played water on it—stood close up and played water on it while burning.

Q Did you find at Black Tom that there were several cars of TNT there that were not exploded at all, that were burned up? A I understand they did, yes.

Q How many—three? On the pier three cars? A Yes, I understand so.

Q That is all.

By the Court.

Q Then, so far as fire was concerned or projectiles exploding in the yard as distinguished from the dock on which these fuses

were, it would be perfectly safe to work around the high explosives, wouldn't it? A Certainly. A man could warm himself by it. I have even used TNT to heat a furnace at times. I had Lewis Nixon out at my place and I heated the boiler with a mixture of picric acid and TNT.

Q That is, that it is a safe thing to do? A Absolutely safe.

Q That is all.

The Court. Well, let us hurry up gentlemen; this is way beyond what we agreed we would do this morning and we are wasting time, I think. When I say wasting time, we are taking more time than we agreed to take last night.

Mr. Hobart. We are only twenty-five minutes late.

The Court. I know; we agreed to finish at half past twelve. We are now 29 minutes past that time.

Mr. Rockwood. We are very nearly through.

The Court. The rebuttal is not in yet.

Mr. Hobart. One point that was overlooked. I will recall Mr. Julian.

JOHN M. JULIAN, recalled.

Direct examination by Mr. Hobart.

Q In the course of your duties as fire marshal, did you have any occasion to make any observations of the fire protection in other railroad yards outside of the Lehigh Valley as it existed in July of 1916? A I did; yes, sir.

Q Which ones did you examine? A The ones at the Lackawanna and at the Erie and Central and our other yards at Newark—Oak Island yard.

Q By the Central, do you mean the Jersey Central? A Yes, sir.

Q Were these yards in Hudson County? A They are, I think, with the exception of the Lackawanna yard.

Q That is in Hudson County, but partly in Hoboken? A Yes, but one of them is in Essex County.

Reading Testimony of Captain Casperson, direct.

Q Were there any of them that had fire hydrants or water mains running into the yard itself? A I have never noticed any.

Mr. Hobart. Cross examine.

By the Court.

Q Did you inspect them specially to see if they had? A I went through them with the fire marshal, looked over all their properties to see what they had.

Q But my question is, did you inspect them especially to see if they had fire hydrants in there? A Not especially to that one point.

Mr. Stallman. That is all.

By Mr. Hobart.

Q Did they have fire hydrants? A I never saw any in those yards.

Q You went through the entire yard? A I will not say every nook and corner, but I went through the yard in a general way.

Cross examination by Mr. Stallman.

Q You did not go there looking for fire hydrants, did you? A Not especially, no, sir.

Mr. Hobart. We rest.

The Court. Any rebuttal?

Mr. Stallman. Yes, I have that testimony we spoke of last night. It will not take but a few moments.

Mr. Hobart. Go ahead.

Mr. Stallman. I want to read the testimony of Mr. Casperson, and I am willing to read only that part of it which we think is rebuttal without taking time—page 542 of the Royal record.

Mr. Hobart. Read it all.

Mr. Stallman. I will read the direct examination:

"Q Captain Casperson, were you down at Black Tom at the time of the fire? A Yes, sir.

"Q What boat did you have? A No. 11.

"Q Johnson 11? A Yes, sir; No. 11.

"Q Where were you tied up? A Well, I was tied up on the north side of the North Pier.

"Q Whereabouts? A Just about one boat length from the end.

"Q From the easterly end? A Yes, from the east—form the outside end, yes; from the out end.

"Q What was the first that you knew about this fire? A The captain of Johnson 17 came and woke me up about one—should think it was about one o'clock at night—and told me there was fire on the dock.

"Q And did you get up? A I got up right away and saw the fire.

"Q Where was it burning? A It was right up about the car track, about 800 feet up from the boat, I should guess; it was about 800 feet.

"Q At that time was there any fire on the North Pier? A No, sir.

"Q Any cars burning anywhere near the North Pier? A No, sir—along about that.

"Q And that was about 800 feet up? A Yes.

"Q How big a fire was it when you first saw it? A Oh, I should think about 600 or 800 feet in circumference.

"Q And about how high were the flames? A Oh, blew up six or eight feet.

"Q And at that time were there any shells going off that you knew of? A Yes, sir; they started to go then.

"Q They started to go then? A Yes, sir.

"Q Did you stay there until the explosion happened? A Yes, sir.

"Q Where did the explosion come from? A I cannot tell.

"Q Well, was it anywhere near you? A Well, it was just—yes, it looked to me to be right up at the dock there by the pier.

"Q How near to this fire? A Just in line with the fire; it was just in line with the fire; it seemed to me—I stayed on my boat.

"Q Well, what direction was this explosion from your boat? A Just in the direction of the car track, right up to the car track.

"Q Well, what direction was the fire from you? A Right at the car track, right in the same way.

"Q Well, you mean—you know the direction. Was it north or west or east? A Oh, sure.

"Q Which direction was it? A West, I should think it is; them piers is running east and west.

"Q You mean the fire was west? A West from me; yes.

"Q West from you. And what direction was the explosion from you? A West.

"Q Well, can you give us an idea, Captain, about how far away from your boat this explosion happened? A I don't know; I cannot tell.

"Q Well, can you tell us how near the fire this explosion came from? A No; I cannot tell anything about that.

"Q What was the effect of the first explosion, Captain A It blowed me right overboard, off the boat.

"Q Well, did you climb back on your boat? A No; I swam over to another boat.

"Q What boat was that? A I think that was one of the Moran boats.

"Q Was that also on the north side of the North Pier? A That was just on the end.

"Q On the end of the North Pier? A Yes; they were all drifting then. All the lines parted in the explosion.

"Q You mean all the lines on these scows? A Yes; they got loose in the explosion and drifted around.

"Q Where were you at the time of the second explosion? A Then I was on board the Lehigh Valley boat Slatington.

"Q And where was she at the time of the explosion? A She was out there trying to pick us up, take the boats out.

"Q Were you in the water at the time of the second explosion? A No; I was just picked up. I was on board the Slatington.

"Q Do you know when the second explosion happened? A No; I don't know anything about it.

"Q Now, do you know what time it was after the second—after the first explosion happened? A I should imagine something around two o'clock; but I had no time on me, so I could not say.

"*Cross examination* (read by Mr. Rockwood).

"Q You were the captain of Johnson 11? A Johnson No. 11, sir.

"Q You laid outside of the Frank, didn't you? A Yes, sir.

"Q And the 17 laid between the Frank and the end of the dock? A Just behind me, yes."

I just want to show them where the Johnson 11 was, on the side of the pier, see? There is where the man was.

"Q The 17 laid between the Frank and the end of the dock? A Just behind me, yes.

"Q Just in front of you, don't you mean? A I was outside of her; I was side of the Frank.

"Q You were side of the Frank? A I was alongside of the Frank.

"Q And the 17 was right in front of the Frank going out to the end of the North Pier? A Yes, sir.

"Q And the Moran was right back of the Frank going shoreward? A Going inshore.

"Q You were asleep, were you, when the captain of the 17 came and awakened you? A Yes, sir.

"Q What was the name of the captain of the Johnson 17? A I am not sure.

"Q Well, give us your best memory? A I think Captain 'Baker' knows better than I do.

"Q Tell us the best you can remember? A I don't know his name at all.

"Q You don't know his name. Had your boat got cast loose before the first explosion? A Yes, sir; I slapped up to another pier for to try to save her.

"Q And the boats on that side had gotten loose—at least the Frank and Johnson 17 had been cast loose before the first explosion, hadn't they? A No; I don't know.

"Q You don't know? A No.

"Q You know the Frank had been, don't you? A No, sir; I don't know.

"Q Well, you know the 11 had been; you know that you cast her loose after you were blown away from the Frank by the first explosion? A Yes, sir; I 'walked' her down toward the end of the pier.

"Q You had gotten your boat down to the end of the pier? A Yes, sir.

"Q You were trying to get away? A Yes, sir.

"Q When the captain of the 17 came and spoke to you you were asleep in your cabin, and your boat was then tied up alongside of the Frank? A Yes.

"Q Did you stay on your boat all the time when you first saw this fire? A I was standing right forward.

"Q Right on the forward part of the boat? A On the forward part of the boat; yes.

"Q And your boat was pointed north? A Yes.

"Q And your boat was pointed north? A Pointed north.

"Q And you were standing on the north end of your boat? A Yes.

"Q And you think the fire was about how far from where you stood? A About 800 feet, I should think.

"Q And did it seem to be down about opposite Zeke's shanty? A Yes, just past the shanty like.

"Q Yes, 'just past the shanty like'; and you could see it was a car? A Yes; I could see it was a car.

"Q One car? A Yes, sir.

"Q And the flames coming out of the top of that? A Yes, sir.

"Q And the shells going off? A Yes, sir.

"Q And the shells going off? A Yes, sir; the shells going off right along.

"Q Now, you stayed on your boat, as I understand it, until after the first explosion? A Yes.

"Q And at that time was your boat lying at the—across the north end of the North Pier? A She was just hanging on one line towards the end of the pier.

"Q And that was right here, at this east end of the North Pier? A Yes, sir.

"Q Her one line ashore? A Yes, sir; one line ashore.

"Q She swung around this way? A Yes, sir.

"Q Where was the 17 then? A She was just on the corner, just right there—

"Q Right up here? A Yes, sir.

"Q North of the North Pier? Now, which explosion was it that blew you overboard? A The first explosion.

"Q And where were you on your boat at the time of the second explosion; before you were blown forward? A I was standing on the forward end of the boat.

"Q Well, you see, now, I do not know which way your bow was pointing. When you got swung around on the east end of the North Pier, which way was your bow pointing? A I could hardly remember that.

"Q You don't remember which way your bow was pointing? A She was hanging on one line and she could swing all around; though I could not remember exactly.

"Q You do not remember which way she happened to be swinging? A No.

"Q Now, which way were you blown? A I was blown right off from the pier like.

"Q North or south? A North.

"Q You were blown from the south to the north or from the north to the south? A Rather from the west to the east.

"Q You were blown from the west to the east? A Yes, sir.

"Q You mean you were blown this way? A Yes, sir.

"Q Were you blown north of that side of the pier or this side of the pier? A No; I was blown right out.

"Q This way? A Yes, sir.

"Q Right straight out? A Right straight out.

"Q And then you got aboard the Slatington? A Yes.

"Q And you were aboard the Slatington and some distance away when the second explosion took place? A Yes, sir."

Mr. Smith. I would like to read the testimony of Andrew Baker—page 536.

"Q Mr. Baker, what is your business? A Lighter captain.

"Q Were you down at Black Tom at the time of the explosion and fire in July, 1916? A Yes, sir.

"Q What boat did you have at that time? A Frank.

"Q Where was your boat laying? A It was laying on the north side of the North Pier, about the middle of the dock.

"Q You mean about the middle of the North Pier? A Yes, sir; on the north side.

"Q And did you know of a fire there that night? A Yes.

"Q What was the first you knew of it? A That the captain of Johnson 17 came in the cabin door and told me there was a fire up in the yard and I had better get out.

"Q Do you know what time that was? A I did not look at the time that night, no.

"Q Then, did you go and see? A Yes, right away.

"Q Where was the fire? A It was up, it seemed to me, to be on the track leading up from the north side of the North Pier, just up somewhere around Zeke's shanty, a little bit further up.

"Q Up a little way from Zeke's shanty? A Yes.

"Q What was burning? A That I did not know, but it was a small flame; it seemed to me to be in a car.

"Q You could see the smoke and flame, but you could not see what was burning; is that what you mean? A Yes.

"Q How big was the fire? A I should say it must have been about eight or ten feet long and about eight or ten feet high.

"Q Was there any fire on the North Pier at that time? A No, not except the light on the different boats.

"Q But was there any car on fire on the North Pier? A No.

"Q Did you watch the fire? A Yes; that is to say, I walked up the dock and looked at it from the other side.

"Q From the other side of what? A Of whatever track that car was on; I was over by the float bridge, and that was on the other side.

"Q You walked down to the float bridge; that is on the bulkhead end, isn't it? A Yes.

"Q And you could see the fire from the float bridge? A Yes; I could see it. Not as well as I could see it from the north side.

"Q How long did you stay around there? A I was around the boat just shortly before the second explosion; I do not really know how long it was.

"Q Where were—were you there at the time of the first explosion? A Yes, sir.

"Q Where were you? A I stood on the offshore side, the north side of my boat, looking at the fire.

"Q And where did this explosion come from? A It appears to me that that came from just about where the fire started, or near to it.

"Q And at the time of that explosion, was there any fire on the North Pier? A None.

"Q What was the result of that explosion? A (No answer.)

"Q Did the explosion do anything to you? A Yes.

"Q What? A I got kicked up in the air from one side of the boat to the other.

"Q Well, you finally landed down on your boat again, didn't you? A Yes, just on the other side.

"Q On the other side of your boat? A Yes.

"Q Were you hurt? A No.

"Q Did you stay there under the second explosion? A No; I went right in my cabin and stayed right under a beam in the top of the cabin there, where I knew there was a beam—mostly something coming down through the air.

"Q Well, what was that? A Well, whatever it was; I don't know; it sounded to me to be dirt and hard pieces of something. It was dark.

"Q You mean you felt something raining on the cabin roof? A Yes.

"Q Was that shortly after the first explosion? A Yes, shortly after the first explosion.

"Q Where were you at the time of the second explosion? A I was overboard in the water, about 150 feet away in the water from the boat.

"Q After the first explosion did you swim away from there? A I was around the dock and the boats somewhere in between them two explosions.

"Q How did you get into the water? A Jumped into it.

"Q Did you hear the second explosion? A Yes, sir.

"Q Could you tell us whether it was any different than the first explosion—whether there was any differ-

ence between the first explosion and the second explosion? A No; I could not say any difference in it.

"Q When you saw the fire, did you see any shells exploding—the first time? A Yes, I did not see them; I heard them.

"Q Well, did you see any shells going up in the air? A No.

"Q But you heard shots; is that what you mean? A Just small shots cracking off in succession.

Cross examination (read by Mr. Rockwood).

"Q You were the captain of the Frank? A Yes.

"Q It was a Johnson lighter? A It was operated by Johnson Lighterage to my best knowledge.

"Q And the Johnson 17 laid between you and the end of the pier on that night? A Yes.

"Q The Johnson 17 laid outside of you? A Yes.

"Q And the Moran 64 laid between you and the dock? A There was a Moran scow, but the number I have forgotten; I am sure of that. It might be a different number.

"Q Yes; there was a Moran scow, but you do not know the number? A No, sir.

"Q The captain of the 17 first told you there was a fire? A Yes, sir.

"Q And then you went up on the dock? A Yes.

"Q Went off your boat? A No; we went over on the 11 and called two men out from the 11 first.

"Q But you went on the dock? A Yes.

"Q Did you stand upon the dock alongside of your boat, or walk down toward the yard? A The two of us walked on the dock to the telephone, here we were going to get a tug.

"Q But when you came up on the dock you could see the fire, couldn't you? A Yes, I could.

"Q Just say yes or no; you could see the fire? A Yes.

"Q Then you walked down toward the fire, didn't you? A Yes, sir.

"Q And you were going to get a telephone? A Yes.

"Q But the house was locked, or something? A Yes.

"Q Now, when you walked down there you said that the car seemed to be on the track leading out to the North Pier; is that what you mean? A Yes.

"Q It may have been, of course, one or two tracks further in? A Yes.

"Q It was about opposite Zeke's shanty? A Yes.

"Q And it was one car as far as you could see? A Yes.

"Q And how high was the flame above the top of the car? A I could not see the car at that distance.

"Q You could just see the flame? A Just see the size of the flame; yes.

"Q How high did the flame seem to be above the cars that were between you and the car that was burning? A The size of the flame, I should say, was about eight feet long and ten feet high, I think.

"Q Was the ten feet above the top of the cars? That is what I am trying to get at? A I could not see the bottom of the cars. I could not tell whether it was in the bottom or on top, really.

"Q But when you saw the fire, it seemed to be going ten feet in the air; you saw ten feet of flame? A The height of it, all told.

"Q I mean you could see the whole ten feet? A Yes.

"Q Then you walked down to the float bridges? A Yes.

"Q Did you walk down to the float bridge that is nearest the South Pier or to the float bridge that is nearest to the North Pier? A I think just between the two of them.

"Q And then you looked over towards the fire again? A Yes, sir.

"Q But you couldn't see it so well there? A No, sir.

"Q There were more cars in between you, weren't there? A Yes, sir.

"Q Then you stood around your boat, you say, until shortly before the second explosion? A Yes, sir.

"Q Did your boat get cast loose from the pier before the first explosion? A Yes; yes, sir; just shortly before.

"Q And the Johnson 17 got loose from the pier before the first explosion? A Yes, sir.

"Q And the Johnson 17 herself blew about for a while didn't she? A I don't know what became of her; I never saw her since.

"Q Oh, you never saw her after that night? A No.

"Q You saw her on fire, didn't you, that night? A No, I didn't see it.

"Q Didn't you? A No.

"Q When you were in the water, did you see her on fire? When you were in the water didn't you see her on fire? A Yes, sir; I saw 17 on fire.

"Q Yes; you did see 17 on fire, didn't you? A Yes; I did.

"Q Now you stayed on your boat during the first explosion? A Yes, sir.

"Q Were you down in your cabin? A No, sir; I was on the outside corner.

"Q What? A I was standing on the outside corner looking up at the fire, corner on my boat, outside corner leading most northward.

"Q If you faced towards the Statue of Liberty were you on the left hand side of your boat or on the right hand side of your boat? A Then I was on the right hand side of the boat.

"Q When you faced toward the Statue of Liberty you were standing on the right hand side of your boat? A No.

"Q On the left hand side of your boat? A Yes.

"Q Then you were nearer the shore, weren't you? A Nearest this way; yes.

"Q Well, let us get that straight. Now, the time of the first explosion the Frank had gotten away from this place here, hadn't she, to near the end of the pier? A Little bit, yes.

"Q And you were standing on the shore side; north side of your boat? A Yes, sir.

"Q At the time of the first explosion? A Yes, sir.

"Q And you were blown from the north side of your boat to the south side of your boat? A Yes sir.

"Q You were blown in this direction, weren't you? A Yes, sir.

"Q I thought you said you were down in the cabin, and things were raining down on the top of the cabin. When was that? A When I found myself on the—where I was blown to, I picked up my dog and walked in the cabin and ran where there was a strong beam.

"Q Your dog was with you? A Yes, sir.

"Q Did he 'jump' overboard, too? A No.

"Q Now, captain, after the first explosion, you went down in your cabin? A Yes, sir.

"Q And then you heard things falling on top of your boat? A Yes, sir.

"Q You came up and was your boat afire? A No, sir.

"Q And then you jumped overboard? A It was quite some time afterward.

"Q But you did jump over? A Yes, sir.

"Q And swam ashore? A Yes, sir.

"Q And it was while you were in the water swimming ashore that the second explosion went off? A Yes, sir.

"Q And they were both about the same kind of explosions weren't they? A Yes, sir; it seems to me."

LUKE J. EISEMAN, recalled.

Direct examination by Mr. Stallman.

Q Mr. Eiseman, did you go into the telephone room or office down at Black Tom to call up the Ackerman people in the place where Mr. Sloan was tending the pumps? A Well, I do not remember Mr. Sloan being there; I do not remember who was there, but I—

Q Well, irrespective of the place where you were when you telephoned, did you say: "Send a tug as quick as they could, as the boat was afire, on the pier where you were tied up? A. No, sir.

Q You did not.

Cross examination by Mr. Rockwood.

Q Did you telephone that night? A Yes, sir.

Q Whom did you telephone to?

Mr. Stallman. I object to this, if the Court please. This is rebuttal to rebut the statement that Sloan made, that in that telephone conversation he stated certain things. Now, we have been all over this twice, both on direct and cross of this witness, and Sloan.

The Court. What is the particular question.

Q (Repeated by the stenographer.) Whom did you telephone to?

Mr. Rockwood. We just had him say that he did not telephone as stated by Sloan.

Mr. Stallman. In those words.

Mr. Rockwood. Yes.

The Court. I will permit him to answer.

Q Whom did you telephone to? A Gus Ackerman.

Q Of the Ackerman Lighterage Company? Yes, sir.

Q Do you recall what you said to him? A I don't.

Q Do you recall it, yes or no? A Yes.

Q Did you get him on the telephone? A Yes, sir.

Q What do you say you said to him? A I said: "There is a fire at Black Tom." I said, "send a tug boat over, but I don't know what it will amount to, and if you can send a tug boat over in case it will amount to something, why, we can get the boats away."

Q At what time was that? A I should judge around one o'clock; probably a little after.

Q Did the tug boat come? A No, sir.

Mr. Stallman. I object. That is not the purpose of cross examination on rebuttal.

The Court. Well, the answer is in. I will let it stand.

Q Did the tugboat ever come? A No, sir.

The Court. I will overrule that. The question was asked and answered, and it is not to be asked again.

Mr. Rockwood. I did not hear it.

The Court. Well, I do not know what you heard. Questions are not be asked and answered again and again.

Mr. Rockwood. If I say I did not hear it I think I am entitled to be understood that way.

The Court. You are not entitled to ask it over again and have it answered over again.

Mr. Rockwood. Well, will Your Honor tell me what the answer is then? I did not hear it.

The Court. The answer will be read to you.

Q (Repeated by the stenographer.) Did the tug boat ever come? A No, sir.

Mr. Rockwood. Mr. Hobart suggests that there is one question here I should have asked this witness that we should like now to ask the Court's permission to ask him, he being on the stand.

The Court. No, sir; it will not be done.

Mr Rockwood. That is all.

Mr. Stallman. Plaintiff rests.

Mr. Rockwood. I guess we all rest.

(Recess to 2:25 P. M.)

After Recess.

Mr. Hobart. If your Honor please, on behalf of the defendant we now move for a direction of verdict in all of the cases for the same reasons and with the same limitations as were expressed in the motion to direct a non-suit. I presume it is not necessary to repeat them at length.

I might say in connection with that that we do not claim that as to the one French car that arrived on July 28th—we do not claim that any defense has been made out as to that car; because there appears no question by the undisputed facts that that car was in our possession as a common carrier. So the motion which I make, of course, does not include that car, but is applicable to the other cars and all of the other property for the reasons stated in the motion for a non-suit.

The Court. I will deny the motion. You may have your objection entered on the record.

Mr. Hobart. Exception.

SUMMING-UP ON BEHALF OF THE DEFENDANT

Mr. Rockwood. May it please your Honor and Gentlemen of the Jury: At the outset and at the close of this important trial, I trust that I may be permitted on behalf of our client, the Lehigh Valley Railroad, and my associates, to express to his Honor and to yourselves our appreciation of the very great patience with which you have listened to the facts which have been presented to you.

Although we have taken practically the week, still great progress has been made; because under the ruling made by his Honor at the inception of the case, three cases are being tried together, three cases which aggregate in the amount claimed for damages, somewhere in the neighborhood of two and a half million dollars, one suit entitled "His Majesty, the King of Great Britain and Ireland, against the Lehigh Valley Railroad;" another, "The Republic of France against the Lehigh Valley Railroad," and another, "The Aetna Explosives Company against the Lehigh Valley Railroad," each seeking to recover damages for the loss of explosives and material at the Black Tom Pier explosion, which occurred, as the evidence has shown, on or about the 30th day of July, 1916.

Now, gentlemen, before I advert to the detailed discussion of such parts of the evidence as may seem to us important,—not with the idea of instructing you in any way, because that power rests solely with his Honor who presides at this trial, but merely with the idea of calling your attention and directing your minds to the high points in the evidence, and the facts which the defendant deems to be important to the defendant's case—before I come to that I want to advert in a general way to the province of the jury.

You twelve men as you sit there, selected from various walks of life, selected, because of your competency to sit as trial jurors in a court of justice, are each one of you sovereign judges of the facts in this case, and you are not to be led from that decision of the facts, but from such conclusion as you may arrive at, by any consideration whatever except such inferences and

such conclusions as logically flow from the evidence in the case, and nothing else, and each one of you when you were accepted as a juror, raised up his hand when he took the oath and said that he would decide the case solely upon the evidence.

So at the outset I am going to take from my mind any idea except that you will, each one of you, separately and alone, and later collectively, pass to the decision of the issues solely by the evidence, not upon any prejudice, not upon any bias, not upon anybody's expressed wish as to what they would like the decision to be, but solely upon what the evidence shows and what the justice of the case is, and what the common sense of the case is; for, in the last analysis gentlemen, I need not appeal to you and to your reasoning and to your understanding of human affairs to make the statement that law is only common sense as applied to the every day affairs of human life; and when we get away from that and when we let prejudice in the jury box, or when we let any feeling in our minds except just what is the evidence, then this does not become a court of justice, it does not become a sacred temple where the rights of individuals and corporations are determined, but it becomes the home or depot of oppression, and the rights of none of you are safe if the evidence in this case is decided upon anything else except the facts as they came from the lips of witnesses upon the stand. I only advert to that because the defendant in the case is the Lehigh Valley Railroad. The plaintiff in the case is his Sovereign—His Majesty, the King of Great Britain and Ireland; the Republic of France; and the Aetna Explosives Company; and, gentlemen of the jury, it must not rest, and I know it will not rest in the minds of any of you that this railroad, because an explosion did occur, and because there was some property damage in outlying country adjacent hereto, because glass was broken somewhere, because somebody suffered from some other property damage,—it must not rest in your mind if we are to have a fair verdict here that there is any prejudice against the railroad in that respect; nor must it rest in your mind, as, of course, it will not, that because so august a person as the King himself has seen fit to come into this court and submit his rights to this jury, that

he is to be entitled to be received with any greater respect or with any greater consideration, or his evidence with any greater care looked at than that of the humblest individual who may come in here with the smallest case. This is a court of justice where justice is to be measured solely by the evidence given by the witnesses.

Now, gentlemen, from the case here as it has gone on I have faith that you will treat it in that way. I only advert to it now so that if there should creep into the discussion anywhere along the line any thought like this, "Oh, well, the railroad did a lot of damage to my neighbor, Smith, and broke his glass; it did a lot of damage to my neighbor, Jones, and injured something that he had in his yard—" that is not a consideration here. This case must stand on its own facts, on its own evidence, and on nothing else, and I beg of you, gentlemen of the jury,—I do not believe I need to do it, but I beg of you in the conduct of your deliberations in the jury room to uphold the sanctity of the jury system, and to say to the King of England, who was, by the way, the first one to accord to the people, at the people's urgent insistence, the right to a trial by jury,—to say to him, "We will decide your case upon the evidence of the witnesses, and decide it right, and decide it according and solely to the evidence."

Now what is the case? It is a very unusual case. I do not believe a case exactly like this, has ever been submitted, I mean outside of the cases growing out of this Black Tom explosion, to any jury in any of the American states.

What is the case? In 1916 there was a world war in Europe,—practically all of the European countries were engaged in it. There was a great and urgent demand for ammunition and explosives. In that contingency the American Congress passed certain laws, the Interstate Commerce Commission passed certain regulations, the Secretary of the Treasury prescribed certain regulations authorized by Congress, and the method and manner in which explosives could be bought in this country by the various foreign powers was laid down, and the method and manner of their transportation from the place where they were manufactured, to wit, the factories, to the vessel where they

were to be taken to the foreign countries, was expressly and in great detail provided, and it was, among other things, laid down that the railroads whose connecting lines happened to be located where the manufacturing plants were situated must take for transportation,—they had no alternative,—they must take for transportation the explosives when offered to them under certain regulations prescribed by the Interstate Commerce Commission, and those regulations related to the placing of certain placards upon the outside of the car showing that they were explosives or inflammable material inside, to the method of packing boxes, and other directions, which it is unnecessary for me to take your time to relate, but which all had to do with the safe handling of the explosives.

So we will start at the outset and say that the Lehigh Valley Railroad had no alternative but to take such explosives for transportation as were offered to it, and the Jersey Central Railroad had no alternative but to do the very same thing.

Now, in the King's case here—I will make this point very clear—not a single box of these explosives came over the Lehigh Valley Railroad—not one; they all came over the Jersey Central, and were loaded on the barges Paulina and the Thompson, at Dock 19, which was situated some distance northerly from the north end of the pier, which we have been discussing, at Black Tom. They were there loaded on barges, and we had nothing whatever to do with them.

The Lehigh Valley Railroad had no more connection with the shipment of the King's materials than any one of you gentlemen had, not the slightest.

Now the shipment of the Aetna Explosives Company, another plaintiff here, which seeks these large damages, is exactly in the same situation. Every box of this material came over the Jersey Central, none of it over the Lehigh Valley. It was all loaded upon the barge Rockwell at Pier 19 of the Jersey Central Railroad, and we have nothing whatever to do with it in the slightest way.

Now as to the Republic of France shipment, with the exception of a few cars which still remained on the Jersey Central Rail-

road tracks, five cars, and for which they bring this suit—way over on the Jersey Central tracks—and the few cars on track 16 of the Lehigh Valley—track 16 is the track where the TNT was located—all the rest of the material, every bit of it in the French suit, came over the Jersey Central Railroad, and was also on the barge Rockwell.

So I will make this general statement to you, that with the exception of the cars which were on the Jersey Central track, five cars, and with the exception I think, of three cars,—

Mr. Stallman. Eight.

Mr. Rockwood. —eight cars on the Lehigh Valley tracks, track 16,—that is thirteen cars altogether,—every other car in the case came over the Jersey Central and was loaded on barges at Pier 19.

So then the important question arises, what was our duty, if any, with respect to those goods which were on the barges, and to the goods which were in the railroad cars over on the Jersey Central Railroad track 19?

Now, as I said, the Department of Commerce and Labor prescribed certain rules and regulations,—the most important to which I call your attention first, is contained in what is known as "Anchorage for explosives," issued by the Department of Commerce and Labor, Bureau of Navigation, rules and regulations relating to anchorage of vessels in the port of New York. It was recognized by the Department of Commerce and Labor that these explosives were very liable to cause serious damage unless they were kept in certain places, and it was realized if they were kept near piers that damage might result.

Now this is the law:

> "Vessels carrying gunpowder or other explosives may anchor only as follows:
>
> "1. On the shoal ground to the eastward of Riker's Island, East River, from one quarter to five-eighths of a mile from the island.
>
> "2. On the New Jersey flats between a line drawn parallel to and fifteen hundred feet south of the Black Tom

dredged channel and a line drawn parallel to and fifteen hundred feet north of the Greenville dredged channel, and to the westward of the line from Bedloe's Island to Robbins Reef (You asked about Robbins Reef this morning) provided they do not anchor—listen to this—provided they do not anchor within one thousand yards of Bedloe's Island or within five hundred yards of any pier."

Therefore I start this case with this important fact, and my friend cannot get away from it, and the King of England is bound by it and the Republic of France has got to rest their case on it, that it was unlawful for any barge containing explosives to anchor within five hundred yards of any pier. Ah, my friend may say a barge is not a vessel. Upon that, which is a question of law, I shall say nothing, because his Honor will direct you upon that as he may think best. If you are told that a barge, within the theory of the law, is a vessel, then I may start out with a proposition that the barge was prohibited by law—regulations issued by your own government—from anchoring within five hundred yards of any pier. And what was the reason for that? Safety! Safety of life, limb and property.

Where was the anchorage ground that was established? About a mile to the southeast of Black Tom pier and in the neighborhood—not the direct neighborhood, but in the general direction of Robbins Reef, down off the bay, in rather flat land and in rather shallow water. And then there is another regulation that every one of those boats so anchoring must put up a red flag. Why? To warn passing vessels and others to keep away, because they were dangerous explosives, and it was never apprehended and it was never the theory of the government, your government, that vessels carrying a hundred thousand pounds of TNT and twenty-five thousand detonating fuses should go about the harbor of New York and tie up to any pier they wanted to regardless of the consequences.

I start, therefore, with that very important proposition upon which the case of the defendant rests, that these vessels were illegally at Black Tom pier.

Mr. Stallman. You do not mean with regard to our TNT?

Mr. Rockwood. I mean to say that there was TNT tied up at the pier, if counsel wishes to interrupt me, tied up to the Johnson-17 on the other side of the pier, and he knows it. I do not say it was his TNT, but I am going to argue, so he will be duly advised in the course of the argument, that that explosion came from that TNT and that was the cause of it. Had he had his boats down at the anchorage grounds they would not have been injured, and you would not have been here to pass on the case.

Now, gentlemen of the jury, in order to understand this case you have to go back to the night of July 30, 1916. It is quite one thing to sit here in a comfortable court room, surrounded by all the pleasant and comfortable arrangements which this county has provided here for the administration of justice and calmly and coolly hear what did occur or what did not occur four years ago on that awful night in July, and it is another thing to have been there and to have personally seen it and to have been through that tremendous explosion and that awful catastrophe, and to have participated in the tremendous result which there obtained. And so, if you will decide this accurately, I respectfully suggest that you let your minds travel with me back to that night on July 30, 1916, and we will go to Black Tom Island together and see what the situation was, and see what happens, and ourselves, as far as our minds can permit us to do it, taking it only from the evidence, see if the Lehigh Valley Railroad was really at fault in any respect on that fateful night. In the first place, gentlemen, it was after five o'clock. The yard was dead. The men had gone. There was no fire in the yard of any kind. Over three hundred cars were stored there. Cars which had come in over the lines of the Lehigh Valley Railroad in the ordinary course of transportation, and lay there waiting to be taken off by the barges or boats which might come to take them. As far as the Lehigh Valley Railroad was concerned, every one of those three hundred cars had reached its point of destination, because the Lehigh Valley Railroad had no control beyond the piers. The barges and the boats of the con-

signees were to come there and take them off. So the Lehigh Valley had performed its duty and had brought to that particular point three hundred cars of various materials—thirty-three cars of explosives—cars of other materials used in commerce and some of those used in war, as I have said, the yard was dead. The night was dark. There were five men in the employ of the Lehigh Valley Railroad, every one a faithful man of long service,—you have seen them upon the stand,—every one as deeply loyal to his employer as you are to yours, or as I may be to mine; every one as anxious to do his duty as you would be or as I would be under similar circumstances. In addition to that, gentlemen of the jury, there were four special detectives, known as Doherty men, and employed by the King of England himself and placed there to guard the boats that the King had there. He had four men present. Admitted in the evidence. So there were nine men. Tied up to the North Pier on the north side of the North Pier were several boats, one of them, the Johnson-17, containing one hundred thousand pounds of TNT, and twenty-five thousand detonating fuses. That boat was not loaded at the Black Tom Pier. It came from another pier. That boat was at the North Pier without any right or authority or permission of any of the agents, representatives or officials of the Lehigh Valley Railroad. Adjacent to that barge was the Johnson number 11, the Frank and the Moran. So on the north side of the pier were four barges. On the south side were the boats in question, the Moran-20, fastened right up to the dock, next to it, fastened by hawsers, was the Jet, and next to that fastened by a hawser was the Paulina, and next to that fastened by a hawser was the Thompson, and then in towards the land and immediately connected with the Jet was the Rockwell. So we find upon our tour of the Black Tom Island that night that on the south side of that pier all of the barges which contained the goods for which recovery is sought in this suit were tied up. Now how were they tied up? Fastened to the pier by hawsers and each one fastened to the other. And where were the men who were in charge of the boats? As we walk down there and look around and look for these men—we are all together now on

the island—where are the men? There is old Mr. Hansen sitting there smoking his pipe. He is the only one. Where are the rest? Is Eiseman there watching the goods to see that no fire occurs or nothing occurs on that barge? Where is he? We inquire. He has gone off to Jersey City to see his girl. Where are the other captains? All gone. Where are the Doherty men that the King of England employed down there to watch these goods? Three are in a shanty and one man is outside walking up an down. The other three are inside. Where is Sloan, the Lehigh Valley man in charge of the boiler room? At his place of duty, —on the job. Where is Kane, the Lehigh Valley man, the patrolman or roundsman? Going his rounds in accordance with his duty. Where are the other Lehigh Valley men, of whom so much criticism has been heard here by the other side, and of whom I assume further criticism will be made? Every one at their appointed place of duty. So as we walk around there we find them all at their stationed places.

Now the yard is dead. The place is quiet. Zeke Townes and his wife were sleeping in peace. What happens? I think she told the truth. I think she put her finger upon the case. This old lady, because she was the nearest to it. She heard shooting, firing of shots; she went and tried to wake Zeke,— he didn't wake very well. He said, "Oh, it is those fellows out there just shooting off." Then she says, "I smelled smoke." I hear Zeke saying, "Leave me alone,—" sleepy. She kept at it. She says, "Zeke, you go out and look." Finally he went out and looked. What did he see? Top of a car in flame. The car containing Bethlehem Steel shells, in flames, and as the colored lady said, balls of fire going up into the air. The only thought they had then was to get away. But when she said she first heard the shooting of shells, the firing of shots, they came out of the top of the car.

And upon her whole evidence, supplemented by the additional evidence of the expert who took the stand, we have the most perfect case of spontaneous combustion on that car containing the Bethlehem Steel shells.

Now, gentlemen of the jury, the thought has been in your minds, as you have heard this case throughout, and it has been in my mind, and every other bystander probably, how did this fire start, and there have been some who said undoubtedly, "Why, it must have been set on fire by an alien enemy," but, gentlemen of the jury, it would be presumptive upon my part, and as an officer of this court, it would be beyond my realm as a lawyer, to endeavor to take from this evidence any fact which has fastened upon any persons the starting of this fire.

And without such evidence, without positive evidence, or without some facts which might acquaint in the line of that evidence, it would be wrong for me to say that this fire was started by somebody—this awful conflagration, with the idea of destroying not only the powder, but of destroying life and property, unless I had something upon which to base it; and I have not. I believe, therefore, that when the old lady said that she heard the firing of shots, and the expert said that the firing of shots would have been the indication of the spontaneous combustion—you remember his story—I believe that the fire started in the Bethlehem car, as a matter of spontaneous combustion, for which no one was to blame. That is my own theory. But it makes no difference one way or the other how it started. You will decide that yourselves; however you may look at it, and you may differ among yourselves about it;—it makes no difference how it started, particularly in this case. What we want here is the results, and the question of the liability, if any.

Now, then, as we are walking around the yard and the old colored gentleman and his wife have run out as fast as they could go, not stopping until they got some three miles away—we can just see them going, as tight as they could go—he thought there was nothing around there to keep him any further; he got away as rapidly as possible; and I do not blame him; we now see just before that—we see a figure coming up the road. Who was this man coming in the darkness of the night up through the yard? Eiseman, the captain of the Paulina. He passes by, Eiseman passes by the cars where the fire was found to exist, and there was no fire there when he passed by; at least he did not see

any. He came on, and he met the Doherty detective, and the detective talked with him, and as they stood there talking, the detective looked down, and he said, "Why, there is a fire!" And they looked down and they saw a fire.

Now, what was the first thing that was done? The testimony is, inferentially, at least, that Eiseman went to his boat, and subsequently went down to Sloan's and did some telephoning to the Ackerman Company. Sloan says that he told him that his boat was on fire. Eiseman says he did not say that. Did he or didn't he? Is that testimony borne out by any other testimony? Yes, it is borne out by the testimony of Hansen. Do you remember that old gentleman, the captain of one of these boats? He said that that was on fire; there were some iron spikes upon it—came down upon it—all hot and aflame, and that he threw them into the water, tried to get them into the water, and that later, as the boat was being towed out, Thompson exploded.

Now, gentlemen of the jury, running throughout this case is a very great diversity of statements. Some people say they saw the fire at one time, and some say they saw it at another. Some say they saw it in one place, and some say they saw it at another; but I think the conclusion from the testimony must be—and I ask you to follow me with your minds—the conclusion must be that the first fire was observed coming out of the Bethlehem Steel car, coming out of the top of the car. One man said he saw a fire down at the bottom, but I guess that a dozen witnesses have testified to you that the fire did come out of the sides or top of the car, and the car was closed; therefore, the car could have gotten afire in only one of two ways; it was set afire, or it was spontaneous combustion. There is not any evidence it was set afire; therefore, the only theory left is that of spontaneous combustion.

Well, gentlemen, what next occurred? Mr. Kane sent in the alarm; that is,—others sent in the alarm; the fire department came down there from Jersey City, several fire departments, hose companies, and others; I think they said some eighteen or twenty men were down there with Chief

Gately; and the Chief looked over the situation, and notwithstanding what may be argued by the other side—the Chief was honest about it—he said on his cross-examination that he thought it was an unsafe place for any man to go, and he told his men not to go down there; and I asked him the direct question, "Would it have made any difference whether that was there, would he have gone?" And he said, "No, I would not have gone." That is the substance of his testimony, gentlemen. They did not go down there. Can we blame the firemen for that? I cannot. I do not know why we should attach any blame to these men for not risking their lives for the purpose of saving some boxes of powder on that night in question. Counsellor for the other side seems to make some point about it, that they came there and that the water did not come from our pipes. Do you believe that, gentlemen of the jury Williams said that there was a 130 pound pressure in the boiler; that at all times the water pipe was full. He finally said to one of the men, one of the firemen, "Why don't you take the water? " And he said, "We are not going to take any water, we are not going down in there."

Now, as I said a moment ago, we have to put ourselves in the same place in order to appreciate the situation. Here were 33 carloads of explosives; here were shells popping in the air—and when we say popping in the air, I presume my language does not at all adequately describe the terrific scene that was going on there from the popping of those so-called shells. Can we attach any blame to these men? I do not. Human nature is weak, and it is only human nature. But I cannot pass this point in the remark that I am making to you without letting a tear of sympathy fall upon the memory of brave Con. Leyden. He was a Lehigh Valley man. My friend says the Lehigh Valley men did nothing. They let it all go and stood around there. Con Leyden went down, the chief of the Lehigh Valley firemen, and poor Con Leyden lost his life, and it took hours and hours, to dig out the remains of his poor body from the debris that was piled around it.

So when we look this case all over we find that the men who did try to do something, the men who were vigilant and who were active, were the Lehigh Valley men. Is there any real criticism that can be made, that you can make in your minds, gentlemen of the jury, of the Lehigh Valley men and their conduct on this night in question? Would you have done yourselves any differently had you been stationed there? Men have families; their wives are precious. Powder was coming there in great quantities. This was a time of war. Explosives were being shipped there in vastly increasing quantities. To risk the life, to save some powder for a foreign kingdom, was quite a proposition. I cannot myself attach any blame.

"Ah!" but my friend says, and he relates to you, "You were negligent; did not have proper fire fighting apparatus." Well, gentlemen of the jury, I read to you, and it took me so long to read it that I wearied you—we had hose connected with the sea, and hose connected with the fresh water and numerous hydrants, and chemical engines, and hose stationed all over, and every kind of modern fire fighting apparatus, that the ingenuity of men could discover and place there. "Ah," but my friend says, "you did not put that down in the yard where the explosives were."

We put down there all that seems to us necessary and proper under the circumstances, and as much as any other railroad did, and followed the practice in doing that. Is there any blame to be attached for anything of that kind? Suppose that yard had been absolutely studded with fire hydrants; suppose there had been one every ten feet; do you think the Jersey City fire department would have gone down there and hooked on to the fire hydrants that night? We have to be reasonable; we have to use common sense. They all said they would not go. The Chief of Police told his men not to go. That is not the gist of his case. He is trying to make out negligence. His case rests on our negligence; that is the basis of the case. He says we were negligent in several things; first, that we stored in this yard large quantities of explosives, 33 carloads. We were obliged to store them by the order of the United States Govern-

ment. We were obliged to take them for transportation by the order of the United States Government. That is not negligence, and I hope that his Honor will so charge you.

In the second place, he says, "You were negligent, because you did not have proper fire fighting apparatus." I submit we had everything that the law allowed, and more too. I submit that we have a right, gentlemen of the jury, also to rely upon the fire fighting connections and the fire department of Jersey City. You have a right in your homes to rely upon your local fire department and your local fire connections and fire conditions. I do not imagine that you men maintain at your homes fire fighting apparatus.

"Ah, but," he will answer back to that argument, "this was a different situation. You were maintaining explosives there." Yes, we were, and we endeavored to get them out of there as rapidly as possible, but they could not take them out because the foreign government boats were not ready to take them at all times, so they waited there until the barge came to take them away.

Now, is there any negligence in that? Is there anything in which the Lehigh Valley Railroad should be mulcted of two million dollars? Is that any negligence?

The next thing he says is, "Ah, but you did not have enough men." We had five and they had four; that is nine. There was no fire in the yard. Dr. Maxim has said that TNT could burn without an explosion, if no detonating fuses were attached to it or connected with it. There were no detonating fuses in that yard. All of them were down on the Johnson 17. Didn't we have enough men under the circumstances? It seems to me that we did. In addition to what were down in this dock were over one hundred and sixty grain boats with 160 captains on, all of whom were Lehigh Valley men, and all of whom were available. But, gentlemen of the jury, let us get right down to common sense.

We might have had a thousand men there that night, and they could not have gone down, and neither could the firemen, and neither could their men, and risk their lives that night, and

take that chance. This was a great and a sudden and an unexpected emergency. It was just as much of an emergency as if at this very minute, as I am having the pleasure of talking to you, the very floor upon which I stand should suddenly upheave and this entire court room should commence to rock with an earthquake, and everything should commence to go one way or the other. What degree of duty should you be held to under those circumstances? Could anybody say you were negligent because you did not do one thing or the other, or would it rather be said that you acted as best you could, confronted by this unusual emergency, which an act of God, or an act of some other nature, imposed upon you?

As I said before, human nature is frail. Isn't it, gentlemen? You men have each, as you look back at your own lives, find there have been times when you would have wished to be a little more strong about something. I know I have. We do the best we can. I do not believe that many go and do an intentionally wrong act. Sometimes the man uses poor judgment; sometimes a man will not be influenced by the same motives that perhaps he would be if he gave more thought to it; but he is not inherently wrong or bad or negligent; he is trying to do the best he can with the light he has got; he is not trying to do anything to injure anybody; and here was on this occasion was what I think was one of the greatest explosions in history. There was one in Baltimore, where more lives were lost. You remember that—55 killed, I think, and a great many more injured. But I think for the intensity of the explosion and for its general effect, I think this was one of the great explosions of history. Well, now, is it to be wondered at that a man working for the defendant, with a wife and family, and with his life before him —and life is sweet—is it to be wondered he did not rush right down there to try to save two or three boxes of powder for the King of England?

Now, let us be reasonable. Would you have done it? I would not. Would they have done it? What would this powder amount to?

Now, it is a great thing to talk about; it is a fine subject of conversation for a lawyer before a jury—500,000 pounds of TNT sounds like—oh, dear, it sounds almost like the United States Mint; but one of the witnesses on the stand for the powder company said that he had quite forgotten, it was such a small affair, whether that one order of 25,000,000 pounds of TNT at 98 cents a pound—he was not quite sure, there was so many. 25,000,000 pounds of TNT at 98 cents a pound—

Mr. Stallman. Powder.

Mr. Rockwood. Powder—I do not see—maybe my friend can tell you, maybe he can explain it to you—I cannot see why a man should have gone down there and risked his life. They did not do it; nobody did, except poor Con Leyden.

What did the bargemen do? They telephoned for the tug boats or the Ackerman Company to come over and take out the barges. Did any of them come over? Not one. What tug boats did go down and try and save those barges? The Slatington and the Geneva, both of which belonged to the Lehigh Valley Railroad. These men went in there and did risk their lives to pull out burning cars. Martin Henley and his crew of the Valley Railroad—I am arguing this rather strenuously because I am tired myself of hearing all this criticism of the Lehigh Valley Railroad Company and of its men.

Railroads are necessary and important. They are necessary for transportation. The Lehigh Valley Railroad Company is a necessary part of the civilization of this section. It deserves to be fairly and properly treated in a court of justice, and it will be in this case by you. It does not deserve, and it does not deserve in this case, at this time of war, in this unusual extremity, in this case when men's judgments would not be the best—it does not deserve criticism, because every one of those poor men did not walk down and sacrifice his life on the night in question.

And if that is negligence and you find it is negligence, gentlemen of the jury, why, we will have to abide by your verdict, but I know very well that in the last analysis you will not do that, because you will not measure the standard of duty of any of the

Lehigh Valley Railroad men to be higher under the circumstances than you would say would be done by yourselves under similar circumstances.

Now, what other negligence thing does he say? He has got a complaint here about negligence, which in my room last night—three complaints, which took me about an hour and twenty minutes to read. All the negligent acts that we are charged with are, lack of fire facilities, storing of a large number of explosives, not a proper number of men, failure to instruct the men, and in general, this Lehigh Valley Railroad, one of the greatest railroads in the United States, should be mulcted of two and a half million dollars from the pockets of its poor stockholders because our friend on the other has counted up a case of great negligence on the night in question. But, was his client at fault? He says nothing about that. I could not find in the complaint from one cover to the other any suggestion that he was at fault in the slightest way. So, as I read the complaint, and I will read a section of it to you in a moment, I was reminded—if I may be excused for the quotation—"Thou who sayeth a man should not steal, dost thou steal? And why considerest thou the mote that is in thy brother's eye and not the beam that is in thine own? First cast out the beam that is in thine own eye; then shalt thou see clearly to cast out the mote that is in thy brother's eye."

Brother Stallman, representing the King of England and the Republic of France, has not yet cast out the beam in his own eye—his client's eye—and the beam in his client's eyes a great big beam of contributory negligence; because if his Majesty, the King of Great Britain and Ireland, and the Republic of France, and the other plaintiff, the Aetna Explosives Company, had obeyed the law of the United States Government they would have been at the anchorage ground and this case would never have occurred, and they would have had no injury in any respect whatever.

What does he say about that? Here is how he pats his client on the back. He says, "And all of which nitrocellulose powder and cordite were on the night of July 29, 1916 and the morning of July 30, 1916—" this is the complaint—

Mr. Stallman. Have you got the amended complaint?

Mr. Rockwood. This is the same thing. This is the complaint in the King's case—all of the product—

Mr. Stallman. Now, if the Court please, if counsel is going to read the complaint or any part to the jury, I insist that he read the amended complaint, or the amended part of what he wants to read.

Mr. Rockwood. I will be glad to.

The Court. Inasmuch as the original complaint is not in evidence, you cannot read from it.

Mr. Rockwood. Then if you will give me the amended I will be glad to read the part I want. I thought I had the right part.

The Court. I think one was handed to me. If it is amongst these you are entitled to it.

Mr. Rockwood. I have the paper given to me by the General Counsel of the Railroad, and I assumed it was correct. You have not amended the part that I wanted to read, have you?

Mr. Hobart. He has not amended that.

Mr. Rockwood. He has not amended that, your Honor. He is interrupting me merely for the purpose of having a little humor out of it, I guess.

Mr. Stallman. If you read I will object again.

Mr. Rockwood. You can object all you want to. His Honor will pass on it.

Mr. Stallman. May I object.

The Court. What is your objection?

Mr. Stallman. If counsel is going to read from the complaint he must read from the amended complaint that was filed before this trial was begun, and not from the old complaint.

The Court. Well, he is reading now, I take it, from the complaint which you handed me, upon which I presume we are trying this case. If you are expecting me to read from it to the jury, you must expect him to read from it.

Mr. Stallman. But this is the amendment of the complaint.

The Court. Have you handed me the amendment?

Mr. Stallman. Yes, he has it before him.

The Court. Well, I have no doubt he will read from it.

Mr. Rockwood. Your Honor, there are only two parts of the complaint amended, two paragraphs.

The Court. Well, if you are quoting from the amended part, you undoubtedly have a right to do what you are doing.

Mr. Rockwood. I think so.

"All of which nitrocellulose powder and cordite were on the night of July 29, 1916—"

Have you amended this part?

Mr. Stallman. I have and there it is in plain language that you can read. That is amended by this language. You can see that.

Mr. Rockwood. It is the same thing. I cannot see any difference in it.

"All of which smokeless powder and cordite smokeless powder were on the night of July 29, 1916 and on the morning of July 30, 1916 on board said barges or lighters of the Ackerman Lighterage Company, known as W. A. Thompson, Jr. and the Paulina, which barges were then and there rightfully and lawfully in the waters of New York Bay near the Black Tom Yard of the defendant."

"Rightfully and Lawfully there." Now, that will be one of the questions in the case for you to pass upon—"Rightfully and lawfully there." He rests his case, therefore, upon the proposition that we were negligent in the respects to which I have referred, and that he was not guilty of any contributory negligence because his boats were rightfully and lawfully in the waters of the Bay.

Now, gentlemen, I want to make the question so sharp that there cannot be any getting away from it, because this is an important case. It is two and a half million dollars at stake here, and if I omit any point here that I should properly call to your attention I would be subject to very great criticism, and this is a very important point.

When he addressed you, counsel upon the other side, and discusses our negligence and his freedom from contributory negligence, I want you in your own mind to follow along asking this question at all times:

"Were your boats rightfully at or near the Black Tom pier, or should you have been down at the anchorage grounds?" I want you to say to him, "What business did you have with those boats about the Black Tom pier?" And if you say, gentlemen of the jury, that they should have been at the anchorage grounds and had no business to be at the Black Tom pier, I apprehend under the instructions which I hope his Honor will give to you, that your verdict will have to be for the defendant, of no cause of action; otherwise you will be saying to the representatives of these foreign governments in effect, you can come over here to this country and you can buy goods of American manufacture and you can disobey the harbor regulations, and you can disobey the laws of the Bureau of Commerce & Labor; you can tie up your barges to any pier where you desire to tie them up, and if there is any accident occurs, or any injury to your barges you will be compensated for the loss, notwithstanding that you violated the laws of the American Government. Can that be a just and fair result?

Now, one other thing.

What else did they do to contribute to the injury? You see how this thing occurred. If they had taken those barges out to the anchorage grounds the men could not have gone ashore. Eiseman could not have gone to see his girl. Some other man could not have gone for something else, and so they wanted to get near the pier; so they came in there without any authority, although they had been often warned away, although the government representative and Mr. Dickman and others had told them not to come there, they just took a chance and tied up there and they all went ashore. Now, was there any care upon their part in that respect or were they guilty of contributory negligence? The boats were all left there. Mr. Hansen went away—or the others went away and left only old man Hansen there. The boats were left alone at the mercy of the situation. There were no tug boats

to pull them out. The Ackerman Company took the chance. Isn't that all there is of it? They towed these boats in there and they took the chance of the situation. I must hurry along.

If you say, gentlemen, that they took the chance and took a chance, or contributed in any way to this result, then they cannot recover any verdict no matter how negligent we may have been. I do not apprehend there are any degrees of negligence. I apprehend that his Honor will say to you that before there can be any recovery on the part of the plaintiff they must show they were free from anything that contributed to the injury. This was our pier; these were our waters. We could not have given these men permission to dock there. We could not legally have changed laws of the Department of Commerce & Labor. There was nothing that Mr. Dickman or any of the officials of the Lehigh Valley could have done to have given any consent to any of these barges to be there. So I say to you, gentlemen, at the start that all these barges, and all of them were illegally there. If you find that is so, that is the absolute end of the case, and upon your oath as jurors, it is your bounden and sacred duty to return a verdict for the defendant. It is not anything that anybody has a right to guess about; it is not anything that anybody has got to tease you to do; it is your sacred, bounden duty before God to do it, and if you do anything else it is not a court of justice; it has become, as I said before, a court of absolute repression, and your children are not safe in it, and you are not safe in it, and nobody else, if you disregard the evidence and the law because you do not like the railroad. We might as well all go out of business; and if any man because he has a claim against the railroad would be against it for that reason, why, then the same situation obtains. Justice is what is demanded here—absolute justice; and if these people were illegally there, and you find it, that must be the end of the case.

Now, this is not boy's play. This is not any simple matter. This is not anything where I am appealing to your prejudice or your loyalty or your patriotism. I am not spending any time trying to stir up in your hearts any feeling of enmity towards or against anybody. That is not in the case. Every one

of these plaintiffs has a right to walk in the door of that court of justice and present to his Honor upon the bench and to you twelve men his rights and to have them passed upon, regardless of whom he is, whether he is the King of England or the humblest sweeper who sweeps the court house steps. He has a right before twelve good men and true, every one of you sovereign judges, to ask your absolute honest judgment, and we as defendants have got an equal right. Do not be swayed, gentlemen, do not be led astray by any feelings of prejudice or passion if any may be urged by my friend on the other side. This is a railroad, yes. These governments were at war, yes. We are all entitled to our rights here. Were we negligent? Well, let us say for the sake of argument that we were. We do not admit it; but let us say to him, why, yes, we were negligent; we are sorry; we should have had an army down there. We should have had about ten fire departments stationed all around the yard. We should have had any number of policemen. We should have had men to take hold of your captains when they started to go off and see their girls, and say, no, you cannot go; you have to stay here and watch your boat. We should have done all these things. We were negligent. Suppose we say that. He cannot recover if he is guilty of the slightest contributory negligence.

In order to give him a verdict you have to find as a fact, as the controlling fact of this important case, that these barges were rightfully there. Now, you follow my argument. What are you answering me in your mind? Were they rightfully there? I have read you the anchorage regulations. What right did they have there? Should they have been down at the anchorage grounds a mile away? The boats that were there were just partially injured on one side, but they lost none of the load. The load was not hurt in any way whatever.

Now, this is not a case—I want to differentiate with you—this is not a case like an individual who has had some glass broken in his house and who had nothing to do with the railroad company, whose house was situated, say, several hundred feet away, and the glass in the house was broken, or the glass in the church was broken, or the organ in the church was put out of tune, or

something else happened. That is not the case; because in that case you did nothing to contribute to the injury. You were pursuing your own way peacefully and all right and did nothing at all to contribute to it; and the railroad by reason of the explosion created a condition upon your property which resulted in damage, and which the law says there is liability as to. That is different.

But suppose you had taken that piece of glass in your hand, a big piece of glass, and walked down on the Black Tom Pier without any right on the night in question and had been walking out there when the explosion occurred, and you were a trespasser. That would be a very different situation, and that is what all these boats were—they were trespassers on our property.

They say in this case, not only forgive us our trespasses, but pay us for them too—two and a half million dollars; because they were doing something wrong, and they want us to pay them for it. Now, that is the vital point in this case, gentlemen. That is the first proposition relating to the barges. The cars were on fire—one car was on fire. The Bethlehem Steel shells popped. Now what next happened? Have you any doubt about it? The Johnson 17 blew up on the north side of the pier, and when it blew up it threw its detonating fuses over into the eight cars of TNT and caused that explosion. Have you any doubt about that?

Hudson Maxim, the greatest expert in the world, I guess, on these subjects, one of the greatest inventors, was on the stand before you today, and he told you that the TNT would burn but could not explode unless the detonating fuses got into the car. Now, there were no detonating fuses anywhere on this pier, or anywhere at all except on the Johnson 17. That is the only place where there were any detonating fuses, and when my friend comes to argue before you, I hope he will explain to you how detonating fuses got over into that TNT unless they came from the Johnson 17. Can't you see just how that occurred?

The Johnson 17 blew up and when it blew up it rained those detonating fuses over on the cars. Any doubt about that? Old man Hansen said he tried to throw them off on the other side of

the pier. The Johnson 17 when it exploded made a great crater underground, 21 feet deep, under water. I will not attempt or take the trouble to show you the map here, but the map showed 21 feet under the Johnson 17, where the earth was dug out in the land of the Bay, underneath, by that terrific explosion.

Now, there is the north side of the South Pier—the north side, see? That shot must have come from the north, mustn't it? It speaks for itself. You will take these with you to the jury room. That was shot over, as you see, from the Johnson 17. It could not have gotten there in any other way.

Now, here is a car. There is the north side of the pier. You see how it is shattered towards the south? It speaks for itself. It shows the force that was on that side.

Now, this one shows a little bit better. That car on the North Pier is tipped to the south, see? Tipped right down in the direction of the barges, right to the south.

These are silent witnesses, but they speak volumes.

That is taken from the float bridges looking south, so you can see how the cars standing on the South Pier were hammered by that same explosion.

Now, when that explosion occurred on the north side of the Johnson 17, it threw those detonating fuses over into the cars of TNT and also on the barges where Capt. Hansen was located.

Mr. Maxim says it could not occur in any other possible way, and there is no other expert put upon the stand by the other side. That evidence stands absolutely undisputed.

It is very difficult, I know, for twelve men to decide a question of this kind, to decide where an explosion occurred, or to decide every fact of a disputed case of this character where there has been such a difference in the testimony. Now, if that is the situation then the plaintiff has not made out the burden of proof because he has got what they call in the law, the burden of proof. He must satisfy your minds—it is not our duty to do that, but he must satisfy your minds before he can get a verdict, first, that he was legally there; second, that he was guilty of no fault or any negligence, and then that we were negligent. All those things have got to be done before there can be

any verdict against us. If any of those things fail we are entitled to a verdict. If there is any question about it we are entitled to the benefit of that doubt, because he bears what is known as the burden of proof.

One very important fact bearing on the point of the explosion: Mr. Dickman, who was in charge of this yard, and a faithful representative of the Lehigh Valley Railroad for many, many years, and the other two gentlemen who were with him, all of whom have testified, stood upon the seawall near the cars of TNT at the time of the first explosion, and they testified to you—and their evidence is undisputed—that the first explosion came from the other end of the pier, the water end of the pier. Dr. Maxim told you that if the fire and explosion had occurred from the cars of TNT those men would have been instantly shattered beyond all recognition. They could not have stood there where they did and live. But they did stand there and did survive. In addition to that, the man, Walsh, who was on top of the car there, shifting the cars—do you remember him? He was blown off the car, but he lived. He survived.

Now, further than that—and it seems to me it is only from small things that we get the truth; small things in law suits sometimes tell greater truths than big things—the fact that Mr. Eiseman went down and telephoned and said, "The boat is on fire. Send a tug," is to me a very controlling element in this case, because gentlemen, he was there on this night in question, coming up the yard, and he telephoned to the Ackerman Company to send a boat; that the lighter was on fire. Do you doubt it? Hansen says it was on fire. Capt. Hansen and Capt. Eiseman both agree that the lighter was on fire.

Now, if those facts are true—and Hansen was their witness—they cannot recover. There cannot be any verdict given here as the result of speculation. You cannot guess about this. When you get out there in the jury room it has got to be an exact conclusion based upon legal evidence, and not based upon inference, or what my friend on the other side may urge to you as his idea of the situation.

There was one car upon our tracks which had only been there a short time, and for which we are liable. That car was valued at $9,000. Under the bills of lading which have been introduced in evidence here before you—one of the first things we did was to introduce this bunch of bills of lading—the carrier has the right to notify the consignee when goods have arrived at the point of embarkation, as in this case, the Black Tom Yard, and if the goods are not taken away within forty-eight hours, our liability as what is known as common carrier ceases.

Now in this case one of these carloads had not been there forty-eight hours, and so we have got as to that car, the French Government car, a liability of nine thousand dollars.

As to the other cars we have no liability, because they were there more than forty-eight hours, and we gave them notice required by law, and they did not take them away. So when they let them stay there they did it at their own risks. I will read it to you:

"No carrier or party in possession of any of the property herein described, shall be liable for any loss or damage thereto or delay caused by the act of God, the public enemy, quarantine, authority of law, or the act or default of the shipper or owner. For loss, damage or delay caused by fire occurring after forty-eight hours after notice of the arrival of the property has been duly sent the carrier's liability shall be that of warehouseman only."

Now some of these cars the consignees let stay at our dock there for several days. We notified them to take them away, but they did not take them away, because they could not get the barges. That is not our fault. I don't know whether my friend is going to press the question of the liability for the burning of cars over on the Jersey Central terminal. I have not heard him say much about that, but our argument there is that we are not liable for those. They were shipped over the Jersey Central line. We never had them. We had nothing to do with them. There is no proof in the case that we burned them or affected them, and we are not liable for them in any condition. The fire that got over

there was started by the explosion on the Johnson 17, with which we have nothing to do.

Now, gentlemen of the jury, I am about to close this case and leave it for your consideration. There are many phases of it which I wish I had the time to further elaborate on; there is a great deal of detail which I wish it had been my privilege to discuss with you with great accuracy and care, reading from the evidence. You have, however, been unusually patient—it has taken the entire week. It is not the province of counsel to weary a jury. I appreciate the kindness and courtesy with which you have received the remarks you have made on behalf of the railroad, and I am submitting the case to you with full confidence that you will approach it with that same degree of care that you would if it was your own case—how you would want your own case considered. I believe that you will give no especial prominence or importance to the fact that the plaintiff is the King of England, the Republic of France or the Aetna Explosives Company, and that we shall have from you a fair verdict based solely upon the evidence and nothing else.

There has been some question in the case about the pierhead line. The pierhead line is shown by the maps as testified to by one of the witnesses some fifteen feet beyond the north line of that pier. You will remember the testimony of several of the barge men that when our boats were attempting to pull them out they got them out some distance away, a little distance away,—one man said six feet from the north end of the dock. Now if those men were originally trespassers upon our land and we were kind enough to endeavor to get them to a place of safety, I do not feel, gentlemen of the jury, under all of the circumstances, you will attach the slightest liability to us upon that state of facts. So, gentlemen, the Lehigh Valley Railroad submits this case to twelve men of the State of New Jersey, and asks them for our verdict.

Now my friend has the last word,—I have no opportunity to answer him. Will you in your own minds, as he makes the proposition of negligence,—will you keep asking him, as I said before, "Were you free from contributory negligence? Did your

clients do anything to contribute to this result? Were you lawfully at the pier? Did you go there rightfully or did you violate the act and regulations of the Government of the United States?''

And, gentlemen of the jury, if he does not answer that question to your satisfaction, then I ask you to hold the foreign governments who have brought this suit to that same degree of respect for our laws that you would hold any citizen. If you find they have violated those laws, they were illegally at that pier,—had they been down at the anchorage ground they would not have been injured,—I not only ask, but upon your oaths, gentlemen I confidently expect from you, as men sworn to do your duty in this case, a verdict for the Lehigh Valley Railroad, with the exception of the nine thousand dollars in the French case, a verdict, as to all the rest of the French claims, including the King of England, the Republic of France, and the Aetna Explosives Company, of no cause of action.

PLAINTIFFS' CLOSING ARGUMENT.

Mr. Stallman. May it please the Court and gentlemen of the jury, I am not going to be very long. I had not intended in opening the argument for the plaintiff in this case to say anything by way of preface, but in the sixteen years or more that I have been practising law in this court and before Judge Speer, it is the first time that any lawyer has found it necessary to say to a jury that Mr. Stallman is likely to say to a jury anything prejudicial to a corporation, or that I was going to appeal to your prejudice because the defendant in this case is a corporation. My learned friend on the other side could have consulted with Brother Hobart and Brother Boles, or any of the others that have been against me in the Black Tom cases, and they would have told him it was entirely unnecessary.

Just one other thing by way of preface, and that is this. I do not care how important a case is, and I do not care how much money is in it, if I can not win a case and I cannot try a case without misrepresenting any facts I do not want to win it,

and you can just take that and remember it during every word I say during this argument.

Now, if I am extravagant, gentlemen of the jury, in the use of any language or figures you just remind me of it. Now do not let my friend on the other side scare you because of the size of this case. A million or two does not make any difference to him evidently, because he has been telling you this is a suit for two and a half million dollars. Well, I have just figured it up here and it comes to less than one and one half millions. It does not make any difference to him. I thought I would put you right on it.

Now what is the situation we have here. This is a suit against the Lehigh Valley Railroad Company, the only person that we can sue, the railroad company who has lines of railroad extending to different parts of the country, who is engaged in the business of transporting merchandise and freight, and in the year 1914 and 15 and 16 this company, in the pursuance of its business, with the purpose of making money for its stockholders, went out through the country and accepted large shipments of munitions, for which they were paid the rates of freight. In other words, to them it was a perfectly good business proposition. And I am not going to tell you, gentlemen of the jury, like some ambulance chaser, that you are to give a verdict in this case because the defendant is a corporation. In all the years of my practice I have not told that to a jury, and I never expect to, but I say this defendant caused the damage to the property of the clients of mine, and Mr. Smith's and Mr. Brogan's, and we are coming here just as humbly as the most humble servant in the world, asking you for the exact measure of justice that you would meet out to anybody else. Why, it doesn't make any difference, the name of the plaintiffs in this case, or the name of the defendant. The question is, did the defendant—call him X—negligently and without care destroy the property of Y. That is the only thing you gentlemen are interested in. Do not let my mention of names, gentlemen, prejudice your minds. You won't hear it from me.

Now what is the situation? The Lehigh Valley Railroad Company, the defendant in this case, I will say, had in the Lehigh Valley yard down here at Black Tom, on the one particular day, on the 29th of July, 1916, eleven cars of TNT, and if you look in the record you will find that they weighed on an average about forty thousand pounds, so that there was four hundred and forty thousand pounds of one of the most violent and powerful explosives known to the ingenuity of mankind, brought right down in the Black Tom, and then that stuff, having been on hand for a few days, the railroad brings down and puts right down on the next track three or four feet from it, eight car loads of shells, and if you look at the record you will find that the record shows that those shells were shells with explosive projectiles attached—ammunition—powerful ammunition.

Well, you had that situation. You had a few other cars of ammunition scattered around the yard that I am not going to bother about,—I am just going to talk about the TNT, that Maxim says, in his great knowledge of this thing, was widely used during the war on account of its explosive qualities, and these shells that were on the track.

Now, gentlemen of the jury, where is the place? What is Black Tom? The place where the railroad company brought this sort of thing? Black Tom, gentlemen of the jury, is in the city of Jersey City, and Jersey City is one of the biggest, if not the biggest cities in the state of New Jersey, and Black Tom lays right in the heart of the location of the homes and the banks and the churches and the business institutions and everything else that goes to make up a metropolitan community. It is right in the middle of Brooklyn and Staten Island and Bayonne and Jersey City, and Hoboken and Manhattan, and all of this vast aggregation of buildings and human habitations. That is where Black Tom is.

Now, gentlemen, right there in the middle of this district where all of the lives and all of the property of the people of this vicinity are centered, the Lehigh Valley Railroad Company brought this vast aggregation of high explosives. Now counsel has come to you and he has tried to say, "Why, gentlemen of the

jury, we could not help it." Now the Court will charge you, I have no doubt, that the regulations of the Interstate Commerce Commission says in very plain language, that any railroad company who finds that they cannot safely—safely—handle high explosives, has the right to refuse to take it. They may at the point or origin or anywhere else, impose such restrictions as the circumstances may require. That is what the law says, and when they come and say that they had to take it, it was on order of the United States Government, gentlemen of the jury, I trust the Court will say to you that that is not the law. Just remember that.

Now having brought that stuff in here with all of these buildings around, would it occur to you, and should it have occurred to them that it was their duty to exercise any degree of care? Should it have occurred to them that if anything did happen to that volume of explosives, that anything would happen to your home? Ought that to have occurred to them? If you had something at your property that might be likely to break loose and cause damage, would it occur to you that possibly you ought to do something to prevent damage? I say it was the duty of this defendant under the law to exercise care, to anticipate what might happen if any of that canned Hell broke loose down there in that yard?

Now what did they do? Now what did they do? Let us just look at the evidence a minute that my friend thinks I am afraid to meet. Let us look at what the Lehigh Valley did? I am not going to criticise the actions of individual men, but I am going to criticise the policy of the corporation itself, the employers of these men. Now let us see what the situation was. Well, I suppose the first thing to think about when you have got explosives down there is fire. In the regulations, which his Honor is now reading, you will find an illustration of a placard that is placed on every one of these cars. It is fourteen inches wide and it is twelve inches high, and it is put on both sides and both ends of a car, and in great big letters about four or five inches high, it says, "Explosives," and in letters equally high and as brilliant red it says, right underneath it, "Keep fire away." Now,

gentlemen of the jury, that does not mean anything more or less than that that stuff is dangerous if it is exposed to fire, and you could read it and understand it, and they could do the same. Well, just what is the way to prevent fire or fight fire? Well, I suppose an ounce of prevention is worth a pound of cure.

It might be prevented, and one way to prevent it, the easiest way, the first thing that occurred to me is for somebody to watch that kind of stuff. A man at a hundred dollars a month, or whatever they paid a watchman in those days, could watch that sort of stuff, and see that a fire would not break out. Did they have anybody there? Did the Lehigh Valley pay enough money to have these explosives watched? Why, they talk about nine men. Let us find out who they were? There was a man named Groat, who was a janitor of the gate down at the oil works a mile away from these cars. Could he watch the explosives? Was not his business. They had a man named Kelly, Joe Kelly. What was Joe Kelly's duty?

His duty was to stay down there in the grain elevator, keep up the fire under one boiler and wash out another one. I said to him, "Was it any part of your duty to watch ammunitions in Black Tom yard? " And he said, "No." "Have you been in the yard while munitions were there? That was not a part of my job." That is two of them. Then comes Sam Sloan, and Sam Sloan's job was to take care of the pump off of pier 5.

Well, that is a matter of forty or fifty inches on the map,—that is only a thousand feet away, and his job was to stay there in that pump house, and he hadn't any right to leave that pump house, and he had never been down in the yard where munitions were, and never having been there you will readily believe he could not watch them.

The next man was a man named Garrity. They said he was an old man, they didn't know how old he was. He punched buttons on pier 6.

Well, that disposes of that man. And then we had Mr. Kane, and Kane had to patrol Black Tom yard from North Pier to the oil works, from the North Pier down to where Groat was at the gate three quarters of a mile away, and he had to walk all the

way down there, all the way back, and he had that whole shooting match to look after,—the safety of the grain elevator, and the safety of the new grain elevator, and the safety of pier 4, and of pier 5, and of pier 6, and of pier 7, and that whole thing, and did he ever go down in the yard where these cars were, where these ammunition cars were? No. When he did have time he walked around the whole works. He walked down pier 7 and out to the bulkhead and back again, and he never went down where those cars were to see whether there was anything the matter with them or not.

Well now, that is all the Lehigh Valley men they had. They said there was one hundred and sixty grain boat captains down there near the grain boats. There is no evidence they ever showed up. Somebody said they saw two or three of them after the fire.

Mr. Stallman (continuing): There was not anybody there watching these explosions, gentlemen of the jury. And so they produce here a detective by the name of Jesse Burns, the Lehigh Valley produces that man—the defendant in this case—and they ask him if he was there that night, and he said he was, and they said: "What were you doing?" "I was on the job." "And what was your job?" "My job was to watch the cars on the North Pier.

And my friend, Ed Smith, said to him, "Didn't you have anything to do with thes cars in the yard?" He said, "No, that was not my job; I was stationed out on the North Pier." "Then who was looking after these cars in the yard?" "Well, Mr. Mulligan, the superintendent, the man higher up, the man who was responsible for the conduct and operation of this yard, of the whole division." He comes on the stand. He says, "I told Leyden, the chief of police, that our men were to be relieved of watching those munitions, because I thought those men out on the North Pier were going to do it."

That is the answer, gentlemen of the jury.

There was not anybody watching this stuff. That is one thing they did not have. If they had had anybody to watch it, probably it would not have happened. They did not have anybody, and you can look through that whole record and you cannot find

whose duty it was to look. It was not anybody's duty, unless there was somebody doing it gratuitously.

I say, what is the best possible way to prevent a fire? Well, probably they will say, the best way would be to provide fire fighting apparatus. Judge Rockwood read 46 pages of description of elaborate fire fighting apparatus and had them scattered all over those piers, piers 4, 5 and 6, and in stores A, B, C, D, E, F and G, and up to X, Y and Z, a whole lot of fire protection in there, and in buildings so far up that they are not even shown on our map when it is unrolled. Well, all I will say about fire protection is, when Julian went on the stand, the man who had the maintenance of all that protection, and I said to him, "Mr. Julian, what was there available for fighting a fire if one occurred where you were?" He said, "Well, there wasn't anything but 13 barrels of water down on the float bridge." What about all that elaborate system? Is that all? Yes, just those twelve barrels.

Gentlemen of the jury, did you ever see a barrel get up on its hind legs and drop itself on a fire? No, you didn't They did not have any men to use even that little insignificant water they had on the float bridge.

Well, then, I did not want to be unfair to this company, I said, "supposing the fire was not down there, supposing the fire was down here near the water tank three or four tracks away from the water tank, where the other witnesses put it, and there was a hydrant there, what would you have done?" He said, "Well, in that case, we would have had to have a gang of men to connect that hose up and carry it over the roofs of those cars, and then Henley and these other men drilling in there would have cut this hose up, so we could not use it, and I do not think of any thing else that could have been done but to get a gang of men to dig a trench and run the hose through it, and by the time you had got those men with all their tools to do those things, this thing would have been all over."

So I say, gentlemen of the jury, they did not provide any fire protection whatever that would amount to a hill of beans.

Well, I was going to say, one way to put out a fire, a man might go down there and kick it out, or use a blanket, or some-

thing of that kind. Well, I am not going to criticise Kane and Kelley and those fellows when they saw the fire down there the size of my hat or Eddie Smith's hat or Brogan's hat, or whosever it was—that was the size of it, he said when I went to turn in the fire alarm; and then Sloan said, "I took a look at it and it was about the size of a barrel when I saw it, and about that wide." "What did you do?" "I could not use a pump; I had to attend to my job." And Kelly, "What did you do?" "I had to go back to my barge, and I went to my barge. I could not go back there; that was not my job."

Now, gentlemen of the jury, if there was a fire burning in a house, in your cellar, and it was that big, about as big as that hat, and that wide, or it was any size at all, wouldn't you do something, if there was anything there to do it with? Wouldn't you do something? But I say once more, I do not want to criticise those men particularly; they might have done something, but the fault lies, gentlemen of the jury, with the Lehigh Valley Railroad Company, the defendant in this case. My friend says, in a rather sarcastic way, "Should these men go down there and save a little powder belonging to a foreign government.

Why, gentlemen of the jury, it was not a question of the value of that powder; it was the question of what the explosion of those shells and that TNT was going to do to the millions of homes around here. That was not the question. Nobody was interested in whether or not there was a hundred and fifty dollars worth of powder going to be blown up. It was—what was going to be the effect of it? That was the question. And there was not anything done.

Now, I could go on, probably, and cite things that occur to me that they did not do. I made out a memorandum of it and have it somewhere to read to you—but I will hurry along.

Now, I do not want you to be under any misunderstanding about the knowledge of the defendant company that that stuff was down there, because do not forget the evidence of Mr. Dickman, I think it was, how those cars were placarded, and they knew that stuff was coming in, and had been coming in for a long time, and just remember this one other important thing, that I almost

overlooked, that those men had been there not less than nine years, and after the munitions began to come in not one man was added to the watching force. In the early days they used to handle in that yard lumber and grain and structural materials, iron, bricks, and all those things that would not burn, and they had those same four or five men down there watching them to see that somebody did not steal them, but when they brought down there that great big concentration of explosive material, they did not add one single soul to the watching force, and, gentlemen of the jury, that is what I mean when I say the railroad company did not exercise any care which the law imposed upon them

Now, I do not want to take any more time than I have to. I just want to call your attention to a few arguments we have made about where the fire started. Well, there were these captains down there of these boats, and they were looking at it from the water side, and they said the fire was in the yard. They all said that. Old Captain Hansen and the boat captain of the Geneva, and the boat captain of the Slatington, they saw it from there, and then they came down in this corner and they saw it over the water front from there, and Zeke Townes and his wife, they saw the fire was down here, and there is not anybody who knows anything about it who tells you anything to the contrary. That is where the fire was! And it was close enough, so that if the company had exercised any care whatever—if they had any of those cars where the hydrants were so that these men could have gotten the hose up quickly, this thing could never have happened; but they seem to have put them as far as they possibly could. They could not get a fire engine there. Why, it was so far away the men did not know where it was; they thought it was out in Bedloe's Island somewhere.

Now, I must get along. My friend has made some references to the Interstate Commerce regulations, and I am not going to take time to read any of those to you. However, I know that the Court in explaining to you the duty that this carrier was under, will take each one of those regulations that are applicable to the situation and read it to you. I just want to impress upon your minds, if I can, that statement that shows on a placard that

fire must be kept away. Now, gentlemen of the jury, that was not put on there to scare children at all. Those placards were put on those cards because fire was a dangerous thing to get near them, and they did not want the railroad company or anybody to forget it. They did not want it to be careless. Now, while I am on that point. I want to advert for a minute to this preposterous claim of spontaneous combustion.

We had a couple of chemists here who probably know more about that than I do, and my friend on the other side, and they say the only way spontaneous combustion can occur, is by having improperly made material; and if there had been spontaneous combustion, the thing would have shot off right away, because if you had spontaneous combustion in a brass cartridge shell, it would burst and make a noise, and if one shell went off another would, and there would be a lot of noise. The evidence in this case is, and you can take it from the record—of the watchmen themselves—that when they discovered that small blaze, it was 45 minutes; that is what Sloan says and Kelly and Kane, before any shells began to explode at all. Spontaneous Combustion.

It is all right to have some sort of a theory, to put a red herring across the trail, to make a smoke screen so you cannot see the real point, but gentlemen of the jury, when you analyze the evidence you are not going to be fooled by any such proposition as that, and I know it.

Now, there was something said about Eiseman coming down to the yard, and that reminds me of this: It is always a good idea, when you have got some kind of valuable material, to have somebody guarding it against people coming from the outside and tampering with it; and the only point I want to make in that connection is this, that after half past twelve at night, Eiseman came down through that yard and he walked three-quarters of a mile right down past all those munition cars, and there was not a soul to say to him nay; there was not a soul to say, "Who are you? Halt! What is your business here?" There was not a person to watch that place as well as you watch your own chicken coop. That is the kind of care this railroad company exercised.

And then, if they were so afraid of spontaneous combustion—gunpowder, if I remember right, was invented seven hundred years ago. It is not anything new. And if gunpowder was susceptible to spontaneous combustion, that is just one of the things they should have guarded against if they were going to have shells that would shoot off, shells with explosive projectiles attached, shells full of TNT that would go up in the air and come down in TNT and detonate the thing.

Now, I do not think there is anything else of any importance I need to allude to to show that this company was negligent. I think my friend Mr. Smith, if I give him a few minutes, will call your attention to these firemen, I think he will give you his idea about the firemen. I have not had time to look over that evidence. The only thing I want to say about it is that if the men down there—Mr. Dickman, Mr. Leyden and Mr. Kane, if you please who were the executives there in the absence of Mr. Dickman—if they had any interest in putting out that fire, they saw those firemen were in any difficulty about getting water—why didn't they find out who the battalion chief was, or who the fire chief was, and go up to them and say, "Chief, the way to get water out of that hose is this way?". There was not a soul who did that—and they say there was plenty of water,—the trouble was that water was turned off about fourteen feet behind the hydrant.

There is one other thing that occurs to me. Mr. Dickman testified that when they called him up and told him this fire was going on at Black Tom, he asked Sloan, "Did you turn in the fire alarm?" He said, "yes." Then he said, "Did you send for the New York fire boat?" "Yes, I did that ." "And did you notify the American District Telegraph Company?' "Yes, I did that." "Is that all you did?" "That is all."

Did it ever strike you, while he was saying that, that he did not say to Kane, "Have you put any water on it?" "Did you tell the grain boat captains to run down here somewhere and get men and couple up and see if you could put it out?" He never asked them that.

What was the matter down there? Didn't they think a fire might happen, and the first thing to do would be to go to it and put it out? It never occurred to Dickman that the thing to do, if you have a fire, is to put it out. He forgot about it. He asked him did he send for a fire company. I do not understand it.

There was some effort made—I think it was a studied effort on the part of my friend on the other side, to have you believe that Eiseman came into Sloan's office and told Ackerman in New York that his boat was on fire; and the funny thing about it, he insists on that after he had brought Burns, the man that met Eiseman, Burns, the detective, who came on the stand and told you that he was looking this way, Eiseman was looking that way, and Burns saw a fire way over there, and Burns said, "I am going to see what it is," and he called Eiseman, and Eiseman went down there, and Burns passed by on the other side, a distance of 150 feet, and he could still see the placard on the car and the car not on fire. The car was not on fire; and yet my friend very calmly gets up here and tells you, "why, gentlemen of the jury, it was Eiseman's boat. You know, some people know the difference between a boat and a freight car. Some people know the difference, whether it is out in the water or up in the yard; and I think Burns did know that distance."

Oh! what utter silliness. What utter rot to tell you gentlemen of the jury, to get out of liability in this case, to tell you that Eiseman went in to telephone before the explosion and called up Askerman and said, "My boat is on fire."

Gentlemen of the jury, I do not think that that sort of thing is going to have much weight with you.

Now, I think I have called to your mind the length of time that elapsed between when the fire was discovered and when it started to pop, and you know there was all the time in the world to put it out—not that the men were cowards—don't blame those fellows so much—only provided the Lehigh Valley had said to them, Ed—or Jim or Sam or Harry, if a fire breaks out in those munition cars at night, you do so and so—and I said to Kane, "What were your instructions if a fire broke out in the munitions cars," and he said, "For nine years there has been a placard

hanging up in my office about turning in a fire alarm." "No, I do not mean about ringing a bell and that sort of thing; what were your instructions if a fire broke out among munition cars."

Well, why didn't they think? —Didn't have any. The railroad men did not tell the men what to do. The railroad company did not tell the men what to do. It must have left the men in consternation. Here is a lot of munitions, fires going, shells spreading. We have not been told what to do. Don't blame those men so much. The railroad company, the superintendents, the general superintendents, the managers, the board of directors, up to the stockholders were responsible for their neglect to give those men any instructions. Now, the defense is in this case—that is the negligence, gentlemen; that is the negligence we claim started the conflagration. That is our case. If that is not negligence there never was any negligence. Talk about a motorman running over somebody, or an automobile running into another automobilist, running over somebody in the street, and calling that negligence—why, gentlemen, this is negligence. This is the extreme of negligence. The way they handled that stuff with all this in and around here. Now, they say, they exercised care. That is one of their defenses, which I won't read to you. That is one of their defenses—that they exercised care, due care. You can see what it was.

Now, the next defense is the explosion did not happen there It happened on Barge 17. The third defense is, "Why, gentlemen, you were trespassing on our land." What I am going to say about that is this: I am going to tell you a little story, and I am not going to argue it.

There was a man out West somewhere who had a ranch, and he had all sorts of animals there. He had sheep and cattle and swine, and he wanted to increase his business somewhat so he went into the business of furnishing wild animals to a menagerie, and he got a couple of panthers and lions and he kept them back of his barn in a little corral that he had there, and it was the law of the State where he had this corral and these wild animals that he ought to take care of them and see that they did not break loose, and he did not put them in the barn and lock

the door; he left them in the corral. He did not tie them in a stable. He left them in the corral and it had a gate on it which easily came open, and I came along the road. A man rode down in front of that fellow's ranch one day—or a friend of mine did; I will put it that way—and he goes in to see this ranch owner on business, and he has got a fence in front of his house which he built there, and my friend goes up and he gets to the fence and he throws a line or two over the post and goes in and talks to the ranch owner. Pretty soon I came along. There is somebody I want to see in the neighborhood, and with my friend's permiscion I tie my nag that I am riding to the buggy-wheel and presently—I don't know that he has a panther behind there in the barn. He is not in this field alongside as far as I can see; and I go across this street to see my friend Jones, and the first thing you know the fence falls down because it is not properly fastened and Mr. Panther comes prancing down. The first thing you know the hired man of this ranch man sees the panther running around the wall and he sees the horse tied to the post, and he lifts the rein off the post and says "Giddap, get down the road," and he takes him by the halter. He sees that panther and says, "Here, I'll get away from there," and instantly this panther jumps over and kills my horse. "Well," he says, "I know he did." And I say further to him, "Why didn't you have that fellow confined, that wild beast?" "Why didn't you put him in a stable, or a box or a corral so he could not get out? I didn't know you had him over there." "Well," he says, "that doesn't make any difference. The lawyer tells me if John Smith had his horse tied to my post and you come over and tie your nag to the tail end of his buggy you can't recover. I don't care how many wild animals I kept, and I don't care what he did to you." "Well, I I say to him, "but my horse had gone down the street. He was not tied up to your fence. He had gone down the street. He had got almost past your house and that wild animal came over there and jumped on him." "Well, I don't care anything about that. I don't care if it is a public road. If you hadn't stopped to see this fellow over there and tied up your horse to that man's buggy you wouldn't have been here. You would have been some-

where else." I say, "That doesn't make any difference. I might have been driving through the street and it would have gotten me instead of my nag. It doesn't make any difference. I had my nag there."

"Before you got past my house you were tied to my friend's wagon, and I am not going to pay you anything."

Now, that is his argument.

As a matter of fact, gentlemen of the jury, I think the Court will charge you—but do not take the law from me. I have no business to tell you what the law is, but I might suggest what the law is—the waters of New York Bay are free to everybody to use for boats, just as if they were out in the middle of the ocean. And that is where our boats were. My friend took the trouble to read to you the allegation of our complaint that our boats were lawfully in the waters of New York Bay. That is where they were, and they were not tied up to the dock at the time of the fire at all. You know every one of these boatmen swore, and you cannot disbelieve them, that the Paulina and the Thompson and the Rockwell, and these other fellows, were out in the water somewhere when this explosion occurred in this yard and threw all this hideous matter right down on the boxes and burned them up.

He says "it did not make any difference." Maybe he is right about that. Maybe he is right. "But there is one other reason why you cannot recover, and that is the anchorage regulations say you had not any right to be there," and I say that is none of their business. I will tell you why.

Suppose I went out here to skate one day, and in skating along the pond or lake I came to a place where there was thin ice and somebody had put up a notice, "Do not skate here. The ice is thin. Stay away." And I am a little curious and foolhardy or anything else, and I go skating around this sign which says, "Do not come here," and some fellow sitting on the bank sees me, and he is fooling around with a rifle or a gun or something, and he very negligently takes a crack at me and shoots me in the back. Well, I say, "Here, I would like to have some damages for this porous plaster I have got to wear." "Oh," he

says, "I won't pay you anything. There is a sign which says you should not skate there." "Well, what has that got to do with you?" "Well, nothing, except that is the sign, and if you had not been where the sign says you should not be you would not have got shot. That is the reason I am not going to pay you anything."

That seems to me to be the fact with the harbor regulations. I was very particular in asking Mr. Campbell, of the Bureau of Explosives, what the nature of the commodities was on these barges of ours, and what did he say? It appears that these barges of ours that were out there were loaded with nothing more dangerous than smokeless powder: That is all we had on them, cannon powder, and Campbell and Dr. Maxim both told you that that stuff is not easily detonated; you cannot detonate it, but it will burn.

Now, my friend Hobart—I guess he thought he was playing a little trick on me then—he said, "Now, Mr. Campbell, I want you to tell the jury just what the purpose of that anchorage regulation was, and why they had to carry a red flag." And he said, "Now, don't answer that until Mr. Stallman has a chance to object."

In other words, Mr. Hobart knew well enough it was not a proper and legal question, and I didn't object and Mr. Campbell answered it. And what did he say? Well, he said the anchorage was for the purpose of reducing the risk of damage. And so I wanted to find out what that was, and let us see what it is. If I have got something on my boat that is dangerous and somebody runs into me, and it is going to cause an explosion, and it is not only going to be disastrous to me, but it is going to be disastrous to the other fellow, and that is the reason I have got to carry a red flag. Isn't it? And that is the reason the anchorage regulations required that a fellow who was carrying anything which in case of a collision with another vessel in the water of New York Bay might cause an explosion, must go to the anchorage grounds and keep out of the path of travel. So I asked these experts, and particularly Mr. Campbell, what would happen in case a collision occurred with these scows

of ours, and he said "Nothing." I said, "Would the wet nitrocellulose explode?" "No." "Would the smokeless powder explode?" "No. It might burn up on you."

So when these gentlemen say it was too bad that these things were not out at the anchorage, I say it was none of their business, because there was not anything about these barges of ours that had anything to do with the exploding of TNT in the yard, and I think it is a sound proposition of law that unless—unless the barges that we had there caused that explosion, it does not amount to a hill of beans, any more than if I should violate the notice on the road or on this lake that I told you about, any more than that would have anything to do with the man's shooting. I do not see what on earth it has to do with the case. Why, I may do a little pistol toting, and I may go down Broadway with a pistol on my hip, and I may be run over by a fellow with an automobile, and he won't pay damages because of my carrying a pistol. He says, "You are violating the law. If you were not violating the law you would not be here." Why, that is not the law at all, unless, gentlemen of the jury,—unless the fact that our barges were there caused the explosion, excused their negligence, or did something to cause that holocaust of explosion of eight cars of TNT and all that shower of shells. Why, gentlemen, I do not see that it has anything to do except, as I said, that it is drawing a red herring across the trail, and it is a lot of smoke to make you think that while we were down in the public highway, in the public water of New York, where we had a right to be—that is something they are hanging their hat on to excuse their negligence.

Now, gentlemen of the jury, I am going to say this over again—that they were negligent and it was their negligence that caused this loss that these humble clients are asking you compensation for.

SUMMING-UP BY MR. SMITH.

May it please the Court and Gentlemen of the Jury: I know you are tired. I am tired. I know you are worn, but I want you to give me about ten minutes. I am only going to take up two points.

One is the question as to where this explosion began? And, being tired from that long trip that you took with Judge Rockwood over to Black Tom Island, I want you please to go back again with me. I won't take you by the hand, but suppose you and I go on one of these vibratory waves of our friend Hudson Maxim or upon the beam that gleams so gently and smoothly from Judge Rockwood's eye, and go out here over to Black Tom on the night of this accident and see what occurred.

Why, the chief defense of our friend Judge Rockwood is this: This explosion, the first explosion, occurred on Johnson 17 and he produces our friend Dickman and our friend Julian, and they say, "Oh, yes." They say, "Oh, yes; out at the end of the North Pier came this first explosion," and they say, "That is so, because forsooth, we stood within 25 feet of the edge of the crater. If that explosion had been where the crater was afterwards found we would have been kindling wood."

Now, that is a very pretty argument, but it does not prove that they stood there. It proves that they were not there, because they are here today. Where did they stand? Walsh tells you. Walsh says, "I was up here opposite Store K and Dickman and Julian were alongside of me on the ground, and off went the explosion." That is where they stood. But we do not rely upon that. We proved to you by their own men that the explosion occurred on the land, not on the Johnson 17. They produced before you this wonderful scientist, Hudson Maxim. Now, I have a great respect for scientific men. I do not know anything about science. I do not ever expect to know, and, therefore I am a lawyer by the wonderful assumption of knowledge on their part. But they all do one thing. They assume a premise. They say, "Given thus and such, such and such follows.

Now, our friend Hudson Maxim may have all the vibratory waves or propelling forces or atmospheric disturbances that he pleases. There is one silent fact that stands out. If the Johnson 17 was in existence after the explosion—Shh! Up goes his vibratory wave and up goes Judge Rockwood. Was it? Was it in existence? Captain Finley, their man, says that at the time when the first explosion happened he had the Johnson 17 attached to his tugboat Slatington. That is what their man says, Mr. Finley.

And the explosion went off. Where? On the land. So says their man, Finley. They don't even remark on that.

Having travelled there, as I have said, what do we see in relation to Johnson 17? The captain of the Johnson 11 and the captain of the other boat that was there, Casperson and Captain Baker were out on the end of the pier and they were standing there when that first explosion went off, and it threw Baker, so he says, into the water, and he swam 150 feet away, and then they prove—not we—but they prove by their evidence that while he was in the water the Johnson 17 was floating out in the bay. They proved that. Is it the truth? They ask you to believe it, because they say this is so on their cross examination of Capt. Baker. Capt. Casperson says that at the time just before the second explosion—"I walked my boat down to the end of the North Pier, and the first explosion came along, and at the time of the first explosion which occurred on the land the Johnson 17 was hanging on one rope at the end of the North Pier." So I say to you men if the Johnson 17 was in existence after the first explosion, what do I care for the theory, the scientific theory of Hudson Maxim? They are all gone to smash. The boat was there. How could 100,000 pounds of detonating fuses have exploded? Maxim says they could not and have left anything of the boat, and yet the boat was there after the first explosion.

Now, gentlemen, this is the point.

One other point that I want to talk to you about is this—I am going to quit in five minutes:

Now, what was done down there by the Jersey City Fire Department? They have a peculiar method, it seems to me, of proving that they did nothing themselves. They prove it. Why, they read you a list here about all of the instrumentalities they had down there for extinguishing fires. Where are they? Every one of them right around the storehouses. What were they using them for? The storehouses where they were storing material, National Storage Company, they call themselves, or National Storage or the Lehigh Valley or whichever you want. That is where every single piece of apparatus was. And then they say another peculiar thing:

"Why we did just what all the railroads do. We didn't have any hydrants in the yard." Well, for Heaven's sake if they could not have hydrants down by the cars, they could have had cars by the hydrants. It is easy enough to move a car up by the hydrant. What is the sense of saying to you, "Why, you could not have hydrants down in the yard?"

It seems to me silly.

What happened? The Jersey City Fire Department was called out. Where? In Jersey City? In the confines, as you would call it, of Jersey City? No, way off. That is, way off at Black Tom Island. No houses, no people, no anything, except the Lehigh Valley and its property.

Well, they had control of that property of ours. They took it down to Black Tom Yard and there they left it. Now, the Jersey City Fire Department came along. They called them. Heavens on earth. The first thing they do, with all their immense equipment, with all their men, with 150 captains of the grain boats—the first thing they did was to call on the Jersey City Fire Department. They are not going to do anything; they are not going to attempt to put out this fire. They know it is dangerous, so Judge Rockwood says. So what do they do? Call on the Jersey City Fire Department. "We cannot go down. We have no instructions to go down. We have no instructions as to how to put it out. We don't know what to do." And all this time while their men are standing there, when their men are standing there, when they knew that these 400,000 pounds

of TNT are there, their men see a little blaze big as a hat, so one of their men says,—as big as a hat, and he stands and looks at it, and he watches it grow, and it grows up to the size of a barrel, and he still watches it and it grows on and on until it catches on the car, and it goes from one car to two cars, and for 45 minutes the men of the Lehigh Valley Railroad Company watch that blaze, car and car and car and car, until finally, after 45 minutes have gone by—finally the shells begin to pop; and then Judge Rockwood, arguing for the Lehigh Valley Railroad Company says, "Why, gentlemen, why should you blame the men of the Lehigh Valley Railroad? Why should you blame them for not going down there to their death? Absolve us because our men did not want to go down there and get killed." But the answer to that is plain: Why didn't his client, the Lehigh Valley Railroad Company instruct its men what to do when a small blaze the size of a straw hat was discovered, when they had ample fire fighting apparatus?

Why leave that grow? Why leave that explode this four hundred thousand pounds of TNT?

Then they come with a new one. Well, it is a new one on me. They produced our friend, Maxim. He says, "Why, that is all right, gentlemen; TNT isn't so dangerous. You can burn it up.

Why, I have used it in my furnace."

Well, if you gentlemen feel that next winter when the cold wind blows and the snows descend that you ought to heat your furnace with TNT, tell me and I will send you a couple of tons any time you want it. Absolutely nonsensical—to my mind. What it may be to Judge Rockwood, I do not know. But I say to you, gentlemen, there was an explosion—they admit it—there was an immense crater at the place where these eight cars of TNT were—they admit it.

It looks like one of the battlefields of France. You see the skeleton of the cars there, you see these great big shells, all scattered over this place, and then they say, "Why, TNT isn't dangerous, won't harm anybody; you can burn it up for kindling wood or coal or whatever you choose."

Well, that may be.

Now, gentlemen, the action of the Jersey City Fire Department is one thing I want to speak to you about. Judge Rockwood was seeking, to my mind, to hide behind what he is pleased in elegant language to term the failure of the Jersey City Fire Department men. I do not believe that. He said that he asked Chief Gately whether or not if he had water it would make any difference in his going down to put out this fire, and then he said to you that Chief Gately said, "No, I wouldn't go down there." That is not what was said. What was said on the night of the fire was this—it was testified to by one of the men here—that after they had tried and tried to get water, after they had manipulated these hydrants in the manner they knew they should be manipulated, and in the manner that they say they instructed the fire department to manipulate them, and could not get any water, Chief Gately told one of his men, "Well, it is a good thing we didn't get any water, because undoubtedly some of us would have been killed, because we had to do our duty."

That is the statement made by one of the witnesses here. Then Judge Rockwood said to Mr. Closterman—Closterman, the policeman, who had been testifying as to the effects of this explosion on him, and flippantly Judge Rockwood said to Closterman, "Well, what was it that was crushing you after this explosion," and Closterman said the only thing, the only answer that seems to be the best answer in the world to a man who would ask that of a man who has been in a position of danger that man had been, he said, "The same thing that killed Doherty, and the same thing that crazed Tiplady and made him commit suicide. That is the thing that crushed me after the explosion." Was it an answer? Well, I should think so.

Now, then, gentlemen, there is this case. All we are saying to you today is this: Our property, which cost us so much money, has been destroyed by the client of Judge Rockwood, the Lehigh Valley Railroad. They took our property they destroyed it, and all we ask you to do is to give us what it cost us. It is true we only had property. It is true that is all of ours

that was destroyed, but this great explosion that occurred at this place, and which we say they absolutely took no care to prevent, did more than that. It did more than destroy property, Judge Rockwood referred to it, and I think I am at liberty to refer to it. He has commented upon the bravery of Con Leyden, as he calls him. I knew Leyden, I lived in the same district with him in Lafayette. I knew the man. I knew he was a brave man, but I also knew Con Leyden lost his life in doing his duty, serving the people who absolutely took no care to protect that life or the property of any other individual near this four hundred thousand pounds of TNT.

(Recess.)

CHARGE TO JURY.

Gentlemen of the Jury: We are trying three cases. One of the cases is brought by his Majesty, the King of the United Kingdom of Great Britain and Ireland; another of them is brought by the Republic of France; and still another by the Aetna Explosives Company, Incorporated. All three are brought against the Lehigh Valley Railroad Company, and the object of these suits is to recover damages for what the plaintiffs, in all of them, claim was the negligence of this defendant-company in the handling of munitions and explosives in their yard, known as Black Tom, in the city of Jersey City.

In order to get it out of the way before we start to consider the rules that govern in a case of this kind with respect to liability, I wish first of all to direct your attention to the claims in money that are made by these respective plaintiffs. The French Government claims for five cars—and has any one of you a piece of paper so that you may write this down?—The French Government claims for five cars in the Jersey City yard, and claims that the value of those cars is $58,875.25. It also claims for interest on that sum from August 1st, 1916, to June 1st, 1920, amounting to $13,541.25, making a total of $72,416.50. Its second

claim is for eight cars in the Lehigh Valley yard, the total value of which is claimed by them to have been $99,647.41. Upon that sum they claim interest from August 1st, 1916 to June 1st, 1920, amounting to $22,918.81, making a total for those eight cars of $122,566.22. And the third item of their claims is for six cars on the Rockwell, the barge, which they claim were worth $356,514.08. Upon this sum they claim interest from August 1st, 1916 to June 1st, 1920, amounting to $81,998.22; making a total of $438,512.30; and making the total claim of the French Government —and I when I say the French Government I mean the French Government as it is represented here in this suit,—making a grand total of $633,495.02.

The claim made by the Aetna Explosives Company is for four cars on the barge Rockwell, the value of which the Aetna Company claims to have been $139,977.24. Upon this sum the Explosives Company claims interest amounting to $33,194.71—interest being, as in the French Government case, from the 1st of August, 1916 to June 1st, 1920—and making the total claim of the Aetna Explosives Company, $173,171.95.

The British Government claims for eight cars on the barge Thompson—and when I say barge, it may have been a scow; but upon the vessel, amounting to $305,877.27. Upon this the British Government claims interest amounting to $70,351.71, making a total of $376,228.98. Its second item of claim is for eighteen cars on the Paulina, which they claim the value of as being $716,198.60. Upon this they claim interest amounting to $164,725.54, making a total of $880,924.14; making a grand total for the two items claimed by the British Government of $1,257,153.12.

You have those figures accurately, gentlemen, have you? All right.

Now, then, with respect to those figures, I wish to speak for one moment. There was some evidence in the case with respect to the claim of the British Government that there was no market at the time of the destruction of these goods, if they were destroyed, so that no market price could be proved, and that some evidence was introduced to the effect that the makers of the munition in fixing their price had added in to the price the

cost of the construction of the plant in which the commodity purchased, was to be manufactured. Now, if there is no market so that no market value can be proven at the time and place of the destruction of a material for which the damages are claimed, the law is in no manner of doubt, and it is to this effect:

That the fact that property has no market value does not restrict the recovery to nominal damages only, but its value, or the plaintiff's damages, must be ascertained in some other rational way, and from such elements as are obtainable. In such cases, the proper measure of damages is generally its actual value, or, as is sometimes said, its value to the owner, taking into account its cost and such other considerations as may affect its value in the particular case.

So that, applying that rule in this case, you ask yourselves, what was its actual value, or its value to the owner at the time of the destruction? Was it the value claimed by the plaintiff here? If it was, that is the value the plaintiff is entitled to have; if it was not, and you can fix that value from any other items of proof in the case, you fix it at that. If it is unfixable from any items, of course you could only allow nominal damages for that; but the question is, from the evidence, what are you satisfied the value is as made out by the greater weight of the evidence?

And then another matter to which attention needs to be directed is this: There are claims in each of these cases for interest upon the alleged value of the destroyed property. Now, interest is not allowed as a matter of right in all cases; interest is allowed by the way of damages, and it rests with the jury to determine whether the interest in any given case shall be allowed; and I have been requested to charge, and do charge as requested by the defendant in this case, that the jury is not at liberty to allow the plaintiffs, or any or either of them, any interest in respect of any sum found to be due them, or any or either of them, unless the jury reach the conclusion that the refusal of the defendant to pay the demands of the plaintiffs was unreasonable, and that the defendant was not justified in attempting to protect itself against such demands.

So, if you conclude that the duty of the defendant in this case, or in these cases, was to pay, and they did not pay, you would be justified in allowing interest upon the claims made by the plaintiffs in the suit, and if the value is found by you to be the sums I mentioned and that you took down, it would be interest on those sums and would amount to the sums that I have given you and which you now have. If the sums found by you are lesser sums, it would be interest upon those sums. Now, so much I thought it proper to say in respect to the matter of damages in order to brush that out of the way of the discussion of the case with respect to the matter of the liability of the defendant in this suit, if there be liability, and with respect to the discharge of the defendant from liability, and with respect to the liability of the plaintiffs themselves, in such wise as to absolve the defendant from liability in a case of this kind if the facts warrant it.

A Juror. Your Honor, may I ask a question?

The Court. Yes.

The Juror. At what rate is the interest charged?

The Court. Oh, six per cent.; six per cent., always; that is the legal rate of interest in the State.

Now, we come to the question, gentlemen, of the liability charged against this defendant by the plaintiffs in their written complaints. The plaintiff charges, after having stated that the Lehigh Valley Railroad Company was a corporation and a common carrier of passengers and freight and that it had certain tracks which ran through the country, and a certain yard in which it collected its cars, and so on, charges that on July 29, 1916, the plaintiff—and I read now from the case of his Majesty the King of the United Kingdom of Great Britain and Ireland—and the charges of negligence in the other cases so far as I will read them, are the same as the charges made in the case of his Majesty the King of the United Kingdom of Great Britain and Ireland, with the exception of certain French cars which you have heard mentioned here again and again by the counsel—and those charges have to do merely with stuff that was in cars, some of it on the Central Railroad tracks and some of it on the tracks of

the Lehigh Valley Railroad itself—the charge is this, that on July 29, 1916, the plaintiff, that is the plaintiff in each of these suits was rightfully and lawfully the owner of certain goods consigned to certain persons, and that—most of this stuff was munitions, high explosives, cordite and smokeless powder and so on—and that on the morning of July 30, 1916, these goods were on board of certain barges, or lighters of the Ackerman Lighterage Company, which barges were then and there rightfully and lawfully in the waters of New York Bay, near the Black Tom yard of the defendant, and the plaintiffs then charge that a fire and explosion, or explosions, took place and damaged or destroyed this property. Then the plaintiff goes on to charge that said fire and explosion, or explosions, and the damage to plaintiffs were not caused or contributed to by any negligence on the part of the plaintiff, but were caused solely by the negligence and misconduct of the defendant, in the following particulars, among others:

First, in collecting freight cars containing explosives, explosive projectiles, ammunitions and munitions of war, subject to detonation by fire or concussion, and permitting them to accumulate in the said Black Tom yards without adequate protection to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with greater danger to human life and damage to surrounding property.

Two: In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals, without adequate protection, in such Black Tom yards and in the vicinity thereof.

Three: In failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patrolling, policing and guarding said yards and said premises in the vicinity thereof under the control of the defendant, and the cars and their contents stored therein, and for the purpose of discovering and extinguishing fire, and in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein.

Four: In neglecting to take due care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon.

Five: In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosion occurred.

Sixth: In failing to provide sufficient and competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred.

Seventh: In failing properly to instruct employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire.

Eighth: In failing to provide adequate facilities and to take proper measures and precautions both before and after the fire started for removing or locating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered.

Ninth: In failing to store, handle and dispose of said explosives, explosive projectiles and ammunition and munitions and cars containing them so as to enable the defendant to prevent or control the communication of fire or concussion from one part of the mass of explosives to another.

Tenth: In failing to install, maintain and keep in repair adequate means for communicating alarms and summon assistance in case of fire.

Eleventh: In failing to give the alarm of fire and summon assistance properly.

Twelve: In failing to prevent said fire.

Thirteen: In failing promptly to discover the said fire and to take proper measures to extinguish it and to prevent damage therefrom.

Those are the charges of negligence which have been made by the plaintiffs in these three respective suits, and the plaintiffs are obliged to make out by the greater weight of the evidence—and the burden rests upon them so to make it out—that one or

more of these causes of the fire existed and was the proximate cause of the destruction of the plaintiffs property, before the plaintiff would have a right to a verdict in the case.

And I charge you that that does not mean they are obliged to make out all those specifications of negligence which I have read to you, for if they make out any one of those specifications of negligence or make out more of them, by the greater weight of the evidence, and show by the greater weight of the evidence that one specification or two or more specifications of negligence was the proximate cause of the loss, and that that existed on the part of the defendant-company, that would give them a right of recovery, unless a defense were made out by the defendant by the greater weight of the evidence—concerning which phase of the case I will speak later.

Now, counsel in summing up have directed your attention to the fact that the Interstate Commerce Commission of the United States had adopted, under appropriate legal authority for that purpose, certain regulations for the transportation and handling and so on of munitions—explosives—inflammable things—and the United States Government under the Constitution of the United States which provides that the control of interstate commerce shall be in the Federal Government if it acts and provides regulations, either by the act of Congress itself, or by the act of some body, in other words, such as the Interstate Commerce Commission, authorized by act of Congress to provide such regulations,—I say, if those regulations are provided, those regulations, within the domain which they cover are exclusive, and if the carrier complies in that domain with those regulations, the carrier has done all that is required to do within that domain.

Now, the law says that the burden rests upon the plaintiff to make out by the greater weight of the evidence that the negligence which he has charged in his written complaint against the defendant existed and was the proximate cause of the loss of which the plaintiffs complain and for which in these suits they seek to have a recovery in damages. That does not mean that they are obliged to make out all of those specifications of negligence which I have read to you, but if they make out any one of

those specifications of negligence, of two or more of them, by the greater weight of the evidence and show by the greater weight of the evidence that that one specification, or two or more specifications of negligence, were the proximate cause of the loss, and that that existed on the part of the defendant-company, that would give them a right to have a recovery and to have you assess their damages at such sum as they have proven by the greater weight of the evidence their loss amounted to. I have repeated that to you for two reasons. First of all, because, first, I read it from the decision of our highest court in this state; and secondly, it will do no harm to fasten that principle in your minds, because it is an important principle in the determination of these cases. Now, you will have observed from what I have read to you that the charge is made that there was a neglect to comply with the statute and regulations made in performance thereof by the Interstate Commerce Commission; and it might be well to look for a moment, first, at the statute, and then at some pertinent portions of the regulations. Let me read to you some pertinent portions of those regulations, because they have a distinct bearing upon many phases of this case.

Section 1401 provides that as the use of explosives is essential to various business activities throughout the country, it is the duty of interstate railroad carriers to accept and transport such explosives under these regulations; when local conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions as provided by paragraph 1429 herein may be imposed.

Now, what are those regulations that may be imposed? Section 1429 provides that all carriers must report to the chief inspector of the Bureau of Explosives for compilation and publication full information as to restrictions which may be imposed as provided in 1401—against the acceptance, delivery or transportation of explosives over any portion of their lines. So that you see the carrier is not obliged to accept everything that is offered to it and transport it willy-nilly, but the carrier may avail himself of section 1401, which provides that when local conditions make the

acceptance, transportation or delivery unusually hazardous, local restrictions may be imposed.

Now section 1643 of these regulations provide that careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. That sentence which I have just read has no application to the cases which we are trying, because that section has to do with the handling of explosives. The rest of the section, however, proceeds as follows:

"Suitable provision must be made, outside of the station, when practicable, for the safe storage of explosives and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within forty-eight hours after notice of arrival at destination, it must be disposed of by a return to the shipper or by storage at the expense of the owner, or by sale, or, when necessary to safety, by destruction under supervision of a competent person. Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier."

Section 1666 provides, under the title, Explosive Placard,—a certified car for the dangerous explosives specified in paragraph 1661 must be protected by attaching to each outside end and side door, the lower edge not less than four and one half feet above the car floor, a standard placard 12 by 14 inches, on which appears in conspicuous red and black printing on strong tagboard the following notice:

"Explosives"—underneath that, to be printed in red—"HANDLE CAREFULLY," "KEEP FIRE AWAY," underneath that, it says, to be printed in red.

And then follows this wording; Condensed rules for handling this car:

1. This car must not be placed in a passenger train, or in a mixed train, if avoidable.

2. Cars containing explosives must be near center of train and may be together if desired; must be at least fifteen cars from engine and ten cars from caboose. when length of train will permit.

3. This car must not be placed next to cars bearing the inflammable or the acid placard, or cars containing lighted heaters. Whenever it is possible to avoid so doing, it must not be placed next to tank cars or flat cars or next to carloads of lumber, poles, iron, or other articles liable to break through end of car from rough handling.

4. The air and hand brakes on this car must be in service.

5. In shifting, have a car between this car and engine whenever possible, and do not cut this car off while in motion.

6. Avoid all shocks to this car and couple carefully.

7. Avoid placing it near a possible source of fire.

8. Engines on parallel track must not be allowed to stand opposite or near this car when it can be avoided.

9. This placard must be removed from car when the explosives are unloaded.

1667 under title, "Inflammable Placard," provides: A placard of diamond shape, printed on strong tagboard, measuring 10¾ inches on each side, and bearing in red and black letters the inscription prescribed by paragraph 1913, must be placed on each outside end and side door of a car containing any quantity of smokeless powder for cannon or smokeless powder for small arms, or ammunition for cannon with empty projectiles, or ammunition for cannon with sand loaded projectiles, or ammunition for cannon with solid projectiles, or ammunition for cannon without projectiles, or fireworks.

Section 1681 provides that under no circumstances must a car known to require the explosive placard be taken from a station, including transfer stations, or interchange points, a siding or yard, unless it is properly placarded as per paragraphs 1665, 1666, nor unless the car is in proper condition. The carrier must see that its representative in charge of a freight train makes a thorough check of cars bearing inflammable, acid and explosive placards, with the billing to see that all placards required are attached, and that those not required are removed.

Section 1682 provides that every possible effort must be made to expedite the moving of cars containing explosives; no un-

necessary delay must occur at initial, interchange or transfer stations.

Section 1684 provides that such cars must be frequently inspected to see that the placards and car certificates are intact. Whenever any of these become detached or lost in transit, they must be replaced on arrival at the next division terminal yard, if in through freight train, or at first station stop if in local freight train.

And section 1689 provides: They must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. They must not be placed on tracks under bridges, and, when avoidable, engines on parallel tracks must not be allowed to stand opposite or near them.

The inflammable placard mentioned in section 1913 is a placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars, containing an inflammable liquid, and on strong tagboard for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars or tank cars, measuring 10¾ inches on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end and to each side door of a car containing one or more packages protected by the red or the yellow diamond label: Blank railroad company. INFLAMMABLE (printed in red.) Keep lights and fires away. Handle carefully. Blank station, blank nineteen. . .

1. This car must not be next to a car containing explosives.

2. Do not enter with exposed flame, nor with lighted lantern, until car has been ventilated and vapors allowed to escape.

3. When lading requiring this placard is unloaded from box or flat cars, agent, yardmasters and conductors must remove the placards. Tank cars must retain placards until cleaned (par. 1903.)

Now, those are provisions to which your attention is directed, and our highest court in this State has announced itself with

respect to the law governing in a situation of this kind as follows: The Federal statute is entitled: "An Act to Promote the Safe Transportation in Interstate Commerce of Explosives and other dangerous articles, and to provide penalties for its violation." Section 233 of the act amending that act conferred authority on the Interstate Commerce Commission to formulate regulations for the safe transportation of explosives, which should be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land."

The Court says these regulations were formulated to govern the packers and shippers of high explosives, and to govern the transportation companies and their servants in the handling and transportation of such dangerous combustibles, and it is to be fairly gathered, from the very nature of the regulations, that they were not intended to absolve transportation companies from care commensurate with the risk of danger which might arise from concentrating a large quantity of highly explosive matter in close proximity to densely populated cities, and at a terminal exposed to and unprotected against intruders and incendiaries, and without proper facilities to promptly meet the outbreak of a fire or any other danger reasonably to be apprehended.

In other words, what that statute means is that in the handling of explosives, while it is true that the Interstate Commerce regulations are exclusive within the domain which they cover, where those directions do not reach, care commensurate with the risk must be exercised by the transportation company in the handling and transportation of these munitions, and therefore, it is for you to determine in this case whether or not it has been established by the greater weight of the evidence that in any one or more of the particulars of negligence specified in the written complaints of these several plaintiffs in these suits, the defendant has shown to have been negligent in that it did not exercise care commensurate with the risk of danger involved in the handling or transportation of these commodities. If that has been made out by the greater weight of the evidence and it is shown also by the greater weight of the evidence that that negligence on their part was the proximate cause of these injuries to these plaintiffs, the

plaintiffs have a right of recovery and to have you assess their damages, unless it also appears by the greater weight of the evidence, and the burden rests upon the defendant so to make it appear, that either the plaintiffs assumed the risk of injury, or that there was contributory negligence on the part of the plaintiffs or their representatives in these actions.

Now, this case differs somewhat from all the cases which have gone before in this line of litigation, and I wish for a moment or two to direct your attention to the particular in this case which differentiates it from all others. The claim made against the defendant in this suit by all these plaintiffs is the claim of negligence. The law says that negligence is the omission to perform a duty which is owing by the defendant to the plaintiff, so that in order that there may be negligence there must be duty, and that brings us to consider just for a moment a very important contention made in this case, and that contention is this: What was the attitude which these barges—scows—occupied at the time of the happening of this catastrophe? Were they trespassers? Were they licensees? Or were they on the public highway, where they had a right to be? It makes a vast difference in the case as to which of these attitudes towards the defendant, the plaintiff, or the plaintiff's representative, occupied. The law in this State is perfectly settled that the only duty in a case like this, possessing circumstances like this, which the defendant owes to a trespasser or a licensee, is the duty to refrain from wanton or willful injury, and therefore, if at the time of the happening of this accident, these plaintiffs of their representatives were trespassers upon the property of the defendant-company, there would be no negligence, in the absence of wanton or willful injury—and there is no proof of that in this case—I say, there would be no negligence, for the very obvious reason that there would not have been any duty on the part of the defendant toward the plaintiff except the duty to refrain from wanton and willful injury, and in the case there is not any evidence that they did not refrain from that;—so I say, if it be a case of trespasser or licensee at the time of the happening of the accident, the defendant goes free in these cases, all of them except the cases

with respect to the cars which you have heard mentioned of the French Government. If, however, the plaintiffs were not trespassers or licensees, but were in the public highway—and the navigable waters of the country are public highways—if, I say, they were not trespassers but were passengers on the public highway, why, then, of course, a different situation arises because then the defendant would owe the duty to use care commensurate with the risk of danger not to inflict injury upon a person who was layfully upon the public highway. If you see the distinction that is made between the two situations, the situation of the plaintiffs being either licensees or trespassers on the one hand, and of being lawfully on the public highway on the other.

Now, the contention of the plaintiffs in this suit is this: Their contention is that whatever they may have been, when this fire started at the time of the explosion which they claim was that which caused the damage to these scows and barges, they had ceased to be either trespassers or licensees, but had become lawfully upon the public highway, where they had a right to be, and therefore, had a right to expect from the defendant the performance of the duty of exercising care commensurate with the risk of danger to be apprehended in case such care were not exercised. Now, then, it becomes a question of fact for you to determine which of these attitudes towards the defendant the plaintiffs occupied at the time of the happening of the occurrence which is charged as the negligence which the plaintiffs' claims renders the defendant liable for injuries which occurred. If they had cut loose from the docks or the appendages which were fastened to the docks—because I charge you, as a matter of law, that if another boat was tied to the dock and the boat of the plaintiff was tied to the other boat, the continuity and fixity of the whole arrangement, dock, boat, boats all fastened together, would be just precisely the same as though the second boat were fastened to the dock itself, and would render the plaintiff at the time the plaintiff was fastened there, a trespasser, or at best, a licensee; and the duty to both trespassers and to licensees is precisely the same, which is to refrain from wanton and willful injury.

Now, then, the defendant contends in this case, that they were still trespassers, that they never had ceased to be that, that they were apparently inside of some pier line, as they call it. Now, in this State, I think the law may be considered as settled, that if a man has a title to the land under the water and that title permits him to build a pier or a dock out on that line and over that water, that until he has built the pier, the mere fact that he has a right to go out a greater distance does not constitute that water over that land on which he may build his private property in such manner as that he can exclude from it anybody who wants to exercise the right of sailing over it; and therefore, I charge you, that if the piers were not built out where these boats were actually operated in the water, and were floating in the water, that these boats were in the public highway, no matter where the imaginary pier line may have been, because until the improvement actually takes place, the right of sailing over the place where the pier may subsequently be built, rests in anybody who may want to sail there; and if those boats were out on the public highway, under the definition which I have given you of a public highway, they were where they had a right to be, and if they were where they had a right to be, the plaintiffs had a right to exact from the defendant the duty of using towards them a degree of care commensurate with the risk of danger to be apprehended if such care were not exercised.

Now, then, the defendant further claims that these plaintiffs in effect were—through their representatives in charge of the boats—were law breakers and criminals, because they had violated the anchorage regulations of the United States. Now, I think it may be said with perfect accuracy that the violation of an ordinance or a regulation, or even of a statute, is *prima facie* evidence of negligence, but it must also appear that that violation of the ordinance was a proximate cause of the injury complained of, before the violation of the ordinance will defeat the plaintiffs right to recover. You can readily see that if it were enacted, as it was in one state in this country, that a man should not, after a certain hour, smoke a cigar upon the public street, and a man should be smoking such a cigar, and somebody should rush

into him violently on the sidewalk by the negligent operation of a horse and wagon, or an automobile, surely the fact that he had a cigar in his mouth in violation of the law would not be held to be contributory to the injury. I take that extravagant illustration in order to make plain the point that I wish to drive home into your minds, the point being that there must be some causal connection between the violation of the law and the happening of the injury of which complaint is made—the relation of cause and effect.

Now, let me read to you what the law of this country is upon that subject:

There could be no recovery on account of such negligence if there were a causal connection between negligence and the injury. The rules for determining whether a negligent act or omission is the proximate cause of an injury are well established, and have been applied by different courts in numerous cases to different conditions of fact. It is sufficient, if it concurs with some other cause acting at the same time, which, in combination with it, causes the injury, or if it sets in motion a chain of circumstances, and operates on them in a continuous sequence, unbroken by any new or independent cause. The question is not determined by the existence or nonexistence of intervening events, but by their character and natural connection between the original act.

To constitute proximate cause the injury must be the natural and probable consequence of the negligence, and be of such a character as an ordinarily prudent person ought to have foreseen might probably occur as a result of the negligence.

It is not necessary that the person guilty of a negligent act or omission might have foreseen the precise form of the injury; but, when it occurs, it must appear that it was a natural and probable consequence of his negligence.

If the negligence does nothing more than furnish a condition by which the injury is made possible, and that condition causes an injury by the subsequent independent act of a third person, the two are not concurrent, and the existence of the condition is not the proximate cause of the injury. Where the intervening

cause is set in operation by the original negligence, such negligence is still the proximate cause, and where the circumstances are such that the injurious consequences might have been foreseen as likely to result from the first negligent act or omission, the act of the third person will not excuse the first wrongdoer.

If the negligent act and the injury are known, by common experience, to be usual in consequence, and the injury such as is liable, in the ordinary course of events, to follow the act of negligence, it is a question of fact for the jury whether the negligence was the proximate cause of the injury. Damages which are recoverable for negligence must be such as are the natural and reasonable results of defendant's acts, and the consequences must be such as in the ordinary course of things would flow from the acts and could be reasonably anticipated as a result thereof. That a person is expected to anticipate and guard against all reasonable consequences, but that he is not, by the law of the land, expected to anticipate and guard against that which no reasonable man would expect to occur, is trite law.

Now that is the law, gentlemen, with respect to what is the proximate cause of an injury, and therefore you ask yourselves in this case, was the act of violation of the anchorage regulations, if they were violated, a proximate cause of the injury, or was it a mere condition, in other words, was it proximate or remote?

If it were proximate it would defeat recovery; if remote it would not, because it would then constitute a mere condition of the injury and would not be destructive of the action.

And while we are upon this subject, some point was made that the Johnson 17 if it exploded afterwards and did damage was such an interruption of the original negligence, if there were original negligence on the part of the defendant, that you could not say how much damage was due to the Johnson 17 and how much to the act of the defendant; but you ascertain, gentlemen, whether the original negligence, if there were original negligence, persisted throughout the whole situation, and was responsible as an efficient cause for setting in operation the other results. If it were, the fact that the Johnson was in the line of explosion and took fire and exploded and did damage

would not defeat the right of the plaintiffs to recover against the defendant. One of the great cases in the common law of this country, has perfectly settled the doctrine, which I illustrate by the facts of that case itself. If some one throws a lighted squib into a market place and some one sees it fall at his feet, sees that it is dangerous, and picks it up and hurls it from himself for safety, and it falls near some one else, and the other person picks it up and hurls it from himself to protect himself, and it at last explodes and injures somebody way off, who is to blame? The first man, because he set it in motion, and he might reasonably have anticipated that anybody who saw that thing coming toward him with its freight of danger would realize that the thing to do was to get it away from him, and therefore the man who first started it in motion would be responsible for all the natural and proximate consequences that flowed from the original act. And so you ask yourselves, is there unbroken continuity of connection between the original negligent act, if there were original negligent act, or did some culpable intervening agency come in and destroy the continuity? If it did, why, of course, the end of the liability of the defendant would be the entry of the intervening culpable agency. If it did not, the end of the responsibility of the defendant would be the end of the destruction wrought by the claim of consequences that followed the original wrongful act, if there were one.

Now, gentlemen, I have covered the various points that have been raised in the case by the parties, but out of abundant caution I will advert to certain requests which have been made of me to charge, and those that I think should be charged I will charge.

With respect to the claims made, except the claim known as Item No. 12, in the case wherein the Republic of France is plaintiff, whereby the claim is made for loss of car NYC 90340, contents of which were valued at the sum of $9,923.53, the defendant's liability being that of a common carrier, subject to any defences that are applicable under the terms of the bill of lading—I say with that exception I charge you that the law imposed upon the defendant the duty of transporting explosives

and inflammables in the cars as testified in the case, and at the time of the explosion they were still in the course of such transportation in interstate or foreign commerce.

That, of course, is to be taken subject to the matter which I read to you from section 1401a where it says that when local conditions make the acceptance, transportation or delivery unusually hazardous local restrictions as provided by paragraph 1429 herein may be imposed.

I charge you that the sole duty of the defendant to the plaintiffs in regard to the explosives and inflammables, received by the defendant for interstate transportation by land, and still in the course thereof with respect to all matters within the scope of the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the same was to comply with said statutes and regulations, and the plaintiffs are not entitled to recover with respect to such subject matter unless they prove a failure on the part of the defendant to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiffs.

I have already charged you that, and I charge you again.

I am requested to charge you that the defendant can only be held responsible in damages for the failure to exercise reasonable care under the circumstances, and the jury in considering the circumstances and the degree of care exercised, may consider the fact that there were four watchmen on the premises in the immediate vicinity of cars containing explosives on the night of the explosion in question in addition to the watchmen employed by the defendant.

I charge you that if the jury finds that the defendant was not negligent in respect to the starting of the fire, and that the said fire was in a car of ammunition, then the jury must consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of emergency, it cannot find the defendant legally responsible for the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire.

I charge you with respect to that, however, that the doctrine of emergency strictly so called, has absolutely no place in this case, and that statement of the rule which I have read to you, while it directs your attention to a subject matter, is without any legal foundation whatever. What counsel meant, I think, to request me to charge, was this, that if the defendant's agents found themselves without negligence on the part of the defendant or its agents in a situation which was so imminent and urgent and dangerous that no man of ordinary firmness and courage would have taken upon himself to endeavor to interfere for the extinguishment of the fire, then they were not negligent if they did not endeavor to interfere for the extinguishment of the fire; but you will observe that in this case you must consider all of the circumstances and ascertain what was the size of the fire when it was first observed.

How long was it, if any time at all, after its first discovery, before it appeared to be dangerous? And if time intervenes between discovery and the appearance of danger such as would daunt a reasonably firm and cautious man, and a reasonably courageous man, and afford time for the exercise of time and thought and judgment on his part, then such a man was bound to exercise such thought and judgment as a reasonably prudent and cautious man would have exercised under the circumstances, and bound to take such action as a reasonably prudent and cautious man would have taken under the circumstances, if any.

That is what the doctrine in this case is as I understand it, and I charge you that that is the law on that subject.

I charge you that if the jury finds that the fire which was discovered upon the premises of the defendant on July 30, 1916, was started by spontaneous combustion, the defendant cannot be held legally responsible in respect of the starting of said fire.

And I charge you that if the jury finds that the fire which was discovered upon the premises of the defendant on July 30, 1916, was started by spontaneous combustion and that the starting of such fire was the sole proximate cause of the injury to the plaintiff, then the defendant cannot be held legally responsible for any damage suffered by the plaintiff.

You will observe both of those requests refer specifically to the starting of the fire. If after the fire had been started, even if it were started by spontaneous combustion, negligence intervened on the part of the defendant, the defendant was responsible for that negligence, whether it was responsible for the starting of the fire or not. I have adverted to this point, and, I have thought, made it plain, but I will direct your attention to one phase of it and you will consider this charge of this request in connection with the rest of the matter that I spoke to you of in the same connection: "In view of the fact that the regulations concerning the transportation of explosives and other dangerous articles by land, article 1647, contain a prohibition against the loading of such materials as detonators and high explosives in the same car or storage place, and of the evidence in this case with respect to the danger of thus loading such articles on the same carrier, the jury may legally find the presence on the Johnson barge 17 of detonators and TNT constituted negligence on behalf of the proprietor of such barge, and if it thus finds and also finds that the explosion on the Johnson 17 was the proximate cause of the damage complained of by the plaintiff, then it may not find against the defendant,"—unless it also finds that the negligence of the defendant was a proximate cause also. What should have been stated here was, that if they find that the explosion on the Johnson 17 was the sole proximate cause of the damage complained of by the plaintiffs.

I charge you that under the terms of the bill of lading under which these three carloads of wet nitrocellulose, item number 7, and four carloads of benzol, items Nos. 8, 9, 10 and 11, were shipped over the line of the defendant company, it is provided that the carrier shall not be liable for loss or damage caused by fire occurring after forty-eight hours, exclusive of legal holidays, after notice of arrival of the property at destination, or at port of export, if intended for export, has been duly sent or given, and the carrier's liability shall be that of a warehouseman only. As to each of the said seven cars the notice of arrival at destination or at port of export had been duly sent or given; and as the loss or damage was caused by fire occurring

after forty-eight hours after said notice had been duly sent or given, the defendant, at the time of the loss or damage to the contents of the said cars was not liable to the Republic of France as a common carrier, but only as a warehouseman; and as such warehouseman its duty in the premises was to exercise reasonable care under the circumstances, gentlemen, would be a high degree of care.

I charge you that with respect to trespassers or licensees upon its property the owner of land is under no obligation to keep his premises in a non-hazardous state.

I charge you that the person who uses dangerous premises with knowledge of the danger assumes the risk that may result to him from such condition.

I charge you that in the absence of any invitation express or implied, on the part of the defendant, plaintiffs had no lawful right to moor their barges or any of them to defendant's pier. And the evidence in this case does not show any such invitation.

I charge you that if the jury finds that the original trespass of the plaintiffs' barges on defendant's property was the proximate cause of the damage suffered by plaintiffs by reason of fire or explosion, or both, then the defendant is not liable for such damage, even though at the moment the fire spread or started upon the said barges they were not then trespassers.

I charge you that it was a violation of the anchorage rules of the United States Government for the plaintiffs to have their loaded barges tied at the defendant's pier, on the night of July 29-30, 1916. If the jury finds that the violation of the anchorage rules of the United States Government by plaintiffs' barges was the proximate cause of the damage sustained by the plaintiffs are not entitled to recover damages for any of the goods on said barges. You will remember in connection with that, what I said about proximate cause, and about what proximate cause actually is, and how you determine it.

Now, gentlemen, I think that that is all that I need to say to you about the case. I dare say you are as wearied as everybody else is, and you may take the case now and decide it.

EXCEPTIONS.

Mr. Stallman. I do not know whether the order appointing receivers of the Aetna Explosives Company and the order authorizing suit is in the case. Will your Honor consider it in the case?

The Court. I suppose there is no objection?

Mr. Hobart. No.

The Court. It will be considered in.

Mr. Stallman. I desire to object to so much of your Honor's charge, in the various places, where your Honor charged that the plaintiffs in each case were trespassers by reason of their barges, or the barges containing their munitions having been tied up to the property.

The Court. All right.

Mr. Stallman. And your Honor will permit me to make that exception as broadly—

The Court. Wherever it occurs I want you to have it. That is an important point in the case.

Mr. Stallman. Then I desire also to take an exception to the charge which your Honor delivered to the jury at the request of the defendant with reference to the anchorage regulations, that part of it which was last read. That is the only way I can distinguish it.

The Court. Well, whatever I charged from their request with respect to that you may have an exception to it.

Mr. Stallman. Thank you.

Mr. Hobart. On behalf of the defendant I respectfully request that exceptions may be noted as follows:

To your Honor's refusal to charge Request No. 64 on the question of interest, and to the modification in your Honor's charge of Request No. 65 on the same question.

The Court. What was the modification?

Mr. Hobart. Your Honor read 65 and then you modified it to the extent that if the jury considered it was the duty of the defendant to pay, that then they might allow interest.

The Court. That is what I read from your request. I did not say another word. If it is wrong you are wrong; that is all.

Mr. Hobart. Well, you read the request and then you modified it.

The Court. No, I did not do that at all.

Mr. Hobart. By referring to the word duty. Well, whatever was said, I want an exception to it, whatever was said in the way of modification.

The Court. If there was anything said you may have an exception to what was said by way of modification.

Mr. Hobart. I also ask an exception to that part of your Honor's charge where, after reading the various particulars of negligence from one of the complaints, your Honor stated that if the plaintiffs make out any one or two or more of such particulars or specifications, and if it is the proximate cause, then there might be a verdict for the plaintiffs.

The Court. You may have that. I read that from the opinion in the case of Howells exactly. You may have it.

Mr. Hobart. And in that same connection, your Honor a little later in the charge made the somewhat general statement that if they had made out any one or more of the specifications—I want to except to each part of the charge in that respect.

The Court. What is the point? I do not see the point.

Mr. Hobart. Well, there are several points. In the first place, the defendant claims that these particulars of negligence, insofar as they differ from the interstate regulations, are not the measure of the defendant's duty. The regulations being exclusive; and, in the second place, the defendant claims that as to at least some of the particulars of negligence there was no proof upon which the jury would be justified in finding negligence.

The Court. How could they find it if they did not make it out under what I told them? They can only find it if it is made out.

Mr. Hobart. Your Honor stated if the plaintiff made out one or more of them.

The Court. Surely. If they did not make them out they could not find.

Mr. Hobart. My point in that respect is that some at least should be expressly withdrawn from the jury, and that the jury should not have been permitted to consider all of them.

The Court. All right; you may have it.

Mr. Hobart. Then coming to the question of the Interstate Commerce Statute and the regulations thereunder, your Honor first read Section 1401, and in connection with that referred to Section 1429. We except to that part of your Honor's charge on the several grounds which I will state, if you desire.

The Court. I would like to know what they are. They seem to me to be so filmy and gossamer-like and I would like to get them in the record so the Court of Errors may have them.

Mr. Hobart. Neither Section 1401 nor Section 1429 is pleaded in any of the complaints.

In the next place, there is no proof of the violation of either of these sections. In the next place there is no proof of the conditions under which Sections 1401 and 1429 would become applicable; there is no proof that the conditions under which Sections 1401 and 1429 would be applicable did in fact exist; that is to say, the provision in 1401 that when local conditions make the acceptance, and so forth, unusually hazardous, etc. We claim there is no proof that this situation was unusually hazardous. Therefore, the section does not apply.

The Court. The reason that that was charged was because counsel in summing up, counsel on your side, stated they were bound under all conditions to accept the goods, and the Court would naturally indicate to the jury that these conditions did not exist at all; there were conditions under which they did not have to take them, and the Court could call attention to that to show the argument was without foundation, which is precisely what the Court did with great cheerfulness, and a confirmed notion of the correctness of it now that you have called his attention to it.

Mr. Hobart. May I have an exception?

The Court. You may have it for whatever it is worth.

Mr. Hobart. Then I should like an exception to that part of your Honor's charge which quoted Section 1643 subdivision A, the part of the section which your Honor stated was applicable to the defendant. That is the section where the first sentence, as your Honor stated, clearly does not apply to the railroad company, but only to the shippers. Of course, I do not except to that. I except to leaving to the jury the application of the other part of 1643-A, and whether there was any proximate relation between the violation of that section and the fire and explosion.

The Court. I did not leave to the jury the question of whether it was applicable or not.

Mr. Hobart. You read part of it.

The Court. However, you may have an exception to that portion if you want to.

Mr. Hobart. Then your Honor also read Section 1643-B, and we object to the jury having that section under consideration as a possible ground of liability, as we think there is no proof that it applied, and that there is no proximate relation between any violation of it and the damage to the plaintiff.

Section 1666, which dealt with the explosive placards. We object to the jury considering that section on the ground that there is no proof of any violation of it or any proximate connection between any violation and the damage; and also on the further ground that the placard which was read as a part of the section is not in itself a regulation and does not undertake to state the duty.

The Court. I did not say that it did. I read them the regulation and told them it provided for that placard, and then I gave them the rule of care which was care commensurate with the risk in that particular, and that is precisely what the Court agrees on. So you may have the exception.

Mr. Hobart. I also ask an exception to Section 1667 which dealt with the inflammable placard, for the same reason as mentioned in regard to Section 1666.

The next section to which your Honor referred was number 1681. We object to that matter being left to the consideration of the jury because it was not pleaded. There is no proof of any violation of it, nor of any proximate connection between the violation and the damage to the plaintiffs.

For the same reasons we object to your Honor permitting the jury to consider Section 1684.

The next one that was mentioned by your Honor was Section 1689. That was pleaded so we do not object on that ground; but we object on the ground that it has no application to the facts. There is no proof of any violation of it, nor any proximate relation.

Section 1913 was the next one that was mentioned, and we except to that because it was not pleaded, and there is no proof of any violation nor of any proximate relation.

The Court. It might have occurred in the course of considering the matter that when you read certain provisions and they have reference to other provisions, in order to indicate their full scope the provisions they have reference to have to be read; and the matter of pleading is a matter of no consequence. They do not rest their right to recover on Section 1913, and I did not say that. I simply pointed out to the jury that 1913 read as follows, and if you go back and look at one of the other provisions that is set forth, it referred to 1913, and makes manifest the bearing of the previous section because it is referred to in it.

Mr. Hobart. Well, may we have an exception to leaving that to the jury?

The Court. Yes. I am always very glad to let you have them after having read what Mr. Justice Dixon, speaking of a unanimous court, said in the case of the Lehigh Navigation Company against the Lehigh Valley Railroad Company, many, many years ago. He said that the plaintiff-in-error had filed, I think, seventy odd assignments of error, and there was grave danger amidst so much frivolousness a good one might be overlooked.

Mr. Hobart. Well, we will have to take pains to pick out the good ones later.

The Court. Oh, yes, I can readily see.

Mr. Hobart. Then I also ask an exception to that part of your Honor's charge, where you stated, reading from a decision of our Court of Errors and Appeals, that the duty was to exercise care commensurate with the risk of danger.

Of course, our point is the same that has been made before, that the measure of our duty must be determined by reference to the regulation.

The Court. Your point being that this case is being tried for the United States Court and not for the Court of Appeals.

Mr. Hobart. Well, I have not said that, but I would like to lay a foundation for what may eventually result. In connection with that, your Honor stated the same rule, that is, the rule of care commensurate with the risk with respect to any one or more of the particulars which you had previously set forth.

The Court. You may have an exception to that.

Mr. Hobart. Then coming to another subject matter which dealt with the question of whether the barges were trespassers or licensees, we object to your Honor leaving to the jury as a question of fact, whether these barges on the one hand were trespassers or licensees, or, on the other hand, whether they were on the public highway.

I think that is a matter of law under the evidence in the case.

The Court. You may have that.

Mr. Hobart. Of course, we do not except to your Honor stating that—the general rule of law as to trespassers; but we urge that there was no question of fact, and, therefore, that your Honor erred in stating that if at the time of the happening of the trespass, and so forth, then there would be no negligence, etc. That was stated, I think in one of two different forms by your Honor, and I ask an exception to whatever was said on that particular subject.

The Court. Whatever was said, you may have an exception to it.

Mr. Hobart. I won't specify any further. In connection with that your Honor again repeated the same rule of exercise of care commensurate with the risk of danger, and we object to that for the reasons already stated.

Then we also ask an exception to your Honor's statement on the subject of the pierhead line, as it were, on the point that the boats in question may have been in the public highway, no matter where the pierhead line was, my point on that being, of course, that we think they were not on the public highway unless they were outside of the pierhead line, or unless while inside of the pierhead line they were there for some lawful purpose.

Mr. Rockwood. May I add to that?

The Court. Yes.

Mr. Rockwood. Further, that that statement to the jury did not leave it to them to determine as a question of fact whether the boats were or were not on the public waters, but said in substance this, that if, notwithstanding the fact that the railroad might have a right to extend the piers, if they did not as a matter of fact extend the piers the scow boats were then in the public waters, where they had a right to be, I think the language was; and I urge the position of those boats was a question of fact to be submitted to the jury from the evidence.

The Court. Well, whatever the point is that you have, I grant an exception to it on that particular phase of the case, and with respect to the subject matter of the charge to which Mr. Hobart has directed attention.

Mr. Hobart. Thank you.

Still another subject matter, namely, the violation of the anchorage regulations. We except to leaving to the jury as a question of fact whether such violation was the proximate cause of the injury. We think that under the evidence the violation was the cause of the injury.

The Court. Whom do you think settles that generally—proximate cause?

Mr. Hobart. The jury, generally, but I think in this case not the jury, but the Court as a matter of law.

And then again, dealing with another subject matter on the question of the Johnson 17, we except to your leaving to the jury the question of whether the original negligence persisted as far as related to the explosion on Johnson 17.

We think the defendant was under no duty to anticipate that that boat would be at the pier under circumstances as shown in the evidence in violation of the rules.

The Court. You may have that. That was a part of my charge in the case that was affirmed in the Court of Appeals a short time ago.

Mr. Hobart. Then I ask an exception to your Honor's refusal to charge the several requests that were submitted and to the modification of each of the requests that were charged. Shall I give them in detail? Or is it sufficient to state them generally

The Court. I do not care how you do it, anyway you please.

Mr. Stallman. I do not object to making it just a blanket—

Mr. Hobart. If counsel has no objection, then I would like to take a separate objection without reciting each separate number, to each of the requests that were refused.

The Court. The ordinary way to do it is to say that you except specifically and generally to each one of the requests I did not charge, and to the modification of those I did.

Mr. Hobart. I would like to take an exception upon that matter without reciting all the numbers.

The Court. Of course.

DEFENDANT'S REQUESTS TO CHARGE.

The defendant submits the following requests to charge in each of the above-entitled cases, as applicable to all the claims in each of said cases, except the claim known as Item No. 12 in the case wherein the Republic of France is plaintiff, whereby claim is made for loss of car No. NYC 90340, contents of which were valued at the sum of $9,923.53, defendant's liability as to this car being that of a common carrier, subject to any defenses that are applicable under the terms of the Bill of Lading.

(A) DUTIES UNDER INTERSTATE COMMERCE STATUTES

1. The law imposed upon the defendant the duty of transporting the explosives and inflammables in the cars as testified in this case, and at the time of the explosion they were still in the course of transportation in interstate or foreign commerce by land.

2. The sole duty of the defendant to the plaintiffs in regard to the explosions and inflammables received by the defendant for interstate transportation by land, and still in the course thereof, was to comply with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the same; and the plaintiff is not entitled to recover unless the jury shall find that the defendant failed to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiff.

In the alternative, if request No. 2 is denied, then the following request is submitted:

3. The sole duty of the defendant to the plaintiffs in regard to the explosives and inflammables received by the defendant for interstate transportation by land, and still in the course thereof, in respect of all matters within the scope of the statutes of the United States and the regulations of the Interstate Commerce Commission concerning the same, was to comply with such statutes and regulations; and the plaintiffs are not entitled to recover in respect of such subject unless they

prove a failure on the part of the defendant to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiffs.

(B) DUTIES UNDER INTERSTATE COMMERCE REGULATIONS

Sec. 1428.

4. There is no proof of any violation of Section 1428, reading as follows:

"1428. Before any shipment of dangerous explosives as named in paragraph 1661 destined to a point beyond the lines of the initial carrier must ascertain that the shipment can go forward via the route designated."

Sec. 1428.

5. There is no proof that the violation, if any, of said Section 1428, above quoted, was the proximate cause of the fire or explosion by which the property of plaintiffs was damaged.

Sec. 1433.

6. There is no proof of any violation of Section 1433, reading as follows:

"1433. Carriers must forward shipments of explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carriers' property within 48 hours after notice of arrival at destination; Sundays and holidays not included."

Sec. 1433.

7. There is no proof that the violation, if any, of said Section 1433, above quoted was the proximate cause of the fire or explosion by which the property of the plaintiffs was damaged.

Sec. 1643 (a)

8. Since the proofs in the case are uncontradicted that the carloads of explosives in defendant's yard were from points outside of the State of New Jersey and were in carload lots, and that it was the practice of the consignee or owner thereof

to unload the said explosives from the cars, therefore, paragraph 1643 (a) of the Interstate Commerce Regulations providing that "careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire" applies to the consignee or owner in unloading the explosives from the cars, and does not apply to the defendant herein, and any alleged negligence in this respect is not chargeable to the defendant.

Sec. 1643 (a)

9. The provisions of paragraph 1643 (a) of the Interstate Commerce Regulations that "Suitable provision must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage," do not apply to the defendant under the evidence in this case, and, therefore, no verdict against the defendant can be based upon any alleged violation of such provisions.

In the alternative, if Request No. 9 is denied, then the following Request is submitted.

Sec. 1643 (a)

10. If the provisions of Section 1643 (a), recited in Requests Nos. 8 and 9, are held to apply to the defendant under the evidence in this case, there is no proof of any violation of such provisions or that any such alleged violation was the proximate cause of damage to the plaintiffs.

Sec. 1643 (b)

11. The language of paragraph 1643 (b) of the Interstate Commerce Regulations, prescribing that "unauthorized persons must not have access to explosives * * * at any time while such articles are in the custody of the carrier," means that before the cars are sealed and after the cars are unsealed, the carrier must not permit unauthorized persons to have access to the explosives in the cars. It does not refer to cars in which explosives are contained while such cars are under seal.

Defendant's Requests to Charge.

Sec. 1643 (b)

12. There is no evidence in this case that the defendant permitted any unauthorized persons to have access to the explosives while such articles were in its custody.

In the alternative, if Request No. 12 is denied, then the following Request is submitted:

Sec. 1643 (b)

13. If the jury finds that unauthorized persons had access to the explosives on the night of July 29 and 30, 1916, while such articles were in the custody of the defendant, there is no evidence that the access of any such persons was the proximate cause of the injury complained of.

Sec. 1682.

14. There is no proof of any violation of Section 1682, reading as follows:

"1682. Every possible effort must be made to expedite the movement of cars containing explosives and no unnecessary delay must occur at initial, interchange or transfer stations."

Sec. 1682.

15. There is no proof that the violation, if any, of said Section 1682, above quoted, was the proximate cause of the fire or explosion by which the property of the plaintiffs was damaged.

Sec. 1689.

16. The language in paragraph 1689 of the Interstate Commerce Regulations referring to the handling of cars containing explosives and providing "they must be placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire" means that in the operation of the railroad company's yard or its sidings, the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them.

Defendant's Requests to Charge.

Sec. 1689.

17. There is no evidence from which the jury can legally infer that under paragraph 1689 of the Interstate Commerce Regulations, the cars containing explosives in the Black Tom Yard at the time of the fire had not been removed from whatever danger of fire might reasonably have been expected by the defendant.

Sec. 1666.

18. The "Explosive" placard required by Section 1666 of the Interstate Commerce Regulations to be attached to certain cars, as specified in the regulations, is not itself a regulation of the Interstate Commerce Commission.

Sec. 1666.

19. The proper construction to be placed upon the placard required to be put upon cars containing explosives by Paragraph 1665 of the Interstate Commerce Regulations, is that the words, "Keep Fire Away" mean do not bring fire near. They do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary action of a person in regard to the bringing of fire to or near the cars. There is no evidence that the defendant disregarded this injunction.

Sec. 1666.

20. In the condensed rules on the so-called "Explosive" placard Section 7, which reads: "Avoid placing it near a possible source of fire," means not to put the car near a place where fire might reasonably be expected to be. There is no evidence that this injunction was disregarded by the defendant.

Sec. 1667.

21. The "Inflammable" placard required by Section 1667 of the Interstate Commerce Regulations to be attached to certain cars, as specified in the regulations, is not itself a regulation of the Interstate Commerce Regulations.

In the alternative, if Request No. 21 is denied then the following request is submitted:

Sec. 1667.

22. The proper construction to be placed upon the placard required to be put upon cars containing inflammables by paragraph 1667, is that the words "Keep Lights and Fires Away," mean do not bring lights or fires near. They do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary action of a person in regard to the bringing of fire or lights to or near the cars. There is no evidence that the defendant disregarded the injunction.

In the alternative, if Request No. 22 is denied, then the following request is submitted:

Sec. 1667.

23. The proper construction to be placed upon the placard required to be attached to cars containing inflammables is that the words, "This car must not be next to a car containing Explosives" do not apply to cars containing inflammables or explosives while the same are standing in a railroad yard, but only while they are actually being moved in the course of transportation.

Sec. 1667.

24. There is no evidence in this case that the defendant violated any of the provisions of paragraph 1667 of the Interstate Commerce Regulations.

In the alternative, if Request No. 24 is denied, then the following request is submitted:

Sec. 1667.

25. Even if the jury should find that there was a violation on the part of the defendant of any of the provisions of Section 1667 of the Interstate Commerce Regulations, there is no evidence that any such violation was the proximate cause of damage to the plaintiff.

26. There is no evidence in this case but that the explosives in defendant's custody were in all respects carried, conveyed, transported, hauled and held by the defendant in compliance with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the safe transportation of explosives in interstate commerce by land.

27. There is no proof that the origin of the fire was the result of any failure of duty imposed upon the defendant by the regulations of the Interstate Commerce Commission relative to the safe transportation of explosives in interstate commerce by land, and, therefore, the jury cannot infer that the defendant was guilty of any violation of said regulations up to and including the time of the origin of the fire.

(C) PARTICULARS OF NEGLIGENCE IN COMPLAINTS

If the Court refuses to charge Requests No. 2 and/or 3, then the following requests are submitted:

28. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(a) in collecting freight cars containing explosives, explosive projectiles, ammunitions and munitions of war subject to detonation by fire or concussion and permitting them to accumulate in the said Black Tom Yards to such an extent that the detonation and explosion of combustion of their contents might result in a great casualty with greater danger to human life and damage to surrounding property;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

29. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(b) in permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals in said Black Tom Yards and in the vicinity thereof:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

Defendant's Requests to Charge.

30. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(c-1) in failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patrolling, policing and guarding said yards and other premises in the vicinity thereof under the control of the defendant, and the cars and their contents stored therein and for the purpose of discovering and extinguishing fires;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

31. So far as relates to plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(c-2) in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

32. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(d) in neglecting to take due care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or disign, set fire to the property on said premises or cause explosions thereon;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the

proximate cause of the damage to the plaintiffs or any or either of them.

33. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(e) in failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosion occurred:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

34. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(f-1) in failing to provide sufficient men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

35. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(f-2) in failing to provide competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

Defendant's Requests to Charge.

36. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(g) in failing properly to instruct its employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire:

there was no proof of any negligence or misconduct in this respect or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

37. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(h-1) in failing to provide adequate facilities and to take proper measures and precautions before the fire started for removing or insulating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

38. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(h-2) in failing to provide adequate facilities and to take proper measures and precautions after the fire started for removing or insulating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was

the proximate cause of the damage to the plaintiffs or any or either of them.

39. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(i) in failing to store, handle and dispose of said explosives, explosive projectiles, and ammunition and munitions and the cars containing them so as to enable the defendant to prevent or control the communication of fire or concussion from one part of the mass of explosives to another:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

40. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(j) in failing to install, maintain and keep in repair adequate means for communicating alarms and summoning assistance in case of fire:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

41. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(k) in failing to give the alarm of fire and summon assistance promptly:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was

the proximate cause of the damage to the plaintiffs or any or either of them.

42. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(l) in failing to prevent the said fire; there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

43. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(m-1) in failing promptly to discover the said fire: there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

44. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(m-2) in failing to take proper measures to extinguish the fire and to prevent damage:

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

(D) OTHER POINTS UNDER ALLEGATIONS OF NEGLIGENCE

If the Court refuses to charge Requests No. 2 and/or 3, then the following Requests are submitted:

45. The mere fact that there was a considerable number of freight cars in defendant's yard, containing explosives, explosive projectiles, ammunition, munitions or war and inflammable materials, as shown by the evidence in the case is not sufficient to charge the defendant with negligence.

46. So far as relates to the plaintiffs' claim of negligence against the defendant because of its alleged failure to provide competent men for the purpose of patrolling, policing and guarding the Black Tom Terminal, it is the law that the duty of the defendant, so far as relates to the selection of men for such purpose, was to take reasonable care to employ competent men, and there is no proof that the defendant failed to use the degree of care required of it by law in the selection of its men.

47. The defendant can only be held responsible in damages for the failure to exercise reasonable care under the circumstances, and the jury in considering the circumstances and the degree of care exercised may consider the fact that there were four watchmen on the premises in the immediate vicinity of the cars containing the explosives on the night of the explosion in question, in addition to the watchmen employed by the defendant.

48. Since there is no proof that the fire on the defendant's premises was started by human agency directly applied at the point of the origin of the fire, the jury cannot conclude that the presence of more Lehigh Valley watchmen in the yard than in fact were there, would have prevented the starting of the fire, and therefore, the jury cannot find negligence on the part of the defendant in that respect.

49. So far as relates to the fire protection in that part of the Black Tom Yard which was located to the east of Store R and the 100,000 gal. gravity tank, there is no evidence

that the defendant did not observe the usual custom of railroads as it existed on July 29 and 30, 1916; and hence, the jury cannot find negligence against the defendant merely by reason of the fact that no fire hydrants were located in that part of the yard on the occasion of the fire and explosion.

50. There was no legal duty resting upon the defendant in respect of the terminal at Black Tom, to furnish hydrants in addition to those furnished by the City of Jersey City, the said terminal being within the limits of said municipality.

51. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom, to furnish its own fire protection, in addition to that furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

52. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish men and equipment to extinguish fires, in addition to the men and equipment of the municipality of Jersey City, within the limits of which the said Black Tom Terminal is.

53. The proofs show that the witness Burns was the first person on the premises to discover the fire, and that he was in a position promptly to discover the fire and did so, and, therefore, the jury may not infer that if there had been more Lehigh Valley watchmen present the fire would have been discovered any earlier than it was.

(E) EMERGENCY DOCTRINE

54. If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was in a car of ammunition, then a condition of emergency existed by reason of which the defendant cannot be held responsible for errors of judgment on the part of its employees, or any of them, in respect of what they did or failed to do concerning the putting out of the fire.

In the alternative, if Request No. 54 is denied, then the following request is submitted:

55. If the jury find the defendant was not negligent in respect of the starting of the fire and that the said fire was in a car of ammunition, then the jury must consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of emergency then it cannot find the defendant legally responsible for the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire.

(F) SPONTANEOUS COMBUSTION

56. Since there is no testimony that the fire was started by human agency at the place where it commenced and there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury cannot find a verdict against the defendant on the ground that the fire was started by human agency applied at the place of the commencement of the fire as the result of defendant's negligence.

57. If the jury finds that the fire which was discovered upon the premises of the defendant on July 30, 1916, was started by spontaneous combustion, the defendant cannot be held legally responsible in respect of the starting of said fire.

58. If the jury finds that the fire which was discovered upon the premises of the defendant on July 30, 1916, was started by spontaneous combustion and that the starting of such fire was the sole proximate cause of the injury to the plaintiffs, then the defendant cannot be held legally responsible for any damage suffered by the plaintiff.

(G) JERSEY CITY FIRE DEPARTMENT

59. If the jury finds that the spreading of the fire caused the injury to the plaintiffs and that such spreading could have been prevented in time to have avoided damage to the plaintiffs by the throwing of water upon the fire, and that the proximate cause of the spreading was the failure to throw water upon the fire, then the jury must consider that the Jersey City Fire Department, came without their fire engines and they testified that for lack of such fire engines they were unable

to throw water upon the fire, and the jury may therefore consider whether that was not the sole proximate cause of the spreading of the fire which caused the damage to the plaintiff, and if it so concludes, should find for the defendant.

(H) JOHNSON BARGE 17

60. The undisputed evidence is that Johnson Barge No. 17, with 1,005 cases of TNT and 417 cases of detonators (all obtained elsewhere) was moored at the North Pier at Black Tom on July 30, 1916, and there is no evidence that the defendant had any knowledge whatever of the materials thus loaded on said Johnson 17 at that time; and the jury must find under the law as contained in the Anchorage Regulations of the United States Government, that a boat thus loaded should not have been moored at Black Tom Pier, but should have proceeded to the anchorage grounds as designated in the said United States Regulations, and that the act of mooring her thus loaded at the North Pier at Black Tom was an unlawful act; and therefore defendant cannot be held responsible for any damage occasioned plaintiffs by reason of the explosion thereon.

61. If the jury finds that the Johnson 17 containing 1,005 cases of TNT and 417 cases of detonators (all obtained elsewhere) was unlawfully moored at Black Tom Pier, and that the TNT thereon subsequently exploded on the night of July 30, 1916, and caused or contributed to the damage complained of by the plaintiffs, the jury cannot legally find the defendant responsible for such damage.

62. There is no evidence from which the jury may determine how much of the damage to the plaintiffs was caused by fire and how much was caused by explosion; there is no evidence that some damage to plaintiff was caused by explosion; and as the defendant cannot be held responsible for the explosion on the Johnson 17 and any damage caused thereby, the jury are instructed that if they find a verdict for the plaintiff the amount of such verdict must be limited to six cents.

63. In view of the fact that the regulations concerning the transportation of explosives and other dangerous articles on land in Article 1647 contain a prohibition against the loading of such materials as detonators and high explosives in the same car or storage place, and of the evidence in this case in respect to the danger of this loading such articles on the same carrier the jury may legally find that the presence on Johnson Barge 17 of the detonators and TNT constituted negligence on behalf of the proprietor of such barge, and if it thus finds and also finds that the explosion on the Johnson 17 was the proximate cause of the damage complained of by the plaintiff, then it may not find against the defendant.

(I) INTEREST

64. The jury is not at liberty to allow the plaintiffs, or any or either of them, any interest in respect of any sum found to be due them, or any or either of them.

In the alternative, if Request No. 64 is denied, then the following Request is submitted:

65. The jury is not at liberty to allow the plaintiffs, or any or either of them any interest in respect of any sum found to be due them, or any or either of them, unless the jury reach the conclusion that the refusal of the defendant to pay the demands of the plaintiffs, was reasonable, and that the defendant was not justified in attempting to protect itself against said demands.

(J.) FORTY-EIGHT HOUR RULE UNDER BILL OF LADING AND I. C. C. REGULATIONS
(Case of Republic of France.)

The following Requests are limited to the items in the case of the Republic of France known as Items 7, 8, 9, 10 and 11, being for three cars of gun cotton (or wet nitrocellulose) and for four cars of benzol (or monoclobenzol).

66. Under the terms of the bill of lading under which these carloads of wet nitrocellulose (Item No. 7) and four carloads of benzol (Items Nos. 8, 9, 10 and 11) were shipped

over the line of the defendant company, it is provided that the carrier shall not be liable for loss or damage caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, and the carrier's liability shall be that of warehouseman only. As to each of the said seven cars the notice of arrival at destination or at port of export had been duly sent or given; and as the loss or damage was caused by fire occurring after forty-eight hours after such notice had been duly sent or given, the defendant at the time of the loss or damage to the contents of said cars was not liable to the Republic of France as a common carrier, but only as a warehouseman; and as such warehouseman its duty in the premises was to exercise reasonable care under the circumstances.

67. By Section 1433 of the Interstate Commerce Regulations it is provided with respect to shipments of explosives that "consignee must remove such shipments from the carrier's property within forty-eight hours after notice of arrival at destination (Sundays and holidays not included.)" In respect of said seven cars described in Request No. 66 it appeared that the consignee, or its agent or representative did not remove such shipments from the carrier's property within forty-eight hours after notice of arrival at destination (Sundays and holidays not included,) and plaintiff, the Republic of France, is not entitled to a verdict for the loss of any the goods in said seven cars because under those circumstances the said plaintiff voluntarily assumed the risk of damage to the goods in said seven cars.

68. With respect to the contents of said seven cars described in Request No. 66, the defendant cannot be held liable even if the jury finds that there was negligence, for the reason that the loss of the plaintiff, the Republic of France, of the contents of said seven cars was due to its contributory negligence in not removing the same as required by the provisions of the Interstate Commerce Regulations.

(K) CONTENTS OF BARGES

The following Requests apply to all of the cars named in the suit wherein His Majesty, The King of the United Kingdom of Great Britain and Ireland, is plaintiff (being the cars whose contents were on the lighters "Thompson" and "Paulina";) to all the cars named in the suit wherein Aetna Explosives Company, Inc., is plaintiff (being the cars whose contents were on the lighter "Charles Rockwell") and to such of the cars named in the suit wherein Republic of France is plaintiff as were not on the land (being the cars of that plaintiff on the lighter "Charles Rockwell" and described in the complaint in said suit as Items 1, 2, and 3).

69. The barges on which the goods of the plaintiffs were loaded were trespassers upon the defendant's property. As such trespassers, the defendant owed no duty to the plaintiffs, or any or either of them, except to refrain from willful or wanton injury. There is no proof of such injury on the part of the defendant with respect to the plaintiffs, or any or either of them.

In the alternative, if Request No. 69 is denied, then the following Request is submitted:

70. If the jury finds that the barges on which the plaintiffs' goods were loaded were at or near the defendant's pier without the knowledge of permission of the defendant, then the plaintiffs, with respect to said barges, were trespassers, or, at the most, licensees—and the defendant's only duty with respect to said barges, or any of them was to refrain from willful or wanton negligence, and there is no proof of any such negligence.

71. With respect to trespassers or licensees upon its property, the owner of lands is under no obligation to keep his premises in a non-hazardous state.

72. A person who uses dangerous premises with knowledge of the danger, assumes the risk of injury which may result to him from such use.

73. In the absence of any invitation, express or implied, on the part of the defendant, the plaintiffs had no lawful right to moor their barges, or any of them, at defendant's pier. The evidence in this case does not show any such invitation.

74. The facts that just before the first explosion the barges on which the plaintiffs' goods were loaded had been cut loose by the defendant's servants from other vessels which had been or were tied to defendant's pier, and that at the time of the first explosion they were in tow of defendant's tugs, do not impose upon the defendant any greater duty than was owed to the barges as trespassers upon defendant's property.

In the alternative, if Request No. 74 is denied, the following request is submitted:

75. If the jury finds that at the time the three barges, "Thompson," "Rockwell," and "Paulina," or any of them caught fire, they, or any of them were still inside the established pierhead line, that is, between the pierhead line and defendant's bulkhead line, such barge or barges as were inside said line at said time remained trespassers.

In the alternative, if Request No. 74 is denied, then the following request is submitted:

76. If the jury finds that the original trespass of the plaintiffs' barges upon the defendant's property was the proximate cause of the damage suffered by the plaintiffs by reason of the fire, or explosion, or both, then the defendant is not liable for such damage, even though at the moment the fire spread or started upon the said barges they were not then trespassers.

77. It was a violation of the Anchorage Rules of the United States Government for the plaintiffs to have their loaded barges tied at the defendant's pier on the night of July 29-30, 1916. If the jury finds that the violation of the Anchorage Rules of the United States Government by the plaintiffs' barges was the proximate cause of the damage sustained by the plaintiffs, then the plaintiffs are not entitled to recover damages for any of the goods on said barges.

Defendant's Requests to Charge.

78. If the jury finds that the cause of the damage to the goods on the plaintiffs' barges was the failure of the plaintiffs to have available any motive power or men for the purpose of removing said barges to a place of safety after the outbreak of fire on land, then the jury may not find any liability on the part of the defendant with respect to the goods on said barges.

79. The proofs show that none of the barges of the plaintiffs had any fire fighting apparatus; if the jury finds that the failure to equip the barges with such apparatus was the cause of the damage to the contents of the barges, then the jury may not find any liability on the part of the defendant with respect to the goods on the said barges.

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		Off'd	P't'd
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EXHIBITS

PLAINTIFFS' EXHIBITS 1 TO 9 INCLUSIVE.

(Nine contracts, summarized by consent)

Ex. No.	Contract No.	Parties	Article	Price and Delivery		
P-1	F333-P28	France —Maas & Waldstein	Wet guncotton	52½c	F. O. B.	Newark, N. J.
P-2	F351-P33	France —Hooker Elec'chem. Co.	Monochlorbenzol	20c	F. O. B.	Niagara Falls
P-3	F340-P30	France —Aetna Explosives Co.	Wet guncotton	52½c	F. O. B.	New York
P-4	359-20	France —Aetna Explosives Co.	Dry Picric Acid	$1.45	F. O. B.	Communipaw
P-5	386-31	France —E. I. Dupont etc. Co.	Smokeless Powder	1.00	F. O. B.	Factory, N. J.
P-6	F587-P45	France —Aetna Explosives Co.	Smokeless Powder	.80	F. A. S.	Steamer
P-7	B320-225W	Gt. Britain —E. I. Dupont Co.	Nitrocellulose Powder	1.00	F. O. B.	Factory, N. J.
P-8	B532	Gt. Britain —E. I. Dupont Co.	Nitrocellulose Powder	.80	F. O. B.	Factory, N. J.
P-9	B196-155W	Gt. Britain —Hercules Powder Co.	Cordite Powder	1.00	F. O. B.	Kenvil, N. J.

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EXHIBIT P. 12.

Summary of Invoices.

Cont.		Name	Date	Init.	Car No.	Contents	Weight	Pr.	Amount
F333 / P28	1.	Maas & Waldstein to Republic of France	7/19/16	NYC.	95537	WNC.	—111888	52½	58741.20
	2.			FWD.	6593	"			
	3.			BF.	14027	"			
	4.	"		B&O.	180323	"			
	5.	"		Wab.	76146	"			
F351 / P33	6.	Hooker Elec. Ch. Co. to Republic of France				MCB.			
	7.		7/12/16	AT&SF.	49825	"	49140	20	9828.00
	8.		7/13/16	CI&L.	2888	"	51448	20	10289.60
	9.	"	7/13/16	StLIM&S.	19657	"	51899	20	10379.80
	10.	"	7/ 6/16	OWRR&N.	10729	"	51906	20	10381.20
	11.	"	7/24/16	NYC.	90340	"	49128	20	9825.60
F340 / P30	12.	Aetna Explosives Co. Inc. to Republic of France	8/ 3/16	Wab.	67166	G. C.	—90866	52.5	47704.59
	13.			CP.	128766	"			
	14.			PRR.	517708	"			
359 / 20	15.	Aetna Explosives Co. Inc. to H. J. Johannet, Rep. French Government	7/20/16	Lot 79		P. A.	50290	1.45	72920.50
	16.		7/20/16	Lot 80		P. A.	50125	1.45	72681.25
386 / 31	17.	E. I. Dupont de Nemours & Co. to H. J. Johannet, Rep. Republic of France	7/17/16	Lot 57		NCP.	105000	1.00	105000.00
	18.								
	19.		7/17/16	Lot 70		SASP.	49940	1.00	49940.00
	20.	"	7/17/16	Lot 71		SASP.	55000	1.00	55000.00

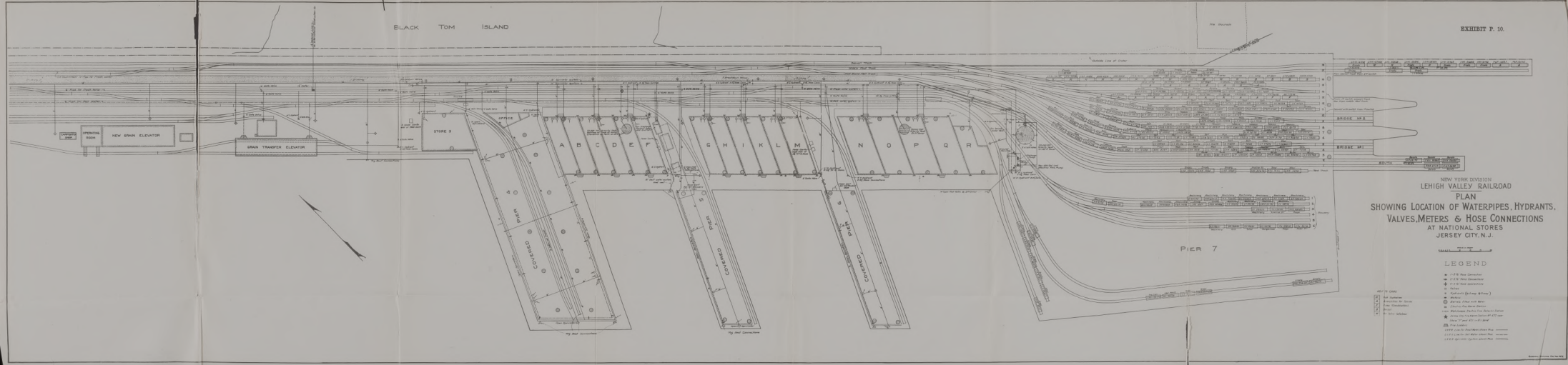
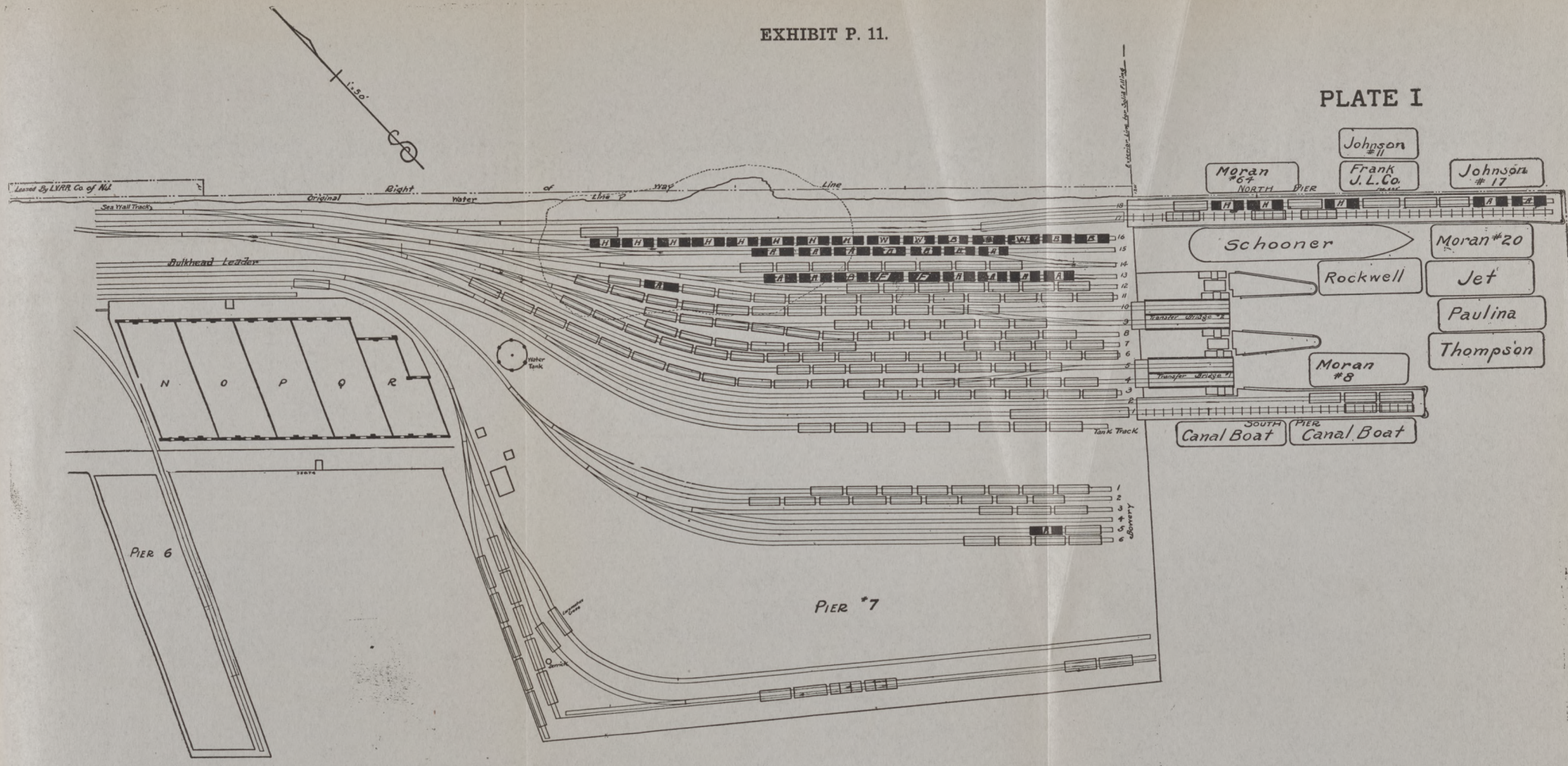


EXHIBIT P. 10.
BLACK TOM ISLAND
NEW GRAIN ELEVATOR
GRAIN TRANSFER ELEVATOR
OPERATING ROOM
STORE 3
OFFICE
A B C D E F
G H I K L M
N O P Q R
PIER 4
PIER 5
PIER 6
PIER 7
COVERED
BRIDGE No 2
BRIDGE No 1
SOUTH PIER
NEW YORK DIVISION
LEHIGH VALLEY RAILROAD
PLAN
SHOWING LOCATION OF WATERPIPES, HYDRANTS,
VALVES, METERS & HOSE CONNECTIONS
AT NATIONAL STORES
JERSEY CITY, N.J.
LEGEND

EXHIBIT P. 11.

PLATE I



LEHIGH VALLEY RAILROAD
NEW YORK DIV'N.
PLAN SHOWING TRACKS, BUILDINGS AND CAR LOCATIONS AS OF AUGUST 1, 1916, EAST OF PIER Nº6, NATIONAL DOCKS
JERSEY CITY, N.J.

OFFICE, DIV ENG'R. SCALE 1"=50' | III-M | JERSEY CITY, N.J. JAN. 17, 1917

Key:-
H = High Explosives (T.N.T.)
A = Ammunition for Cannon — Exp. projectiles
F. = Fuzes (Combination)
B = Benzol
W = Wet Nitro Cellulose
▭ = Merchandise Cars

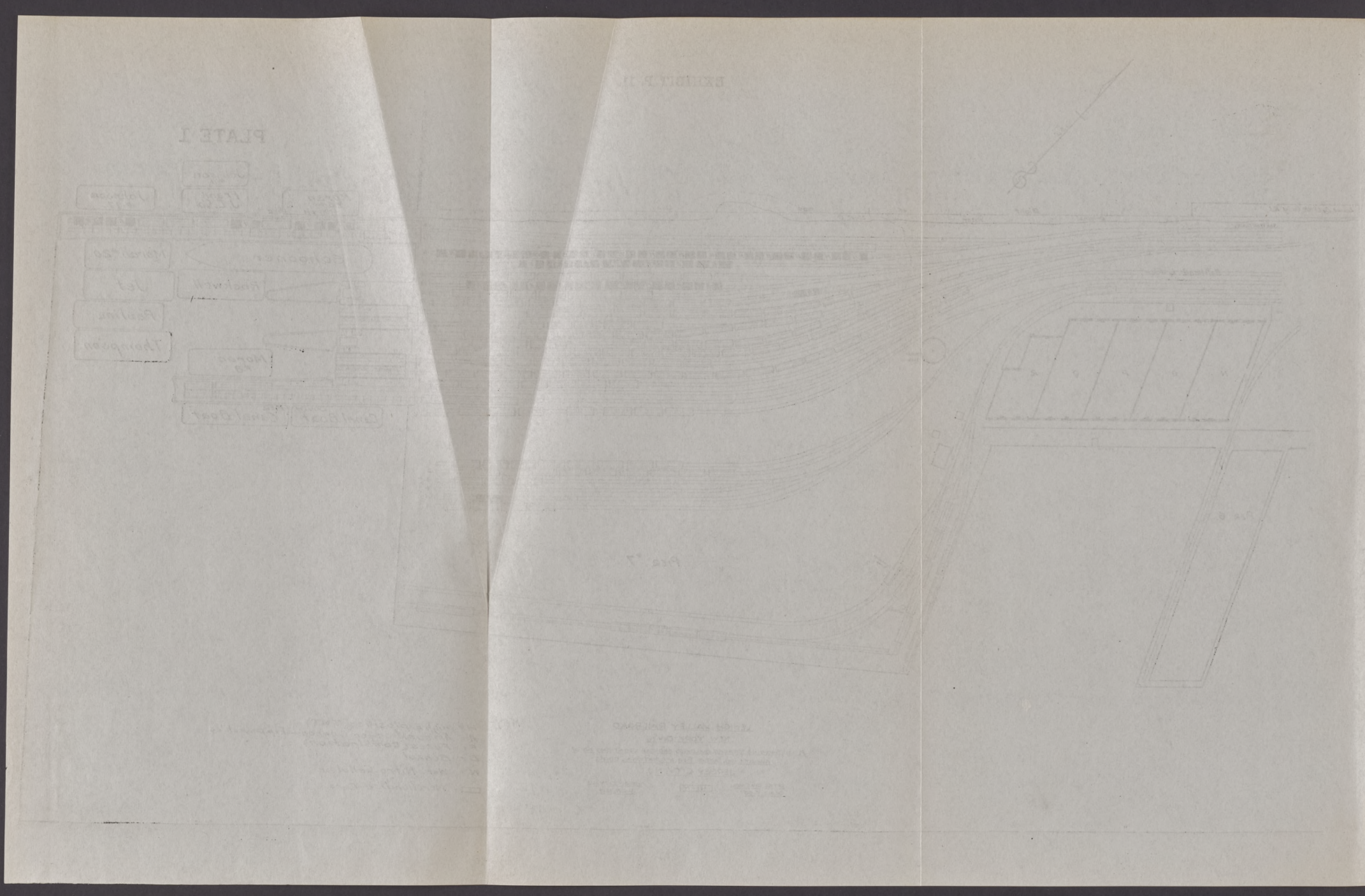


Exhibit P. 12.

Cont.		Name	Date	Init.	Car No.	Contents	Weight	Pr.	Amount
F587	21.	Aetna Explosives Co. Inc. to Republic of France	7/13/16	PRR.	84203	S. P.	87500	.80	70000.00
	22.			PL.	560234	"			
P45	23.	"		PRR.	26245	S. P.	86580	.80	69264.00
	24.	"	7/20/16	PL.	535107	"			
	25.	E. I. Dupont de Nemours & Co. to His Majesty's Govt.	7/18/16	Lot 168		NCCP.	99960	.90	89964.00
	26.								
	27.	"	7/18/16	Lot 178		"	100100	.90	90090.00
	28.								
B320	29.	"	"	Lot 170		"	"	.90	90090.00
	30.								
225W	31.	"	"	Lot 166		"	"	.90	90090.00
	32.								
	33.	"	7/ 5/16	Lot 90		NCP.	99955	.80	79964.00
	34.								
532	35.	"	7/18/16	Lot 145		NCCP.	100060	.90	90054.00
	36.								

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Exhibit P. 12.

Cont.		Name	Date	Init.	Car No.	Contents	Weight	Pr.	Amount
	37.	Hercules Powder Co.	7/28/16	Erie	106834	Cordite	100000	.98	98000.00
	38.	to His Britannic		AT&SF.	28208				
	39.	Majesty's Govt.		CCC&StL.	55180				
			7/28/16	PRR.	10130	"	100000	.98	98000.00
	40.	"							
	41.			CM&StP.	92918				
	42.			CCCStL.	5527				
			7/28/16	CP.	202810	"	100000	.98	98000.00
	43.	"							
B196	44.			PRR.	92993				
	45.			B&O.	94180				
155W			7/28/16	GT.	23686	"	100000	.98	98000.00
	46.	"							
	47.			PRR.	13448				
	48.			AT&SF.	35243				
			7/28/16	CRI&P.	40602	"	100000	.98	98000.00
	49.	"							
	50.			I. C.	141121				
	51.			NH.	89976				

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EXHIBIT P. 13.

Summary of Bills of Lading.

RR.	Date	From	To	Car		Contents	Weight
	1916						
CRR. N. J.	7/24	G. W. Sheldon Newark, N. J.	G. W. Sheldon Communipaw	NYC.	95537	135 Cs. WNC.	46994
"	"	"	"	FWD.	6593	150 " "	51742
"	"	"	"	BF.	14027	106 " "	37032
				B&O.	180323	135 " "	44196
				Wab.	76146	140 " "	49017
L. V.	7- 3	Hooker E. C. Co. Echota, N. Y.	Hooker E. C. Co. New York	SLTMS	19657	50 Dr. Chlor.	60301
"	"	"	"	CIL.	2888	" " "	60052
"	7- 6	"	"	OWRRN.	10729	" " "	60372
"	7-20	"	"	CBQ.	99082	" " "	57799
"	7-24	"	"	NYC.	90340	" " Monocb.	57949
"	7-12	"	"	ATSF.	49825	" " Chlor.	58286
Wabash	7-19	Aetna Exp. Co. Aetna, Ind.	G. W. Sheldon Jersey City	Wab.	67166	184 Cs. WNC.	53641
"	"	"	"	C. P.	128766	186 " "	54682
"	"	"	"	PRR.	517708	212 " "	61553
P. RR.	7-19	Aetna Exp. Co. Emporium, Pa.	G. W. Sheldon Jersey City	PL.	561418	500 Kgs. Picric A.	58000
"	"	"	"	PRR.	67263	" " " "	58000

RR.	Date	From	To	Car		Contents	Weight
Erie	7-22	E. I. DPd. N. Co. Haskell, N. J.	G. W. Sheldon Communipaw	NYC.	226068		
"	"	"	"	PM.	578	750 Bxs. SPC.	133500
"	"	"	"	Sou.	135795	454 " SPSA.	65376
				Erie	90283	500 " "	72000
P. RR.	7-19	Aetna Exp. Co. Emporium, Pa.	G. W. Sheldon Jersey City	P. RR.	26245	336 Pkgs. SPC.	55776
"	"	"	"	PL.	535107	330 " "	54780
"	"	"	"	PRR.	84203	377 " "	67860
"	"	"	"	PL.	560234	248 " "	44640
Raritan Riv.	7-27	E. I. DPd. N. Co. Parlin, N. J.	Lunham & Moore Communipaw	NYC.	252318	388 Bxs. SPC.	69452
" "	7-26	"	"	CRR.	36217	325 " "	58175
				N&W	22344	318 " "	56922
" "	7-26	"	"	CRR.	35854	396 " "	70884
				B&O.	88386	357 " "	63903
" "	"	"	"	B&O.	71388	357 " "	63903
				L&N.	3147	357 " "	63903
" "	"	"	"	B&O.	96066	356 " "	63724
				NH.	87699	432 " "	66528
" "	"	"	"	Erie	103675	437 " "	67298
				VRR.	7755	357 " "	63903
				CCCStL.	45016	357 " "	63903
CRR. N. J.	7-27	Hercules Powder Co., Lake Juncn., N. J.	"	Erie	106834	350 Cs. SPC.	44100
				ATSF.	28208	350 " "	44100
"	"	"	"	CTS&L.	55180	300 " "	37800
				PRR.	10130	350 " "	44100
				CMStP.	92918	350 " "	44100
"	"	"	"	CCCStL.	5527	300 " "	37800
				CP.	202810	350 " "	44100
				PRR.	92993	350 " "	44100
				B&O.	94180	300 " "	37800

RR.	Date	From	To	Car		Contents	Weight
CRR. N. J.	7-27	Hercules Powder Co., Lake Juncn., N. J.	Lunham & Moore Communipaw	PRR.	13448	350 Cs. SPC	44100

B&O.	94180	300	"	"			37800

RR.	Date	From	To	Car		Contents	Weight
CRR. N. J.	7–27	Hercules Powder Co., Lake Juncn., N. J.	Lunham & Moore Communipaw	PRR.	13448	350 Cs. SPC	44100
				GT.	23686	350 " "	44100
				AT&SF.	35243	300 " "	37800
"	"	"	"	IC.	141121	350 " "	44100
				CRI&P.	40602	350 " "	44100
				NH.	89976	300 " "	37800

Exhibit P. 14.

EXHIBIT P. 14.

Summary of Freight Bills.

	RR.	Date	No.	Init.	Car No.	Articles	Weight	Freight
		1916						
1.	CRR.	7/26	7–3782	NYC.	95537	135 Cs. WNC.	46994	37.59
2.	"	"	7–3781	FW&D.	6593	150 " "	51742	
3.	"		"	CCCStL.	14027	106 " "	37032	
4.			"	B.&O.	180323	135 " "	44196	
5.			"	Wab.	76146	140 " "	49017	96.46
6.	L. V.	7/25	7– 519	CB&Q.	99082	50 Drms. CB.	57799	97.68
7.	"	7/18	7– 326	AT&SF.	49825	50 " "	58286	98.56
8.	"	7/ 6	7– 58	CI&L.	2888	" " Benzol	60052	101.49
9.	"	7/ 6	7– 59	StLMS	19657	" " "	60301	101.91
10.	"	7/13	7– 178	OWRRN	10729	" " "	60372	102.03
11.	"	8/ 2	7– 603	NYC.	90340	" " MCB.	57949	97.93
12.	Wabash	7/19	492	Wab.	67166	184 Cs. Cellulose	53641	422.69
13.	"	7/19	488	CP.	128766	186 " "	54862	430.89
14.	"	7/19	489	PRR.	517708	212 " "	61553	485.04
15.	P. RR.	7/20		PL.	561418	500 Kgs. H. E.	58500	215.28
16.	"	7/20		PRR.	67263	" " "	58500	215.28

Exhibit P. 14.

	RR.	Date	No.	Int.	Car No.	Articles	Weight	Freight
17.	CRR.	7/21	7–3011	NYC.	226068	363 Bxs. SPC		
18.				PM.	578	378 " Powder	133800	252.88
19.	"	7/26	7–3778	Sou.	138795	454 Brl. SPSA.	65476	137.48
20.	"	7/20	7–3779	E.	90283	500 Bxs. "	72100	151.41
21.	"	7/20		PRR.	84203	377 Cs. SPC.	68660	216.28
22.	"	7/20		PL.	560234	248 " "	45340	142.82
23.	"	7/20		PRR.	26245	336 " "	56526	178.06
24.	"	7/20		PL.	535107	330 " "	55580	175.08
27.	"	7/29	T7–5460	N&W.	22344	318 Bxs. "	56922	
28.				CRR.	35854	396 " "	70884	
25.				NYC.	252318	388 " "	69452	
26.				CRR.	36217	325 " "	58175	
29.			—	VRR.	7755	357 " "	63903	
36.				CCCStL.	45016	357 " "	63903	
30.				B&O.	88386	357 " "	63903	
31.				B&O.	71377	357 " "	63903	
32.				L&N.	3147	357 " "	63903	
33.				B&O.	96066	356 " "	63724	
34.				NH.	87699	432 " "	66528	
35.				Erie	103675	437 " "	67298	814.27
37.	"	7/29	7–4351	Erie	106834	350 Cs. SP.		
38.				ATSF.	28208	350 " "		
39.				CP.	55180	308 " "	127800	201.92
40.	"	7/29	7–4348	PRR.	10130	350 " "		
41.				CMStP.	92918	350 " "		
42.				CCC.	5527	300 " "	127800	201.92
43.	"	7/28	7–4232	CP.	202810	350 " "		
44.				PRR.	92993	350 " "		
45.				B&O.	94180	300 " "	127800	201.92
47.	"	7/29	7–4350	PRR.	13448	350 " "		

	RR.	Date	No.	Int.	Car No.	Articles	Weight	Freight
45.				B&O.	92993	350 " "		
47.	"	7/29	7–4350	PRR.	94180	300 " "	127800	201.92
					13448	350 " "		
46.				GT.	23686	350 " "		
48.				ATSF.	35243	300 " "	127800	201.92
50.	"	7/29	7–4349	IC	141121	350 " "		
49.				CRIP.	40602	350 " "		
51.				NH.	89976	300 " "	127800	201.92

WNC.—Wet Nitrocellulose.
CB.—Chlorbenzol.
MCB.—Monochlorbenzol.
Cell.—Cellulose.
H. E.—High Explosives.
S. P. C.—Smokeless Powder for Cannon.
SPSA.— " " small arms.

Form 3090

10-18-400M of ea.

EXHIBIT P. 15.

Freight Delivery Receipt.

G. W. Sheldon or or Station—Jersey City, N. J., 7/24/16 Pro. No. 17/4 395

Received in good order from
UNITED STATES RAILROAD ADMINISTRATION
Director General of Railroads
CENTRAL RAILROAD OF NEW JERSEY

The following goods: Rockwell
From 5712 Emporium, Pa. W. B. Date and No. 744 7/20/16 Car. No. and Init. 408951
Route Originating Station Ex. Car No. & Init. PL 561418

Consignor	Articles	Weight	Rate	Amount
Aetna Explosives Co., Inc.	500 Kegs High Explosives	58500	36 8	PPD
	1 Sample Box " "		GO	6202
			War Tax	
			Total	

Date Received, 7/25/16 Truck..... Geo. Healing, Consignee.

Exhibit P. 15.

847

40 30 20 10

Summary of Delivery Receipts.

TAKEN BY THE CENTRAL RAILROAD COMPANY OF NEW JERSEY

Date	Pro. No.	Consignee	Car Number		Contents	Barge	Signed by
7/25/16	T7/4395	G. W. Sheldon	PL.	561418	500 Kgs. High Explos.	Rockwell	Geo. Healing
7/25/16	T7/4396	G. W. Sheldon	PRR.	67263	" " " "	"	" "
7/27/16	7/3777	G. W. Sheldon	NYC.	226068 578	750 Bxs. Smkless Pdr.	Rockwell	Geo. Healing
7/27/16	7/3780	G. W. Sheldon	SOU.	135795	450 Bxs. " "	"	" "
7/27/16	T7/3776	G. W. Sheldon	E.	90283	500 " " "	"	" "
7/25/16	T7/4057	G. W. Sheldon	PRR.	26245	336 Cas. " "	Rockwell	Geo. Healing
7/25/16	T7/4058	G. W. Sheldon	PL.	535107	330 Cas. " "	"	" "
7/25/16	T7/4059	G. W. Sheldon	PRR.	84203	377 Cas. " "	"	" "
7/25/16	T7/4060	G. W. Sheldon	PL.	560234	248 Cas. " "	"	" "
7/28/16	T7/5460	Lunham & Moore	N&W.	22344	318 Bxs. Smkless Pdr.	Thompson	Geo. Healing
			CRR.	35854	396 " " "	"	" "
			NYC.	252318	388 " " "	"	" "
			CRR.	36217	325 " " "	"	" "
			VRR.	7755	357 " " "	"	" "
			CCCSTL.	45016	357 " " "	"	" "
			B&O.	88386	357 " " "	"	" "
			B&O.	71377	357 " " "	"	" "
			L&N.	3147	357 " " "	"	" "
			B&O.	96066	356 " " "	"	" "
			NH.	87699	432 " " "	"	" "
			E.	103675	437 " " "	"	" "

Exhibit P. 15.

Date	Pro. No.	Consignee	Car Number			Contents	Barge	Signed by
			CCSTL.	5527	300	S-Powder	Paulina	Geo. Healing
			CMSTP.	92918	350	"	"	" "
			IC.	141121	350	"	"	" "
			NH.	89976	300	"	"	" "
			RI.	40602	350	"	"	" "
			GT.	23686	350	"	"	" "
			ATSF	35243	300	"	"	" "
7/28/16	T7/5460	Lunham & Moore	P&R.	13448	350	"	"	" "
			GNE.	106834	350	"	"	" "
			ATSF.	28208	350	"	"	" "
			CCSTL.	55180	300	"	"	" "
			CP.	202810	350	"	"	" "
			B&O.	94180	300	"	"	" "
			PRR.	92993	350	"	"	" "
			PRR.	10130	350	"	"	" "

10 20 30 40

Exhibit D. 1.

EXHIBIT D. 1.

(Cover)

Form T-686

Supersedes Form T-629 Effective March 31, 1912.

Lehigh Valley Railroad Company

REGULATIONS

For the

Transportation of Explosives and Other Dangerous Articles by Freight.

and

Specifications for Shipping Containers.

Prescribed Under the Act of March 4, 1909, and Section 15 of the Act to Regulate Commerce, as Amended June 18, 1910

Effective October 1, 1914, Except as Noted Herein

Paragraphs Are Numbered to Correspond to the Rules and Regulations of the American Railway Association

Exhibit D. 1.

NOTICE.

The regulations herein contained have been adopted by the LEHIGH VALLEY RAILROAD COMPANY, and must be complied with by all concerned, in order to make effective the regulations prescribed by the Interstate Commerce Commission. Every employe concerned must thoroughly familiarize himself with them and see that they are carried out.

The placards and labels provided for in these regulations are kept in stock by the General Storekeeper, and may be obtained by making requisition for them in the usual way. Shippers are required to furnish their own labels, but Agents must keep on hand an adequate supply as samples, and for emergency use to replace lost and detached labels.

C. W. KINNEY,
Supt. of Transportation.

Approved:

J. F. MAGUIRE,
General Manager.

Exhibit D. 1.

Form T-686

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Lehigh Valley Railroad Company

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Exhibit D. 1.

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American Railway Association Rules and Interstate Commerce Commission Regulations for the Transportation of Explosives and Dangerous Articles Other Than Explosives by Freight

NOTE.—Paragraphs 1401 to 1697 inclusive, refer to Interstate Commerce Commission Regulations for the Transportation of Explosives; Paragraphs 1701 to 1959, inclusive, refer to Interstate Commerce Commission Regulations for the Transportation of Dangerous Articles other than Explosives; Paragraphs 1301 to 1307 refer to the American Railway Association Rules.

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THE AMERICAN RAILWAY ASSOCIATION

RULES

FOR THE

Transportation of Explosives and Other Dangerous Articles by Freight.

GENERAL NOTICE.

The following rules are prescribed in order to make effective for interstate and instrastate shipments of articles subject thereto, the Interstate Commerce Commission Regulations for the Transportation of Explosives and other Dangerous Articles published July 2, 1914 to become effective October 1, 1914.

It is necessary for railway employes and shippers to become familiar with their specific duties. Railway employes are specially designated to perform certain duties under these regulations, and the paragraphs referred to in the following should be studied carefully.

RULES.

1301. Serious violations of the regulations and fires or accidents occurring in connection with the transportation or storage of dangerous articles on railway property, must be reported promptly to the proper official, who will forward reports to the Chief Inspector, Bureau of Explosives, 30 Vesey Street, New York City. Samples of blank forms for reporting such violations, accidents, fires or explosions, will be furnished by the Bureau on request.

1302. Dangerous articles for railway use (not explosives) may be shipped in emergency in baggage cars or caboose cars when properly packed and protected by the prescribed labels. Such packages should not be shipped in these cars unless a railway employe is riding therein.

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1303. Inspectors of the Bureau of Explosives are furnished with a red credential card bearing thereon their photographs and an impression of the Bureau seal, and in the following form:

Bureau for the Safe Transportation of Explosives and Other Dangerous Articles

The American Railway Association

PHOTO

This certifies that

Mr_____

Is an Inspector of this Bureau.

Dated at 30 Vesey Street,
New York, N. Y.

_____191 _____

Chief Inspector

Inspectors presenting this credential card properly signed, are authorized to inspect everything pertaining to the transportation, handling and storing of explosives or dangerous articles other than explosives, and should be given full opportunity to do so, and all necessary assistance in the performance of their duties.

1304. Should the services of an Inspector of the Bureau of Explosives be required, application should be made by the Agent to the Superintendent or other designated official.

1305. **Trainmasters, Yardmasters and Station Agents** should study carefully the regulations. They will be held responsible respectively, for the proper instruction of the employes under them and for their compliance with the regulations.

1306. The following mentioned paragraphs have specific reference to the duties devolving on the employes in the various classes named:

Employes Receiving Freight. Paragraphs 1404, 1422 to 1425, 1427, 1428, 1430, 1431, 1500, 1501, 1531, 1641, 1654, 1656, 1687,

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1702, 1704, 1711 to 1713, 1801, 1807, 1822, 1864 to 1867, 1871, 1877, 1895, 1902, 1904.

Employes Billing Freight. Paragraphs 1428, 1652, 1654, 1657, 1712, 1871, 1873, to 1876.

Employes Loading and Unloading Freight. Paragraphs 1422, 1433, 1434, 1531, 1642 to 1651, 1655 to 1657, 1661 to 1667, 1682, 1687, 1692, 1714, 1715, 1833 (*f*), 1871, 1890 to 1894, 1903, 1909, 1910, 1912, 1913, 1941, 1943.

Employes Delivering Freight. Paragraphs 1434, 1531, 1643, 1656, 1657, 1692, 1714, 1715, 1871 (*c*), 1890, 1903, 1909, 1910, 1912.

Yard and Train Employes. Paragraphs 1654, to 1657, 1661 to 1667, 1680 to 1692, 1697, 1715, 1874 to 1877, 1890 to 1895, 1902 to 1911, 1913, 1941, 1943, 1946, 1951 to 1959.

Employes Inspecting Cars. Paragraphs 1434, 1654, 1655, 1661 to 1667, 1680, 1681, 1691, 1822 (*d*), (*e*), (*f*), 1946, 1951 to 1959.

Wreck Crews. Paragraphs 1697, 1946, 1951 to 1959.

LOADING CHART.

1307. The following chart shows the explosives and other dangerous articles which must not be loaded or stored together, and this chart should be used by employes in charge of loading as a means of ready reference:

* * *

Exhibit D. 1.

REGULATIONS
for the
TRANSPORTATION OF EXPLOSIVES BY FREIGHT.

Prescribed under act of March 4, 1909. Originally formulated and published January 15, 1910, effective 90 days thereafter. Revision formulated and published July 2, 1914, effective October 1, 1914, and superseding the regulations published January 1, 1912.

GENERAL NOTICE.

1401. (*a*) As the use of explosives is essential to various business activities throughout the country, it is the duty of interstate railroad carriers to accept and transport such explosives under these regulations. When local conditions make the acceptance, transportation, or delivery unusually hazardous, local restrictions, as provided by paragraph 1429 herein, may be imposed.

(*b*) It is also the duty of carriers and shippers to make these regulations effective and to thoroughly instruct their employees in relation thereto.

1402. The Bureau for the Safe Transportation of Explosives and other Dangerous Articles, hereinafter called Bureau of Explosives, organized by the railways under the auspices of the American Railway Association, is an efficient bureau in charge of an expert chief inspector. This bureau will make inspections and conduct investigations, and will confer with manufacturers and shippers with a view to determining what specifications and regulations will within reasonable limits afford the highest degree of safety in packing and preparing these dangerous articles for shipment and in transporting the same. The Commission will seek to avail itself of the expert knowledge thus developed, and in formulating amendments to these regulations or specifications

supplemental thereto, while not bound thereby, will give due weight to such expert opinions.

1403. The Commission will make further provision as occasion may require for new explosives not included in or covered by the following regulations.

1404. These regulations apply to all shipments of explosives as defined herein, including carrier's material and supplies.

GENERAL RULES.

1421. Unless specifically authorized by these regulations, explosives must not be packed in the same outside packages with each other or with other articles.

1422. Explosives, when offered for shipment by rail, must be in proper condition for transportation and must be packed, marked, loaded, stayed, and handled while in transit in accordance with these regulations. All packages of less-than-carload shipments must also be plainly marked on the outer covering or boxing (outside package) with the name and address of the consignee.

1423. Except on through bills of lading to a foreign destination, shipments of dangerous explosives as named in paragraph 1661 must not be accepted when consigned "order notify."

1424. **Empty boxes or kegs** previously used for high explosives are dangerous and must not be again used for shipments of any character. Empty boxes which have been used for shipments of other explosives than high explosives must have the old marks thoroughly removed before being used for shipment of other articles. **Empty metal kegs** which have been used for the shipment of black powder which was not contained in an interior package must not be again used for shipment of any explosive, and if used for the shipment of other articles must have the old marks thoroughly removed or obliterated.

1425. (*a*) Explosives except such as are forbidden (see par. 1501) may be offered for transportation to railroads engaged in interstate commerce, provided the following regulations are com-

plied with, and provided their method of manufacture, packing, and storage, so far as it affects safe transportation, is open to inspection by a duly authorized representative of the initial carrier or of the Bureau of Explosives. Shipments of explosives that do not comply with these regulations must not be received.

(*b*) Shipments offered by the War and Navy Departments of the United States Government may be packed, including limitations of weight, as required by their regulations.

1426. When practicable at any point, **regular and separate days** should be assigned for receiving from shippers less-than-carload lots of dangerous explosives named in paragraph 1661.

1427. To enable the carrier to provide proper cars at stations where less-than-carload shipments of the dangerous explosives named in paragraph 1661 are accepted for loading by the carrier, the shipper must give to the carrier not less than **24 hours' notice** of his intention to offer such shipments, and state their destinations. When a regular day to receive all explosive shipments offered at such a station has been appointed, this notice may be waived by the carrier, but the explosive shipments must be delivered on such days in time to permit proper inspection, billing, and loading, on that day.

1428. Before any shipment of dangerous explosives as named in paragraph 1661 destined to a point beyond the lines of the initial carrier is accepted from a shipper, the initial carrier must ascertain that the shipment can go forward via the route designated.

1429. All carriers must report to the chief inspector of the Bureau of Explosives for compilation and publication, full information as to **restrictions** which may be imposed as provided in paragraph 1401 (a) against the acceptance, delivery, or transportation of explosives over any portion of their lines.

1430. (*a*) **Forbidden explosives**, as defined in paragraph 1501, and explosives condemned by the Bureau of Explosives (except properly repacked samples for laboratory examination), must not be offered for shipment.

Exhibit D. 1.

(*b*) Samples of any **explosive must be examined** and approved as safe for transportation by the Bureau of Explosives before shipments (except samples for this examination not exceeding 5 pounds net in weight) can be accepted. For this purpose a **new explosive** is defined to be the product of a new factory or an explosive of an essentially new composition made by any factory.

1431. **Leaking or damaged packages** of explosives must not be offered for shipment. Should any package of high explosives when offered for shipment show excessive dampness or be mouldy or show outward signs of any oily stain or other indication that absorption of the liquid part of the explosive is not perfect, or that the amount of the liquid part is greater than the absorbent can carry, it must be refused in every instance. The shipper must substantiate any claim that a stain is due to accidental contact with grease, oil, or similar substance. In case of doubt, the package must be rejected.

1432. **Condemned or leaking dynamite** must not be repacked and offered for shipment unless the repacking is done by a competent person in the presence of, or with the written consent of an inspector, or with the written authority of the chief inspector of the Bureau of Explosives.

1433. Carriers must forward shipments of explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carrier's property within 48 hours after notice of arrival at destination, Sundays and holidays not included.

1434. (*a*) Serious **violation** of these regulations (such as defective packing, improper staying, rough treatment of car, broken packages, etc.) and **accidents** or **explosions** occurring in connection with the transportation or storage on carrier's property of explosives must be reported by the carrier to the chief inspector, Bureau of Explosives, 30 Vesey Street, New York City.

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All violations must be corrected before forwarding the explosives.

(*b*) Consignees should report promptly to the chief inspector, Bureau of Explosives, all instances of improper staying and broken or defective packages of explosives in shipments received by them.

SECTION 1.

Information and Definitions.

Grouping.

1500. For transportation purposes, explosives are divided into the following groups:

1. **Forbidden explosives.**
2. **Acceptable explosives.**

Group 1.—Forbidden Explosives.

1501. The following are forbidden explosives:

(*a*) **Liquid nitroglycerin.**

(*b*) **Dynamite** containing over 60 per cent of nitroglycerin (except gelatin dynamite).

(*c*) **Dynamite** having an unsatisfactory absorbent, or one that permits leakage of nitroglycerin under any conditions liable to exist during transportation or storage.

(*d*) **Nitrocellulose** in a dry and uncompressed condition, in quantity greater than 10 pounds, net weight in one exterior package.

(*e*) **Fulminate of mercury in bulk** in a dry condition, and fulminates of all other metals in any condition except as a component of manufactured articles whose transportation is not forbidden herein.

(*f*) **Fireworks** that combine an explosive and a detonator or blasting cap.

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(*g*) **Explosive compositions** including **fireworks** that ignite spontaneously or undergo marked decomposition when subjected for 48 consecutive hours to a temperature of 75° C. (167° F.)

(*h*) **Firecrackers** whose dimensions exceed 5 inches in length or three-quarters of an inch in diameter or whose explosive charges exceed 45 grains each in weight.

(*i*) **Toy torpedoes** exceeding 1½ inches in diameter, or toy caps containing more than an average of thirty-five hundredths of a grain of explosive composition per cap.

(*j*) **Fireworks** that can be exploded en masse by a blasting cap placed in one of the units or by the impact of a rifle bullet or otherwise.

Such articles may be shipped when packed, marked, and certified in accordance with these regulations and offered for shipment as high explosives.

(*k*) **Fireworks** containing a match tip or head, or similar igniting point or surface, unless each individual tip, head, or similar igniting point or surface is entirely covered and securely protected from accidental contact or friction with any other surface.

(*l*) **Fireworks or explosives** containing an ammonium salt and a chlorate.

(*m*) **New explosives** (except samples for laboratory examinations) until approved for transportation by the Bureau of Explosives.

(*n*) **Explosives properly condemned** by the Bureau of Explosives (except properly repacked samples for laboratory examinations). Parties who are dissatisfied with the decision of the Bureau may appeal to the Commission and if it is a question of chemical composition the Commission will arrange to have a test made by a disinterested government laboratory.

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Group 2—Acceptable Explosives.

1502. **Low explosives and black powder** are general names that may be used to describe all explosives having a composition similar to that of ordinary black powder, such as carbonaceous material, sulphur, and a nitrate of sodium or potassium, and that cannot be detonated by a commercial blasting cap. Examples are, rifle, sporting, cannon, and blasting powders.

1503. **High explosives** are all explosives more powerful than ordinary black powder, except smokeless powders and fulminates. Their distinguishing characteristic is their susceptibility to detonation by a blasting cap. Examples of high explosives are the dynamites, picric acid,[1] picrates, chlorate powders, nitrate of ammonia powders, dry trinitrotoluol, dry nitrocellulose (gun cotton), and fireworks that can be exploded en masse.

1504. **Smokeless powders** are those explosives from which there is little or no smoke when fired. They include smokeless powder for cannon and smokeless powder for small arms. **Smokeless powder for cannon** used in the United States at the present time consists of a nitrocellulose colloid, and is comparatively safe to handle and transport. **Smokeless powder for small arms** may consist of nitrocellulose or nitrocellulose combined with nitroglycerin. Detonable picrate or chlorate mixtures are classed as high explosives.

1505. **Fulminates** are fulminates of mercury or of other metals in bulk form, that is, not made up into percussion caps, detonators, blasting caps, toy torpedoes, or exploders.

1506. **Small-arms ammunition** (such as is used in sporting or fowling pieces, or in rifle or pistol practice, etc.), consists usually of a paper or metallic shell, the primer, and the powder charge, with or without shot or bullet, the materials necessary for one firing being all in one piece.

1507. **Ammunition for cannon** embraces all fixed or separate-loading ammunition too heavy for use in small arms. When

[1] Picric acid for medicinal purposes, and not exceeding 4 ounces in one outside package, may be shipped without other restrictions when in securely closed glass bottles, properly cushioned to prevent breakage.

the component parts are packed in separate outside packages such packages may be shipped as smokeless powder for cannon, explosive projectiles, empty (including solid and sand loaded) projectiles, primers, or fuzes. Igniters composed of black powder may be attached to packages in shipments of smokeless powder for cannon.

1508. **Explosive projectiles** are loaded shells for use in cannon. They are not liable to be exploded except by fire of considerable intensity, and the flying fragments would then be very dangerous.

1509. **Blasting caps** contain from 5 to 50 grains of dry fulminate of mercury, or other substance similar to or in combination with fulminate of mercury, packed in a thin copper shell and fired by a slow-burning safety fuse. When a small "bridge" of fine wire is imbedded in a suitable priming material and arranged to fire the fulminate by heating the bridge by means of an electric current, the cap is called an "electric blasting cap." They cause explosions of a high order, or "detonations." This means the instantaneous conversion of the entire explosive into gas instead of the gradual conversion known as "combustion." Dynamite "detonates" and smokeless powder for cannon "burns."

1510. **Detonating fuses** are used in the military service to detonate the high explosive bursting charges of projectiles or torpedoes. In addition to a powerful detonator they may contain several ounces of a high explosive, such as picric acid or dry nitrocellulose, all assembled in a heavy steel envelope.

1511. **Primers, percussion and time fuses** are devices used to ignite the black powder bursting charges of projectiles, or the powder charges of ammunition. For small-arms ammunition the primers are usually called "small-arms primers" or "percussion caps." **Tracer fuzes** consist of a device which is attached to a projectile and contains a slow-burning composition to show the flight of projectiles at night.

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1512. **Safety fuse** consists ordinarily of a core of granular black powder, which is surrounded by yarn, tape, pitch, rubber, etc.

Cordeau detonant is a fuse containing trinitrotoluol, assembled in a drawn lead tube.

Safety squibs are small paper tubes containing a small quantity of black powder, one end of each tube being twisted and generally tipped with sulphur.

1513. **Fireworks** include everything that is designed and manufactured primarily for the purpose of producing a visible or an audible pyrotechnic effect by combustion or by explosion. They consist of common fireworks and special fireworks. (See par. 1501 (*j*).)

1514. **Cannon fireworks** include all that depend principally upon nitrates to support combustion and not upon chlorates; that contain no phosphorus and no high explosive sensitive to shock and friction; that produce their effect through color display rather than by loud noises. If noise is the principal object, the units must be small and of such nature and manufacture that they will explode separately and harmlessly, if at all, when one unit is ignited in a packing case. They must not be designed for ignition by shock or friction. Examples are Chinese firecrackers, Roman candles, pinwheels, colored fires, rockets, serpents, railway fusees, flash powders, etc.

1515. **Special fireworks** include all that contain any quantity of phosphorus, a fulminate, or other high explosive sensitive to shock or friction, or that contain units of such size that the explosion of one while being handled would produce a serious injury, or that require a special appliance or tool, mortar, holder, etc., for their safe use, or that are designed for ignition by shock or friction. Examples are giant firecrackers, bombs, and salutes (not high explosives), toy torpedoes and caps, ammunition pellets fired in a special holder, railway torpedoes, etc.

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SECTION 2.

Packing, Marking and Certifying Acceptable Explosives.

1531. (*a*) The construction of **shipping containers** purchased hereafter and used in shipping explosives must conform to specifications approved by the Interstate Commerce Commission that apply, and excepting shipments offered by the United States Government, each container must be stamped, labeled, or marked "Complies with I. C. C. Spec'n No.——" or equivalent marking, as stated in the specification.

(*b*) In addition to standing the tests prescribed, the design and construction of packages must be such as to prevent the occurrence in individual packages of defects that permit leakage of their contents under the ordinary conditions incident to transportation. The results of experience, gained by an examination of broken or leaking packages on arrival at destination, must be reported to and recorded by the Bureau of Explosives, to the end that further use of any particular kind of package shown by experience to be inefficient may be prohibited by the Commission.

(*c*) Pending approval and promulgation by the Commission of specifications for types of shipping containers other than those for which specifications are published herein, containers may be used which after investigation made by the Bureau of Explosives or by other competent testing laboratory in the presence of a representative of the Bureau of Explosives, are shown to possess the general efficiency and the protection against leakage of contents afforded by the standard types of corresponding capacity described in the specifications published herein, provided they are labeled or marked to show compliance with this requirement.

Samples of Explosives Together.

1532. **Samples of explosives** (except blasting caps) in separate interior containers may be packed in the same outside package of gross weight not exceeding 50 pounds, provided the

weight of any one sample does not exceed eight ounces, and provided the interior packages are so cushioned and protected as to insure their transportation without rupture or leakage of contents. The package must be marked and described with the name of the most dangerous explosive included among the samples, such as "HIGH EXPLOSIVE," "BLACK POWDER," etc.

Low Explosives and Black Powder.

1533. **Packing.**—Packages containing less than 12½ pounds of black powder or low explosives must be inclosed in a tight wooden box complying with specification No. 16. Each inside package containing less than 12½ pounds and more than 1½ pounds must be so placed in the outside box that the filling hole will be up. The boxes must be marked on top "THIS SIDE UP" and also as prescribed by paragraph 1536.

1534. Twelve and a half pounds or over of black powder or low explosives must be packed in packages that comply with specification No. 11 or 13. Kegs less than 8 inches long must be boxed as prescribed by paragraph 1533.

1535. **Weight.**—Packages must not weigh over 200 pounds gross.

1536. **Marking.**—Each outside package must be plainly marked, stamped, or stenciled "BLACK POWDER" or "LOW EXPLOSIVES," and may also show "BLASTING," "RIFLE," etc., as "BLACK BLASTING POWDER," "BLACK RIFLE POWDER," "LOW BLASTING EXPLOSIVE," etc. Additional marks, trade names, etc., may appear if desired by shipper, but such additional marking must not be more conspicuous nor must it obscure the marking prescribed herein.

High Explosives.

1551. **High explosives** consisting of a liquid mixed with an absorbent material must have the absorbent (wood pulp or similar material) in sufficient quantity and of satisfactory

quality, properly dried at the time of mixing; nitrate of soda must be dried at the time of mixing to less than 1 per cent of moisture; and the ingredients must be uniformly mixed so that the liquid will remain thoroughly absorbed under the most unfavorable conditions incident to transportation.

1552. Explosives containing nitroglycerin must have uniformly mixed with the absorbent material a satisfactory antacid which must be in quantity sufficient to have the acid neutralizing power of an amount of magnesium carbonate equal to 1 per cent of the nitroglycerin.

1553. (*a*) **Packing.**—High explosives containing more than 10 per cent of nitroglycerin must be made into cartridges not exceeding 4 inches in diameter or 8 inches in length, and must not be packed in bags or sacks. This does not apply to gelatin dynamite.

(*b*) High explosives containing not more than 10 per cent of nitroglycerin may be shipped in bags or sacks. Each bag or sack must not contain more than 12½ pounds of explosive, and must be placed in a box with filling end up. These bags or sacks and the coverings of all cartridges must be strong and so treated that they will not absorb the liquid constituent of the explosive.

1554. (*a*) All boxes in which high explosives in cartridges, bags, sacks, or in bulk are packed must be lined with strong paraffined paper or other suitable material. The lining must be without joints or other openings at the bottom or on the sides of the box, and must be impervious to water and to any liquid ingredients of the explosive.

(*b*) In packing cartridges of nitroglycerin explosives at least one-quarter of an inch thickness of dry, fine wood pulp or sawdust must be spread over the bottom of the lined box before inserting the cartridges, and all the vacant space in the top must be filled with this material.

(*c*) All cartridges exceeding 4 inches in length, except explosive gelatin or gelatin dynamite, must be placed horizontally in boxes.

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1555. Inside packages containing not more than 1 pound each of dry uncompressed nitrocellulose, wrapped in strong paraffined paper or other suitable spark-proof material, will be accepted for shipment if securely packed in an outside package that complies with Specification No. 14 and is marked as prescribed in paragraph 1559. Outside packages must not contain more than 10 pounds of dry nitrocellulose.

1556. (*a*) High explosives containing no explosive liquid ingredient and not having, with their normal percentage of moisture, a sensitiveness to percussion greater than measured by the blow delivered by an 8-pound weight dropping from a height of 7 inches on a compressed pellet of the explosive three-hundredths of an inch in thickness and two-tenths of an inch in diameter confined rigidly between hard steel surfaces, as in the standard impact-testing apparatus of the Bureau of Explosives, may be shipped in bulk when securely packed in authorized containers. These explosives may also be packed in cartridges, and must be so packed when their sensitiveness is greater than the above limit. Wooden boxes or wooden kegs provided with suitable linings to prevent leakage must be used for chlorate powders.

(*b*) When the addition of water to any such explosive will make it nonexplosive according to tests made by the Bureau of Explosives, the wet material may be shipped and handled in transit as prescribed by the Regulations for the Transportation of Dangerous Articles other than Explosives by Freight and by Express.

1557. **Containers** for high explosives must comply with Specifications Nos. 11, 14, 20, 21, and 22 as specified therein.

1558. (*a*) **Weights.**—Packages of high explosives containing an explosive liquid ingredient must not exceed 75 pounds gross weight.

(*b*) Packages of high explosives containing no liquid explosive ingredient whose shipment in bulk is authorized by paragraph 1556 must not exceed 125 pounds gross weight.

(*c*) The gross weight of an outside package containing not exceeding 10 pounds net of dry nitrocellulose, not compressed,

packed as prescribed in paragraph 1555, must not exceed 35 pounds. Compressed sticks or blocks of dry nitrocellulose (gun cotton) wrapped in strong paraffined paper may be shipped in outside package complying with Specification No. 14, with a gross weight not exceeding 75 pounds.

1559. **Marking.**—Boxes must be plainly marked on top and on one side or end and kegs must be marked on one end "HIGH EXPLOSIVE—DANGEROUS," in letters not less than $\frac{7}{16}$ inch in height. The tops of boxes must be marked "THIS SIDE UP."

Smokeless Powder for Cannon.

1571. **Packing.**—Smokeless powder for cannon must be packed in tight wooden boxes free from loose knots and cracks, or in wooden barrels that comply with Specification No. 11, or in metal barrels or kegs that comply with Specification No. 13. Smokeless powder for cannon may be packed in water in metal barrels or in strong wooden barrels of the type used for alcohol.

1572. **Weight.**—Packages must not weigh over 180 pounds gross unless the powder is packed in water.

1573. **Marking.**—Each package must be plainly marked "SMOKELESS POWDER FOR CANNON," or "SMOKELESS POWDER FOR CANNON IN WATER."

Smokeless Powder for Small Arms.

1575. **Packing.**—Packages containing less than 9 pounds of smokeless powder for small arms must be inclosed in a tight wooden box complying with Specification No. 16. Each inside package containing less than 9 pounds and more than 1½ pounds must be so placed in the outside box that the filling hole will be up. The box must be marked on top "THIS SIDE UP" and also as prescribed by paragraph 1578.

1576. Quantities of 9 pounds or over of smokeless powder for small arms must be packed in tight wooden boxes free from loose knots or cracks, or in wooden barrels that comply with

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Specification No. 11, or in metal barrels or kegs that comply with Specification No. 13. Kegs less than 8 inches long must be boxed as prescribed by paragraph 1575. Smokeless powder for small arms may be packed in water in metal barrels or in strong wooden barrels of the type used for alcohol.

1577. **Weight**—Packages must not weigh over 150 pounds gross.

1578. **Marking.**—Each outside package must be plainly marked "SMOKELESS POWDER FOR SMALL ARMS," or "SMOKELESS POWDER FOR SMALL ARMS, IN WATER."

Fulminates.

1591. **Packing.**—Fulminate of mercury in bulk must contain when packed not less than 25 per cent of water and must in this wet condition be placed in a bag made of heavy cotton cloth of close mesh, equal in quality and weight to the cotton twill used for pockets in high-grade clothing. There must be placed inside the bag and over the fulminate a cap of the same cloth and of the diameter of the bag, and the bag must be tied securely and placed in a strong grain bag, which must, in turn, be tied securely and packed in the center of a cask or barrel in good condition and of the kind used for shipment of alcohol. The grain bag must not contain more than 150 pounds dry weight of fulminate and it must be surrounded on all sides by tightly packed sawdust not less than 6 inches thick. The cask or barrel must be lined with a heavy, close-fitting jute bag, closed by secure sewing to prevent escape of sawdust. After the barrel is properly coopered it must be filled with water and the bung sealed. The barrel must be inspected carefully and all leaks stopped.

1592. **Marking.**—Each cask or barrel must be plainly marked "WET FULMINATE OF MERCURY—DANGEROUS."

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Small-Arms Ammunition.

1601. **Packing.**—Small-arms ammunition must be packed in pasteboard or other boxes, and these boxes must be packed in strong outside wooden or metal containers.

Small-arms ammunition in pasteboard or other boxes, and in quantity not exceeding a gross weight of 75 pounds, may be packed with nonexplosive and noninflammable articles and with small-arms primers or percussion caps (see par. 1619), provided the outside wooden or metal container is marked as prescribed in paragraph 1602.

1602. **Marking.**—Each outside package or case must be plainly marked "SMALL-ARMS AMMUNITION."

1603. No restrictions, other than proper packing and marking, are necessary for the shipment of small-arms ammunition.

Ammunition for Cannon.

1604. **Packing.**—Ammunition for cannon must be well packed and properly secured in strong wooden or metal containers.

1605. **Marking.**—Each outside package must be plainly marked "AMMUNITION FOR CANNON WITH EXPLOSIVE PROJECTILES," or "AMMUNITION FOR CANNON WITH EMPTY PROJECTILES," or "AMMUNITION FOR CANNON WITH SAND-LOADED PROJECTILES," or "AMMUNITION FOR CANNON WITH SOLID PROJECTILES," according as the projectiles do or do not contain a bursting charge, or "AMMUNITION FOR CANNON WITHOUT PROJECTILES."

Empty cartridge bags having attached black powder igniters must be marked "EMPTY CARTRIDGE BAGS—BLACK POWDER IGNITERS."

1606. No restrictions other than proper marking are prescribed for shipments of material relating to ammunition for cannon, but containing no explosive or other dangerous article, such as cartridge cases, "dummy" or "drill" cartridges, etc.

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Explosive Projectiles.

1607. **Packing.**—Explosive projectiles must be packed in strong wooden or metal boxes and each projectile must be properly secured. Projectiles exceeding 100 pounds in weight may be shipped without being boxed, if desired. When necessary, detonating fuzes of an approved type may be assembled in explosive projectiles.

1608. **Weight.**—The gross weight of a box containing more than one explosive projectile must not exceed 160 pounds.

1609. **Marking.**—Each exterior package or projectile must be plainly marked "EXPLOSIVE PROJECTILE," "SAND-LOADED PROJECTILE," "SOLID PROJECTILE," "EMPTY PROJECTILE," "EXPLOSIVE TORPEDO," or "EMPTY TORPEDO."

No restrictions, other than proper marking, are prescribed for the shipment of sand-loaded projectiles, empty projectiles, solid projectiles, or empty torpedoes, and tracer fuzes of an approved type may be assembled in projectiles.

Blasting Caps.

1611. **Packing.**—Blasting caps contain such a sensitive and dangerous explosive that very efficient packing is necessary, and the outside of all caps must be free from fulminate.

(*a*) Blasting caps must be packed in strong interior packages or container, in which they must fit snugly, and the caps must be closed securely by teats projecting from a plate of suitable elastic material placed over the caps. Not more than 100 blasting caps may be packed in a single inside container. All inside containers must then be packed snugly in cartons or wrappings made of paper or pasteboard.

(*b*) For not more than 5,000 caps the inside containers in cartons or wrappings must be packed in an outside box which must comply with Specification No. 15, and they must be separated from the outside box by at least 1 inch of tightly packed sawdust, excelsior, or equivalent cushioned material.

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(*c*) For more than 5,000 caps the inside containers, in cartons or wrappings must be packed in an inside box made of sound lumber or in a hermetically sealed metal box made of not less than 30 gauge United States standard, and this inside wooden or metal box must then be packed in an outside box made of sound lumber; both of these boxes must comply with Specification No. 15. Tightly packed sawdust, excelsior, or equivalent cushioned material at least 1 inch thick at all points must separate the inside box from the outside wooden box.

(*d*) More than 20,000 blasting caps must not be placed in one outside package.

(*e*) Not more than five tin boxes, containing not more than 100 blasting caps in each box, may be packed with safety fuse, each box to be placed in the center of a coil of fuse, and in this case the outside box must be made of sound lumber, complying with Specification No. 15.

(*f*) Electric blasting caps must be packed in pasteboard cartons containing not more than 50 caps each. These cartons must be packed in a wooden box, complying with Specification No. 15.

1612. **Weight.**—The gross weight of an outside package containing blasting caps or electric blasting caps must not exceed 150 pounds.

1613. **Marking.**—Each outside package must be plainly marked "(number) BLASTING CAPS—HANDLE CAREFULLY," or "(number) ELECTRIC BLASTING CAPS—HANDLE CAREFULLY." In addition, each box must bear the marking "DO NOT STORE OR LOAD WITH ANY HIGH EXPLOSIVE."

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Detonating Fuzes.

1615. **Packing.**—Detonating fuzes must be packed in strong tight wooden boxes, and each fuze must be well secured.

1616. **Weight.**—The gross weight of one outside package must not exceed 165 pounds.

1617. **Marking.**—Each outside package must be plainly marked "DETONATING FUZES—HANDLE CAREFULLY."

Primers, Percussion and Time Fuzes.

1619. (*a*) **Packing.**—Primers, percussion and time fuzes must be packed in strong, tight wooden boxes, with special provision for securing individual packages of primers and fuzes against movement in the box.

(*b*) Small-arms primers containing anvils must be packed in cellular inside packages, with partitions separating the layers and columns of primers, so that the explosion of a portion of the primers in the completed shipping package will not cause the explosion of all of the primers.

(*c*) Percussion caps may be packed in metal or other inside boxes containing not more than 500 caps, but the construction of the cap and the kind and quantity of explosives in each must be such that the explosion of a part of the caps in the completed shipping package will not cause the explosion of all of the caps.

(*d*) Small-arms primers and percussion caps may form a part of the gross weight of 75 pounds of small-arms ammunition that may be packed with other articles as authorized by paragraph 1601.

1620. **Weight.**—The gross weight of one outside package must not exceed 150 pounds.

1621. **Marking.**—Each outside box must be plainly marked "SMALL-ARMS PRIMERS—HANDLE CAREFULLY," or "PERCUSSION CAPS—HANDLE CAREFULLY," or "CANNON PRIMERS—HANDLE CAREFULLY," or "COMBINATION PRIMERS—HANDLE CAREFULLY," or "PERCUSSION FUZES—HANDLE CAREFULLY," or "COMBINA-

TION FUZES—HANDLE CAREFULLY," or "TRACER FUZES—HANDLE CAREFULLY," etc.

1622. No restrictions other than proper packing and marking are necessary for the shipment of primers, percussion and time fuzes. No restrictions other than proper marking are prescribed for the shipment of "Empty cartridge shells, primed."

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Common Fireworks.

1631. **Packing.**—Common fireworks must be in a finished state, exclusive of mere ornamentation, as supplied to the retail trade, and must be securely packed in strong, tight, spark-proof wooden barrels that comply with Specification No. 11, or in boxes complying with Specification No. 12A.

1632. **Weight.**—The gross weight of one outside package containing common fireworks must not exceed 325 pounds, except that exhibition set pieces when specially packed may have weight
20 not exceeding 400 pounds.

1633. **Marking.**—Each outside package must be plainly marked in letters not less than $\frac{7}{16}$ inch in height "COMMON FIREWORKS—KEEP FIRE AWAY."

Special Fireworks.

1634. **Packing.**—Special fireworks must be in a finished state, exclusive of mere ornamentation, as supplied to the retail trade, and must not contain forbidden fireworks. (See par. 1501 (*f*) to
30 (*l*), inclusive.)

Special fireworks must be securely packed in strong, spark-proof wooden barrels that comply with Specification No. 11, or in boxes complying with Specification No. 12.

1635. **Weight.**—The gross weight of one outside package containing special fireworks must not exceed 200 pounds, and the gross weight of a package containing toy torpedoes must not exceed 65 pounds.

1636. **Marking.**—Each outside package containing special fireworks or a mixture of common and special fireworks must be
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plainly marked in letters not less than $\frac{7}{16}$ inch in height "SPECIAL FIREWORKS—HANDLE CAREFULLY—KEEP FIRE AWAY."

Safety Fuse, Cordeau Detonant, and Safety Squibs.

1638. **Safety fuse, cordeau detonant, and safety squibs** must be packed in strong wooden boxes or barrels properly marked, and may be loaded in any car with any other kind of an explosive or inflammable substance or with other freight. Cordeau detonant must not be packed in the same package with blasting caps, or with any high explosive.

SHIPPING ORDER.

1641. (*a*) **Shipper's certificate.**—The shipping order for any package containing an explosive named below must show each article under its proper name as specified in this paragraph, and must show the following certificate in the lower left-hand corner, over the written or stamped facsimile signature of the shipper or of his duly authorized agent:

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission.

List of Shipping Names.

Low explosives.
Black powder.
High explosives.
Smokeless powder for cannon.
Smokeless powder for small arms.
Wet fulminate of mercury.
Ammunition for cannon with explosive projectiles.
Ammunition for cannon with empty projectiles.
Ammunition for cannon with sand-loaded projectiles.
Ammunition for cannon with solid projectiles.

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Ammunition for cannon without projectiles.
Explosive projectiles.
Explosive torpedoes.
Detonating fuzes.
(Number) blasting caps.
(Number) electric blasting caps.
Common fireworks.
Special fireworks.

(*b*) The following acceptable explosives must be described under their proper names as given below, but shipper's certificate is not required:

Small-arms ammunition.
Small-arms primers.
Cannon primers.
Empty cartridge shells, primed.
Empty cartridge bags—black powder igniters.
Combination primers.
Percussion caps.
Percussion fuzes.
Time fuzes.
Tracer fuzes.
Combination fuzes.
Safety fuse.
Cordeau detonant.
Safety squibs.
Empty projectiles.
Sand loaded projectiles.
Solid projectiles.
Empty torpedoes.

(*c*) Whenever orders are placed in foreign countries for the importation of explosives, to be forwarded from port of entry by carriers subject to these regulations, the importer must furnish with the order to the foreign shipper, and also to the forwarding agent at the port of entry, full and complete information as to the necessary packing and marking required by these

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regulations. The forwarding agent must file with the originating carrier a properly prepared and certified shipping order as prescribed herein.

SECTION 3.

Rules for Handling.

1642. In handling packages of explosives at stations and in transferring them to and from cars the greatest care must be taken, and shocks or falls liable to injure the containing package must be avoided. Where an inclined chute is employed such chute shall be constructed of 1-inch planed boards, with side guards 4 inches high extending 3 inches above top face of bottom of chute and throughout its length, fastened with brass screws. D-shaped strips or runners, not more than 6 inches apart and running lengthwise of chute, must be fastened to the upper surface of the bottom board by means of glue and wooden pegs extending through the bottom board and runners. Chutes must be occasionally wiped down with waste moistened with machine oil when dynamite packages are being handled.

A stuffed mattress, 4 feet wide by 6 feet long and not less than than 4 inches thick, or a heavy jute or hemp mat of like dimensions, must be placed under the discharging end of the chute.

1643. (*a*) Careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire. Suitable provision must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within 48 hours after notice of arrival at destination, it must be disposed of by return to the shipper, or by storage at the expense of the owner, or by sale, or when necessary to safety by destruction under supervision of a competent person.

(*b*) Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier.

Loading in Cars.

1644. (*a*) Packages receive their greatest stresses in a direction parallel to the length of the car and must be loaded so as to offer their greatest resistance in this direction. Boxes of dangerous explosives named in paragraph 1661 when loaded in the car must rest on their bottoms and with their long dimension parallel to the length of the car.

(*b*) A car must not contain more than 70,000 pounds gross weight of explosives. This limit does not apply to shipments of small-arms ammunition or ammunition for cannon.

(*c*) When the lading of a car includes explosives and exceeds 5,000 pounds the weight of the lading must be distributed in approximately equal parts in both ends of the car.

1645. Explosives packed in kegs, except when boxed, must be loaded on their sides with ends toward ends of the car; and packages of explosives must not be placed in the space opposite the doors unless the doorways are boarded on the inside as high as the lading.

Large casks, barrels, or drums may be loaded on their sides or ends as will best suit the conditions.

1646. (*a*) Packages containing any of the explosives for the transportation of which a certified and placarded car is prescribed (see par. 1661), must be stayed (blocked and braced) by the one who loads the car, by methods not less efficient than those described in Bureau of Explosives Pamphlet No. 6, to prevent change of position by the ordinary shocks incident to transportation. Special care must be used to prevent them from falling to the floor or from having anything fall on them or slide against them during transit.

(*b*) To prevent delays to local freight trains, when there are shipments of explosives for different destinations loaded in a

"peddle car" or "way car," the shipments for each destination must be stayed separately.

(*c*) Forwarding and transfer stations for explosives must be provided with the necessary materials for staying.

(*d*) Shippers must furnish the material for staying packages loaded by them.

1647. Detonating fuzes or blasting caps, or electric blasting caps, must not be loaded in a car or stored with high explosives of any kind, including explosive projectiles, nor with wet nitrocellulose.

1648. Wet fulminate of mercury must not be loaded with any explosive or inflammable article.

1649. Fireworks must not be loaded in the same car nor stored on carriers' property with any explosive named in paragraph 1661.

1650. Explosives named in paragraph 1661 that require a certified car, placarded "EXPLOSIVE," must not be transported in the same car with nor stored on railway property near any of the dangerous articles for which labels are prescribed by the Regulations for the Transportation of Dangerous Articles other than Explosives by Freight.

1651. In a car containing explosives all packages of other freight must be loaded, and when necessary must be stayed to prevent injury to packages of explosives during transit. When practicable explosives should be loaded so as to avoid transfer at stations.[1]

Waybilling.

1652. (*a*) The carrier must see that each shipment of explosives is properly described on the shipping order and on the revenue waybill under one of the names in the "List of shipping names," paragraph 1641, and that the correct gross weight is given.

[1] At stations where it is necessary to handle explosives at night it is recommended that incandescent electric lights be provided.

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(*b*) The revenue waybill or astray waybill for a shipment, and the card waybill and envelope containing revenue waybill when used as a card waybill for a car containing any of the following explosives:

Low explosives,
Black powder,
High explosives,
Wet fulminate of mercury,
Ammunition for cannon with explosive projectiles,
Explosive projectiles,
Explosive torpedoes,
Detonating fuzes,
Blasting caps,
Electric blasting caps,
} In quantity exceeding 1,000 blasting caps or 1,000 electric blasting caps,

must have plainly stamped or plainly written across the top, in letters not less than ⅜ of an inch high, the word "EXPLOSIVES."

(*c*) The revenue waybill and astray waybill for a shipment, and the card waybill and envelope containing revenue waybill when used as a card waybill for a car containing:

Ammunition for cannon with empty projectiles,
Ammunition for cannon with sand-loaded projectiles,
Ammunition for cannon without projectiles,
Ammunition for cannon with solid projectiles,
Smokeless powder for small arms,
Smokeless powder for cannon,
Common fireworks, or
Special fireworks,

must have plainly stamped or plainly written across the top, in letters not less than ⅜ of an inch high, the word "INFLAMMABLE."

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(*d*) No indorsements are required on revenue waybills, card waybills, or other billing for shipments or for cars of the following explosives:

Small-arms ammunition.
Small-arms primers.
Cannon primers.
Empty cartridge shells, primed.
Empty cartridge bags—black powder igniters.
Combination primers.
Percussion caps.
Percussion fuzes.
Time fuzes.
Tracer fuzes.
Combination fuzes.
Safety fuses.
Cordeau detonant.
Safety squibs.
Empty projectiles.
Sand-loaded projectiles.
Solid projectiles.
Empty torpedoes.
Blasting caps. } In quantity not exceeding
Electric blasting caps, } 1,000 caps.

Shipments From Connecting Lines.

1654. (*a*) Cars containing explosives named in paragraph 1661 which are offered by connecting lines must be carefully inspected by the receiving line on the outside, including the roof, and if practicable the lading must also be inspected. These cars must not be forwarded until all discovered violations have been corrected.

(*b*) If the car shows evidence of, or if there is any reason to suspect that it has received rough treatment, the lading must be inspected and placed in proper condition before the car is permitted to proceed. When interchange occurs and inspection is necessary after daylight hours, electric flash lights or other

suitable covered light should be provided. Naked lights must not be used.

(*c*) Shipments of explosives offered by connecting lines must comply with these regulations, and the revenue waybill, freight bill, manifest of lading, card waybill, switching order, or other billing must bear the indorsement "EXPLOSIVE" or "INFLAMMABLE" prescribed by paragraph 1652 (*b*) and (*c*).

Disposition of Injured, Condemned, and Astray Packages.

1655. **Packages found injured or broken in transit** may be recoopered when this is evidently practicable and not dangerous. A broken box of high explosives that can not be recoopered should be reinforced by stout wrapping paper and twine, placed in another strong box, and surrounded by dry, fine sawdust, or dry and clean cotton waste, or elastic wads made from dry newspaper. A ruptured can or keg should be inclosed in a grain bag of good quality and boxed or crated. Injured packages thus protected and properly marked may be forwarded.

1656. **Condemned packages** of leaking explosives should (1) be returned immediately to shipper if at point of shipment; or (2) disposed of to a person who is competent and willing to remove them from railway property, if leakage is discovered while in transit; or (3) removed immediately by consignee if shipment is at destination.

When disposition cannot be made as above, the leaking boxes must be packed in other boxes large enough to permit, and the leaking box must be surrounded by at least 2 inches of dry, fine sawdust, or dry and clean waste, and be stored in station magazine or other safe place until arrival of an inspector of the Bureau of Explosives or other authorized person to superintend the destruction or disposition of the condemned material.

1657. When name and address of consignee or shipper are known, an **astray shipment** must be forwarded to its destination or returned to the shipper by the most practicable route, provided a careful inspection shows the packages to be in proper condition for safe transportation.

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When a package in an astray shipment is not in proper condition for safe transportation (see par. 1655), or when name and address of consignee and shipper are unknown, disposition will be made as prescribed by paragraph 1656.

Selection and Preparation of Cars.

Dangerous Explosives.

1661. For the transportation of carloads or less-than-carload lots of—

Low explosives,
Black powder,
High explosives,
Wet fulminate of mercury,
Blasting caps, Electric blasting caps, (In quantity exceeding 1,000 blasting caps or 1,000 electric blasting caps.)
Ammunition for cannon with explosive projectiles,
Explosive projectiles,
Explosive torpedoes, or
Detonating fuzes,

only certified and placarded box cars may be used.

Certified Car Placarded "Explosives."

1662. Certified cars must be inspected inside and outside and must conform to the following specifications:

(*a*) Box car not less than 60,000 pounds capacity with friction draft gear. Steel underframe cars should be used when available. On narrow-guage and other railroads, all of whose freight cars are of less than 60,000 pounds capacity, explosives may be transported in car of less than that capacity, provided the available cars of greatest capacity and strength are used for this purpose.

(*b*) Must be equipped with air brakes and hand brakes in condition for service.

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(*c*) Must have no loose boards or cracks in the roof, sides, or ends, through which sparks may enter.

(*d*) The doors must shut so closely that no sparks can get in at the joints, and, when necessary, they must be stripped. The stripping for doors should be on the inside and be fastened to the door frame where it will form a shoulder against which the closed door is pressed by means of wedges or cleats in door shoes or keepers. The openings under the doors should be similarly closed. The hasp fastenings must be examined with doors closed and fastened and must be cleated when necessary to prevent door shifting.

(*e*) The journal boxes and trucks must be carefully examined and put in such condition as to reduce to a minimum the danger of hot boxes or other failure necessitating the setting out of the car before reaching destination. The lids or covers of journal boxes must be in place.

(*f*) The car must be carefully swept out before it is loaded. For less-than-carload shipments the space in which the packages are to be loaded must be carefully swept.

Holes in the floor or lining must be repaired and special care taken to have no projecting nails or bolts or exposed pieces of metal which may work loose or produce holes in packages of explosives during transit.

(*g*) When packages of explosives are to be loaded over exposed draft bolts or kingbolts, these bolts must have short pieces of solid, sound wood with beveled ends (2-inch plank) spiked to the floor over them (or empty packages of the same character may be used for this purpose) to prevent possibility of their wearing into the packages of explosives.

(*h*) The roof of the car must be carefully inspected from the outside for decayed spots or broken boards, especially under or near the running board, and such spots must be covered or repaired to prevent their holding fire from sparks. A car with a roof generally decayed, even if tight, must not be used.

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(*i*) The carrier must have the car examined by a competent employee to see that it is properly prepared, and must have a "Car certificate" signed in triplicate upon the prescribed form (see par. 1665) before permitting the car to be loaded.

(*j*) Cars not in proper condition, as above specified, must not be furnished to the shipper or used for the transportation of explosives.

Less Dangerous Explosives in Car Placarded "Inflammable."

1663. (*a*) Carloads or less-than-carload lots of—
Ammunition for cannon with empty projectiles,
Ammunition for cannon with sand-loaded projectiles,
Ammunition for cannon with solid projectiles,
Ammunition for cannon without projectiles,
Smokeless powder for small arms,
Smokeless powder for cannon, or
Fireworks,
may be loaded in any box car which is in good condition into which sparks can not enter and whose roof is not in danger of taking fire through unprotected decayed wood. These cars do not require the car certificate but must have attached to both side doors and both ends the "INFLAMMABLE" placard prescribed by paragraph 1667, and the doors if not tight must be stripped to prevent the entrance of sparks.

Relatively Safe Explosives in Car Without Placards.

(*b*) Carloads or less-than-carload lots of—
Small-arms ammunition,
Small-arms primers,
Cannon primers,
Empty cartridge shells, primed,
Empty cartridge bags—black powder igniters,
Combination primers,
Percussion caps,
Percussion fuzes,
Time fuzes,

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Tracer fuzes,
Combination fuzes,
Safety fuse,
Cordeau detonant,
Safety squibs,
Empty projectiles,
Sand-loaded projectiles,
Solid projectiles,
Empty torpedoes, and not exceeding 1,000 blasting caps, or 1,000 electric blasting caps,

may be loaded in any box car which is in good condition, without car certificate or placards.

(*c*) When specially authorized by the carrier, explosives in quantity not exceeding 150 pounds may be carried in construction or repair cars when the packages of explosives are placed in a "magazine" box made of sound lumber not less than 1 inch thick, covered on the exterior with metal, and provided with strong handles. This box must be plainly stenciled on the top, sides, and ends, in letters not less than 2 inches high "EXPLOSIVES—DANGEROUS—HANDLE CAREFULLY." The box must be provided with strong hinges and with a lock for keeping it securely closed. Vacant space in the box must be filled with a cushioning material such as sawdust or excelsior, and the box must be properly stayed in the car to prevent movement. The car, when not occupied by a responsible employee, must be placarded "EXPLOSIVES."

Placarding of Cars and Certification of Contents.

1664. Uniform practice is important and the prescribed forms of car certificates and placards must be used.

1665. (*a*) **Car certificate.**—The following certificate (prescribed by par. 1662 (*i*)), printed on strong tagboard measuring 7 by 7 inches, must be duly executed in triplicate by the carrier, and by the shipper if he loads the shipment. The original must be filed by the carrier at the forwarding station on a separate

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file, and the other two must be attached to the outside of the car doors, one on each side, the lower edge of the certificate not less than 4½ feet above the floor level.

(*b*) At stations where explosives are loaded into a properly certified and placarded car received with other shipments of explosives, or carload shipments are reconsigned, a record must be kept of the car, originating point, carrier's name and date of car certificate.

Car Certificate.

No. 1. ———Station,———, 19——.

I hereby certify that I have this day personally examined —— car No. ——, and that the roof and sides have no loose boards, holes, or cracks, or unprotected decayed spots liable to hold sparks and start a fire; that the kingbolts or draft bolts are properly protected and that there are no uncovered irons or nails projecting from the floor or sides of the car which might injure packages of explosives; also that the floor is in good condition and has this day been cleanly swept before the car was loaded; that I have examined all the axle boxes and that they are properly covered, packed, and oiled, and that the air brakes and hand brakes are in condition for service.

———————————

Railway employee inspecting car.

———

No. 2. ———Station,———, 19——.

I hereby certify that I have this day personally examined the above car; that the floor is in good condition and has been cleanly swept and that the roof and sides have no loose boards, holes, cracks, or unprotected decayed spots liable to hold sparks and start a fire; that the kingbolts and draft bolts are protected, and that there are no uncovered irons or nails projecting from the floor or sides of the car which might injure packages of

Exhibit D. 1.

explosives; that the explosives in this car have been loaded and stayed and that the car has been placarded according to paragraphs 1644 to 1651, inclusive, 1661, and 1666, of the Regulations for the Transportation of Explosives prescribed by the Interstate Commerce Commission; that the doors fit or have been stripped so that sparks can not get in at the joints or bottom.

_____,

Shipper.

_____,

Railway employee inspecting loading and staying.

NOTE. Both certificates must be signed. Certificate No. 1 by the representative of the carrier. For all shipments loaded by the shipper he or his authorized agent must sign certificate No. 2, and the representative of the carrier must certify as to loading and staying and general condition. When the car is not loaded by shipper, certificate No. 2 must be signed only by the representative of the carrier. A shipper should decline to use a car not in proper condition.

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"Explosive" Placard.

1666. **Placard.**—A certified car for the dangerous explosives specified in paragraph 1661, must be protected by attaching to each outside end, and side door, the lower edge not less than 4½ feet above the car floor, a standard placard 12 by 14 inches, on which appears in conspicuous red and black printing on strong tag board the following notice:

14 inches

.....R.....Company

EXPLOSIVES

(To Be Printed in Red)

HANDLE CAREFULLY

KEEP FIRE AWAY

(To Be Printed in Red)

.....STATION .....19....

12 inches

CONDENSED RULES FOR HANDLING THIS CAR

1. This car must not be placed in a passenger train, nor in a mixed train if avoidable.

2. Cars containing explosives must be near center of train and may be together if desired; must be at least 15 cars from engine and 10 cars from caboose when length of train will permit.

3. This car must not be placed next to cars bearing the inflammable or the acid placard or cars containing lighted heaters. Whenever it is possible to avoid so doing it must not be placed next to tank cars or flat cars or next to carloads of lumber, poles, iron, pipe, or other articles liable to break through end of car from rough handling.

4. The air and hand brakes on this car must be in service.

5. In shifting have a car between this car and engine whenever possible, and do not cut this car off while in motion.

6. Avoid all shocks to this car and couple carefully.

7. Avoid placing it near a possible source of fire.

8. Engines on parallel track must not be allowed to stand opposite or near this car when it can be avoided.

9. This placard must be removed from car when the explosives are unloaded.

NOTE. Carriers will be permitted to use their present supply of placards, but all new supplies must conform to the amended form.

Exhibit D. 1.

"Inflammable" Placard.

1667. A placard of diamond shape printed on strong tag board measuring 10¾ inches on each side and bearing in red and black letters the inscription prescribed by paragraph 1913 must be placed on each outside end and side door of a car containing any quantity of smokeless powder for cannon, or smokeless powder for small arms, or ammunition for cannon with empty projectiles, or ammunition for cannon with sand-loaded projectiles, or ammunition for cannon with solid projectiles, or ammunition for cannon without projectiles, or fireworks.

Handling Cars Containing Explosives.

1680. The phrase "cars containing explosives" as used in this and subsequent paragraphs, excepting paragraph 1697, refers to the dangerous explosives specified in paragraph 1661, which require a certified car placarded "EXPLOSIVES."

1681. Under no circumstances must a car known to require the "EXPLOSIVE" placard be taken from a station, including transfer stations or interchange points, a siding, or yard, unless it is properly placarded as per paragraphs 1665 and 1666, nor unless the car is in proper condition. The carrier must see that its representative in charge of a freight train makes a thorough check of the cars bearing "INFLAMMABLE," "ACID," and "EXPLOSIVE" placards with the billing to see that all placards required are attached and that those not required are removed.

1682. Every possible effort must be made to expedite the movement of cars containing explosives, and no unnecessary delay must occur at initial, interchange, or transfer stations.

1683. When a car containing explosives is in a train, the carrier must make proper provision for notifying its train and engine employees of the presence and location of such car in the train before leaving the initial station.

1684. Such cars must be frequently inspected to see that the placards and car certificates are intact. Whenever any of these

Exhibit D. 1.

become detached or lost in transit, they must be replaced on arrival at the next division terminal yard, if in through freight train, or at first station stop if in local freight train.

1685. On lines where regular trains are operated for freight service only, cars containing explosives must not be hauled in a train that carries passengers. Where only a mixed train service is operated or where passengers are carried in the caboose car of a freight train, a car containing a freight shipment of explosives may be hauled, but it must not be placed next to a car carrying passengers, and whenever it is practicable to do so, such a car or cars must be placed between freight cars not bearing "ACID" or "INFLAMMABLE" placards. Cars containing explosives must have air and hand brakes in service.

1686. (*a*) In through freight trains they must be placed near the middle of the train, and two or more such cars may be placed together if desired. They must be at least 15 cars from the engine and 10 cars from the caboose when length of the train will permit. They must not be placed next to cars bearing the "INFLAMMABLE" or the "ACID" placard, or cars containing lighted heaters. Whenever it is possible to avoid so doing they must not be placed next to tank cars or wooden-frame flat cars or next to carloads of lumber, poles, iron, pipe, or other articles liable to break through end of car from rough handling.

(*b*) These requirements apply also to local freight trains except that to avoid the danger of otherwise unnecessary switching at way stations, cars containing explosives may be placed not closer than the second car from caboose or the second car from engine. They must be placed between cars that do not bear the "INFLAMMABLE" or "ACID" placards, if such cars are in the train.

1687. (*a*) If shipments of explosives are accepted at non-agency stations, provision must be made for the proper certification and placarding of cars, examination of shipments, and loading and staying of packages in cars.

Exhibit D. 1.

(*b*) Shipments of explosives must not be unloaded at non-agency stations unless the consignee is there to receive them, or unless proper storage facilities are provided at that point for their protection.

1688. When handling cars containing explosives in yards or on sidings, they must, if it is practically possible, be coupled to the engine protected by a car between, and they must never be cut off while in motion.

Cars containing explosives must not be handled in switching or in trains, with doors open.

1689. They must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. They must not be placed on tracks under bridges, and, when avoidable, engines on parallel tracks must not be allowed to stand opposite or near them.

1690. At points where trains stop and time permits, cars containing explosives and adjacent cars must be examined to see that they are in good condition and free from hot boxes or other defects liable to cause damage. If cars containing explosives are set out short of destination for any cause the carrier must arrange that proper notice be given to prevent accident.

1691. Whenever a car containing explosives is opened for any purpose and in every instance after such a car has received rough treatment, inspection must be made of the packages of explosives as soon as practicable without unnecessary disturbance of lading to see that they are properly loaded and stayed and in good condition. Upon the discovery of leaking or broken packages, they must be carefully removed to a safe place. Loose powder or other explosives must be swept up and carefully removed. If the floor is wet with nitroglycerin, the car is unsafe to use and a representative of the Bureau of Explosives should be immediately called to superintend the thorough mopping

and washing of the floor with a warm, saturated solution of concentrated lye or sodium carbonate. If necessary, the car must be placed on an isolated siding and proper notice given.

1692. **Removal of placards.**—The certificates and placards prescribed in paragraphs 1665, 1666 and 1667 must be removed from the car as soon as the explosives are unloaded.

In Case of a Wreck.

1697. In case of a wreck involving a car containing explosives, the first and most important precaution is to prevent fire. Before beginning to clear a wreck in which a car containing explosives is involved all unbroken packages should be removed to a place of safety and as much of the broken packages as possible gathered up and likewise removed, and the rest saturated with water. Many explosives are readily fired by a blow or by the spark produced when two pieces of metal or a piece of metal and a stone come violently together. In clearing a wreck, therefore, care must be taken not to strike fire with tools, and in using the crane or locomotive to tear the wreckage in pieces the possibility of producing sparks must be considered. With most explosives thorough wetting with water practically removes all danger of explosion by spark or blow; but with the dynamites wetting does not make them safe from blows. With all explosives mixing with wet earth renders them safer from either fire, spark, or blow. In case fulminate has been scattered by a wreck, after the wreck has been cleared the wet surface of the ground should be removed, and, after saturating the area with oil, be replaced by fresh earth. If this is not done, when the ground and fulminate become dry small explosions may occur when the mixed material is trodden on or struck.

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REGULATIONS

for the

Transportation of Dangerous Articles Other Than Explosives by Freight.

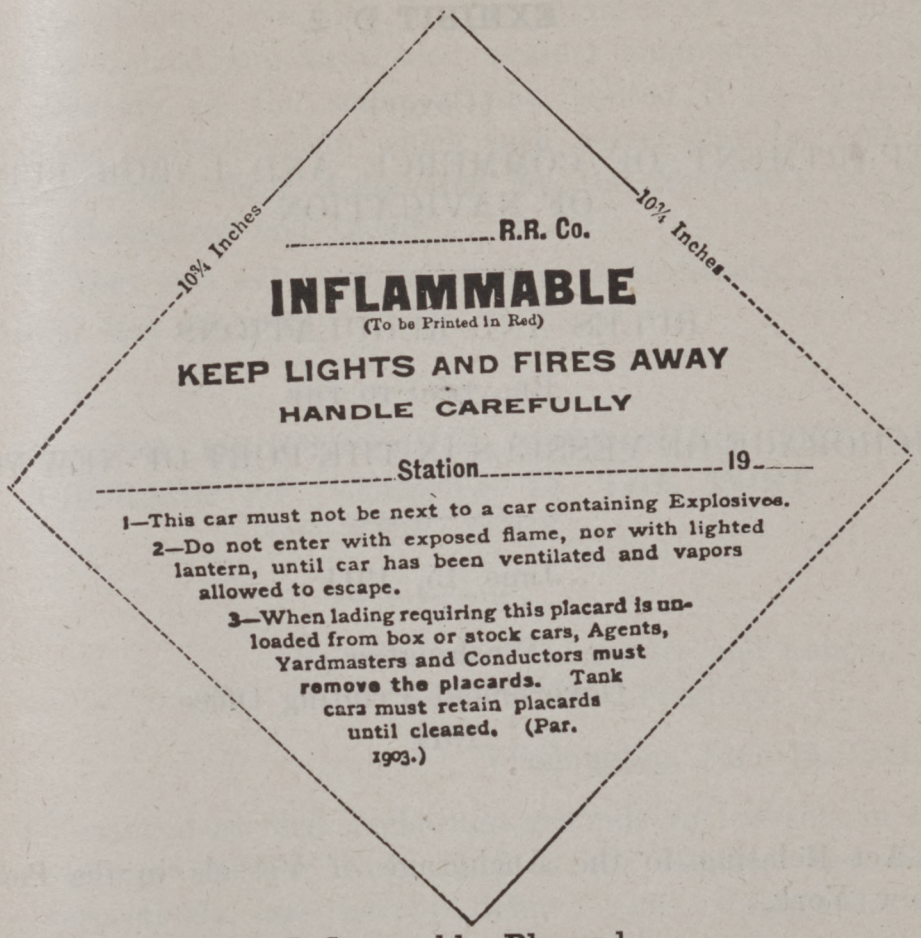
Prescribed under act of March 4, 1909, and section 15 of the act to regulate commerce, as amended June 18, 1910. Revision formulated and published July 2, 1914, effective October 1, 1914, and superseding regulations published January 1, 1912.

* * * * * * *

Inflammable Placard.

1913. A placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars, containing an inflammable liquid and on strong tag board for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars, or tank cars, measuring 10¾ inches on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end and to each side door of a car containing one or more packages protected by the *red* or the *yellow* diamond label:

Exhibit D. 1.



Inflammable Placard.
(Reduced Size)

Exhibit D. 2.

EXHIBIT D. 2.

(Cover)

DEPARTMENT OF COMMERCE AND LABOR BUREAU OF NAVIGATION

RULES AND REGULATIONS

RELATING TO THE

ANCHORAGE OF VESSELS IN THE PORT OF NEW YORK

June 15, 1911

Washington
Government Printing Office
1911

An Act Relating to the Anchorage of Vessels in the Port of New York.

Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the Secretary of the Treasury (Commerce and Labor) is authorized, empowered, and directed to define and establish an anchorage ground for vessels in the bay and harbor of New York and in the Hudson and East Rivers, to adopt suitable rules and regulations in relation thereto, and to take all necessary measures for the proper enforcement of such rules and regulations.

Sec. 2. That in the event of the violation of any such rules and regulations by the owner, master or person in charge of any vessel, such owner, master or person in charge of such vessel shall be liable to a penalty of one hundred dollars; and

Exhibit D. 2.

the said vessel may be holden for the payment of such penalty and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be, and in the name of the officer designated by the Secretary of the Treasury (Commerce and Labor).

Sec. 3. That this act shall take effect immediately.

Approved May 16, 1888.

RULES AND REGULATIONS GOVERNING THE ANCHORAGE OF VESSELS IN THE PORT OF NEW YORK.

Department of Commerce and Labor,
Office of the Secretary,

Washington, June 15, 1911.

The following described anchorage grounds for vessels in the bay and harbor of New York, and in the Hudson and East Rivers, respectively, are hereby defined and established, and the following revised rules and regulations governing the same are published for the government of the owner, master, pilot, or other persons having charge of a steam vessel towing or otherwise conducting a vessel to an anchorage in the port of New York, pursuant to the act of Congress approved May 16, 1888:

(a) Vessels shall anchor only within the following specified limits, and a vessel anchoring within any of the below described boundaries must anchor entirely within said boundaries, so that no portion of the hull shall extend beyond said boundary after veering chain or when riding to a tideway.

(b) No vessel shall anchor in any of the channels except in cases of great emergency, and then as near the edge of the channel as possible, so as not to impede or interfere with the

Exhibit D. 2.

free navigation of the same, and only until such time as they can procure assistance; and no vessel shall anchor so as to obstruct the approach to any pier or impede the movement of any ferryboat.

(c) All stake boats used for assembling barges, canal boats, and other vessels preparatory to being made up in tows, and vessels used for storing explosives and moored only in the anchorage for explosives, as described in paragraph 2, No. 27, page 7, may be moored under permits granted by the supervisor of anchorages and moored only in such places as he may designate.

(d) A vessel upon being notified to move into the anchorage limits must at once get under way or make a signal for a tug.

(e) Permits may be granted by the supervisor of anchorages to wrecking plants to anchor in the channel for the purpose of recovering sunken property, subject to his supervision. Such wrecking plants must comply with all the navigation laws in regard to lights fog signals, etc., and in granting such permit the Government assumes no responsibility.

(f) Points where cables and pipes cross the anchorage grounds are marked in red on the accompanying maps, and all vessels are cautioned not to anchor so as to interfere with them.

(g) All ash scows the property of the municipalities bordering on the waters of the port may be anchored in such places as the supervisor of anchorages may designate.

(h) The creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters in respect of which the United States has jurisdiction is hereby prohibited.

(i) No vessel shall occupy permanent berths in the anchorages except as provided for in these anchorage rules and regulations.

(j) The supervisor of anchorages shall assign berths in the respective anchorages to all vessels applying for them.

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(k) All officers of revenue vessels at the port of New York are charged with the enforcement of these rules and regulations, and are empowered to remove from her anchorage any vessel not anchoring within the prescribed limits.

EAST RIVER ANCHORAGES.

(See Plate No. 1)

1. To the northward of a line from the south point of Hart Island to Wrights Point.
2. To the westward of a line from Wrights Point to Throgs Neck.
3. To the southward of a line from buoy off Sands Point to buoy off Gangway Rock.
4. To the southward of a line from buoy off Gangway Rock to the center of Stepping Stones Lighthouse.
5. To the eastward of a line from the center of Stepping Stones Lighthouse to Willets Point.
6. On Hammond Flats to the northward of a line from Old Ferry Point to the head of Engineers Wharf., Throgs Neck, the said line running about magnetic east and west between said points.
7. To the southward of a line from Willets Point to Whitestones Point.
8. On the north side of the channel, north of a line between Old Ferry Point and Hunts Point.
9. On the north side of the channel, south of a line between Whitestone Point and buoy (No. 1) off College Point, and to the eastward of a line running from said buoy to College Point.
10. In Flushing Bay, to the southward of a line from College Point to the north end of Rikers Island.
11. To the southward of a line from the north end of Rikers Island to the north end of South Brother Island, thence to Lawrences Point.

Exhibit D. 2:

12. To the westward of a line from Stony Point to northeast end of Wards Island; and between Wards Island and Randalls Island, and between Randalls Island and Port Morris.

13. To the westward of a line from the foot of One hundred and sixteenth Street, New York, to the north end of Avenue B, New York, but no vessels shall anchor on this anchorage within 150 feet of any wharf or pier, or so as to impede the movements of a ferry, or so as to prevent ready access to or from the piers.

14. To the eastward of a line from Hatters Dock to Gibbs Point (Hallets Cove, Astoria).

(See Plate No. 2.)

15. To the southward of Thirty-second Street Pier and the northward of Twenty-fourth Street Pier, and to the westward of a line passing through the horizontal-striped buoy off Nineteenth Street, running thence N. by E. 1/8 E. (cor. mag.). Vessels may anchor anywhere within these limits, provided they do not obstruct the approach to any pier or impede the movements of any ferryboat; and the officer in charge of anchorage grounds may, whenever he deems it advisable, move or cause to move any vessel not, in his opinion, complying with this proviso.

Range for outer boundary of this anchorage: When steering on this range (N. by E. 1/8 E., cor. mag.) you should look squarely into the new Forty-second Street Ferry Slip, on the center of the axis of which is a prominent dark chimney.

SOUTH ANCHORAGE, HUDSON RIVER

(See Plate No. 3.)

16. Vessels may anchor in the Hudson River to the westward of a line 100 yards west of the center line of said river; that the northeast boundary of this anchorage shall be

Exhibit D. 2.

a line drawn from the southeast corner of Gokey's dry docks just below the Weehawken terminal of the West Shore ferries to the end of the Thirty-fourth Street Pier, New York; that the southern limit of this anchorage be a line from the end of the Erie Railroad Co.'s Pier, Hoboken, to the end of the Twenty-fifth Street Pier, New York, about SE. 3/8 E.

MIDDLE ANCHORAGE, HUDSON RIVER.
(See Plate No. 4.)

17. Vessels may anchor in the Hudson River within the limits of the port of New York to the westward of the center line of said river running about NE. ½ N. (cor. mag.) from Castle Point, Hoboken, through the white anchorage buoy off Sixtieth Street to the northward of a line running from the southeast corner of West Shore Pier No. 3, Weehawken, to the center of the Fifty-fourth Street Pier, New York, about SE. ½ E. (cor. mag.) and to the southward of a line running from the outer end of the Guttenberg Pier to the outer end of the West Seventieth Street Pier, New York.

In no case shall a vessel anchor within 200 yards of the shore in either of these Hudson River anchorages.

UPPER ANCHORAGE, HUDSON RIVER.
(See Plate No. 4.)

18. To the northward of a line drawn from the pier on the Guttenberg side directly across the river to Eightieth Street, New York (cor. mag.), to the westward of a line parallel to and 125 yards to the westward of the center line of the river.

Note.—Small vessels may anchor inside the pierhead lines as established by the Board of Engineers, United States Army, along the east bank of the Hudson River between Eighty-first Street and One hundred and twenty-first Street, and between One hundred and thirty-

Exhibit D. 2.

second Street and One hundred and fifty-eighth Street, in the discretion of the supervisor of anchorages, but the officer in charge of anchorage grounds may, whenever he deems it advisable, move or cause to move any vessel not, in his opinion, complying with this proviso.

NAVAL ANCHORAGE, HUDSON RIVER.
(See Plate No. 4.)

19. An anchorage is set aside for naval vessels to moor in a single line on the east side of Hudson River north of Seventy-ninth Street, and thence to Fort Washington Point, and above that point if necessary. Its southernmost limit shall be north of the ——— northernmost cable crossing the river at Seventy-ninth Street, and extending northeastwardly on the east side of the river. Anchors shall be let go to the eastward of a line drawn 250 yards from the end of the pier at Seventy-ninth Street to 250 yards from the end of the pier at the foot of One hundred and twenty-ninth street, thence to a point 330 yards from the pier at the foot of One hundred and fifty-eighth Street; and thence northeasterly, following the general line of the 24-foot curve on the east side of the river and 250 yards distant from the salient point of this curve. No ships shall anchor within a limit of 300 yards of the prolongation of One hundred and thirtieth Street, in order to give free passage for the Fort Lee ferryboats. The destroyers and other light-draft naval vessels may anchor on the west side of the river west of the 18-foot curve as shown on Coast Survey chart No. 369.

WESTERN ANCHORAGE, UPPER BAY.
(See Plate No. 5.)

20. To the southward of a range passing through Wall Street ferry, Brooklyn, and the white buoy to the north and

Exhibit D. 2.

east of Ellis Island; to the westward of a line running SW. by S. (nearly) from the said white buoy to a point one-third of a mile ESE. 7/8 E. from the red bell buoy at the entrance of Greenville Channel. In order to prevent vessels fouling the Ellis Island cable, the buoy marking the northern limit of the channel to Ellis Island and the buoy marking the southern entrance to said channel have been moved so as to leave a space of 800 yards clear water between the anchorage grounds north of the Ellis Island Channel and the anchorage grounds south of said channel, but the ranges otherwise retain their same magnetic bearings.

No vessels shall anchor in the Black Tom or Greenville dredge channels nor near the entrances to said channels so as to obstruct the approaches or interfere in any way with the free navigation of the same.

Note.—Vessels are especially cautioned not to anchor in Ellis Island Channel, thereby endangering the cable in said channel. In addition to the penalty for illegal anchorage, the owners of vessels which foul the above-mentioned cable will be liable for the damages resulting therefrom, including the cost of clearing, which should be done, in order to reduce the injury to a minimum, by signaling for the Western Union Co.'s tug.

½. To the northward of a line from Constables Point to Robbins Reef bell buoy; to the westward of a line from Robbins Reef bell buoy to the bell buoy at entrance to Greenville Channel, and south of said channel.

EASTERN ANCHORAGE, UPPER BAY.

(See Plate No. 6.)

21. To the southward of a line passing through the Statue of Liberty on Bedloes Island, the two white buoys marking the northerly limit of anchorage ground and the southern point of the north entrance to the Erie Basin; to the eastward of a range passing through Produce Exchange

Exhibit D. 2.

tower and buoy No. 14 and the bell buoy off Owls Head, and thence marked on the eastern and southeastern limits by four white anchorage buoys along the western edge of the widened Bay Ridge and Red Hook Channels. These buoys will eventually be replaced by proper channel buoys marking the edge of the dredged channel. On and after July 1, 1901, vessels will not be allowed to anchor to the eastward and southward of said line of buoys. Small vessels may, in the discretion of the supervisor of anchorages, anchor to the southward and eastward of the Bay Ridge Channel, provided they are inside of the pierhead lines as established by the Board of Engineers, United States Army. Small vessels may, in the discretion of the supervisor of anchorages, anchor at the mouth of Gowanus Bay, to the eastward of a line tangent to the southwestern edge of Erie Basin Bulkhead, and running thence S. by E. (cor. mag.), but so as to leave a clear channel of 150 yards along the northern shore. The supervisor of anchorages may, in his discretion, remove any vessel not complying with the provisions hereof.

EASTERN ANCHORAGE, LOWER BAY.
(See Plate No. 7.)

22. To the eastward of a line drawn through Fort Lafayette in a S. by E. (mag.) direction, and to the northward of a line drawn from Coney Island Lighthouse, on Norton Point, to Hoffman Island, approximately WNW. ¾ W. (mag.).

STATEN ISLAND ANCHORAGE.
(See Plates Nos. 7 and 8.)

23. To the southward of a line from St. George Ferry Flagstaff to the white buoy off St. George Landing, and to the westward of a line running S. ⅝ W. (nearly) from the

Exhibit D. 2.

white buoy off St. George Landing, through the white buoy off Tompkinsville, and as far south as a point off Clifton, Staten Island. (See plate No. 8) To the westward of a line running SSE. ¼ E. (nearly) from Fort Tompkins to the buoy on Craven Shoal; thence to buoys Nos. 11, 9 and 7; thence to Conovers Beacon.

The part of anchorage 23 lying between the northerly boundary and the white buoy 800 yards south of the said boundary is reserved for ships of war of all nations and vessels of the United States Government.

QUARANTINE ANCHORAGE.
(See Plate No. 8.)

24. To the southward of a line passing through Clifton, Staten Island, and a point off same, and to the westward of a line from the point off Clifton, Staten Island, to the bell at Fort Wadsworth.

Vessels arriving at quarantine and awaiting inspection may anchor temporarily to the westward of a range passing through Craven Shoal Buoy and Robbins Reef Lighthouse, but as soon as cleared by the quarantine officer must vacate this temporary anchorage, and if detained in quarantine, must at once move into the quarantine anchorage.

SANDY HOOK ANCHORAGE.
(See Plate No. 7.)

25. To the southward of a line extending from North Hook Beacon Lighthouse to Point Comfort Beacon Lighthouse.

(See Plate No. 7.)

26. Vessels may anchor on Dry Romer Shoal and Flynns Knoll. Care must be observed not to foul the United States Signal Corps cable (shown in red on the chart), which crosses Flynns Knoll.

Exhibit D. 2.

ANCHORAGE FOR EXPLOSIVES.
(See Plates Nos. 1 and 5.)

27. Vessels carrying gunpowder or other explosives may anchor only as follows:

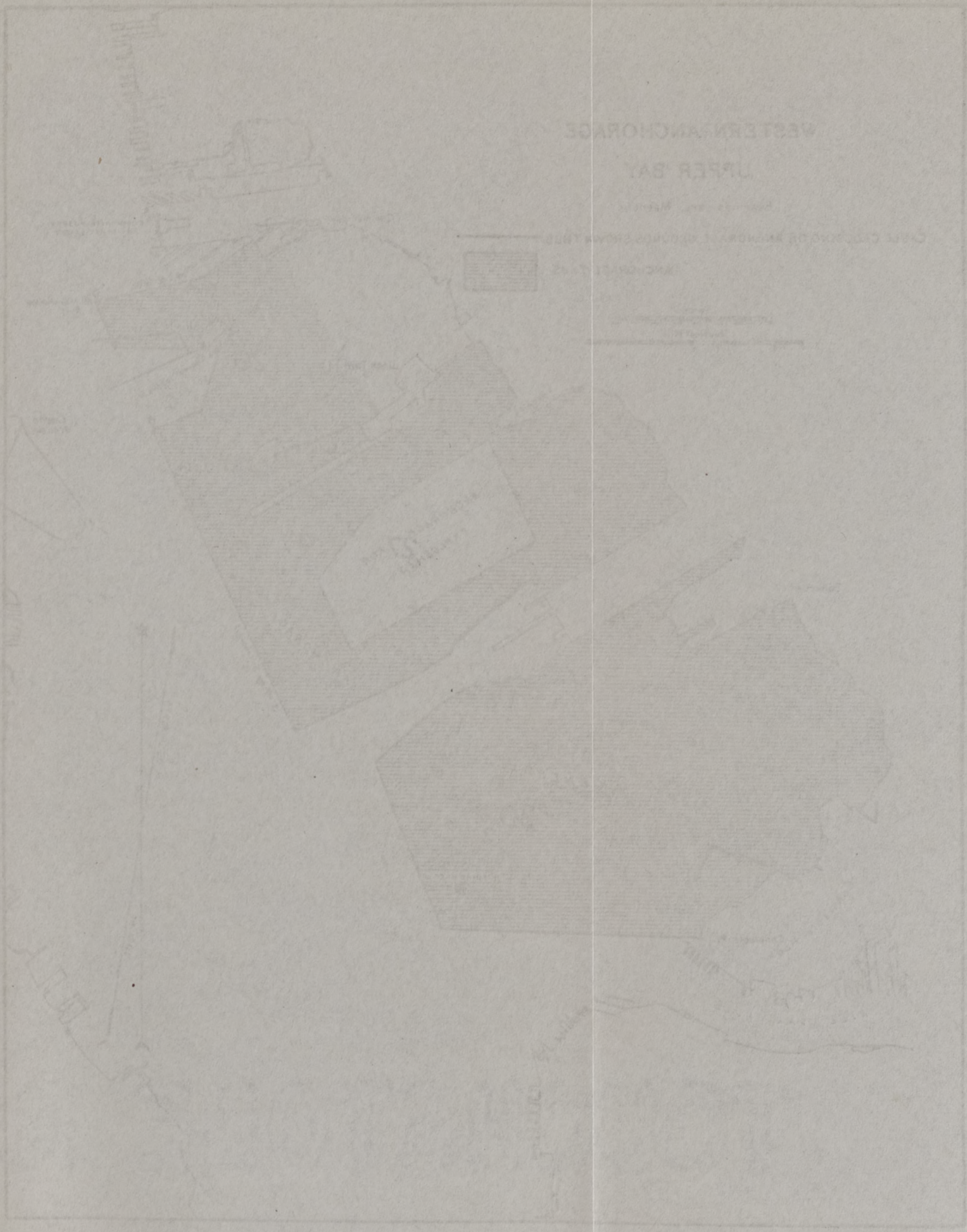
First. On the shoal ground to the eastward of Rikers Island, East River, from one-fourth to five-eighths of a mile from this island.

Second. On the New Jersey Flats between a line drawn parallel to and 1,500 feet to the south of the Black Tom dredged channel and a line drawn parallel to and 1,500 feet north of the Greenville dredged channel, and to the westward of a line from Bedloes Island to Robbins Reef, provided that they do not anchor within 1,000 yards of Bedloes Island, or within 500 yards of any pier.

Third. Vessels (carrying explosives) of too great draft to use the above anchorages may anchor only in Gravesend Bay, on a line drawn from Fort Hamilton to the western tip of Nortons Point, Coney Island, but not within 1,000 yards of the shore. All vessels laden with explosives while within the port will display at all times a red flag of at least 16 square feet surface at the masthead. Vessels so laden and without masts will display the flag at least 10 feet above the uppermost deck. All such vessels must be at all times in charge of competent persons and must comply with the navigation laws in regard to lights and fog signals.

SHEEPSHEAD BAY.

28. No vessel shall anchor or moor so that under any conditions of wind and tide it will be within 100 feet of the wharves or floats along the north shore of Sheepshead Bay, or within 100 feet of the bulkhead or beach at low tide along the south shore of the bay, or within 200 feet east of the footbridge crossing the bay from the foot of Ocean Avenue to the Manhattan Beach property. This



PART OF EXHIBIT D. 2.

PLATE V

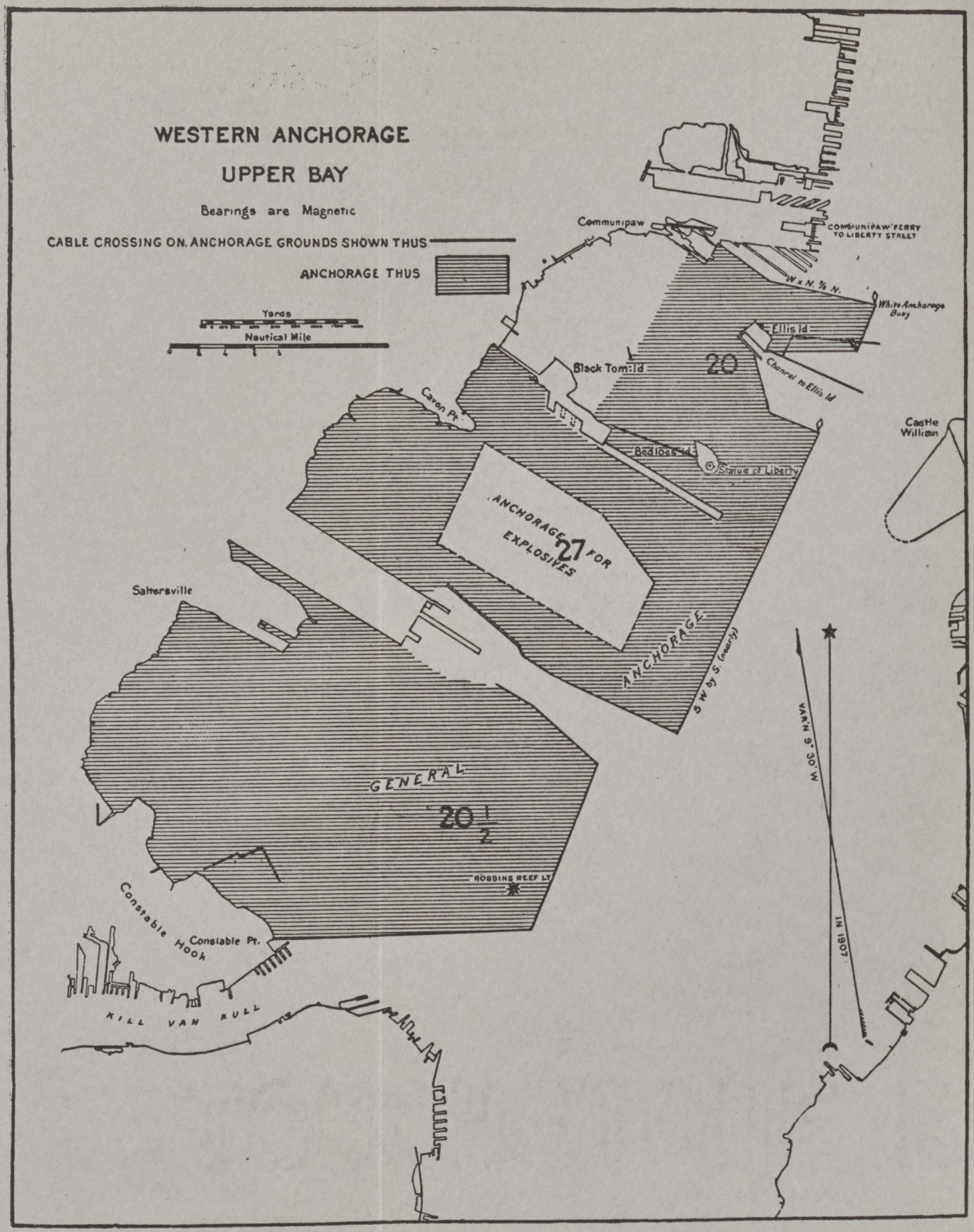


Exhibit D. 2A.

shall not prevent small vessels from mooring, not more than two abreast, to the outside of floats and wharves along the north shore, or the mooring of such vessels, as may have the consent of the property owners, to the bulkhead on the south side of the bay, but in no case shall vessels so moored extend more than 30 feet from said bulkhead, if moored thereto, or from the beach line at low tide if not moored to bulkhead.

Benj. S. Cable, Acting Secretary.

EXHIBIT D. 2A.

NEW YORK ANCHORAGE REGULATIONS

DEPARTMENT OF COMMERCE
OFFICE OF THE SECRETARY
WASHINGTON

Department Circular No. 254

Bureau of Navigation.

May 18, 1914.

To Whom It May Concern:

The Rules and Regulations Governing the Anchorage of Vessels in the Bay and Harbor of New York, issued June 15, 1911, pursuant to the act approved May 16, 1888, as amended by the act approved February 14, 1903, and the act approved March 4, 1913, are hereby amended as follows:

WESTERN ANCHORAGE, UPPER BAY.
(See Plate V.)

20. At the end of the first paragraph insert:

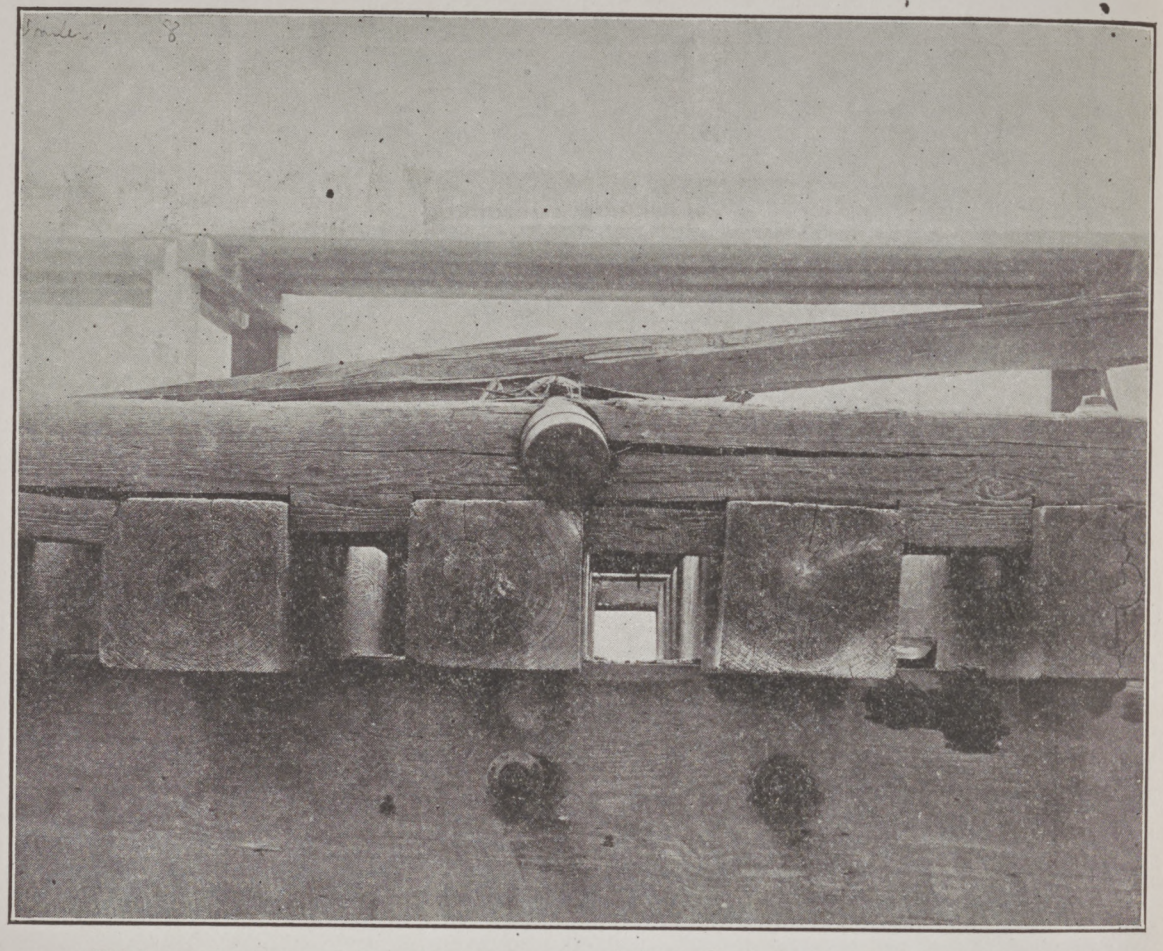
"No vessel shall anchor between Ellis Island and the piers of the Central Railroad of New Jersey, or in the dredged channel approaches to this space."

E. F. SWEET,
Assistant Secretary.

Exhibit D. 3.

EXHIBIT D. 3.

8. Underwood.

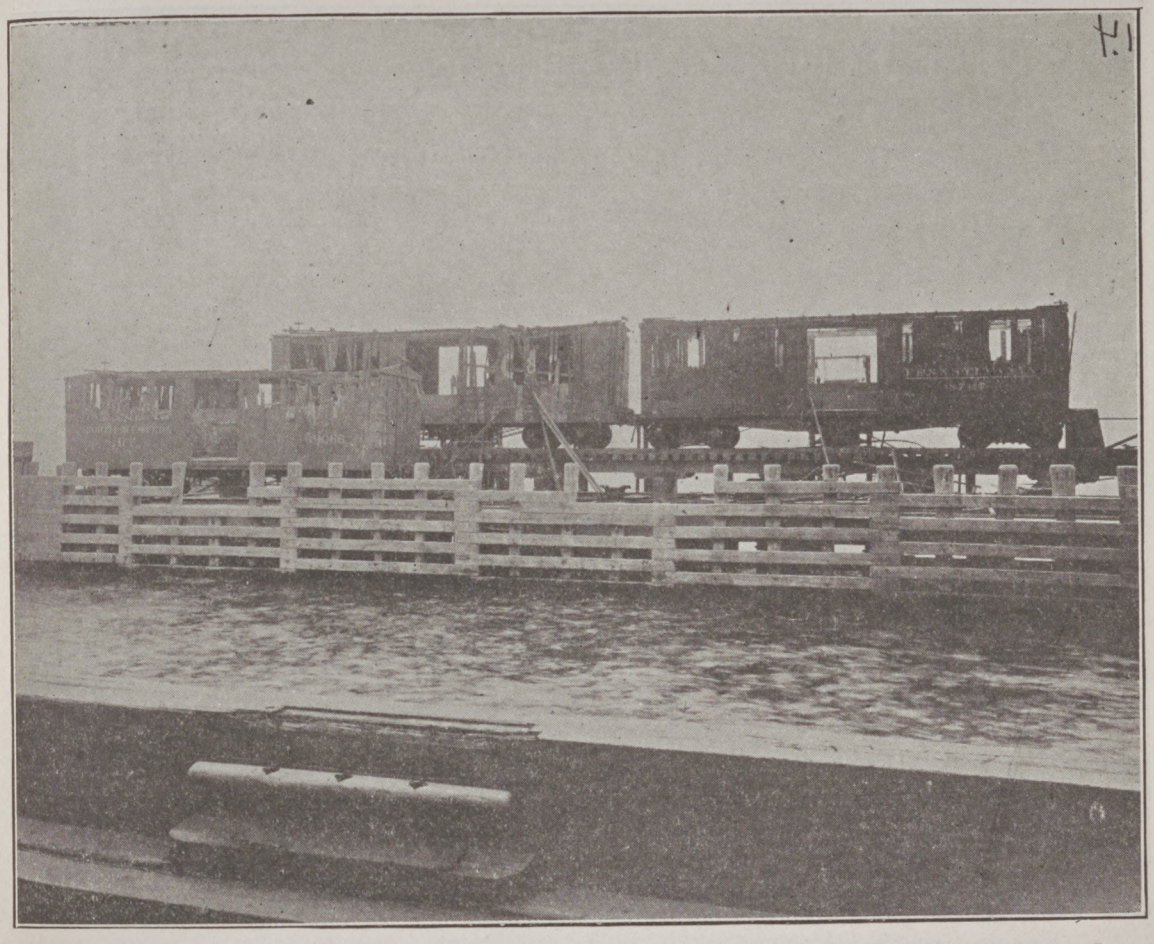


This photograph shows a 5.11-inch shell imbedded in the superstructure on the north side of the South Pier. The photograph is taken almost directly north and in an almost straight line from North Pier toward the South Pier.

Exhibit D. 4.

EXHIBIT D. 4.

14. Harrison.



Taken August 4, 1916, from the float bridges looking toward the south. It shows the north side of the South Pier and the car standing thereon.

EXHIBIT D. 5.

1. Underwood.



North Pier looking from east toward west showing trucks and under-frames of cars, which had been burned. Cars on South Pier can be seen in the distance.

Exhibit D. 6.

EXHIBIT D. 6.

2. Underwood.



Extreme end of North Pier where man is standing, showing effect of explosion upon box car standing on the track on the end of the pier. Picture taken from the north looking south, showing car thrown southward by explosion. This was car P. & R. 12275.

Exhibit D. 7.

EXHIBIT D. 7.

Abstract of Lease from National Storage Company to Lehigh Valley Railroad Company of New Jersey.

National Storage Company, to Lehigh Valley Railroad Company of New Jersey.	Lease. Dated, June 24, 1913.

Leases ALL the lands belonging to the National Storage Company, situate at the National Docks, Jersey City, Hudson County, New Jersey, being a tract of land containing about one hundred and eleven acres, more or less, together with all the tracks, wharves, piers, docks, bulkheads, stores, warehouses, elevators and power houses, and all other buildings and structures of every kind whatsoever erected thereon; excepting and reserving therefrom about one hundred and forty-nine thousand and five hundred (149.500) square feet, together with the following structures erected thereon: Stores "A", "E", "F", "G", "H", "I", "K", "L", "M', "N', "O", "P", "Q" and "R" and Pier 6 and Shed No. 2 on Pier 7 and the office building (40'x25), located between stores "F" and "G", together with the right of access thereto and wharfage rights in connection therewith, for ten years from July 1, 1913 at certain rental.

Various covenants as to taxes, repairs improvements, etc.

THIRD. The Storage Company hereby grants to the Railroad Company the right to use the property herein demised for all purposes incident to its transportation business; to operate an elevator or elevators and make any other use of the lands, buildings, railroad tracks, and other property herein leased not inconsistent with such use as the Railroad Company could make of the said property if owned by it in fee. The Storage Company further grants to the Railroad Company the right

Exhibit D. 11.

to sublet any portion or portions of the lands, buildings and other property herein leased to it without further permission from the Storage Company than that herein contained, provided, however, that if the Storage Company at any time shall be temporarily in need of additional storage space or aditional pier facilities it reserves the right to call upon the Railroad Company therefor when such space or pier facility is not in use by the Railroad Company and the Storage Company agrees to pay and the Railroad Company agrees to charge for such temporary accomodations a reasonable monthly rental therefor, the same to be determined by agreement between the parties hereto or by arbitration in the manner hereinafter provided.

EXHIBIT D. 11.

Deed, dated September 1, 1877, from American Dock and Improvement Company to National Storage Company.

This Indenture, made this First day of September in the year of our Lord one thousand eight hundred and seventy seven.

Between The American Dock and Improvement Company, a corporation created under and by virtue of the laws of the State of New Jersey, of the first part: And The National Storage Company, a corporation also created under and by virtue of the laws of the State of New Jersey, of the second part, Witnesseth, That the said parties of the first part, for and in consideration of the sum of Four Hundred and sixty four thousand Dollars lawful money of the United States, to the said parties of the first part well and truly paid by the said parties of the second part, at or immediately before the ensealing and delivery of these presents, the receipt whereof is is hereby acknowledged, and the said parties of the second part therefrom discharged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do

Exhibit D. 11.

grant, bargain, sell, alien, release, convey and confirm unto the said parties of the second part, and to their successors and assigns, ALL THAT CERTAIN tract, piece or parcel of land, situate lying and being in the City of Jersey City in the County of Hudson, in the said State of New Jersey: BEGINNING at a point in the middle of a proposed Street called Bay Avenue, and in the middle of another Street called Third Street, intersecting said Bay Avenue at right angles, said point being eight hundred and fifty feet measured Southwesterly along the middle of said Bay Avenue at right angles from the Southwesterly boundary line formerly of the New Jersey Stock Yard & Market Company; thence along the middle of said Bay Avenue and line now or formerly of Joseph D. Potts magnetically South forty three degrees fifty four minutes West, seven hundred and eighty (780) feet to its intersection with another proposed Street called Sixth Street, also at right angles therewith; thence along the middle of said Sixth Street and another line of said Potts, magnetically South forty six degrees six minutes East, five hundred and forty seven (547) feet to a point in a Bulkhead and in range with the Southeasterly boundary line of said Stock Yard and Market Company extended Southwesterly; thence Northeasterly along said extension of said Stock Yard and Market Company's line and along another line of said Potts and parallel with said Bay Avenue, seven hundred and eighty (780) feet to the middle of said Third Street above mentioned; thence along the middle of said Third Street extended and in continuation of said Potts northeasterly line, magnetically South forty six degrees and six minutes East four hundred (400) feet; thence Southwesterly parallel with said Bay Avenue one thousand and forty (1040) feet; thence Southeasterly parallel with said Third Street, thirty three hundred and ninety five (3.395) feet more or less, crossing the exterior line for solid filling, to the exterior line for piers as established by the Riparian Commissioners of the State of New Jersey; thence Southwesterly along said exterior line for piers five hundred and seventy five (575) feet; thence

Exhibit D. 11.

Northwesterly crossing said exterior line for solid filling, through the centre of the proposed canal, and parallel with said Third Street, thirty nine hundred and thirty five (3935) feet more or less to a point five feet westerly from ordinary highwater mark of New York Bay; thence Northerly parallel with said ordinary high water mark its several courses and distances and along the division line of said parties of the first part and now or formerly N. S. Vreeland, two hundred and eighty five (285) feet more or less to the Southwesterly line of lands formerly of John S. Gilbert; thence North forty one degrees West along division line formerly of John S. Gilbert and N. S. Vreeland seven hundred and eighty two (782) feet more or less to a corner; thence North forty six degrees forty minutes East along the Northwesterly boundary line formerly of said Gilbert seven hundred and fourteen and ninety eight hundredths (714.98) feet; thence North forty five and three quarters degrees East and still along said boundary line three hundred and ninety two and seven tenths (392.7) feet; thence North forty four and a half degrees East, and still along said boundary line, one hundred and twenty and twelve hundredths (120.12) feet thence North forty one degrees and five minutes East and still along said boundary line, twenty five (25) feet more or less to a point in the middle of Third Street above mentioned; thence Southeasterly along said middle line of Third Street and in direct range with the Northeasterly boundary line formerly of Joseph D. Potts, three hundred and seventy (370) feet more or less to the place of beginning; being the same premises shown on the annexed map entitled "Map of Property in Jersey City conveyed by the American Dock and Improvement Company to the National Storage Company, September 1st 1877".

TOGETHER with all things thereto belonging or appertaining, as part or parcel of the same, and the reversion and reversions remainder and remainders, rents, issues, profits, ways, easements, advantages and emoluments, with the appurtenances: and also, all the estate, right, title, interest, claim, demand and possession of the said parties of the first part either in law or

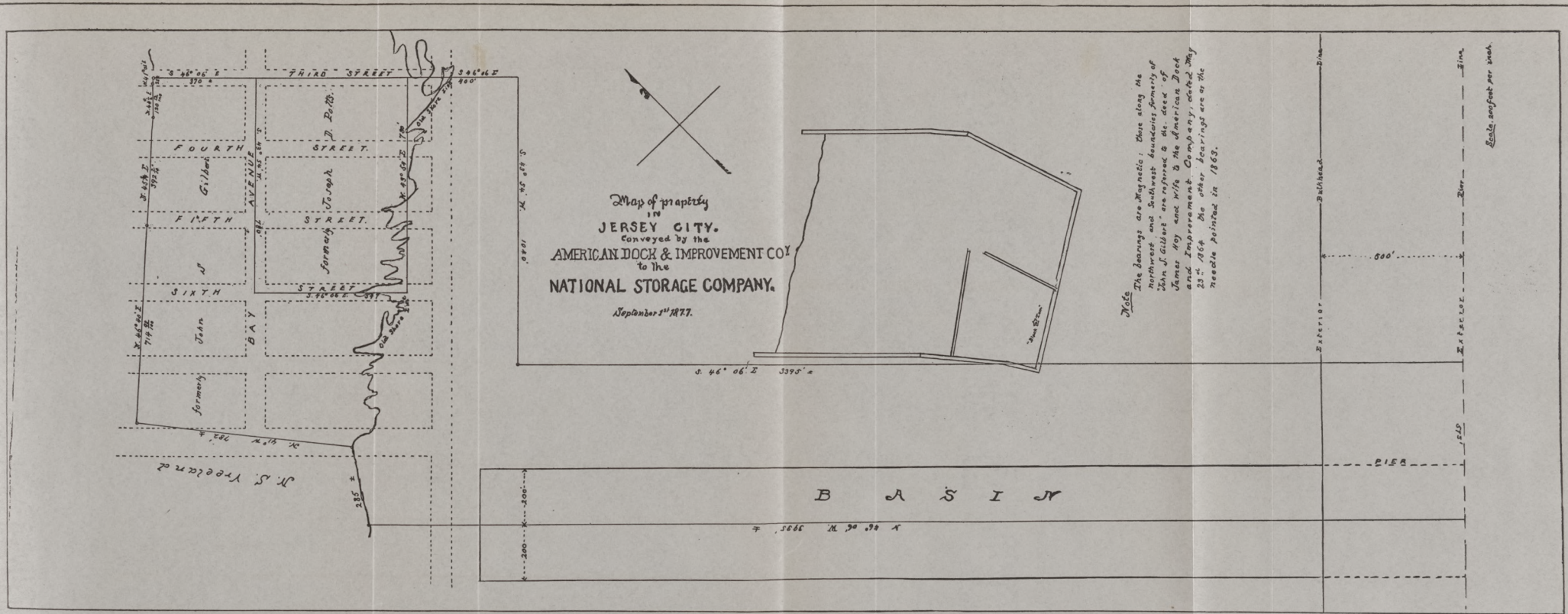
Exhibit D. 11.

equity, of, in and to the same, and to every part and parcel thereof. To HAVE AND TO HOLD, all and singular the said premises hereby granted, bargained sold and conveyed, or intended so to be, unto the said parties of the second part their successors and assigns, to the only proper use, benefit and behoof of the said parties of the second part, their successors and assigns for ever.....

AND the said parties of the first part, for themselves and their successors, do convenant, promise and agree to and with the said parties of the second part, their successors and assigns, that they, the said parties of the first part are now the true, lawful and rightful owners of all and singular the said lands, tenements and hereditaments before described and mentioned, and every part and parcel thereof, and rightfully and lawfully seized and possessed thereof, of a good, sure, perfect and absolute estate of inheritance in fee simple; and that the same are free from all encumbrances, and that they, the said parties of the first part have good right, full power and sufficient authority to grant and convey the same in manner aforesaid; and that they, the said parties of the first part will warrant, save harmless, indemnify and defend the said parties of the second part their successors and assigns, against all former and other gifts, grants, charges, conveyances or encumbrances whatsoever, made committed, done or suffered; and against all and every person or persons lawfully claiming, or to claim the said premises, by, from or under the said parties of the first part, or by from or under any other person or persons whatsoever.....

The parties to these presents hereby mutually covenant and agree that the western line of the property hereby sold and conveyed shall be the centre line of a permanent basin or canal four hundred feet wide, and two hundred feet on each side of this line shall be forever set apart for that purpose, as shown on the diagram annexed.

MAP ATTACHED TO EXHIBIT D. 11.



This is a true copy of the tracing attached to the deed of September 1, 1877 from The American Dock and Improvement Company to The National Storage Company.

General Land and Tax Agent.

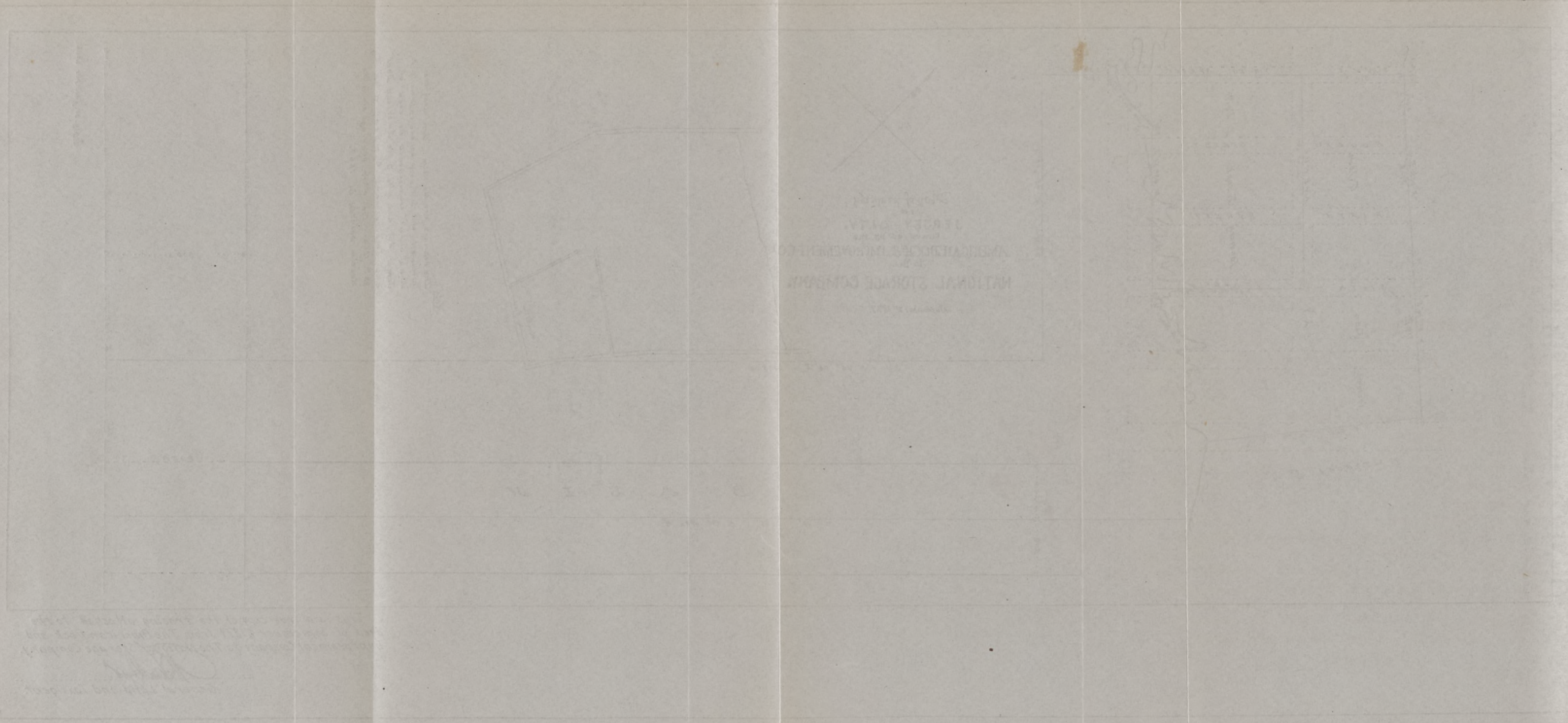


Exhibit D. 12.

In witness whereof, the said parties of the first part have caused these presents to be signed by their President and their corporate seal to be hereunto affixed the day and year first above written

THE AMERICAN DOCK AND
IMPROVEMENT COMPANY,

per. John T. Johnson,
President.

Sealed and delivered in the presence of

Samuel Knox,
Sec'y.

EXHIBIT D. 12.

Deed, dated December 18, 1877, from American Dock and Improvement Company to National Storage Company.

This indenture made the eighteenth day of December in the year of Our Lord One Thousand Eight Hundred and Seventy Seven between the American Dock and Improvement Company a corporation of the State of New Jersey, party of the First Part. And the National Storage Company a corporation organized and existing under the laws of the State of New Jersey party of the second part

Witnesseth, that the said party of the first part, for and in consideration of the sum of seventy three thousand dollars, payable forty eight thousand dollars thereof in bonds of the said American Dock and Improvement Company and the balance in lawful money of the United States of America, to it in hand well and truly paid by the said party of the second part at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged, and the said party of the first

Exhibit D. 12.

part therewith fully satisfied, contended and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey, and confirm to the said party of the second part, and to its successors and assigns forever ALL that tract or parcel of land, land under water and premises, hereinafter particularly described, situate lying and being in the City of Jersey City in the County of Hudson and State of New Jersey and more particularly described as follows, viz: Beginning at a point in the fifth course of the description of land conveyed by the party of the first part to the party of the second part on the First day of September in the year one thousand eight hundred and seventy seven by deed on that day dated and recorded in Hudson County Clerk's office in Liber 316 of deeds pages 733 &c. said point being seven hundred and eighty (780) feet distant southwesterly from the middle line of Third Street extended; thence South forty six degrees six minutes east parallel with said Third Street extended thirty three hundred and ninety five (3395) feet more or less crossing the exterior line for solid filling to the exterior line for piers as established by the Riprarian Commissioners of the State of New Jersey; thence South forty three degrees fifty four minutes West along said exterior line for piers two hundred and sixty (260) feet to the line of the property above referred to conveyed to the party of the second part; thence north forty six degrees six minutes West along the property above referred to, crossing said exterior line for solid filling thirty three hundred and ninety five (3395) feet more or less; thence North forty three degrees fifty four minutes east, parallel with Bay Avenue and still along the property above referred to, two hundred and sixty (260) feet to the place of beginning.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining:

ALSO all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part of, in and to the same and of, in and to every part and parcel thereof

Exhibit D. 12.

To HAVE AND TO HOLD, all and singular the above described land and premises with the appurtenances unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever, AND the said THE AMERICAN DOCK and IMPROVEMENT COMPANY does for itself its successors and assigns covenant and grant to and with the said party of the second part, its successors and assigns, that it the said THE AMERICAN DOCK and IMPROVEMENT COMPANY is the true, lawful and right owner of all and singular the above described land and premises and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

AND ALSO, that the said party of the first part now has good right, full power, and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid, and ALSO, that the said THE AMERICAN DOCK and IMPROVEMENT COMPANY will WARRANT, secure and forever defend the said land and premises unto the said THE NATIONAL STORAGE COMPANY its successors and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

Exhibit D. 12.

IN WITNESS WHEREOF the said party of the first part has caused these presents to be signed by its President and its corporate seal to be hereto affixed the day and year first above written.

THE AMERICAN DOCK and IMPROVEMENT COMPANY

Per

JOHN TAYLOR JOHNSTON (SEAL)
President.

Signed, Sealed and
Delivered in the
presence of

Attest

JAMES KNOX
Secretary

Exhibit D. 16.

EXHIBIT D. 16.

Charter of American Dock and Improvement Company.

CHAPTER CCCXII.

An Act to Incorporate the American Dock and Improvement Company.

Preamble.

WHEREAS, It is represented that John S. Gilbert, Preston H. Hodges, James Hoy, Henry L. Gilbert and Moses B. Bramhall, and other their associates, now own certain tracts of land, situate in the townships of Bergen and Greenville, in the County of Hudson, and desire to acquire from the state other tracts of land contiguous thereto, covered by water, which they desire to fill in and reclaim from the water, and to divide into suitable building and other lots, and to sell and dispose of the same for the benefit of the association, with the object of erecting a town, with docks, wharves and bulkheads, so as to afford facilities to secure to this state a portion of the commerce and shipping of the city of New York; and whereas, it is necessary for the success of their undertaking that they should be able to convey the said premises from time to time, to such persons as may be desirous to purchase, notwithstanding death or other cause affecting the individuals owning or who may own the said land, and in order to give greater efficiency and concentration to their efforts for the improvement of the said land—now therefore,

Corporators.

1. BE IT ENACTED by the Senate and General Assembly of the State of New Jersey, That John S. Gilbert, Preston H. Hodges, James Hoy, Henry L. Gilbert and Moses B. Bramhall, and such other persons as they may associate with them, and their suc-

Exhibit D. 16.

cessors, shall be and they are hereby incorporated and made a body politic and corporate, in fact and in law, by the name of "The American Dock and Improvement Company," and that the capital stock of the company shall be three million dollars, divided into shares of one hundred dollars each, which shall be subscribed and paid in at such times, upon such notice, and in such manner and installments as the directors of said company by their by-laws or otherwise may direct; that such payment shall be made either in money or in land situate in said townships of Bergen and Greenville, in the county of Hudson; and in case of payment in land, the directors may issue in payment therefor the stock of said company, upon such terms as may be deemed best for its interests; and that in case of the failure of any stockholder to pay the installments on his or her stock, at the place and within thirty days of the time appointed for the payment thereof, such stockholder shall incur a forfeiture of his or her share or shares, and of all previous payments thereon, for the use of the company.

Stock personal property

2. AND BE IT ENACTED, That the capital stock of the said company shall be deemed personal property and the shares shall be transferable in such manner as the board of directors, by their by-laws may direct; and every share shall entitle the holder to one vote, either in person or by proxy.

Directors, president and officers.

3. AND BE IT ENACTED, That the affairs of the company shall after the organization of the company, be managed by not less than five directors, or more than nine, to be chosen by the stockholders of the said company annually, at such time and in such manner as the by-laws of the company may direct, who shall serve for one year, and until others

Exhibit D. 16.

are chosen in their stead, notice of which election shall be previously given for two weeks, in a newspaper published in the county of Hudson; the said directors shall, from time to time, elect a president from their number, and may also appoint such other officers as may be convenient or necessary, who shall receive such compensation as the by-laws may direct.

First directors.

4. AND BE IT ENACTED, That John S. Gilbert, Preston H. Hodges, James Hoy, Henry L. Gilbert and Moses B. Bramhall shall be the first directors of the company, a majority of whom shall as soon as convenient after the passage of this act, assemble and organize such company, and shall continue in office until others, as hereinbefore directed, shall be chosen in their stead.

May receive conveyances of lands.

5. AND BE IT ENACTED, That as soon as the said company shall be organized, it shall be authorized to receive conveyances for the lands now owned as aforesaid between the south line of the lands of "The Central Railroad Company of New Jersey," where it intersects the New York Bay and Kavan Point, and to hold and execute all instruments and conveyances necessary for the purchasing, leasing or selling of such property; and the said company are hereby authorized to purchase and hold any lands adjoining or near the above mentioned tracts, which they may deem necessary for improving and enlarging said property, and to pay for all lands with the shares of its capital stock, at such price as the company may deem best for its interest; *provided*, they shall not hold at any time over two hundred acres above the present high water mark, in addition to the tracts mentioned in this section.

Proviso.

Exhibit D. 16.

May improve lands. &c.

6. AND BE IT ENACTED, That the said company shall be, and hereby are authorized to improve all and every portion of the said lands under water held or purchased by them as aforesaid by erecting buildings, and laying out said lands into lots, streets, squares, docks, lanes, alleys, or other divisions, and by leveling, grading, raising or tunnelling the said land, streets, lanes and alleys; and they shall have liberty to fill up, raise, occupy, possess and enjoy as their own property, all lands covered with water which they may hold or purchase, or which may lie in front of any lands which they may hold or purchase, and may build, enlarge or improve, (or sell and convey to others to improve) all and any land or lands under water, wharf or wharves, bulkhead or bulkheads, piers, slips, and other structures which they may deem necessary for commercial, shipping or other purposes; *provided,* that in carrying out the provisions of this act they shall not injure the navigation of the Hudson river, nor interfere with the legal rights of others, nor build out beyond the easterly line of Hudson Street, in Jersey City, extended southerly, or such other exterior line as may be fixed by law, and that the southerly line of the said improvement into the bay, shall be on a line commencing on the southerly side of Kavan Point, at the boundary line of lands of late belonging to Stephen B. Vreeland and at the point where said boundary line strikes the shore of New York Bay, and from thence running south forty-six degrees and thirty-nine minutes east to the channel of the Hudson river; *provided,* that the northerly line shall be parallel to and with the said southerly line; *and provided always,* that the said company shall pay for the oysters planted, if any there be, upon any land under water which

Proviso.

Proviso.

Exhibit D. 16.

they may improve, to the person or persons by whom they were planted, or shall give them at least one year's notice to remove the same; and in case the value of such oysters cannot be agreed upon, then, in such case, either party, upon twenty days' notice to the other, may apply to the court of common pleas of the County of Hudson, whose duty it shall be to appoint three disinterested freeholders of said county to appraise the same, whose report, or the report of any two of them, made in writing to the said court, shall be final and conclusive; and in determining said value the said appraisers shall be governed by the like rules as arbitrators; *and provided further,* that nothing contained in this act shall be so construed as to give the said company any power to make any improvement whatever upon the tract of land under water in New York Bay, heretofore granted to Aaron Ogden, without the consent in writing of the said Aaron Ogden, or his legal representatives.

Proviso.

Dockage, &c.

7. AND BE IT ENACTED, That the said company shall have the right to demand and recover by action at law, all wharfage, dockage and cranage which may be levied upon any wharf, dock, pier, slip or bulkhead erected by them upon said land by virtue of this act.

Limitation.

8. AND BE IT ENACTED, That unless the aforesaid improvement shall be commenced within one year from the passage of this act, then this act shall be null and void.

Reserved rights.

9. AND BE IT ENACTED, That the legislature may alter, modify or repeal this act whenever, in their opinion, the public good may so require.

Location of office.

10. AND BE IT ENACTED, That a majority of the board of directors shall (after the expiration of the

Exhibit D. 16.

first year of the organization of this company,) be residents of this state, and that there shall be maintained at Jersey City a principal office for the conduct of the business of said company.

State assessment.

11. And be it enacted, That the said company shall pay to the treasurer of this state, on or before the first day of July, Anno Domini eighteen and eighty-five, the sum of twenty-five dollars for each and every foot of the shore embraced and contained in this bill, the amount of the same to be ascertained by a commission to be appointed by the governor, and the extent of the shore front is to be ascertained and measured as follows, commencing at a point on the southerly side of Kavan Point at the boundary line of lands of late belonging to Stephen B. Vreeland, and at the point where said boundary line strikes the shore of the New York bay, and thence northerly in a straight line to the south line of the lands of the Central Railroad Company of New Jersey, where it intersects the New York bay, and upon the aggregate amount so ascertained as aforesaid, the said company shall pay to the state interest from the first day of July, eighteen hundred and sixty-five, at the rate of six per centum per annum, payable semi-annually; and the said aggregate amount so ascertained as aforesaid shall be and remain a lien upon said lands until the payment of the same, with the interest thereon; and a certificate of the said commissioners, signed by them and the president of said company, of the measurement of the shore line made as aforesaid, shall be filed in the office of the secretary of state.

Exhibit D. 16.

Regulations.

12. And be it enacted, That the payment of a proportionate part of the aggregate amount of money provided to be paid as aforesaid, shall release from the force and effect of this lien a corresponding proportionate part of the lands under water embraced and contained in this bill, and the interest upon the amount paid shall cease from the time of such payment being made to the treasurer of this state, the said treasurer shall give to the said company a certificate thereof, and the same being duly acknowledged may be recorded in the office of the clerk of the county of Hudson.

13. And be it enacted, That this act shall take effect immediately.

Approved April 11, 1864.

Exhibit D. 17.

EXHIBIT D. 17.

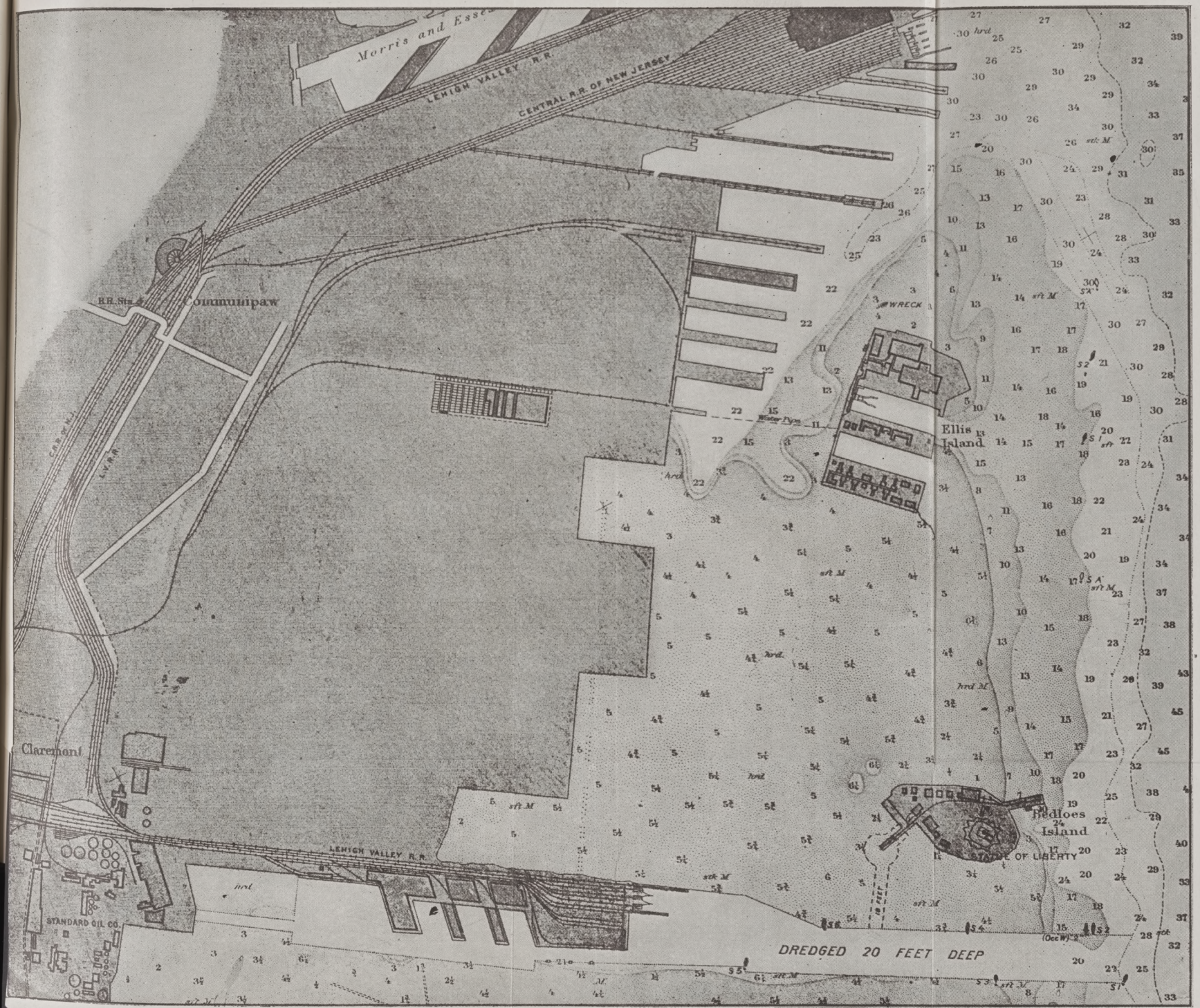
Abstract of Lease from Lehigh Valley Railroad Company of New Jersey to Lehigh Valley Railroad Company (of Pennsylvania).

Lehigh Valley Railroad Company of New Jersey, a corporation of the State of New Jersey to Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania.	Lease. Dated June 17, 1914.

Leases for the term of ninety-nine years from July 1, 1914 all of its railroad in the State of New Jersey, extending from Phillipsburg to Perth Amboy and to Jersey City, with all branches, laterals, sidings and appurtenances whatsoever, together with the right to maintain and operate the same and to receive all lawful tolls and revenue therefrom arising.

Certain covenants as to repairs, taxes and betterments.

EXHIBIT D. 18.



Morris and Esses
LEHIGH VALLEY R.R.
CENTRAL R.R. OF NEW JERSEY
R.R. Sta.
Communipaw
C.R.R. of N.J.
L.V.R.R.
WRECK
Water Pipe
Ellis Island
Claremont
Bedloes Island
STATUE OF LIBERTY
LEHIGH VALLEY R.R.
STANDARD OIL CO.
DREDGED 20 FEET DEEP

Exhibit D. 19.

EXHIBIT D. 19.

5. Harrison.

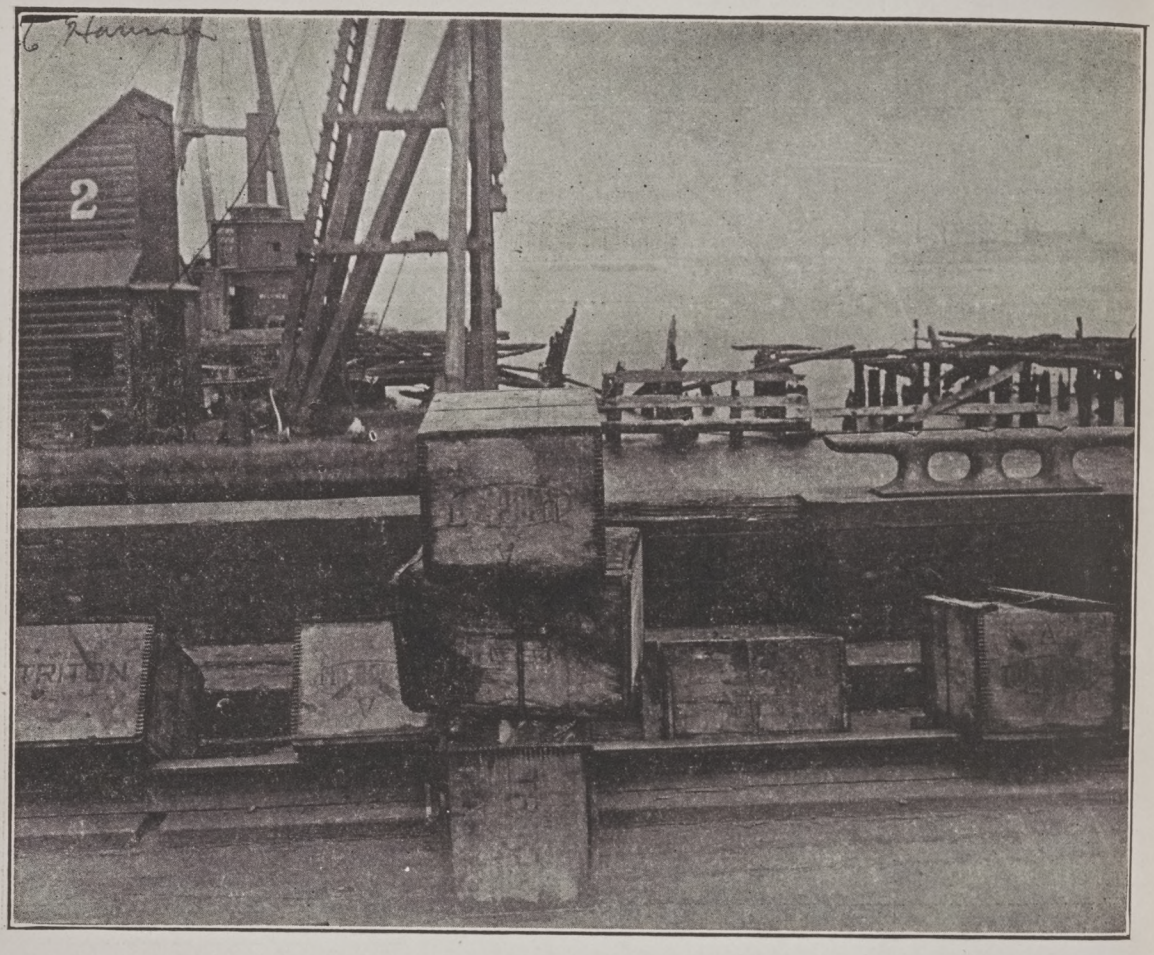


Taken August 4, 1916, from near the float bridges looking toward the northwest. The track at the left of this picture is track 10. Track 11 is next to the right. Track 12 can be seen still further to the right. The car shown with the brake wheel and frame intact is Erie 88702, loaded with salt. The car next west of this car is L. V. 97001, a non-revenue box car. The car in the distance on track 10 is L. V. 8759.

Exhibit D. 20.

EXHIBIT D. 20.

6. Harrison.

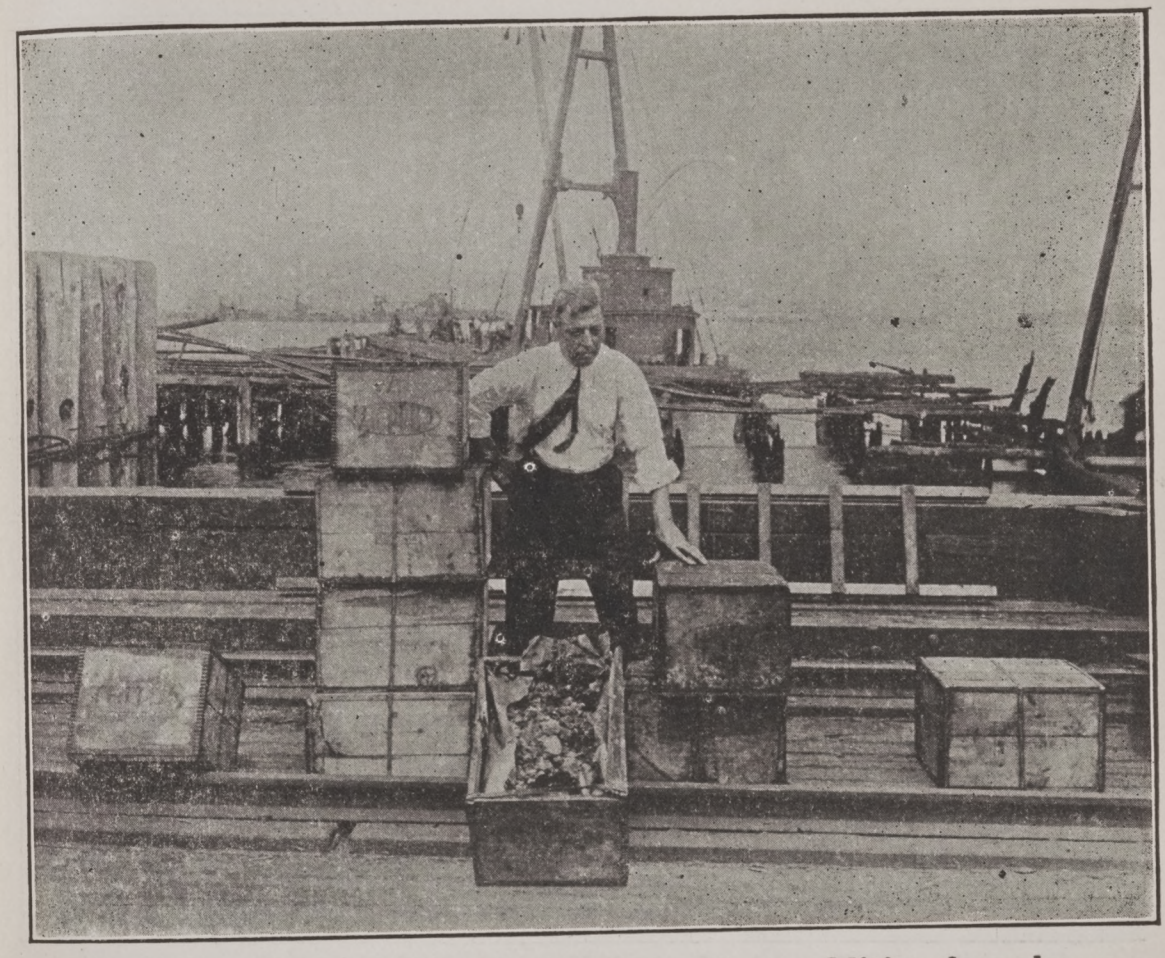


Taken August 4, 1916, from the float bridge at the south side of the burned portion of the North Pier looking northeast toward Ellis Island. Taken after the pier had been destroyed by fire.

Exhibit D. 21.

EXHIBIT D. 21.

7. Harrison.



August 4, 1916. This picture shows some additional packages of T.N.T.

Exhibit D. 22.

EXHIBIT D. 22.

8. Harrison.



Taken August 4, 1916, showing shells and shell boxes salvaged from cars and barges.

Exhibit D. 23.

EXHIBIT D. 23.

9. Harrison.



Taken August 4, 1916, from the south side of the east end of the crater near tracks 14 and 15 looking east. Shows the extreme east end of the crater. Shows condition of cars wrecked at the southeast side of the crater.

Exhibit D. 24.

EXHIBIT D. 24.

10. Harrison.



Taken August 4, 1916, from near the east end of the crater looking east, showing the wreckage of cars near the southeast side of the crater, and looking across the yard toward the bulkhead. The mast of the schooner at the right-hand side of the picture was located at the South Pier.

Exhibit D. 25.

EXHIBIT D. 25.

11. Harrison.



Taken August 4, 1916, from the south side of the crater a little east of the middle and looking almost north. The boxes in the foreground were brought in empty from Bethlehem for the purpose of carrying salvaged shells.

Exhibit D. 26.

EXHIBIT D. 26.

12 A. Harrison.



Taken August 1, 1916, from the west end of the crater looking east toward the North Pier.

Exhibit D. 27.

EXHIBIT D. 27.

12 C. Harrison.

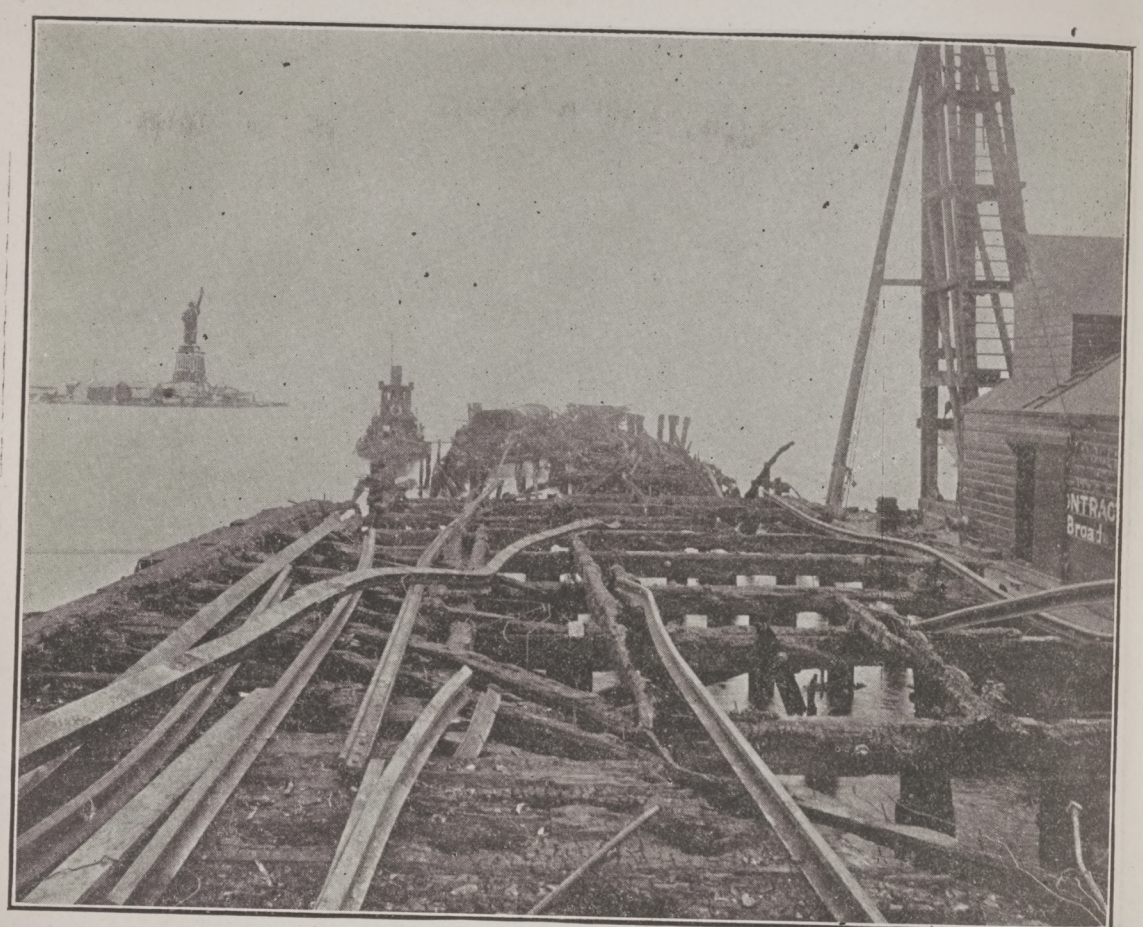


Taken August 1, 1916, showing the wreck of the east end of the storage warehouse; also the wreck of the water tank.

Exhibit D. 28.

EXHIBIT D. 28.

1. Harrison.



Taken August 4, 1916, from land end of North Pier looking east after fire had destroyed pier.

Exhibit D. 29.

EXHIBIT D. 29.

1 A. Harrison.



Taken August 1, 1916, from land end of North Pier to the south of the same looking northeast before fire had destroyed pier. This shows the south side of the pier.

Exhibit D. 30.

EXHIBIT D. 30.

3. Harrison.



Taken August 4, 1916, from land end of North Pier looking west, showing track 17 to the right of the picture.

Exhibit D. 31.

EXHIBIT D. 31.

3 A. Harrison.



Taken August 1, 1916, from near land end of North Pier, showing tracks 17 and 18, looking west.

Exhibit D. 32.

EXHIBIT D. 32.

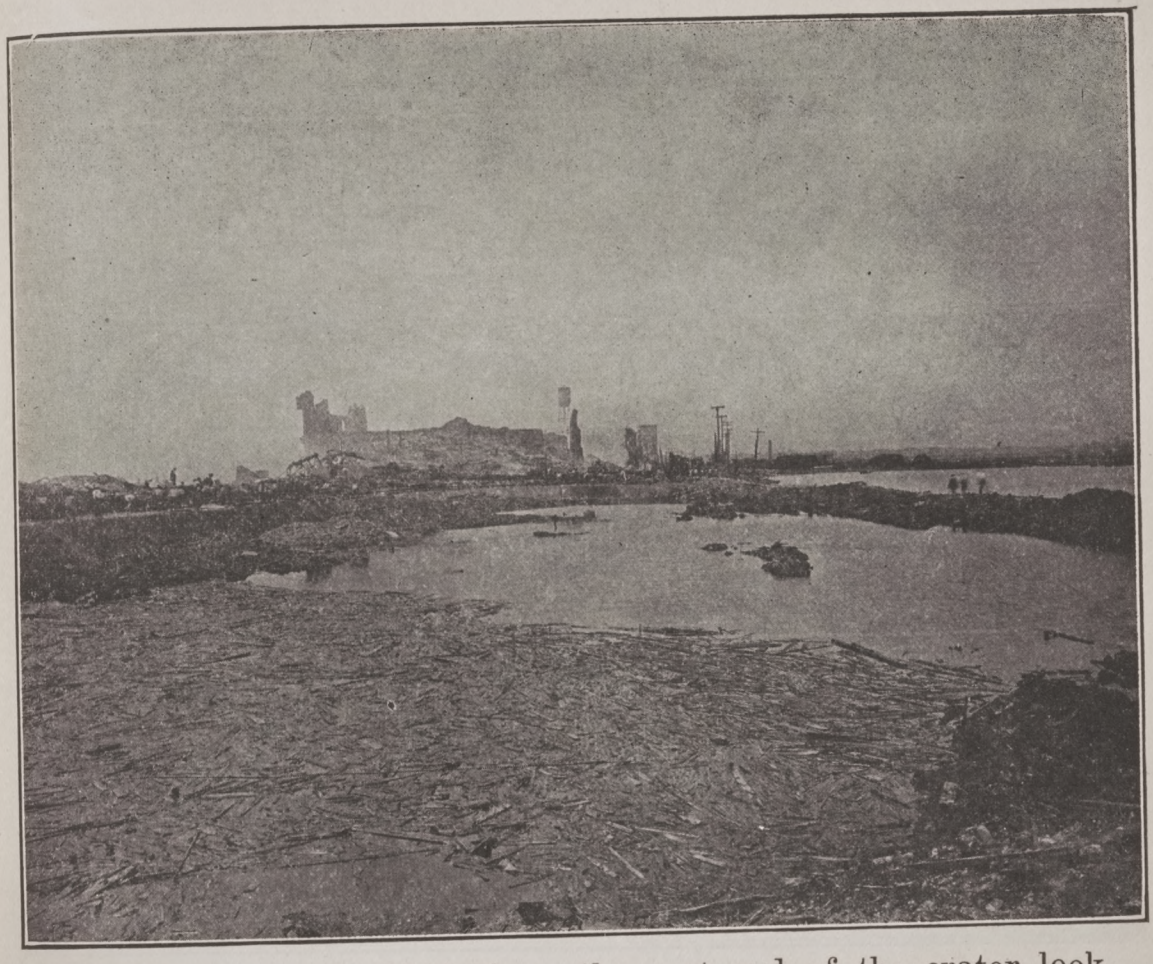
4. Harrison.



Taken August 4, 1916, from track 17 near land end of North Pier looking south. The steel car showing through the frame is T. & O. C. 23787, the first car on the east end of track 7.

EXHIBIT D. 33.

12. Harrison.

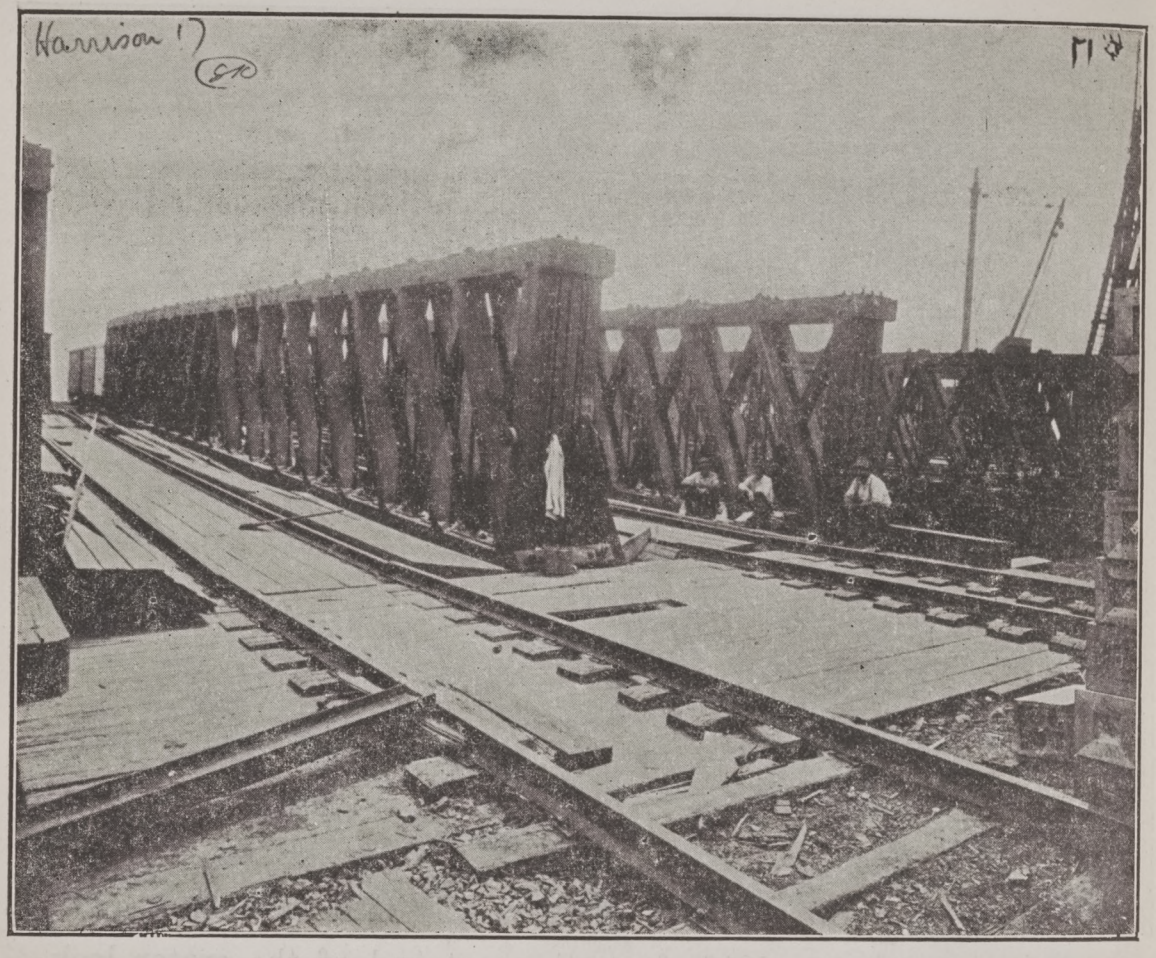


Taken August 1, 1916, from the east end of the crater looking west toward the storage warehouses.

Exhibit D. 34.

EXHIBIT D. 34.

17. Harrison.



Taken August 4, 1916, showing float bridges.

Exhibit D. 35.

EXHIBIT D. 35.

19. Harrison.



Taken August 1, 1916, from the north side of the east end of the crater looking toward the southeast.

Exhibit D. 36.

EXHIBIT D. 36.

18. Harrison.



Taken August 1, 1916, from the land end of the North Pier looking east after the pier had been partially destroyed.

Exhibit D. 37.

EXHIBIT D. 37.

2. Harrison.



Taken August 4, 1916, from the end of the North Pier looking west, showing track 18.

Exhibit D. 38.

EXHIBIT D. 38.

3. Underwood.



This picture shows the North Pier looking from the north toward the south from the land end to about two car lengths from the water end of the pier.

Exhibit D. 39.

EXHIBIT D 39.

4. Underwood.



Car P. & R. 12275, shown on No. 2. This photograph is taken from the extreme east end of the North Pier before they had been destroyed by fire. Taken July 31, 1916.

Exhibit D. 40.

EXHIBIT D. 40.

6. Underwood.

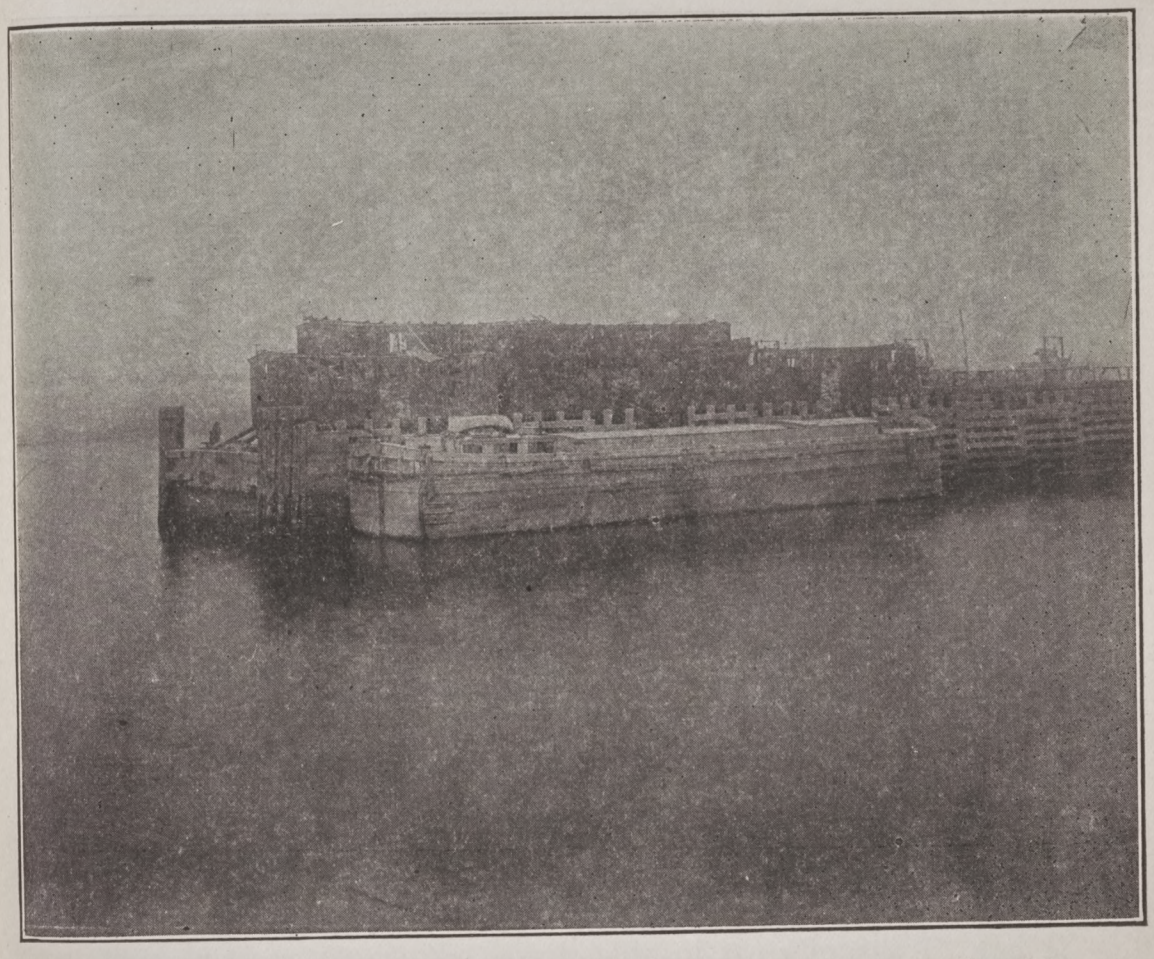


Photograph taken from almost the same point as No. 21 with the camera turned toward the southwest, showing the racks projecting the float bridges.

Exhibit D. 41.

EXHIBIT D. 41.

7. Underwood.



Cars on extreme end of South Pier directly opposite the North Pier. These cars were loaded with borax in sacks. The north side of the cars is shown. The south side of these cars is shown in Barth's picture No. 3.

Exhibit D. 42.

EXHIBIT D. 42.

3. Barth.



Taken , 1916. This picture shows the south side of the cars shown in Harrison No. 14.

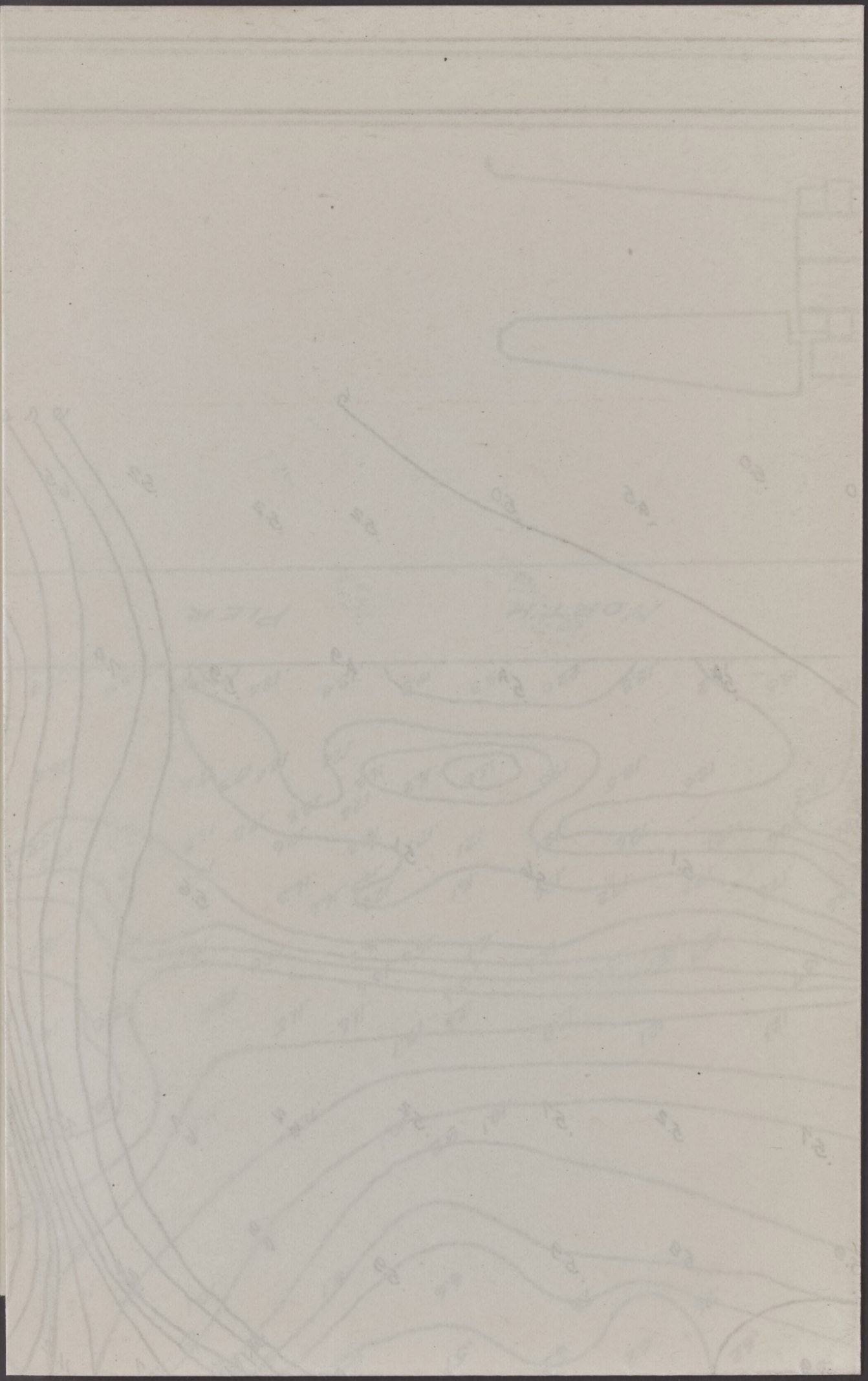
Exhibit D. 43.

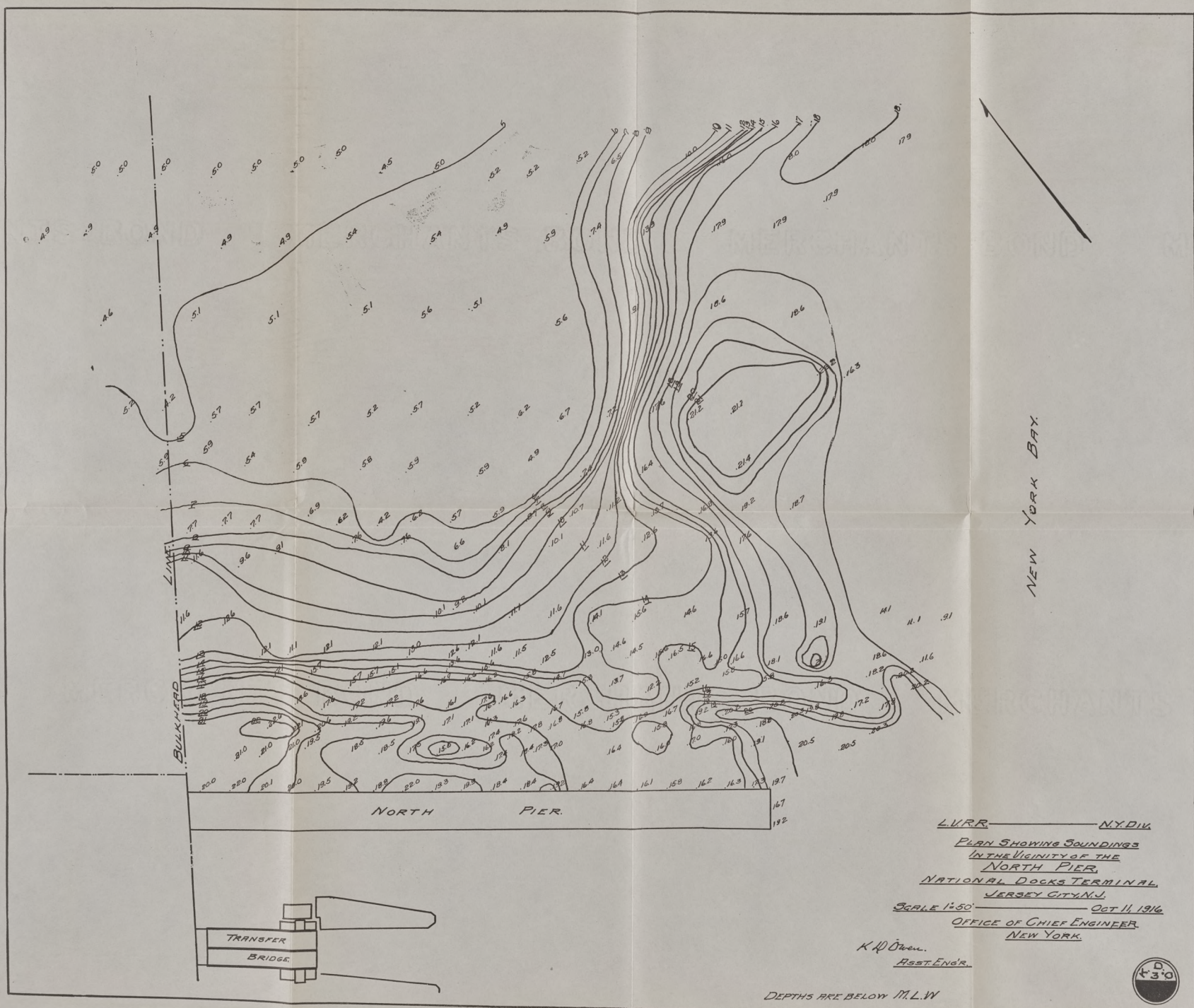
EXHIBIT D. 43.

6. Barth.



This picture shows the south side of warehouses P. and Q.





L.V.R.R. ——— N.Y.Div.

PLAN SHOWING SOUNDINGS IN THE VICINITY OF THE NORTH PIER. NATIONAL DOCKS TERMINAL. JERSEY CITY, N.J.

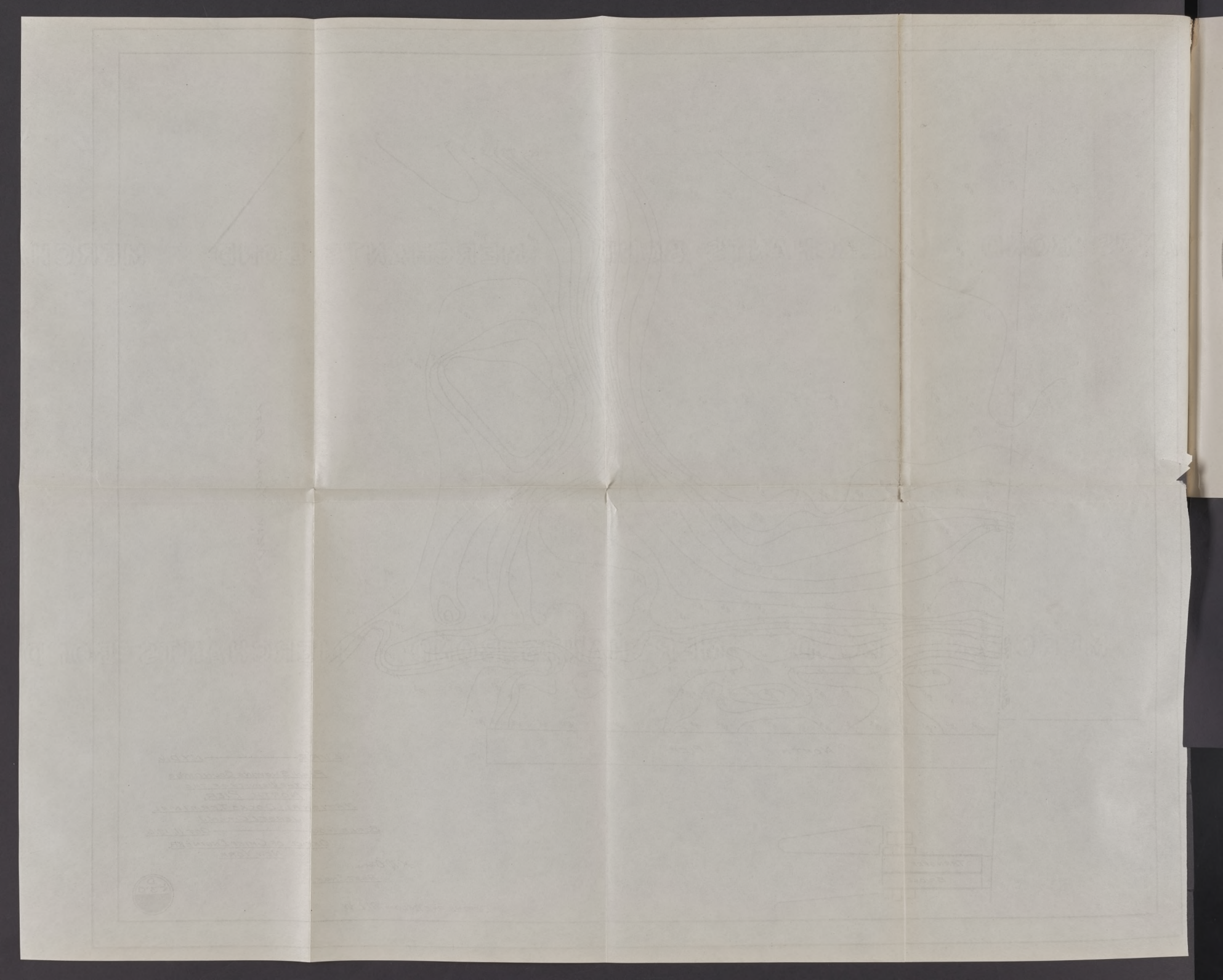
SCALE 1:50' ——— OCT 11, 1916

OFFICE OF CHIEF ENGINEER. NEW YORK.

K.A. Owen. ASST. ENG'R.

D. 30

DEPTHS ARE BELOW M.L.W.



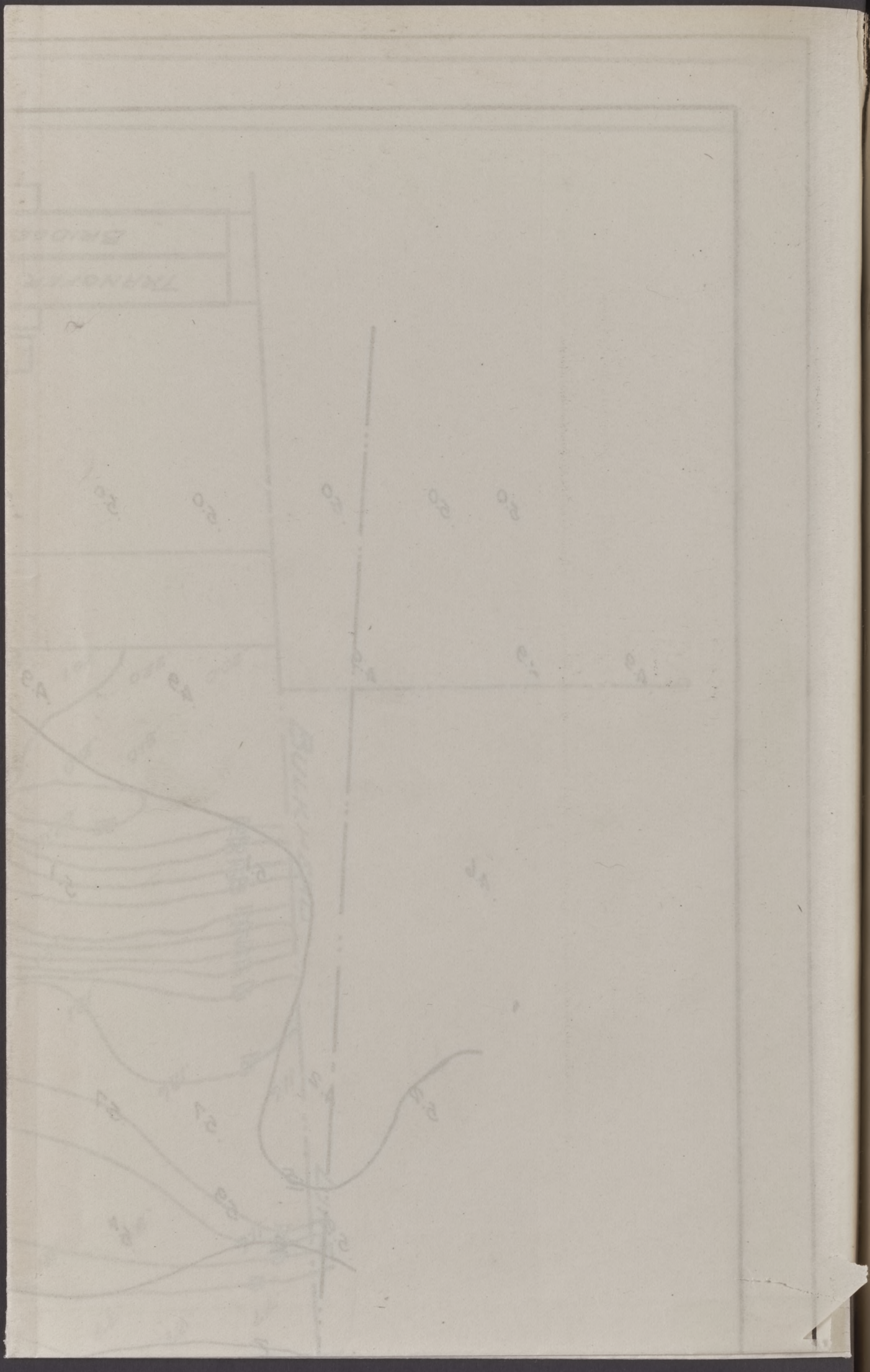
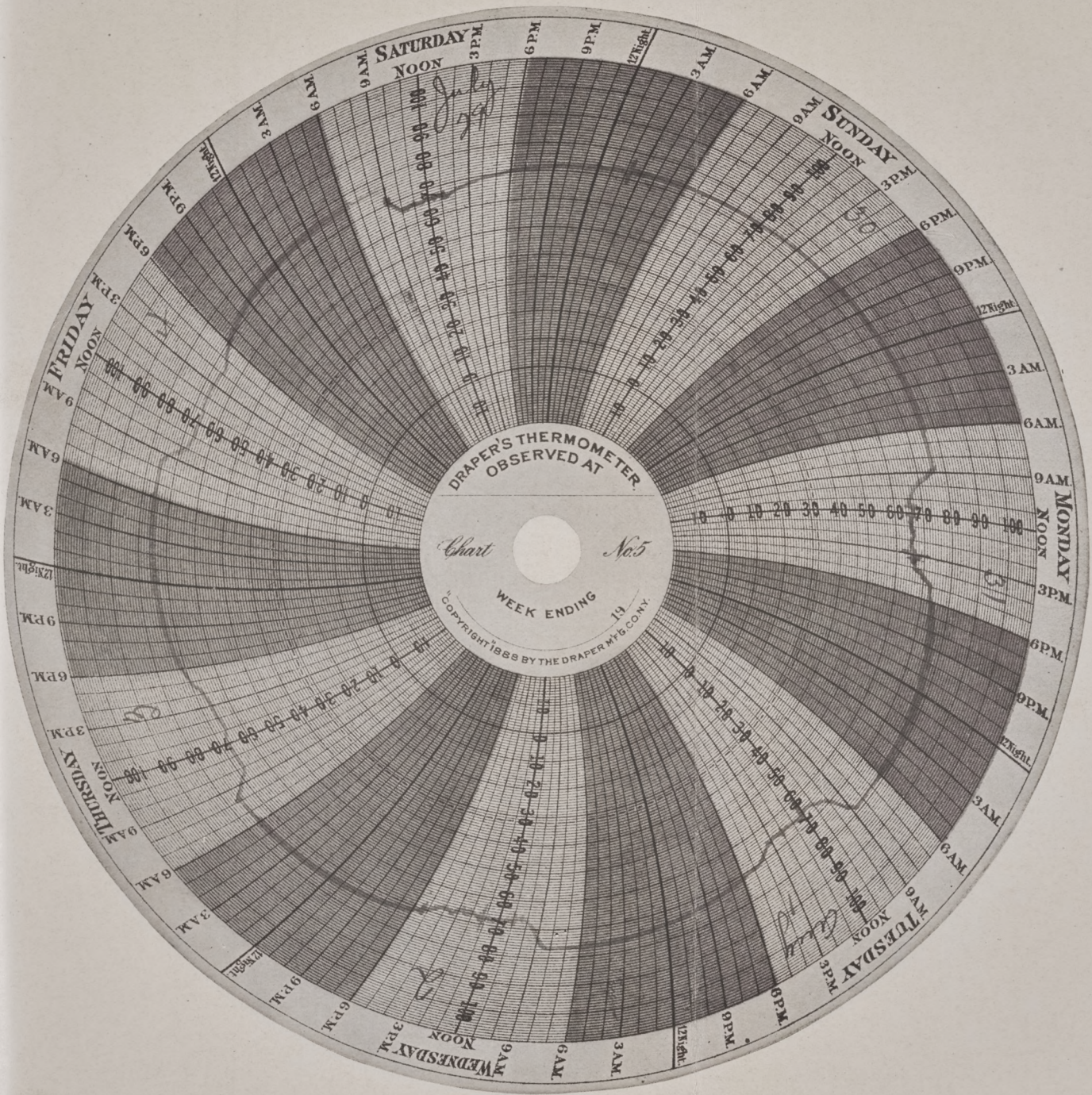


EXHIBIT D. 46.



Record of Automatic Thermometer.

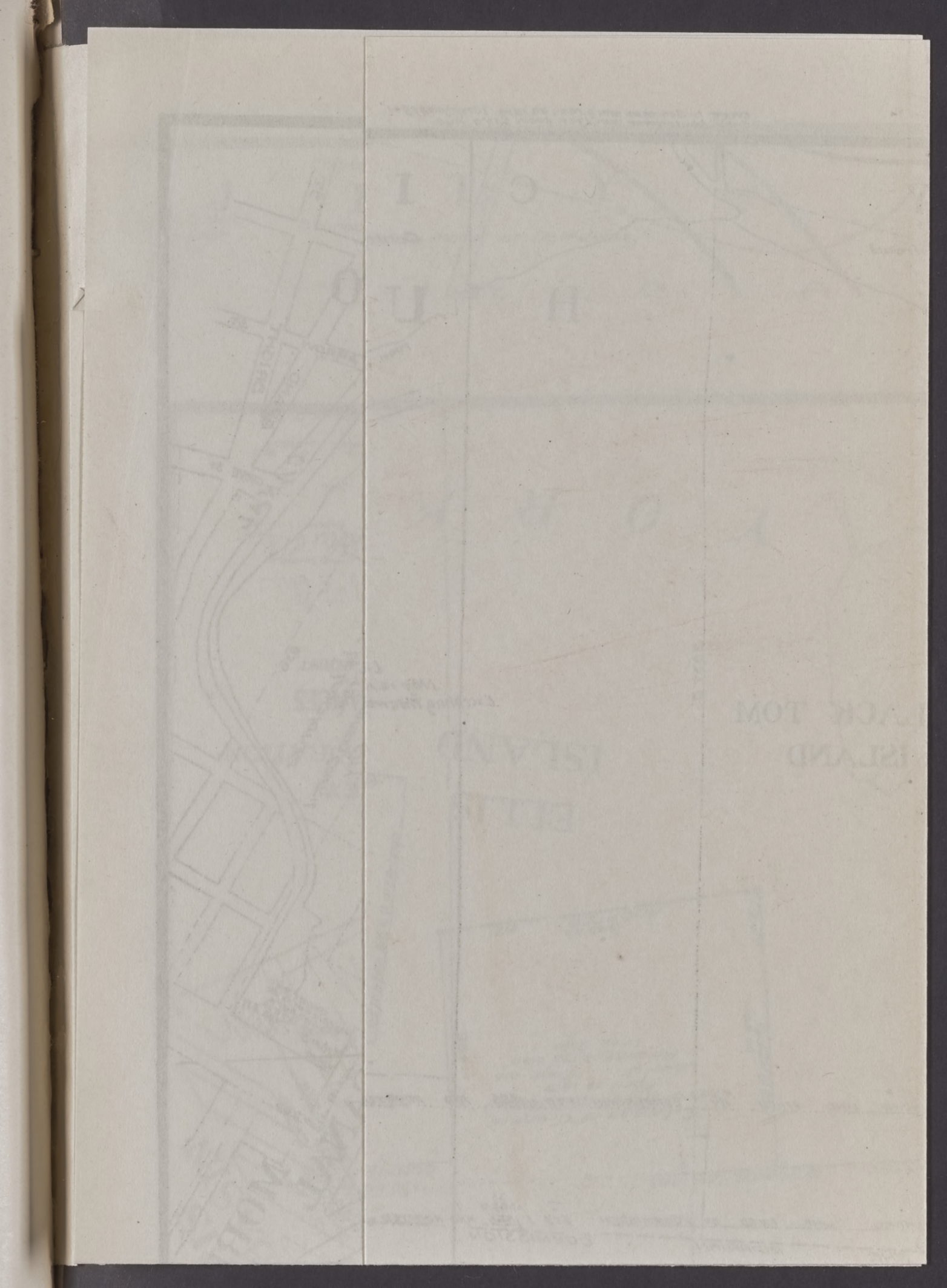
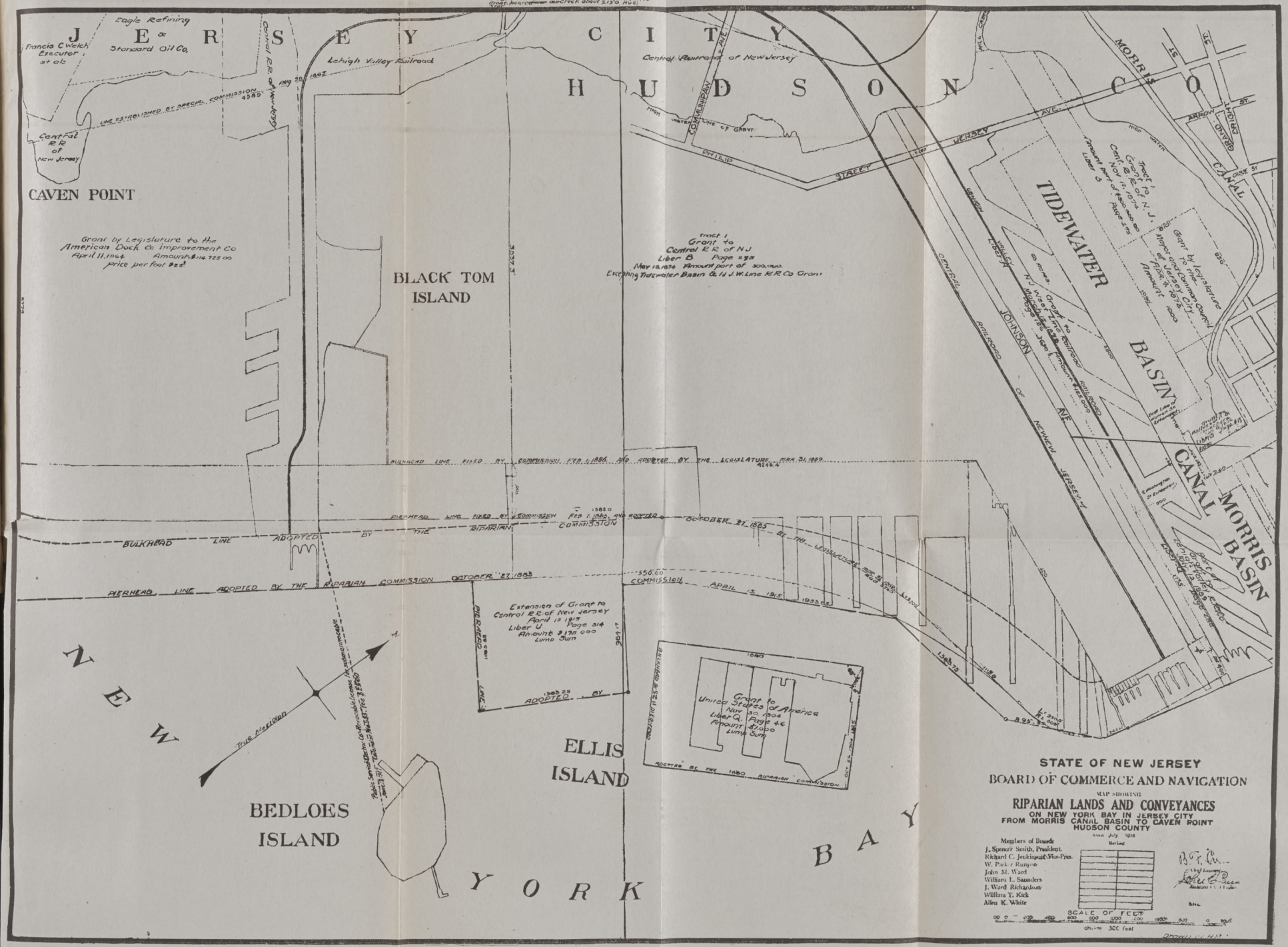


EXHIBIT D. 47.



JERSEY CITY
HUDSON CO
Eagle Refining & Standard Oil Co.
Francis C Welch Executor et al
Central R.R. of New Jersey
Lehigh Valley Railroad
Central Railroad of New Jersey
CAVEN POINT
Grant by Legislature to the American Dock & Improvement Co April 11, 1864 Amount $114,725.00 price per foot $25
BLACK TOM ISLAND
Tract 1 Grant to Central R.R. of N.J. Liber B Page 295 May 12, 1874 Amount part of 300,000. Excepting Tidewater Basin & N.J.W. Line R.R. Co Grant
TIDEWATER BASIN
Tract 1 Grant to Cent. R.R. of N.J. Nov 12, 1874 Amount part of $300,000.00 Liber 3 Page 275
Grant by legislature to the Mayor and Common Council of Jersey City Apr. 7, 1872 Amount 1000
MORRIS CANAL
MORRIS BASIN
JOHNSON AVE
CENTRAL RAILROAD OF NEWNEW JERSEY
PHILIP STREET
JERSEY AVE
COMMUNIPAW AVE
BULKHEAD LINE FIXED BY COMMISSION FEB 1, 1886 AND ADOPTED BY THE LEGISLATURE MAR 31, 1889
PIERHEAD LINE FIXED BY COMMISSION FEB 1, 1885 AND ADOPTED OCTOBER 27, 1883
BULKHEAD LINE ADOPTED BY THE RIPARIAN COMMISSION OCTOBER 27, 1883
PIERHEAD LINE ADOPTED BY THE RIPARIAN COMMISSION OCTOBER 27, 1883
COMMISSION APRIL 15, 1915
Extension of Grant to Central R.R. of New Jersey April 13, 1915 Liber U Page 314 Amount $175,000 Lump Sum
Grant to United States of America Nov 30, 1904 Liber Q Page 46 Amount $1,000 Lump Sum
ADOPTED BY THE 1880 RIPARIAN COMMISSION
ELLIS ISLAND
BEDLOES ISLAND
NEW YORK BAY
True Meridian
STATE OF NEW JERSEY
BOARD OF COMMERCE AND NAVIGATION
MAP SHOWING
RIPARIAN LANDS AND CONVEYANCES
ON NEW YORK BAY IN JERSEY CITY
FROM MORRIS CANAL BASIN TO CAVEN POINT
HUDSON COUNTY
Members of Boards
J. Spencer Smith, President.
Richard C. Jenkinson, Vice-Pres.
W. Parker Runyon
John M. Ward
William L. Saunders
J. Ward Richardson
William T. Kirk
Allen K. White
SCALE OF FEET

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

REPUBLIC OF FRANCE, *Plaintiff-Respondent,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant-Appellant.*	*Action at Law.* *Appeal from Supreme Court.*

BRIEF OF PLAINTIFF-RESPONDENT.

This is probably the last of the Black Tom explosion cases and involves a verdict for the plaintiff for the loss of eight cars of non-explosive benzol and wet guncotton which were standing in the defendant's yard when they were burned and destroyed.

This case was tried with other cases in June, 1920, and with respect to the cars in question, the verdict of the jury establishes that the defendant was negligent in the care and custody of this material (see opinion of Supreme Court, *Republic of France* v. *L. V. R. R. Co.*, 114 Atl. 242).

The legal questions raised by the grounds of appeal (109 in number) have all been considered by this court in the earlier cases:

New Jersey Fidelity, etc., Ins. Co. v. *Lehigh Valley R. R. Co.*, 92 N. J. L. 467, 249 U. S. 600;

Howell v. *Lehigh Valley R. R. Co.*, 94 N. J. L. 213, 253 U. S. 482;

Metropolitan Casualty Ins. Co. v. *Lehigh Valley R. R. Co.*, 94 N. J. L. 236;

Royal Indemnity Co., et al., v. *Lehigh Valley R. R. Co.*, 94 N. J. L. 260, 253 U. S. 483;

and decided adversely to the defendant's contentions.

In defendant's brief (p. 5), it is stated:

> "The defendant, of course, recognizes that these decisions are conclusive upon it—at least so far as relates to questions purely of state law, and there is no intention to re-argue those questions at this time. But in this brief these questions will be stated, so that in the event of an adverse decision by this court and a review of same by the United States Supreme Court, the defendant will not be held to have waived these questions by failing to urge them.
>
> There are certain other questions in the case which depend upon a construction of the Federal statutes relative to interstate commerce and the transportation of explosives. These same questions were involved in the earlier cases and decided adversely to the defendant, but we desire to present them for the same reasons."

I.

There was ample evidence to justify the submission of this case to the jury.

In the present argument the defendant seems to divide the phases of negligence into two classes—first, such negligence as may be found in the violation of the Federal regulations, and, second, negligence as failure to exercise reasonable care as required by the common law.

The brief under this head then proceeds to enumerate the grounds of appeal with respect to the second class of negligence referred to, and concludes as follows:

> "The defendant relies upon and urges each and all of the foregoing grounds of appeal, but will not further elaborate its argument in support of such grounds, as they are substantially similar to certain of the grounds of appeal which were argued in the previous cases decided by this court adversely to defendant's claim."

This court has reviewed all of these assignments of error in the earlier cases and held that a jury question was fairly presented by the evidence (the evidence in this

case being substantially identical with the former cases), and as they are not argued by the defendant we do not feel warranted in re-arguing these questions which, as is conceded, the court have already determined.

II.

The measure of the defendant's duty in the premises is not determined solely by reference to the Act of Congress authorizing the Interstate Commerce Commission to promulgate regulations, and the text of such regulations.

In its brief the defendant states:

> "Counsel for plaintiff will no doubt urge that this question has been concluded so far as this court is concerned by the previous decisions in the cases cited in the statement of the case. We recognize the force of this contention, but in view of the fact that since the decision of the first case cited, the United States Supreme Court in some very recent decisions has gone further than it ever did before in dealing with the exclusive application of Federal statutes and regulations made thereunder, we desire to repeat our argument on this subject adding thereto these recent decisions so that this court may be in a position to give further consideration to this very important question."

This question has been raised and fully argued in all of the former cases. In those cases we pointed out that there were many circumstances and conditions which naturally arise in the transportation and custody of explosives, which are entirely outside of the scope of the regulations, particularly as those regulations are construed and applied by the defendant.

For instance, it was contended in the earlier cases, and in this case, that inasmuch as there was no provision in the regulations requiring a carrier to extinguish a fire which might be found burning among or near carloads of explosives, there was therefore no duty on the part of the carrier to extinguish such a fire and no charge

of negligence could be based upon such failure. (Deft's brief, p. 79.) The defendant also contends that no matter how great an accumulation of explosives it might gather together in a city or elsewhere, in the absence of any regulation to that effect there was no duty on the part of the carrier to provide any safeguards against fire and explosion either for the benefit of the property itself or for the benefit of others who might be affected by a fire or explosion. It did not seem to us that any Court could sustain such contentions. In the *Howell* case, 94 N. J. L. 213, 215, Justice Kalisch speaking for this court said:

> "The federal statute which is invoked and on which the defendant's counsel have rested their contention is entitled 'An act to promote the safe transportation in interstate commerce of explosives and other dangerous articles and to provide penalties for its violation.'
>
> Section 233 of that act conferred authority on the interstate commerce commission to formulate regulations for the safe transportation of explosives which should be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land.
>
> In addition to what has been said by us in the former case, it is clear from a plain reading of the statute, and the regulations relating to the subject matter of controversy, that neither the statute nor the regulations attempts or attempt to fix the entire measure or degree of care to be exercised by a common carrier in the care and custody of high explosives.
>
> It seems to us that the regulations were formulated to govern the packers and shippers of high explosives and to govern the transportation companies and their servants in the handling and transportation of such dangerous combustibles, and it is to be fairly gathered from the very nature of the regulations that they were not intended to absolve transportation companies from care commensurate with the risk of danger which might arise from concentrating a large quantity of highly explosive matter in close proximity to densely populated cities, and at a terminal exposed to and un-

protected against intruders and incendiaries, and without proper facilities to promptly meet the outbreak of a fire or any other danger reasonably to be apprehended."

With three exceptions all of the cases cited in defendant's brief were discussed on pages 58 to 64, inclusive, of its brief in the *Royal Indemnity* case, reported 94 N. J. L. 260 and also on pages 43 to 49, inclusive, in the brief of the defendant in support of the application for writ or certiorari, which was denied, 253 U. S. 483. The case of *Pennsylvania R. R.* v. *Public Service Commission,* 250 U. S. 566, 63 L. Ed. 1142, and *Postal Telegraph Cable Co.* v. *Warren-Goodwin Lumber Co.,* 251 U. S. 27, 64 L. Ed. 118, were also cited in the brief of the Lehigh Valley R. R. Co. on the application for writ of certiorari in the *Royal Indemnity* case. These two additional cases do not exhibit any change whatever in the law; they merely reiterate the principle, that where Congress has assumed to exercise *exclusive* jurisdiction with respect to a particular subject matter, *conflicting regulations* by a state must fail, and it was also upon this principle that the Supreme Court decided the only other additional case cited, *Railroad Commission of Wisconsin* v. *Chicago, etc., R. R.,* not yet reported, in which it held that the right to fix intrastate rates of fare is subordinate to the powers of Congress under the commerce clause of the Constitution, *when they conflict with the interstate rates.*

When this court has repeatedly considered and decided this question, which the defendants had contended is a federal question, and it is seen that the United States Supreme Court has upon five separate occasions refused to review the determination of this court, as well as the similar judgment of the Second Circuit, we think this court has a right to assume that its judgment was not erroneous.

N. J. Fidelity, etc., Ins. Co. v. *Lehigh Valley R. R. Co.,* certiorari denied, 249 U. S. 600;

Howell v. *Lehigh Valley R. R. Co.,* certiorari denied, 253 U. S. 482;

Royal Indemnity Co. v. *Lehigh Valley R. R. Co.,* certiorari denied, 253 U. S. 483;

Allied Machinery Co. v. *Lehigh Valley R. R. Co.,* 271 Fed. 900, certiorari denied, June 6, 1921;

Allied Machinery Co. v. *Lehigh Valley R. R. Co.,* 271 Fed. 900, writ or error dismissed, November, 1921.

The United States Supreme Court has never abandoned or overruled its decisions in *Reid* v. *Colorado,* 187 U. S. 137, 47 L. Ed. 108, or *Savage* v. *Jones,* 225 U. S. 501, 56 L. Ed. 1182.

In the former of these cases the court said:

> "It should never be held that Congress intends to supersede or by its regulations suspend the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested."

And in the *Savage* case the court said:

> "But the intent to supersede the exercise by the state of its police power as to matters not covered by the federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulations and occupy a limited field; in other words, such intent is not to be implied unless the act of Congress fairly interpreted is in actual conflict with the law of the state.

III.

There was no error in the submission of the case to the jury.

Point III, while exceedingly complex, is found to be the same in substance as Point III in the *Royal* case. Nevertheless as it is extensively briefed, we will endeavor once more to reply.

The first complaint we discover is that the trial judge referred to certain "regulations which were not pleaded," and permitted the jury to take them "into consideration." The fact is that the defendant pleaded *all* of the regulations as a defense (pp. 16, 17) and offered *all* of them in evidence (p. 488). It is certainly a novel proposition that a party who pleads and offers in evidence a document of this character may object to the trial judge placing it before the jury. (See *Fidelity* case, 92 L. at 473). And then it must be observed that the trial judge in reading the defendant's exhibit, did not pause to comment upon them, or draw attention to any one in particular, except as requested by the defendant, to limit its application. So when the defendant complains, as it does in numerous places, that the court "permitted" the jury to "consider" this or that regulation, it is unable to show any more than that the court in a very general and explanatory way, read to the jury certain of these rules to explain to them the scope of the federal regulation of the subject, upon which the defendant was relying as the measure of its duty. After reading the regulations which the court deemed illustrative or pertinent to the discussion, he charged the jury, *as requested by the defendant:*

> (a) "I charge you that the sole duty of the defendant to the plaintiffs in regard to the explosives and inflammables * * * with respect to all matters within the scope of the statutes of the United States and the regulations of the Interstate Commerce Commission respecting same was to comply with said statute and regulations, and the plaintiffs are not entitled to recover with respect to such subject matter unless they prove a failure on the part of the defendant to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiffs."

(We do not comprehend, in view of the request, how it is error to read the regulations to which the request refers.)

> (b) "Now the law says that the burden rests upon the plaintiff to make out by the greater weight of the evidence that the negligence which he has charged in his written complaint against the defendant existed and was the proximate cause of the loss of which the plaintiffs complain and for which in these suits they seek to have a recovery in damages. That does not mean that they are obliged to make out all of these specifications of negligence which I have read to you, but if they make out any of those specifications of negligence, or of two or more of them, by the greater weight of the evidence and show by the greater weight of the evidence that that one specification, or two or more specifications of negligence, were the proximate cause of the loss, and that that existed on the part of the defendant company, that would give them a right to have a recovery and to have you assess their damages at such sum as they have proven by the greater weight of the evidence their loss amounted to."

It is therefore untenable to assert, as defendant does on page 64 of its brief,

> "That as to at least some of the regulations there was an utter failure to prove a violation thereof and accordingly the jury were permitted to base a verdict upon a ground which was without support in the evidence."

On the same page it is said:

> "But even if there should be evidence as to a violation of some of them, the judgment should be reversed if we are able to show that there was a failure to prove a violation of others which were submitted to the jury."

We repeat that the defendant having pleaded and proved *all of the regulations,* cannot now complain of their "submission to the jury," particularly in view of the charge which followed, in connection with the burden of proof. Furthermore, the action of the trial judge was

the same as in the Howell case, in which Justice Kalisch wrote (94 N. J. L. 215):

> "The record shows that the learned trial judge read to the jury the specifications of negligence contained in the complaint, and supplemented this by instructing the jury that the burden rested upon the plaintiffs to make out by the greater weight of the evidence that the negligence charged in the written complaint existed and was the proximate cause of the loss and then said: 'That does not mean that they are obliged to make out all of those specifications of negligence which I have read to you, for if they make out any one of those specifications of negligence, or two or more of them by the greater weight of the evidence and show by the greater weight of the evidence that one specification, or two or more specifications of negligence were the proximate cause of the loss and that they existed on part of the defendant company, that would give them a right of recovery,' etc. To this statement of the rule of law counsel of defendant excepted. We perceive no error in the instruction. *It is obvious that the court limited the finding by the jury of the defendant's negligence to such specifications of negligence as were the proximate cause of loss and supported by proof,* and, hence, he impliedly excluded any specification contained in the complaint and read to the jury which was not the proximate cause of the loss and was not supported by the greater weight of the evidence."

Referring briefly to the particular regulations complained of:

1401 (a), 1429. The defendant requested the instruction (p. 817-1), and the court used the language of regulation itself instead of the language of the request, which was not accurate.

1428. Not mentioned.

1643 (a). The court did charge as requested, that the first sentence did not apply to this case (p. 795, l. 10). This section was particularly referred to by this court in the *Howell* case, 94 N. J. L., at p. 216.

1643 (b). No comment was made or instruction given on this section. But it does not lie in the mouth of the defendant to say that *unauthorized persons* were not permitted in the yard where these explosives were, when it proves that Eiseman walked the entire length of the yard *unchallenged and unseen,* and that the boat (Paulina) upon which he was employed, and to which he was bending his steps, was a *trespasser* on defendant's property. Request 69 (p. 835); request 75 (p. 836). If the Paulina was a trespasser on defendant's property, manifestly its mate had no business prowling around that yard at 1 o'clock in the morning, nor had any of the crews of the other trespassing barges any authorized right there.

1661-1662-1667-1913. It was both proved and admitted that the cars were properly tagged, and the contents of the tags were in evidence with the rest of the regulations offered by the defendant. It is interesting to note that in its discussion of section 1666 and also of section 1913, the defendant again contends that the "warning" on the tag "*Keep Fire Away*" does not impose any duty to extinguish a fire "in the event that one started in or near such cars."

1681-1682-1684. As to these as well as others, the court made no comment, but simply read from the defendant's Exhibit D. 1 (pp. 796, 797). In view of this fact and the fact that the court charged the jury that no verdict could be found unless the charges were sustained by the evidence, we fail to see where any error is pointed out.

The remainder of the argument under point III is copied from the briefs in the earlier cases which have already been considered by this court, and deal particularly with the quantum and effect of the evidence and conclusions to be drawn therefrom.

In this connection we once more quote from *Sutton* v. *Bell,* 79 N. J. L. 507, where this court held:

> "The existence of negligence, whether the plaintiff or of the defendant, depended upon the conclu-

sion to be reached from a variety of circumstances, considered not as isolated occurrences but altogether and in view of their relation to and reaction upon each other. To draw a conclusion as to the conduct of the parties under such circumstances thus connected, is of the very essence of the jury function. In proportion as such circumstances multiply and intercalate, it becomes more and more a matter of deciding between conflicting inferences, and less and less a matter of declaring that one inference alone is conclusively compelled by the testimony."

In the *Fidelity Co.* case, 92 N. J. L. 492, this court said:

"Whether the defendant had exercised that degree of care commensurate with the risk of danger arising from the accumulation of the vast quantity of high explosives upon its premises, in cars which stood in close proximity to each other, was clearly a jury question.

Under the pleadings and proof in the cause the jury was warranted in taking into consideration the exposed condition of the premises where the cars containing the explosives stood, the possibility of their being tampered with or set on fire by intruders, or through the carelessness of workmen employed by the defendant, in and about the premises, and might properly have found that the number of watchmen employed by the defendant to guard this great quantity of high explosives against such happenings was inadequate; or that the watchmen had been negligent in the performance of their duties in failing to discover the fire before it was too late to prevent the disaster which followed; or that the defendant was negligent in failing to provide adequate apparatus to fight the fire; or in failing to give notice of the fire as soon as discovered to the fire department."

In the *Howell case,* 94 N. J. L. 214, the court said:

"It is obvious from an examination of this new testimony that it does not in legal effect constitute a complete bar to the plaintiff's right of recovery, and, at most, only raised issues of fact which were for the consideration and decision of a jury. Thus,

> as instances illustrative of this comment, were the questions whether the fire and explosions were due to incendiarism or to spontaneous combustion, or whether the fire and explosion had its origin in a schooner loaded with explosive substances, which vessel, it was alleged was unlawfully moored to the pier of the defendant without its knowledge or consent, or whether the explosion on the schooner preceded the explosion on land."

The present case involves only the destruction of the plaintiff's property in the possession and custody of the defendant. In the case in the Supreme Court involving those claims upon which the jury rendered a verdict in favor of the defendant (114 Atl. 242), Mr. Justice Swayze in commenting on the present claim, said:

> "* * * There was an element of negligence as to these explosives that was not present in the case of the other explosives belonging to France. One of the causes of negligence alleged was the failure to provide adequate facilities and proper measures and precautions, both before and after the fire started, for removing and isolating cars which caught fire and cars loaded with dangerous explosives likely to explode in or near where the fire might be discovered. We agree with the defendant that under a charge permitting recovery for negligence thus characterized, the jury might properly find that there was no negligence * * * so far as concerned the starting of the fire, and yet may have properly found that there was negligence after the fire started in removing or isolating cars on its dock."

We respectfully submit therefore that in view of the previous decisions of this court on these questions, and in view of the great mass of evidence showing negligence on the part of the defendant, and the careful exposition of the law on the part of the trial judge expounding the plain meaning and intent of the regulations, that there was no error in the submission of the case to the jury with respect to these claims.

IV.

There was no error in the charge relative to the anchorage regulations or the Johnson Barge No. 17.

The defendant endeavored to show that the loss of the property of the plaintiff in this case was caused either wholly or in part by an explosion on a barge, called the Johnson 17, which was moored on the north side of the North Pier, and the argument is predicated upon the assertion that the presence of the Johnson 17 in the pier was in violation of the anchorage regulations.

The errors in this contention, as we have heretofore pointed out, are as follows:

a. This barge was at the place selected by the defendant to transfer explosives from its cars to barges, and as shown by the testimony of Carrine (p. 606) this barge was not completely loaded and more explosives were to be loaded on it the following day. We are not referred to any provisions of the anchorage regulations which require a barge, expecting to take on additional lading at a railroad pier to go away from the place where the lading is expected. Under this contention it would be unlawful for a barge to go near the pier for the purpose of receiving and transferring the explosives to ships. It is therefore not in accord with the facts or the law to say that the presence of the Johnson 17 was a deliberate violation of the anchorage regulations which constituted an independent intervening agency so as to break the chain of causation in the events of that night.

b. There was a great deal of evidence tending to show that the first explosion, the one of the greatest force and intensity, occurred in the yard near the corner of the storehouse. It therefore was a jury question whether the first explosion destroyed plaintiff's goods directly or whether it threw some burning material upon the Johnson 17, which, in turn, caused that boat to explode. Reference to the instructions of the court on this subject will show that it was treated in strict accordance with

the legal principles applicable to the disputed facts. We submit that the charge on this subject, including the defendant's requests, which were granted, must be considered as a whole, and cannot be invalidated by picking out phrases here and there without showing their relation to the charge as a whole. Under the last point on brief (b) it is conceded that an explosion occurred in the yard (which was of such great intensity as to excavate and leave a crater of 300 feet in length and 200 feet in width) and also that the plaintiff's benzol and guncotton were within this area of destruction and were actually destroyed. Upon these facts we conceive that there was no duty on the part of the plaintiff to speculate whether its loss was caused by a subsequent explosion, of very much less intensity, which occurred some twenty minutes later, on a boat at a point 800 to 1,000 feet distant from the location of these cars.

We respectfully submit that there is no legal error shown on this record and that the judgment should be affirmed.

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Of Counsel.

New Jersey Court of Errors and Appeals

REPUBLIC OF FRANCE, *Plaintiff-Respondent,* *vs.* LEHIGH VALLEY RAILROAD COMPANY, *Defendant-Appellant.*	*On Appeal from New Jersey Supreme Court.*

BRIEF IN FAVOR OF LEHIGH VALLEY RAILROAD COMPANY.

(1)

Statement of the Case.

The appeal in this case is taken from a judgment entered in the New Jersey Supreme Court in favor of the respondent (hereinafter called the plaintiff) and against the appellant (hereinafter called the defendant) upon the verdict of a jury at a trial in the Hudson County Circuit Court. Said judgment was entered for the sum of $122,566.22, being the amount of the damages, with interest, alleged to have been sustained by the plaintiff by reason of the destruction of certain ammunition and munitions of war (p. 22).

The complaint of the plaintiff set forth several separate and distinct losses, described in the complaint as "Items" 1 to 12, inclusive (pages 3-5 of Record). At the trial of the case, Items 4 and 6 of the complaint were, by consent, withdrawn from the case and were accordingly not submitted to the jury. The issues with respect to the other items were submitted to the jury with the result that there was a verdict in favor of the *defendant* with respect to Items 1, 2, 3 and 5. The verdict upon which the judgment under review was based was returned in favor of the plaintiff with respect to Items 7, 8, 9, 10, 11 and 12, aggre-

gating the sum of $99,647.41, principal, and $22,918.81 interest, making the total judgment as above stated (p. 22).

This case was tried jointly with two other cases wherein the plaintiffs, respectively, were His Majesty the King of the United Kingdom of Great Britain and Ireland, and Aetna Explosives Company, Inc. In both of these cases there was a verdict returned in favor of the *defendant.*

The King of England and the Aetna Explosives Company took rules to show cause to review the verdicts against them and the Republic of France also took a rule to show cause with respect to the items wherein the verdict was against it. These rules were argued before the Supreme Court at the November Term, 1920; decision was filed June 7, 1921, discharging all the rules. See 114 Atl. 242.

The only matter before this court on the present appeal is the judgment entered in favor of the plaintiff for the said Items 7, 8, 9, 10, 11 and 12. It was alleged by the plaintiff that the articles included under this description were destroyed by the fire and explosion commonly known as the Black Tom explosion, which occurred at one of the Jersey City terminals of the defendant, located on the west store of the Hudson River, in the early morning of July 30th, 1916.

Item No. 7 consists of 13 carloads of wet nitrocellulose, otherwise known as guncotton, which had been shipped from Aetna, Indiana, by the Aetna Explosives Company to Sheldon & Company, shipping agents of the plaintiff in this country. These cars had been transported over the line of the defendant and had arrived at the Black Tom Yard on July 23rd, 1916. The defendant sent prompt notice of the arrival of each car, two of the notices being sent on July 25th, and one on July 25th (see Exhibit D. 10, pp. 524-5). For reasons which were not explained, the consignees (whose duty it was to unload the contents of the cars on to barges for the purpose of transshipment to foreign steamers), allowed the cars to remain in

the yard and at the time of the explosion none of them had been unloaded either in whole or in part.

Items 8, 9, 10, 11 and 12, each cover one car containing 50 drums of monochlorbenzol, shipped from Buffalo by the Hooker Electrical Chemical Co., to itself, as consignee. The several cars arrived in the Black Tom Yard on the following dates: July 17, 10, 17, 11 and 28. Notices of arrival were promptly sent as to all of these cars except the car that arrived on July 28th. Up to the time of the explosion the consignees had not unloaded any of the cars. The four cars for which notice of arrival had been sent were located on Track 16. The car which arrived on July 28th, was on Track 13. As to the last-mentioned car the defendant conceded at the trial that it was liable as a common carrier. Hence, so far as concerns this car (which is represented by Item No. 12), the defendant does not press its appeal, but as the value of this is readily separable from the other items, the judgment could be affirmed as to this one item and reversed as to the other items, if the court reaches the conclusion that the defendant is entitled to a reversal as to such other items.

With respect to all of the other items, 7 to 11 inclusive, the liability, if any, of the defendant, was not that of a common carrier but that of a warehouseman, as notice of the arrival of the several cars represented by the said items had been duly given to the plaintiff. Hence, in order to establish liability on the part of the defendant with respect to these items, it was necessary for the plaintiff to prove negligence; and the Trial Judge so charged (pp. 804-5).

Prior to the time of the fire and explosion, the property belonging to the King of England and the Aetna Explosives Company had been transported over the line of the Central Railroad of New Jersey and unloaded at Dock 19 of that company on to certain barges known as the Thompson, Paulina and Rockwell. These barges were tied at or near the North Pier at the time of the fire and

explosion. In both cases there was a general verdict for the defendant as to the entire claims.

The property of the Republic of France known as Items 1, 2 and 3 had been transported over the line of the Central Railroad Company and delivered at Dock 19 of that Company to the lighter "Rockwell." It was claimed by the plaintiff that the property represented by these items was on the lighter at the time of the explosion and was destroyed thereby. The verdict was for the defendant.

The property of the Republic of France known as Item No. 5 had also been transported over the line of the Central Railroad Company, but had not been delivered to any lighter. It was destroyed while in cars which were standing on Dock 19 of said Central Railroad Company. As to this item also, the verdict was for the defendant.

As to Item No. 12, verdict was for the plaintiff, but, for the reasons stated above, the appeal with respect thereto is not pressed.

Accordingly, the only items which are to be considered on this appeal are 7, 8, 9, 10 and 11.

Several other cases arising out of the Black Tom explosion have been before this court, as follows:

N. J. Fidelity & Plate Glass Ins. Co. v. *L. V. R. R. Co.*, 92 N. J. L. 467; 105 Atl. 206;

Howell v. *L. V. R. R. Co.*, 94 N. J. L. 213; 109 Atl. 309;

Metropolitan Casualty Ins. Co. v. *L. V. R. R. Co.*, 94 N. J. L. 236; 109 Atl. 743;

Clark v. *L. V. R. R. Co.*, 94 N. J. L. 228; 109 Atl. 745;

Royal Indemnity Company v. *L. V. R. R. Co.*, 94 N. J. L. 260; 109 Atl. 745.

The last three cases were part of a series of twelve cases which were consolidated for the purpose of trial. The principal opinion followed the decision of this court in N. J. Fidelity & Plate Glass Ins. Co. and the other opinions merely deal with points peculiar to the particular cases.

The defendant, of course, recognizes that these decisions are conclusive upon it—at least so far as relates to questions purely of state law, and there is no intention to re-argue these questions at this time. But in this brief these questions will be stated, so that in the event of an adverse decision by this court and a review of same by the United States Supreme Court, the defendant will not be held to have waived these questions by failing to urge them.

There are certain other questions in the case which depend upon a construction of the Federal statutes relative to interstate commerce and the transportation of explosives. These same questions were involved in the earlier cases and decided adversely to the defendant, but we desire to present them for the same reasons.

Another case arising out of the explosion, *Allied Machinery Co.* v. *L. V. R. R.*, was decided by the United States Circuit Court of Appeals for the Second Circuit, on February 23rd, 1921. See 271 Fed. 900. In that case, as in the present case, the plaintiff recovered damages by reason of alleged negligence on the part of the defendant. After the affirmance of the judgment in favor of the plaintiff, a petition for writ of certiorari was presented to the United States Supreme Court on May 31st, 1921. There being some uncertainty as to whether the proper method of review of the judgment of the Circuit Court of Appeals was by writ of certiorari or by writ of error, the defendant also applied for a writ of error. The application for writ of certiorari was denied by the United States Supreme Court on June 6th, but, in the meantime, writ of error was allowed by Circuit Court Judge Ward on June 3rd. No opinion was filed by the U. S. Supreme Court at the time of the denial of the petition for the writ of certiorari. The writ of error was dismissed by the U. S. Supreme Court on November 14, 1921, the opinion reading as follows:

"*Per Curiam:* Dismissed for want of jurisdiction upon the authority of *Shulthis* v. *McDougal,* 225 U. S. 561, 56 L.

Ed. 1205, 32 Sup. Ct. Rep. 704; *Hull* v. *Burr,* 234 U. S. 712, 720, 58 L. Ed. 1557, 1561, 34 Sup. Ct. Rep. 892; *St. Anthony's Church* v. *Pennsylvania R. Co.,* 237 U. S. 575, 577, 578, 59 L. Ed. 1119, 1122, 1123, 35 Sup. Ct. Rep. 729."

See Adv. Opn. of Dec. 15, 1921, at p. 87.

(2)

GROUNDS OF APPEAL.

The grounds of appeal will be found at pages 25 to 65 of the record. The number of such grounds is necessarily somewhat larger than in the ordinary case, due to the fact that the plaintiff, in the complaint, alleged several separate and distinct grounds of liability and the Trial Judge permitted the jury to consider each of them, notwithstanding the fact that the defendant requested him to remove one or more of them from the jury.

The various grounds may be summarized under the following points:

I and II. Refusal to non-suit and to direct a verdict for the defendant (except as to Item No. 12).

III. Refusal to charge as requested.

IV. Error in the charge of the Trial Judge.

The grounds raise numerous questions of law, some of them arising under local or State law and others arising under Federal law as expressed in Federal statutes. In reciting the grounds of appeal it will be convenient to separate questions which arise under State law from those which arise under Federal law, and we have accordingly done so, as follows:

(A)

Questions of State Law.

I AND II.

MOTION FOR NON-SUIT AND FOR DIRECTION OF VERDICT.

Motion for non-suit, or for direction of verdict in favor of defendant should have been granted for one or more of the following reasons:

(Numbers correspond to numbers of the grounds of appeal.)

1. Plaintiff has failed to prove facts sufficient to state a cause of action.

3. Assuming that there may have been some other duty to which the defendant was subject, which is not covered by the statutes of the United States and the rules and regulations of the Interstate Commerce Commission above referred to, there is no proof of any violation of any such other duty, if any existed.

4. Plaintiff has failed to prove any negligence on the part of the defendant in respect of the starting of the fire, and the facts do not permit the Court to allow the case to go to the jury upon the doctrine of *res ipsa loquitur*.

5. Since there is no proof from which any inference could be drawn of negligence on the part of the defendant in respect of the starting of the fire, and since the facts do not permit the application of *res ipsa loquitur*, if it is sought to hold the defendant responsible because of the conduct of its employees after the fire started, then the pliantiff may not succeed, on this theory, because the evidence shows that the fire when discovered was in a car containing ammunition or explosives, or was in the immediate vicinity of care containing ammunition or explosives, and the only inference which the jury could be permitted to draw is that any one going near such fire would be in great danger and therefore the defendant could not be held responsible even if its employees un-

der these circumstances of emergency made any error of judgment in their conduct.

6. There is no proof that the omission of any duty set forth in the complaint or complaints, with which the defendant was legally chargeable, was the proximate cause of the injury to the plaintiff.

7. There is no proof that the performance of any duty set forth in the complaint, or complaints, with which the defendant was legally chargeable, would have prevented the injury of which the plaintiff complains.

8. The defendant may not be held legally liable upon the assumption that the failure of its employees to procure water and to put out the fire was the proximate cause of the injury to the plaintiff, because the proofs show that the Jersey City Fire Department was promptly notified and came to the scene of the fire without means for pumping water, and any failure in this respect was the failure of the Jersey City Fire Department, and of its duty as a public agency, and is not attributable to the defendant.

9. Since there is no proof that the fire was started by human agency directly applied at the origin of the fire, there is no proper legal inference that the presence of any number of watchmen would have prevented the outbreak of the fire, and there is no proper ground to attribute negligence to the defendant in respect to the number of watchmen furnished by it, and if the plaintiff seeks to hold the defendant responsible with respect to the starting of the fire as the proximate cause of the injuries complained of, it may not do so legally, under the proofs.

10. Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients of the materials composing the shells was capable of spontaneous combustion, the jury may not legally infer that the fire was started by human agency applied at the place of the commencement of the fire.

11. Plaintiff may not have a verdict upon the assumption that the proximate cause of the injury complained of was the negligence of the defend-

ant with respect to the starting of the fire, because the evidence is consistent with the non-existence of negligence in that respect.

12. Plaintiff may not have a verdict against the defendant upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant in respect of the spreading or non-extinguishment of the fire, because the evidence in the case is consistent with the non-existence of any negligence in that respect.

13. By suffering their explosives to come and remain at the terminal in the manner described in the proofs, the plaintiff voluntarily took the risk of their destruction except by the wilful negligence of the defendant, and no such negligence is pleaded or shown.

14. By suffering the high explosives to come and remain at the terminal in the manner described by the proofs, the plaintiff contributed to the injury complained of.

III.

REQUESTS TO CHARGE.

It was error to refuse to charge one or more of the following requests submitted in behalf of the defendant:

41. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(a) In collecting freight cars containing explosives, explosive projectiles, ammunition and munitions of war subject to detonation by fire or concussion and permitting them to accumulate in the said Black Tom Yards, to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with greater damage to human life and damage to surrounding property;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

42. So far as relates to the plaintiffs' claim that the damage to them and to each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(b) In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals in said Black Tom Yards and in the vicinity thereof;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

43. So far as relates to the plaintiff's claim that the damage to them and to each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(c-1) In failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patroling, policing and guarding said yard and other premises in the vicinity thereof under the control of the defendant, and the cars and their contents stored therein, and for the purpose of discovering and extinguishing fires;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

44. So far as relates to the plaintiffs' claim that the damage to them and to each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(c-2) In failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein;

there was no proof of any negligence or misconduct in this respect or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

45. So far as relates to the plaintiffs' claim that the damage to them and each of them was cause by the negligence and misconduct of the defendant in the following particular, to wit:

(d) In neglecting to take care to exclude unauthorized persons from the said yards and leased

premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

46. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(e) In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosion occurred;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

47. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(f-1) In failing to provide sufficient men, adequate fire drills and proper facilities for fire protections and prevention on and in the vicinity of the premises where the fire occurred;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

48. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(f-2) In failing to provide competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

49. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(g) In failing properly to instruct its employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

50. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(h-1) In failing to provide adequate facilities and to take proper measures and precautions *before* the fire started for removing or insulating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them

51. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(h-2) In failing to provide adequate facilities and to take proper measures and precautions *after* the fire started for removing or insulating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

52. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(i) In failing to store, handle and dispose of said explosives, explosive projectiles, and

ammunition and munitions and the cars containing them so as to enable the defendant to prevent or control the communication of fire or concussion from one part of the mass of explosives to another;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs or any or either of them.

53. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(j) in failing to install, maintain and keep in repair adequate means for communicating alarms and summoning assistance in case of fire;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

54. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(k) in failing to give the alarm of fire and summon assistance promptly;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

55. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(l) in failing to prevent the said fire;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

56. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(m-1) In failing promptly to discover the said fire; there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

57. So far as relates to the plaintiffs' claim that the damage to them and each of them was caused by the negligence and misconduct of the defendant in the following particular, to wit:

(m-2) in failing to take proper measures to extinguish the fire and to prevent damage therefrom;

there was no proof of any negligence or misconduct in this respect; or that such negligence or misconduct, if any, was the proximate cause of the damage to the plaintiffs, or any or either of them.

58. The mere fact that there was a considerable number of freight cars in the defendant's yard, containing explosives, explosive projectiles, ammunition, munitions of war and inflammable materials, as shown by the evidence in the case, is not sufficient to charge the defendant with negligence.

59. So far as relates to the plaintiffs' claim of negligence against the defendant because of its alleged failure to provide competent men for the purpose of patrolling, policing and guarding the Black Tom Terminal, it is the law that the duty of the defendant, so far as relates to the selection of men for such purposes, was to take reasonable care to employ competent men, and there is no proof that the defendant failed to use the degree of care required of it by law in the selection of its said men.

60. Since there is no proof that the fire on the defendant's premises was started by human agency directly applied at the point of the origin of the fire, the jury cannot conclude that the presence of more Lehigh Valley watchmen in the yard than in fact were there would have prevented the starting of the fire, and, therefore, the jury cannot find

negligence on the part of the defendant in that respect.

61. So far as relates to the fire protection in that part of the Black Tom Yard which was located to the east of Store R and the 100,000-gallon gravity tank, there is no evidence that the defendant did not observe the usual custom of railroads as it existed on July 29th and 30th, 1916; and, hence, the jury cannot find negligence against the defendant merely by reason of the fact that no fire hydrants were located in that part of the yard on the occasion of the fire and explosion.

62. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish fire hydrants in addition to those furnished by the City of Jersey City, the said terminal being within the limits of said municipality.

63. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish its own fire protection in addition to that furnished by the City of Jersey City, the said terminal being within the limits of that municipality.

64. There was no legal duty resting upon the defendant in respect of its terminal at Black Tom to furnish men and equipment to extinguish fires, in addition to the men and equipment of the municipality of Jersey City, within the limits of which the said Black Tom Terminal is.

65. The proofs show that the witness Burns was the first person on the premises to discover the fire, and that he was in a position promptly to discover the fire and did so, and, therefore, the jury may not infer that if there had been more Lehigh Valley watchmen present the fire would have been discovered any earlier than it was.

66. If the jury finds that the defendant was not negligent in respect to the starting of the fire and that the said fire was in a car of ammunition, then a condition of emergency existed by reason of which the defendant cannot be held responsible for errors of judgment on the part of its employees, or any of them, in respect of what they did or failed to do concerning the putting out of the fire.

67. If the jury finds that the defendant was not negligent in respect of the starting of the fire and that the said fire was in a car of ammunition, then the jury must consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of emergency, then it cannot find the defendant legally responsible fo the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire.

68. Since there is no testimony that the fire was started by human agency at the place where it commenced, and there is testimony that one of the ingredients in the material composing the shells was capable of spontaneous combustion, the jury cannot find a verdict against the defendant on the ground that the fire was started by human agency applied at the place of the commencement of the fire as the result of defendant's negligence.

69. If the jury finds that the fire which was discovered upon the premises of the defendant on July 30th, 1916, was started by spontaneous combustion and that the starting of such fire was the sole proximate cause of the injury to the plaintiffs, then the defendant cannot be held legally responsible for any damage suffered by the plaintiff.

70. If the jury finds that the spreading of the fire caused the injury to the plaintiff and that such spreading could have been prevented in time to have avoided damage to the plaintiff by the throwing of water upon the fire, and that the proximate cause of the spreading was the failure to throw water upon the fire, then the jury must consider that the Jersey City Fire Department, came without their fire engines and they testified that for the lack of such fire engines they were unable to throw water upon the fire and the jury may therefore consider whether that was not the sole proximate cause of the spreading of the fire which caused the damage to the plaintiff, and if it so concludes should find for the defendant.

73. There is no evidence from which the jury may determine how much of the damage in the plaintiff was caused by fire and how much was

caused by explosion; there is evidence that some damage to plaintiff was caused by explosion; and as the defendant cannot be held responsible for the explosion on the Johnson 17 and any damage caused thereby, the jury are instructed that if they find a verdict for the plaintiff, the amount of such verdict must be limited to six cents.

74. The jury is not at liberty to allow the plaintiff any interest in respect of any sum found to be due it.

75. The jury is not at liberty to allow the plaintiffs, or any or either of them, any interest in respect of any sum found to be due them, or any or either of them, unless the jury reach the conclusion that the refusal of the defendant to pay the demands of the plaintiffs, was unreasonable and that the defendant was not justified in attempting to protect itself against said demands.

IV.

EXCEPTIONS TO CHARGE.

The Trial Judge erroneously charged the jury in one or more of the following respects:

78. "And then another matter in which attention needs to be directed is this: There are claims in each of these cases for interest upon the alleged value of the destroyed property. Now, interest is not allowed as a matter of right in all cases; interest is allowed by way of damages, and it rests with the jury to determine whether the interest in any given case shall be allowed; and I have been requested to charge, and do charge as requested by the defendant in this case, that the jury is not at liberty to allow the plaintiffs, or any or either of them, any interest in respect of any sum found to be due them, or any or either of them, unless the jury reach the conclusion that the refusal of the defendant to pay the demands of the plaintiffs was unreasonable, and that the defendant was not justified in attempting to protect itself against such demands.

"So, if you conclude that the duty of the defendant in this case, or in these cases, was to pay, and they did not pay, you would be justified in allowing interest upon the claims made by the plaintiffs in the suit, and if the value is found by you to be the sums I mentioned and that you took down, it would be interest on those sums and would amount to the sums that I have given you and which you now have. If the sums found by you are lesser sums, it would be interest upon those sums.

79. (a) "Then the plaintiff goes on to charge that said fire and explosion, or explosions, and the damage to the plaintiffs were not caused or contributed to by any negligence on the part of the plaintiff, but were caused solely by the negligence and misconduct of the defendant in the following particulars, among others:

(b) "First, in collecting freight cars containing explosives, explosive projectiles, ammunitions and munitions of war, subject to detonation by fire or concussion, and permitting them to accumulate in the said Black Tom Yards without adequate protection to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with greater danger to human life and damage to surrounding property."

* * * * * * * * *

(c) "Those are the charges of negligence which have been made by the plaintiffs in these three respective suits, and the plaintiffs are obliged to make out by the greater weight of the evidence—and the burden rests upon them so to make it out—that one or more of these causes of the fire existed and was the proximate cause of the destruction of the plaintiffs' property, before the plaintiffs would have a right to a verdict in the case.

"And I charge you that that does not mean they are obliged to make out all those specifications of negligence which I have read to you, for if they make out any one of those specifications of negligence or make out more of them, by the greater weight of the evidence that one specification or two or more specifications of negligence was the proximate cause of the loss, and that that existed on the part of the defendant company, that would give

them a right of recovery, unless a defense were made out by the defendant by the greater weight of the evidence—concerning which phase of the case I will speak later."

80. After charging the jury in the language set forth in sub-head (a) ground of appeal No. 79. The Trial Judge then charged as follows:

"Two: In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals, without adequate protection, in such Black Tom Yards and in the vicinity thereof."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff, if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

81. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Three: In failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patrolling, policing and guarding said yards and said premises in the vicinity thereof under the control of the defendant, and the cars and their contents stored therein, and for the purpose of discovering and extinguishing fires and in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff, if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

82. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Four: In neglecting to take due care to exclude unauthorized persons from the said yards

and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

83. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Five: In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water on and in the vicinity of the premises where the fire and explosion occurred."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

84. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Sixth: In failing to provide sufficient and competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in the sub-head (c) ground of appeal 79.

85. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Seventh: In failing properly to instruct its employees on and in the vicinity of the premises

where the fire occurred as to their duties in case of fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

86. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Eighth: In failing to provide adequate facilities and to take proper measures and precautions both before and after the fire started for removing or isolating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

87. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Ninth: In failing to store, handle and dispose of said explosives, explosive projectiles and ammunition and munitions and cars containing them so as to enable the defendant to prevent or control the communication of fire or concussion from one part of the mass of explosives to another."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

88. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Tenth: In failing to install, maintain and keep in repair adequate means for communicating alarms and summon assistance in case of fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

89. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Eleventh: In failing to give the alarm of fire and summon assistance promptly."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

90. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Twelve: In failing to prevent the said fire."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

91. After charging the jury in the language set forth in sub-head (a) of ground of appeal No. 79, the Trial Judge then charged as follows:

"Thirteen: In failing promptly to discover the said fire and to take proper measures to extinguish it and to prevent damage therefrom."

And after so charging, the Trial Judge then erroneously permitted the jury to find a verdict for the plaintiff if the plaintiff had made out by the greater weight of the evidence that the defendant was negligent in the respect above quoted, using the language set forth in sub-head (c) of ground of appeal 79.

92. "Then the plaintiff goes on to charge that said fire and explosion, or explosions, and the damage to plaintiffs, were not caused or contributed to by any negligence on the part of the plaintiff, but were caused solely by the negligence and misconduct of the defendant in the following particulars, among others":

First, in collecting freight cars containing explosives, explosive projectiles, ammunitions and munitions of war, subject to detonation by fire or concussion, and permitting them to accumulate in the said Black Tom Yards without adequate protection to such an extent that the detonation and explosion or combustion of their contents might result in a great casualty with greater danger to human life and damage to surrounding property.

Two: In permitting the accumulation of inflammable material, and especially cars containing highly inflammable chemicals, without adequate protection, in such Black Tom Yards and in the vicinity thereof.

Three: In failing to provide an adequate system and sufficient competent men and proper facilities for the purpose of patroling, policing and guarding said yards and the defendant, and the cars and their contents stored therein, and fo the purpose of discovering and extinguishing fire, and in failing adequately to patrol, police and guard said premises and the cars and their contents and other property stored therein.

Fourth: In neglecting to take due care to exclude unauthorized persons from the said yards and leased premises and from the adjoining premises who might, by accident or design, set fire to the property on said premises or cause explosions thereon.

Fifth: In failing to provide adequate hydrants, fire apparatus and sufficient pressure of water

on and in the vicinity of the premises where the fire and explosion occurred.

Sixth: In failing to provide sufficient and competent men, adequate fire drills and proper facilities for fire protection and prevention on and in the vicinity of the premises where the fire occurred.

Seventh: In failing properly to instruct its employees on and in the vicinity of the premises where the fire occurred as to their duties in case of fire.

Eighth: In failing to provide adequate facilities and to take proper measures and precautions both before and after the fire started for removing or isolating cars which caught fire and cars loaded with dangerous explosives likely to explode by fire in or near which fire might be discovered.

Ninth: In failing to store, handle and dispose of said explosives, explosive projectiles and ammunition and munitions and cars containing them so as to enable the defendant to prevent or control the commuication of fire or combustion from one part of the mass of explosives to another.

Tenth: In failing to install, maintain and keep in repair adequate means for communicating alarms and summon assistance in case of fire.

Eleventh: In failing to give the alarm of fire and summon assistance promptly.

Twelfth: In failing to prevent said fire.

Thirteenth: In failing promptly to discover the said fire and to take proper measures to extinguish it and to prevent damage therefrom.

Those are the charges of negligence which have been made by the plaintiffs in these three respective suits, and the plaintiffs are obliged to make out by the greater weight of the evidence—and the burden rests upon them so to make it out—that one or more of these causes of the fire existed and was the proximate cause of the destruction of the plaintiff's property, before the plaintiff would have a right to a verdict in the case.

And I charge you that that does not mean they are obliged to make out all those specifications of

negligence which I have read to you, for if they make out any one of those specifications of negligence or make out more of them, by the greater weight of the evidence, and show by the greater weight of the evidence that one specification or two or more specifications of negligence was the proximate cause of the loss, and that that existed on the part of the defendant company, that would give them a right of recovery, unless a defense were made out by the defendant by the greater weight of the evidence, concerning which phase of the case I will speak later.

94. "Now, the law says that the burden rests upon the plaintiff to make out by the greater weight of the evidence that the negligence which he has charged in his written complaint against the defendant existed and was the proximate cause of the loss of which the plaintiffs complain and for which in these suits they seek to have a recovery in damages. That does not mean that they are obliged to make out all of those specifications of negligence which I have read to you, but if they make out any of those specifications of negligence, or of two or more of them, by the greater weight of the evidence and show by the greater weight of the evidence that that one specification, or two or more specifications of negligence, were the proximate cause of the loss, and that that existed on the part of the defendant company, that would give them a right to have a recovery and to have you assess their damages at such sum as they have proven by the greater weight of the evidence their loss amounted to."

105. "And while we are upon this subject, some point was made that the Johnson 17 if it exploded afterwards and did damage was such an interruption of the original negligence, if there were original negligence on the part of the defendant, that you could not say how much damage was due to the Johnson 17 and how much to the act of the defendant; but you ascertain, gentlemen, whether the original negligence, if there were original negligence, persisted throughout the whole situation, and was responsible as an efficient cause for setting in operation the other result. If it were, the fact that

the Johnson 17 was in the line of explosion and took fire and exploded and did damage would not defeat the right of the plaintiffs to recover against the defendant. One of the great cases in the common law of this country has perfectly settled the doctrine, which I illustrated by the facts of that case itself. If some one throws a lighted squib into a market place and some one sees it fall at his feet, sees that it is dangerous, and picks it up and hurls it from himself for safety, and it falls near some one else, and the other person picks it up and hurls it from himself to protect himself, and it at last explodes and injures somebody way off, who is to blame? the first man, because he set it in motion, and he might reasonably have anticipated that anybody who saw that thing coming toward him with its freight of danger would realize that the thing to do was to get it away from him, and therefore the man who first started it in motion would be responsible for all the natural and proximate consequences that flowed from the original act. And so you ask yourselves, is there unbroken continuity of connection between the original negligent acts, if there were original negligent acts or did some culpable intervening agency come in and destroy the continuity? If it did, why, of course, the end of the liability of the defendant would be the entry of the intervening culpable agency. If it did not, the end of the responsibility of the defendant would be the end of the destruction wrought by the chain of consequences that followed the original wrongful act, if there were one."

106. "I charge you that the law imposed upon the defendant the duty of transporting explosives and inflammables in the cars as testified in the case, and at the time of the explosion they were still in the course of such transportation in interstate or foreign commerce.

That, of course, is to be taken subject to the matter which I read to you from section 1401a where it says that when local conditions make the acceptance, transportation or delivery unusually hazardous local restrictions as provided by paragraph 1429 herein may be imposed."

107. "I charge you that if the jury finds that the defendant was not negligent in respect to the starting of the fire, and that the said fire was in a car of ammunition, then the jury must consider whether the situation thus disclosed was not an emergency, and if the jury finds that the situation was that of emergency, it cannot find the defendant legally responsible for the errors of judgment of its employees in respect of what they did or failed to do concerning the putting out of the fire."

"I charge you with the respect to that, however, that the doctrine of emergency strictly so called, has absolutely no place in this case, and that statement of the rule which I have read to you, while it directs your attention to a subject matter, is without any legal foundation whatever. What counsel meant, I think, to request me to charge, was this, that if the defendant's agents found themselves without negligence on the part of the defendant or its agents in a situation which was so imminent and urgent and dangerous that no man of ordinary firmness and courage would have taken upon himself to endeavor to interfere for the extinguishment of the fire, then they were not negligent if they did not endeavor to interfere for the extinguishment of the fire; but you will observe that in this case you must consider all of the circumstances and ascertain what was the size of the fire when it was first observed. How long was it, if any time at all, after the first discovery, before it appeared to be dangerous? And if time intervenes between discovery and the appearance of danger such as would daunt a reasonably firm and cautious man, and a reasonably courageous man, and afford time for the exercise of time and thought and judgment on his part, then such a man was bound to exercise such thought and judgment as a reasonably prudent and cautious man would have exercised under the circumstances, and bound to take such action as a reasonably prudent and cautious man would have taken under the circumstances, if any. That is what the doctrine in this case is as I understand it, and I charge you that that is the law on the subject."

108. "If after the fire had been started, even if it were started by spontaneous combustion, negligence intervened on the part of the defendant, the defendant was responsible for that negligence, whether it was responsible for the starting of the fire or not."

109. "I charge you that under the terms of the bill of lading under which three carloads of wet nitrocellulose, Item No. 7, and four carloads of benzol, Items Nos. 8, 9, 10 and 11, were shipped over the line of the defendant company, it is provided that the carrier shall not be liable for loss or damage by fire occurring after forty-eight hours, exclusive of legal holidays, after notice of arrival of the property at destination, or at port of export, if intended for export, has been duly sent or given, and the carrier's liability shall be that of a warehouseman only. As to each of the said seven cars the notice of arrival at destination or at port of export had been duly sent or given; and as the loss or damage was caused by fire occurring after said notice had been duly sent or given, the defendant, at the time of the loss or damage to the contents of the said cars was not liable to the Republic of France as a common carrier, but only as a warehouseman; and as warehouseman its duty in the premises was to exercise reasonable care under the circumstances. And reasonable care under the circumstances, gentlemen, would be a high degree of care."

(B)

Questions of Federal Law.

I AND II.

MOTION FOR NON-SUIT AND FOR DIRECTION OF VERDICT.

(Numbers correspond to numbers of the grounds of appeal.)

Motion for non-suit or for direction of verdict in favor of defendant should have been granted for one or more of the following reasons:

1. Plaintiff has failed to prove facts sufficient to state a cause of action.

2. Congress having taken jurisdiction of the subject matter, and having enacted statutes thereon to provide for the safe transportation of explosives in interstate commerce on land, and the Interstate Commerce Commission, in accordance with the directions of said statutes, having made rules and regulations governing the subject matter, and the explosives in question in this suit having been in the course of transportation on land in interstate commerce, the plaintiff can only succeed if it has proven a violation of said statutes or the rules and regulations of the Interstate Commerce Commission, above referred to, and this it has failed to do.

6. There is no proof that the omission of any duty set forth in the complaint or complaints, with which the defendant was legally chargeable, was the proximate cause of the injury to the plaintiff.

7. There is no proof that the performance of any duty set forth in the complaint, or complaints, with which the defendant was legally chargeable, would have prevented the injury of which the plaintiff complains.

11. Plaintiff may not have a verdict upon the assumption that the proximate cause of the injury complained of was the negligence of the defendant with respect to the starting of the fire, because the evidence is consistent with the non-existence of negligence in that respect.

III.

REQUESTS TO CHARGE.

It was error to refuse to charge one or more of the following requests submitted in behalf of the defendant:

15. The law imposed upon the defendant the duty of transporting the explosives and inflammables in the cars as testified in this case, and at the time of the explosion they were still in the course of such transportation in interstate or foreign commerce by land.

16. The sole duty of the defendant to the plaintiffs in regard to the explosives and inflammables received by the defendant for interstate transportation by land, and still in the course thereof, was to comply with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the same; and the plaintiff is not entitled to recover unless the jury shall find that the defendant failed to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiff.

17. There is no proof of any violation of Section 1428, reading as follows:

"1428. Before any shipment of dangerous explosives as named in paragraph 1661 destined to a point beyond the lines of the initial carrier is accepted from a shipper, the initial carrier must ascertain that the shipment can go forward via the route designated."

18. There is no proof that the violation, if any, of said Section 1428, above quoted, was the proximate cause of the fire or explosion by which the property of the plaintiffs was damaged.

19. There is no proof of any violation of Section 1433, reading as follows:

"1433. Carriers must forward shipments of explosives promptly and within 48 hours after acceptance at originating point or receipt at transfer station or at interchange point, and consignees must remove such shipments from the carrier's property within 48 hours after notice of arrival at destination. Sundays and holidays not included."

20. There is no proof that the violation, if any, of said Section 1433, above quoted, was the proximate cause of the fire or explosion by which the property of the plaintiffs was damaged.

21. Since the proofs in the case are uncontradicted that the carloads of explosives in defendant's yard were from points outside of the State of New Jersey and were in carload lots, and that it was the practice of the consignee or owner thereof to unload the said explosives from the cars, therefore, paragraph 1643 (a) of the Interstate Commerce regulations providing that "careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit, and all possible precautions must be taken against fire," applies to consignee or owner in unloading the explosives from the cars and does not apply to the defendant herein, and any alleged negligence in this respect is not chargeable to the defendant.

22. The provisions of paragraph 1643 (a) of the Interstate Commerce regulations that "suitable provision must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage," do not apply to the defendant under the evidence in this case, and, therefore, no verdict against the defendant can be based upon any alleged violation of such provisions.

23. If the provisions of Section 1643 (a) recited in Requests Nos. 8 and 9, are held to apply to the defendant under the evidence in this case, there is no proof of any violation of such provisions or that any such alleged violation was the proximate cause of damage to the plaintiffs.

24. The language of paragraph 1643 (b) of the Interstate Commerce regulations, prescribing that "unauthorized persons must not have access to explosives * * * at any time while such articles are in the custody of the carrier," means that before the cars are sealed and after the cars are unsealed, the carrier must not permit unauthorized persons to have access to the explosives in the cars. It does not refer to cars in which explosives are contained while such cars are under seal.

25. There is no evidence in this case that the defendant permitted any unauthorized persons to have access to the explosives while such articles were in its custody.

26. If the jury finds that unauthorized persons had access to the explosives on the night of July 29 and 30, 1916, while such articles were in the custody of the defendant, there is no evidence that the access of any such persons was the approximate cause of the injury complained of.

27. There is no proof of any violation of Section 1682, reading as follows:

> "1682. Every possible effort must be made to expedite the movement of cars containing explosives and no unnecessary delay must occur at initial, interchange or transfer stations."

28. There is no proof that the violation, if any of said Section 1682, above quoted, was the proximate cause of the fire or explosion by which the property of the plaintiffs was damaged.

29. The language in paragraph 1689 of the Interstate Commerce regulations referring to the handling of cars containing explosives and providing "they must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire" means that in the operation of the railroad company's yard or its sidings, the cars containing explosives must be removed from such danger of fire as might reasonably be expected. This regulation does not impose upon the railroad company an absolute duty to remove such cars from all possibility that fire might ever reach them.

30. There is no evidence from which the jury can legally infer that under paragraph 1689 of the Interstate Commerce regulations, the cars containing explosives in the Black Tom Yard at the time of the fire had not been removed from whatever danger of fire might reasonably have been expected by the defendant.

31. The "Explosive" placard required by Section 1666 of the Interstate Commerce regulations to be attached to certain cars, as specified in the

regulations, is not itself a regulation of the Interstate Commerce Commission.

32. The proper construction to be placed upon the placard required to be put upon cars containing explosives by paragraph 1666 of the Interstate Commerce regulations, is that the words, "Keep Fire Away," mean do not bring fire near. They do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary action of a person in regard to the bringing of fire to or near the cars. There is no evidence that the defendant disregarded this injunction.

33. In the condensed rules on the so-called "Explosive" placard, Section 7, which reads: "Avoid placing it near a possible source of fire," means not to put the car near a place where fire might reasonably be expected to be. There is no evidence that this injunction was disregarded by the defendant.

34. The "Inflammable" placard required by Section 1667 of the Interstate Commerce regulations to be attached to certain cars, as specified in the regulations is not itself a regulation of the Interstate Commerce regulations.

35. The proper construction to be placed upon the placard required to be put upon cars containing inflammables by paragraph 667, is that the words "Keep Lights and Fires Away," mean do not constitute an injunction to put out fire in the neighborhood of the cars, and only refer to the voluntary action of a person in regard to the bringing of fire or lights to or near the cars. There is no evidence that the defendant disregarded the injunction.

36. The proper construction to be placed upon the placard required to be attached to cars containing inflammables is that the words, "This car must not be next to a car containing Explosives" do not apply to cars containing inflammables or explosives while the same are standing in a railroad yard, but only while they are actually being moved in the course of transportation.

37. There is no evidence in this case that the defendant violated any of the provisions of paragraph 1667 of the Interstate Commerce regulation

38. Even if the jury should find that there was a violation on the part of the defendant of any of the provisions of Section 1667 of the Interstate Commerce regulations, there is no evidence that any such violation was the proximate cause of damage to the plaintiff.

39. There is no evidence in this case but that the explosives in defendant's custody were in all respects carried, conveyed, transported, handled and held by the defendant in compliance with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the safe transportation of explosives in interstate commerce by land.

40. There is no proof that the origin of the fire was the result of any failure of duty imposed upon the defendant by the regulations of the Interstate Commerce Commission relative to the safe transportation of explosives in interstate commerce by land, and, therefore, the jury cannot infer that the defendant was guilty of any violation of said regulations up to and including the time of the origin of the fire.

72. If the jury finds that the Johnson 17 containing 1,005 cases of TNT and 417 cases of detonators (all obtained elsewhere) was unlawfully moored at Black Tom Pier, and that the TNT thereon subsequently exploded on the night of July 30th, 1916, and caused or contributed to the damage complained of by the plaintiff, the jury cannot legally find the defendant responsible for such damage.

76. By Section 1433 of the Interstate Commerce Regulations it is provided with respect to shipments of explosives that "consignee must remove such shipments from the carrier's property within 48 hours after notice of arrival, at destination (Sundays and holidays not included)." In respect of said seven cars described in request No. 66 it appeared that the consignee, or its agent or representative, did not remove such shipments

from the carrier's property within forty-eight hours after notice of arrival at destination (Sundays and holidays not included), and plaintiff, the Republic of France, is not entitled to a verdict for the loss of any of the goods in said seven cars because under those circumstances the said plaintiff voluntarily assumed the risk of damage to the goods in said seven cars.

77. With respect to the contents of said seven cars described in Request No. 66, the defendant cannot be held liable even if the jury finds that there was negligence, for the reason that the loss to the plaintiff, the Republic of France, of the contents of said seven cars was due to its contributory negligence in not removing the same as required by the provisions of the Interstate Commerce Regulations.

IV.

EXCEPTIONS TO CHARGE.

The Trial Judge erroneously charged the jury in one or more of the following respects:

93. "Now, counsel in summing up have directed your attention to the fact that the Interstate Commerce Commission of the United States had adopted, under appropriate legal authority for that purpose, certain regulations for the transportation and handling and so on of munitions—explosives—inflammable things—and the United States Government under the Constitution of the United States which provides that the control of interstate commerce shall be in the Federal Government if it acts and provides regulations, either by the act of Congress itself, or by the act of some body, in other words, such as the Interstate Commerce Commission, authorized by act of Congress to provide such regulations—I say, if those regulations are provided, those regulations, within the domain which they cover, are exclusive, and if the carrier complies in that domain with those regulations, the carrier has done all that is required to do within that domain."

95. "Let me read to you some pertinent portion of those regulations, because they have a distinct bearing upon many phases of this case. Section 1401 provides that as the use of explosives is essential to various business activities throughout the country, it is the duty of interstate railroad carriers to accept and transport such explosives under these regulations; when local conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions as provided by paragraph 1429 herein may be imposed.

Now, what are these regulations that may be imposed? Section 1429 provides that all carriers must report to the chief inspector of the Bureau of Explosives for compilation and publication full information as to restrictions which may be imposed as provided in 1401-a against the acceptance, delivery or transportation of explosives over any portion of their lines. So that you see the carrier is not obliged to accept everything that is offered to it and transport it willy-nilly, but the carrier may avail himself of section 1401, which provides that when local conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions may be imposed."

96. "Now section 1643 of these regulations provides that careful men must be chosen to handle explosives; the platform and the feet of the men must be free as possible from grit, and all possible precautions must be taken against fire. That sentence which I have just read has no application to the cases which we are trying, because that section has to do with the handling of explosives. The rest of the section, however, proceeds as follows:

"Suitable provision must be made, outside of the station, when practicable, for the safe storage of explosives and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within forty-eight hours after notice of arrival at destination, it must be disposed of by a return to the shipper or by storage at the expense of the owner, or by sale, or, when necessary to safety, by destruction under

supervision of a competent person. Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier."

97. "Section 1666 provides, under the title, Explosive Placard—a certified car for the dangerous explosives specified in paragraph 1661 must be protected by attaching to each outside end and side door, the lower edge not less than four and one-half feet above the car floor, a standard placard 12 by 14 inches, on which appears in conspicuous red and black printing on strong tagboard, the following notice:

'Explosives'—underneath that, to be printed in red—'Handle Carefully,' 'Keep Fire Away,' underneath that, it says, to be printed in red. And then follows this wording: Condensed Rules for handling this car:

1. This car must not be placed in a passenger train, or in a mixed train, if avoidable.

2. Cars containing explosives must be near center of train and may be together if desired; must be at least fifteen cars from engine and ten cars from caboose, when length of train will permit.

3. This car must not be placed next to cars bearing the inflammable or the acid placard, or cars containing lighted heaters. Whenever it is possible to avoid so doing, it must not be placed next to tank or flat cars or next to carloads of lumber, poles, iron, or other articles liable to break through end of car from rough handling.

4. The air and hand brakes on this car must be in service.

5. In shifting, have a car between this car and engine whenever possible, and do not cut this car off while in motion.

6. Avoid all shocks to this car and couple carefully.

7. Avoid placing it near a possible source of fire.

8. Engines on parallel track must not be allowed to stand opposite or near this car when it can be avoided.

9. This placard must be removed from car when explosives are unloaded."

98. "1667 under title, 'Inflammable Placard,' provided: A placard of diamond shape, printed on strong tagboard, measuring 10¾ inches on each side, and bearing in red and black letters the inscription prescribed by paragraph 1913, must be placed on each outside end and side door of a car containing any quantity of smokeless powder for cannon or smokeless powder for small firearms, or ammunition for cannon with empty projectiles, or ammunition for cannon with sand loaded projectiles, or ammunition for cannon without projectiles or fireworks."

99. "Section 1681 provides that under no circumstances must a car known to require the explosive placard be taken from a station, including transfer stations or interchange points, a siding or yard, unless it is properly placarded as per paragraphs 1665-1666, nor unless the car is in proper condition. The carrier must see that its representative in charge of a freight train makes a thorough check of cars bearing inflammable, acid and explosive placards, with the billing to see that all placards required are attached, and those not required are removed."

100. "Section 1682 provides that every possible effort must be made to expedite the moving of cars containing explosives; no unnecessary delay must occur at initial, interchange or transfer stations."

101. "Section 1684 provides that such cars must be frequently inspected to see that the placards and car certificates are intact. Whenever any of these become detached or, lost in transit, they must be replaced on arrival at the next division terminal yard, if in through freight train, or at first station stop if in local freight train."

102. "And section 1689 provides: They must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be placed in yards or on sidings that they will be subject to as little handling as possible, and be removed from all danger of fire. They

must not be placed on tracks under bridges, and, when avoidable, engines on parallel tracks must not be allowed to stand opposite or near them."

103. "The inflammable placard mentioned in section 1913 is a placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars, containing an inflammable liquid, and on strong tagboard for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars or tank cars, measuring 10¾ inches on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end and to each side door of a car containing one or more packages protected by the red or the yellow diamond label: Blank railroad company. 'INFLAMMABLE (printed in red). Keep lights and fires away. Handle carefully. Blank station, blank nineteen. 1. This car must not be next to a car containing explosives. 2. Do not enter with exposed flame, nor with lighted lantern, until car has been ventilated and vapors allowed to escape. 3. When lading requiring this placard is unloaded from box or flat cars, agent, yardmasters and conductors must remove the placards. Tank cars must retain placards until cleaned (par. 1903).' "

104. "The Court says these regulations were formulated to govern the packers and shippers of high explosives, and to govern the transportation companies and their servants in the handling and transportation of such dangerous combustibles, and it is to be fairly gathered, from the very nature of the regulations, that they were not intended to absolve transportation companies from care commensurate with the risk of danger which might arise from concentrating a large quantity of highly explosive matter in close proximity in densely populated cities, and at a terminal exposed to and unprotected against intruders and incendiaries, and without proper facilities to promptly meet the outbreak of a fire or any other danger reasonably to be apprehended."

"In other words, what that statute means is that in the handling of explosives, while it is true that the Interstate Commerce regulations are ex-

clusive within the domain which they cover, where those directions do not reach, care commensurate with the risk must be exercised by the transportation company in the handling and transportation of these munitions and, therefore, it is for you to determine in this case whether or not it has been established by the greater weight of the evidence that in any one or more of the particulars of negligence specified in the written complaints of these several plaintiffs in these suits, the defendant has been shown to have been negligent in that it did not exercise care commensurate with the risk of danger involved in the handling or transportation of these commodities. If that has been made out by the greater weight of the evidence and it is shown also by the greater weight of the evidence that that negligence on their part was the proximate cause of these injuries to these plaintiffs, the plaintiffs have a right of recovery and to have you assess their damages unless it also appears by the greater weight of the evidence, and the burden rests upon the defendant so to make it appear, that either the plaintiffs assumed the risk of injury or that there was contributory negligence on the part of the plaintiffs or their representatives in these actions."

(3)

BRIEF OF THE ARGUMENT.

(A.)

POINTS UNDER STATE LAW.

I.

Assuming that the jury had the right to base a verdict against the defendant upon any ground of negligence other than a violation of the regulations prescribed by the Interstate Commerce Commission, the evidence failed to show any such negligence, or that the same, if shown, was the proximate cause of the damage sustained by the plaintiff. But even if there was any such negligence with respect to some one or more of the matters alleged in the complaint and submitted to the jury (other than a violation of said regulations), the evidence failed to show negligence with respect to all of such matters and it was, therefore, error to permit the jury to base a verdict upon a finding of negligence on the part of the defendant with respect to at least some of the matters thus submitted.

The plaintiff alleged in its complaint and proved at the trial that at the time of the fire and explosion there were in force and effect certain regulations of the Interstate Commerce Commission for the transportation of explosives and other dangerous articles which had been promulgated by virtue of the Explosives Act of March 4th, 1901, and Section 15 of the Act to regulate commerce. Certain of the sections were specifically set forth in the complaint, with a corresponding allegation of a violation of each such sections on the part of the defendant (p. 9, l. 20; p. 11, l. 30). In the charge of the Trial Judge, the attention of the jury was called to these specific regulations (p. 794, l. 20, to p. 798, l. 30). The defendant, in its answer, set up the said statutes and regulations and claimed that they were the exclusive measure of its duty to the plaintiff in the premises. The defendant also set

up certain other regulations, known as the anchorage regulations, and claimed that there was a violation of same by certain barges or lighters, in that they moored at its North Pier contrary to the prohibition expressed in such regulations.

Entirely aside from any questions that may be raised under the interstate regulations, or under the anchorage regulations, the defendant also raised, by requests to charge, certain points relating to the plaintiff's claims that the defendant was negligent in certain respects other than such as might arise by reason of a violation of the interstate regulations. The points arising under the interstate regulations and the anchorage regulations will be considered hereinafter. Under the present point we will state the various grounds of appeal relating to the other claims alleged by the plaintiff in its complaint and submitted to the jury in the charge of the Trial Judge. These other points are as follows:

(a) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in collecting and accumulating in its yard certain cars containing explosives and inflammables,

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-sub-heads a & b, p. 7, l. 30; p. 8, l. 10; charge to jury, p. 791, ll. 20-30; ground of appeal Nos. 41 and 42, p. 34, l. 35; p. 35, l. 20.)

(b) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to provide an adequate system and sufficient competent men and proper facilities to afford proper fire protection at its yard and the cars and contents thereof stored therein;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-c (in part and f), p. 8; charge, p. 791, ll. 30-40; p. 792, ll. 10-15; grounds 43, 47 and 48, p. 35, l. 35, to p. 36, l. 12; p. 37, l. 20, to p. 38, l. 10.)

(c) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing adequately to patrol and police its yard and the cars and their contents and in neglecting to take due care to exclude unauthorized persons therefrom;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-c (in part and d), p. 8; charge, p. 791, l. 35, p. 792, l. 5; grounds 44 and 45, p. 36, ll 15-40.)

(d) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to provide adequate fire hydrants or other apparatus and sufficient water pressure;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-e, p. 8; charge, p. 792, ll. 7-10; ground No. 46, p. 37, ll. 10-15.)

(e) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing properly to instruct its employees as to their duties in case of fire;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-g, p. 8; charge, p. 792, ll. 15-18; ground No. 49, p. 38, ll. 10-20.)

(f) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to provide adequate facilities for removal or isolation of cars containing explosives;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-h, p. 8; charge, p. 792, ll. 18-23; ground No. 50, p. 38, ll. 20-30.)

(g) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to store, handle and dispose of explosives and munitions of war so as to prevent or control the communication of fire or concussion;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-i, p. 9; charge, p. 792, ll. 23-28; ground No. 52, p. 39, ll. 20-35.)

(h) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to install and maintain adequate means for communicating fire alarms;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-j, p. 9; charge, p. 792, ll. 28-30; ground No. 53, p. 39, l. 40; p. 40, l. 13.)

(i) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to give prompt alarm of fire;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-k, p. 9; charge, p. 792, ll. 30-32; ground No. 54, p. 40, ll. 15-25.)

(j) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to prevent fire;

and further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-l, p. 9; charge, p. 792, l. 33; ground No. 55, p. 40, ll. 32-40.)

(k) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to discover the fire promptly;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-m (in part), p. 9; charge, p. 792, ll. 34-37; ground No. 56, p. 41, ll. 1-15.)

(l) It was error to permit the jury to find the defendant liable to the plaintiff on the ground that there was negligence on the part of the defendant in the following respect, to wit:

in failing to take proper measures to extinguish the fire;

and in further permitting the jury to find that such negligence was the proximate cause of the damage to the plaintiff.

(Complaint, par. 13-m (in part), p. 9; charge, p. 792, ll. 34-37; ground No. 57, p. 41, ll. 15-30.)

The defendant relies upon and urges each and all of the foregoing grounds of appeal, but will not further elaborate its argument in support of such grounds, as they are substantially similar to certain of the grounds of appeal which were argued in the previous cases decided by this court adversely to the defendant's claim.

(B.)

POINTS UNDER FEDERAL LAW.

II.

The Congress of the United States having enacted legislation relating to the transportation of explosives and other dangerous articles in interstate and foreign commerce and regulations having been issued by the Interstate Commerce Commission pursuant to such legislation, the duty of the defendant in the premises must be determined solely by reference to such legislation and regulations, as the definite measure of its duty or as the standard of its conduct; and it was therefore error on the part of the Trial Judge to permit the jury to take into consideration, any other measure or standard in determining the question of the defendant's negligence.

The complaint charges in the second count that certain regulations of the Interstate Commerce Commission which were promulgated by authority of the Act of Congress of March 4th, 1909, and section 15 of the Act to Regulate Commerce, as amended June 18, 1910, were in force and effect prior to and at the time of the fire and explosion whereby the plaintiff was damaged; that the same had the force and effect of law and it was the duty of the defendant strictly to observe them.

It is further charged that the said fire and explosion and the damage to the plaintiff were caused by the defendant's negligence in that it violated certain of these regulations, specifically named in the complaint, to wit,

sections 1428, 1643, 1682 and 1689 (p. 9, l. 20 to p. 11, l. 30).

The defendant, in its answer, admitted the allegations of the second count as to the regulations, except it stated that the regulations did not impose upon it the "absolute duty" of strictly observing same, and except that it denied there was any negligence on its part by reason of any violation of the sections specified in the second count.

It set up as a second defense, the claim that it carried, conveyed, transported and held the various explosives in the course of interstate and foreign commerce, lawfully and strictly in accordance with such statutes and regulations (p. 17, l. 35 to p. 18, l. 15).

At the trial, the defendant moved for a non-suit and for a direction of verdict in its favor on the ground, among others, that:

> "Congress having taken jurisdiction of the subject matter, and having enacted statutes thereon to provide for the safe transportation of explosives in interstate commerce on land, and the Interstate Commerce Commission, in accordance with the directions of said statutes having made rules and regulations governing the subject matter, and the explosives in question in this suit having been in the course of transportation on land in interstate commerce, the plaintiff can only succeed if it has proved a violation of said statutes or the rules and regulations of the Interstate Commerce Commission above referred to, and that it has failed to do" (p. 450, l. 38 to p. 451, l. 10; p. 737, ll. 10-30).

This motion being denied, the defendant submitted certain requests to charge, reading as follows:

> "1. The law imposed upon the defendant the duty of transporting the explosives and inflammables in the cars as testified in this case, and at the time of the explosion they were still in the course of transportation in interstate or foreign commerce by land.

2. The sole duty of the defendant to the plaintiffs in regard to the explosives and inflammables received by the defendant for interstate transportation by land, and still in the course thereof, was to comply with the statutes of the United States and the regulations of the Interstate Commerce Commission respecting the same; and the plaintiff is not entitled to recover unless the jury shall find that the defendant failed to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiff.

In the alternative, if request No. 2 is denied, then the following request is submitted:

3. The sole duty of the defendant to the plaintiffs in regard to the explosives and inflammables received by the defendant for interstate transportation by land, and still in the course thereof, in respect of all matters within the scope of the statutes of the United States and the regulations of the Interstate Commerce Commission concerning the same, was to comply with such statutes and regulations; and the plaintiffs are not entitled to recover in respect of such subject unless they prove a failure on the part of the defendant to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiffs'' (p. 817, l. 15, p. 818, l. 5).

The Trial Judge charged request No. 1, with a modification which will be discussed hereinafter (p. 804, l. 38 to p. 805, l. 10). He also charged request No. 3, which was submitted as an alternative to request No. 2 (p. 805, ll 12-23). He denied request No. 2 and in lieu thereof charged No. 3, and, on the same subject, after referring to the statute known as the Explosives Transportation Act, charged as follows:

''In other words, what that statute means is that in the handling of explosives, while it is true that the Interstate Commerce regulations are exclusive within the domain which they cover, where those directions do not reach, care commensurate with the risk must be exercised by the transportation company in the handling and transportation of these munitions, and, therefore, it is for you to

> determine in this case whether or not it has been established by the greater weight of the evidence that in any one or more of the particulars of negligence specified in the written complaints of these several plaintiffs in these suits, the defendant has shown to have been negligent in that it did not exercise care commensurate with the risk of danger involved in the handling or transportation of these commodities. If that has been made out by the greater weight of the evidence and it is shown also by the greater weight of the evidence that that negligence on their part was the proximate cause of these injuries to these plaintiffs, the plaintiffs have a right of recovery and to have you assess their damages, unless it also appears by the greater weight of the evidence, and the burden rests upon the defendant so to make it appear, that either the plaintiffs assumed the risk of injury or that there was contributory negligence on the part of the plaintiffs or their representatives in these actions'' (p. 798, l. 35 to p. 799, l. 10).

Exceptions were duly taken to the refusal to charge request No. 2 and to the part of the charge above quoted (pp. 811-6).

It appeared without dispute that the explosives which were in the defendant's yard at Black Tom on the night of July 20-30, 1916, were all in the course of interstate or foreign commerce; and the Trial Judge so charged (p. 805, ll. 1-3). These explosives were in certain cars which had come from various points outside of New Jersey and had been taken to the defendant's terminal for the purpose of having their contents transported to lighters, which, in turn, would carry them to ocean steamers for export. There being no dispute as to this evidence, the defendant submits that the interstate regulations were exclusively controlling and that the question for the consideration of the jury was—not whether the defendant had exercised care commensurate with the risk —not whether it had performed certain other alleged duties outside of those, or in addition to those specified in the regulations—but whether it had complied with the

regulations; and, assuming that it had not so complied, whether any alleged failure so to do was the proximate cause of the damage to the plaintiff.

Counsel for plaintiff will no doubt urge that this question has been concluded, so far as this Court is concerned, by the previous decisions cited in the Statement of the Case..

We recognize the force of this contention, but in view of the fact that since the decision of the first case cited, the United States Supreme Court in some recent decisions, has gone further than it ever did before in dealing with the exclusive application of Federal statutes and regulations made thereunder, we desire to repeat our argument on this subject, adding thereto these recent decisions, so that this Court may be in a position to give further consideration to this very important question.

We therefore submit as our fundamental premise that when the Congress of the United States has enacted legislation relative to a subject committed to its control by the federal constitution, such enactment of Congress is exclusive of any state statute or other law on the same subject. In support of this premise we cite the following authorities:

In *Gulf, etc., Ry. Co.* v. *Hefley,* 158 U. S. 98; 39 L. Ed., 910, it was held that a statute of Texas imposing a penalty for failure to deliver goods on tender of the rate named in the bill of lading did not apply to interstate shipments, for the reason that Congress had legislated upon the same "subject matter" in the Interstate Commission Act, whereby the published tariff rate was prescribed as the rule of compensation in such cases.

In *Northern Pacific Ry. Co.* v. *Washington,* 222 U. S. 370; 56 L. Ed., 237, it was held that legislation by Congress as to hours of service of railroad employees occupied the field to such an extent as to prevent state legis-

lation on that subject. It was said by Chief Justice White:

> "In view of the unity and indivisibility of the service of the train crew and the paramount character of the authority of Congress to regulate commerce, *the Act of Congress was exclusively controlling.*" (Citing *Southern Railway Co.* v. *United States,* 222 U. S. 20.)

In *Southern Ry. Co.* v. *Reid* ,222 U. S. 424, 56 L. Ed., 257, a statute of North Carolina requiring common carriers to transport freight as soon as received to interstate points under certain penalty for failing to do so, was held to be invalid because in conflict with the requirement of the Hepburn Act forbidding such transportation until rates had been fixed and published.

In the case of *Savage* v. *Jones,* 225 U. S. 501, at p. 533, 56 L. Ed., 1182, the Court said (italics ours):

> "When the question is whether a Federal act overrides a state law, the entire scheme of the statute must of course be considered and that which *needs must be implied is of no less force than that which is expressed.* If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulations of Congress within the sphere of its delegated power (citing cases).
>
> "But the intent to supersede the exercise by the State of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the Act of Congress fairly interpreted is in actual conflict with the law of the state" (citing cases).

In *Chicago, etc., R. Co.* v. *Hardwick Elevator Co.,* 226 U. S. 426, 57 L. Ed. 284, a reciprocal demurrage law of Minnesota was held invalid because Congress, by the passage of the Hepburn Act had "exerted its paramount and all-embracing authority over the subject."

In *Adams Express Co.* v. *Croninger,* 226 U. S. 491, 57 L. Ed. 314, it was held that the Carmack amendment to the Hepburn Act superseded all state laws upon the subject of the limitations of the carrier's liability for loss of and damage to interstate shipments.

In *St. Louis, etc., Ry. Co.* v. *Edwards,* 227 U. S. 265, 57 L. Ed. 506, and *Hampton* v. *St. Louis, etc., R. Co.,* 227 U. S. 456, 57 L. Ed. 596, a statute of Arkansas, imposing a penalty for delay in delivering cars to the consignee was held invalid on the ground that it had been superseded by the provisions of the Hepburn Act.

In *McDermott* v. *Wisconsin,* 228 U. S. 115, 57 L. Ed. 754, it was held that certain provisions of a statute of Wisconsin, requiring syrup and certain similar articles to be labeled, were void insofar as they interfered with the Federal Pure Food and Drug Acts.

In *Adams Express Co.* v. *City of New York,* 232 U. S. 14, 58 L. Ed. 483, held that the provisions of a municipal ordinance requiring every owner of a public express to give a bond for each vehicle licensed under the ordinance, to be conditioned for the safe and prompt delivery of all baggage and packages entrusted to the owner or driver of such "express" was invalid for the reason, among others, that Congress, by the Act of June 29, 1916 (U. S. Comp. Stat. Supp. 1911, p. 1288), had exercised its authority and had provided its own scheme of regulation in order to secure the discharge of the public obligations that the business involved.

In *Erie R. R. Co.* v. *New York,* 233 U. S. 671, 58 L. Ed. 1149, 52 L. R. A. (N. S.), 266, the provisions in the labor law of the State of New York relating to the hours of service of telegraph operators engaged in interstate commerce were held to be void, as Congress had covered the same "field" by the Hours of Service Act of 1907.

In *Houston & Texas Ry.* v. *United States,* 234 U. S. 342, 52 L. Ed. 1341 (Shreveport Rate Case), the Court said.

> "The fact that carriers are instruments of intrastate commerce, as well as of interstate commerce,

> does not derogate from the complete and paramount authority of Congress over the latter or preclude the Federal power from being exerted to prevent the intrastate operations of such carriers from being made a means of injury to that which has been confided to Federal care. Wherever the interstate and intrastate transactions of carriers are so related that the government of one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the nation, would be supreme within the national field. * * * We are not unmindful of the gravity of the question that is presented when state and Federal views conflict. But it was recognized at the beginning that the nation could not prosper if the interstate and foreign trade were governed by many masters, and, where the interests of the freedom of interstate commerce are involved, the judgment of Congress, and of the agencies it lawfully establishes must control."

In *Illinois Central R. Co.* v. *De Fuentes,* 236 U. S. 157, 59 L. Ed. 517, an order of a state railroad commission requiring empty cars to be switched to side tracks was held to be invalid as an unlawful regulation of interstate commerce, on the ground that such switching movement was a part of interstate commerce, the regulation of which Congress had undertaken.

In *Southern Ry. Co.* v. *R. R. Commissioners of Indiana,* 236 U. S. 439, 59 L. Ed. 661, held that the state law of Indiana was superseded by the Federal Safety Appliance Act, although the requirements of the latter differed in certain details from those of the state law.

In *Charleston & W. C. Ry. Co.* v. *Varnville Furniture Co.,* 237 U. S. 597, 59 L. Ed. 1137, a state statute providing for a penalty against the carrier for failure to pay, within forty days, a claim for damages to an interstate shipment, was held to be superseded by the Carmack Amendment.

In *Atchison, etc., Ry. Co.* v. *Harold*, 241 U. S. 371, 60 L. Ed. 1050, held that the Carmack Amendment excluded state action in regard to the duty of carriers in interstate shipments to issue bills of lading and the responsibilities thereunder, and that therefore all questions in regard thereto must be determined by reference to said statute rather than by reference to the local law of the state if such local law is in conflict with the said statute.

In *Spokane, etc., R. Co.* v. *Campbell*, 241 U. S. 497, 60 L. Ed. 1125, held that a state law which rendered a wilful violation or omission of duty on the part of a railroad employee whereby human life or safety is in danger and punishable as a misdemeanor, had no bearing on the right of an employee of an interstate railway to recover damages for injuries sustained in a collision because of defective brakes, since the right to recover depended exclusively upon the Federal Employers' Liability Act of April 22, 1908.

In *New York Central R. R. Co.* v. *Winfield*, 244 U. S. 147, 61 L. Ed. 1045, and *Erie R. R. Co.* v. *Winfield*, 244 U. S. 170, 61 L. Ed. 1057, held that the right of employees who were engaged in interstate commerce at the time of an accident to receive compensation for injuries sustained therein depended solely upon the Federal Statute of 1908 so as to exclude any right of compensation under state law, even though the injuries were caused by an accident which arose without negligence on the part of the employer or any of the fellow-employees.

The principle of the exclusive application of the Federal Employers' Liability Act, established by the last cited cases, has also been followed by the Supreme Court of the United States in its decisions holding that in an action based upon said statute, the plaintiff must affirmatively establish the defendant's negligence, even though a statute of the state where the case is tried provides that in certain classes of cases to which the Federal statute is applicable, proof merely of the fact of injury is to be

considered as *prima facie* evidence of negligence on the part of the carrier.

New Orleans, &c., R. Co. v. *Harris,* 247 U. S. 367, 62 L. Ed. 1167;

New Orleans, &c., R. Co. v. *Scarlet,* 249 U. S. 528, 63 L. Ed. 752;

Yazoo & M. V. R. Co. v. *Mullins,* 249 U. S. 531, 63 L. Ed. 754.

The decision of this court in the N. J. Fidelity & Plate Glass Ins. Co. case was announced on November 18th, 1918. Of the three cases last cited, one was decided prior to the date of the decision in the N. J. Fidelity & Plate Glass Co. case and the other two subsequent thereto; the Harris case being decided on June 3rd, 1916, and the Scarlet and Mullins cases both being decided on April 21st, 1919. There are also certain other later cases in the U. S. Supreme Court to which we will now call attention.

In *Northern Pacific R. Co.* v. *North Dakota,* 250 U. S. 135, 63 L. Ed. 897 (decided June 2, 1919), it was held that under the recent statute by virtue of which the President was authorized to take over and operate the railroad systems, as a war measure, the Director General had authority to make and enforce intrastate rates without regard to state action. In the course of the opinion the Court said:

> "The elementary principle that, under the Constitution, the authority of the Government of the United States is paramount when exerted as subjects concerning which it has the power to control, is undisputable. This being true, it results that although authority to regulate within a given sphere may exist in both the United States and in the states, when the former calls into play constitutional authority within such general sphere, the necessary effect of doing so is, that to the extent that any conflict arises, the state power is limited, since, in case of conflict, that which is paramount necessarily controls that which is subordinate."

In *Pennsylvania R. Co.* v. *Public Service Commission,* 250 U. S. 566; 63 L. Ed. 1142 (decided November 10, 1919), it was held that regulations of the Interstate Commerce Commission prescribing certain requirements for caboose cars without platforms, and of the Post Office Department, respecting the equipment of mail cars when used as end cars, amounted to such an assumption of control by the United States over the subject matter, as to invalidate a state statute which requires such mail cars to be equipped with a platform 30 inches in width and with guard rails and steps. In the course of the decision, the Court said:

> "In the present instance, the rules for the constuction of mail cars, admitted to be valid, not only exclude the wide platform, but provide an equipment for them when used as end cars. The Safety Appliance Act, with its careful requirements for the safety of the men was followed by most elaborate regulations issued by the Interstate Commerce Commission which include three large pages of prescriptions for 'caboose cars without platforms.' Caboose cars constantly are used as end cars, and these pages like the Post Office order as to mail cars, recognize the lawfulness of an end car such as the Pennsylvania statute forbids.
>
> The question whether Congress and its commissions acting under it have so far exercised the exclusive jurisdiction that belongs to it as to exclude the state must be answered by a judgment upon the particular case. The subject matter in this instance is peculiarly one that calls for uniform law, and in our opinion regulations by the paramount authority has gone so far that the statute of Pennsylvania cannot impose the additional obligation in issue here."

In *Postal Telegraph Cable Co.* v. *Warren-Goodwin Lumber Company,* 251 U. S. 27, 64 L. Ed. 118 (decided Dec. 8th, 1919), it was held that a contract made by a telegraph company limiting its liability for mistakes in the transmission of an unrepeated message, was valid, notwithstanding a statute of a state declaring that such a

contract was void, the decision being placed upon the ground that the Interstate Commerce Act of 1910 was an exercise by the Congress of its authority to bring under Federal control the interstate business of a telegraph company and was, therefore, an occupation of the field by Congress, which excluded state action.

In the case of *Railroad Commission of Wisconsin* v. *Chicago, &c., R. Co.* (decided February 27th, 1922, and not yet reported), the United States Supreme Court affirmed an order of the United States District Court granting an injunction against state officials from interfering with the maintenance of the fares ordered by the Interstate Commerce Commission, whereby intrastate fares were increased to correspond with increases previously ordered in interstate business. This case arises under the Transportation Act of 1920, and probably goes further than any other decision in sustaining the exclusive and paramount authority of Congress in dealing with the subject of interstate commerce. Among other things, the Court held that the Transportation Act did not constitute an unconstitutional interference with the internal affairs of the state, nor involve general regulation of intrastate commerce, as the supreme power of Congress to regulate interstate commerce was not limited by the fact that intrastate transactions might be so closely interwoven therewith that the effective government of the former incidentally controlled the latter.

The principles laid down in the foregoing cases have not yet been applied by the Supreme Court of the United States, to a case arising under the Transportation of Explosives Act, but they have been applied by the Circuit Court of Appeals for the Second Circuit in the case of *The Ingrid,* 195 Fed. 596, which arose out of an explosion of dynamite on February 1, 1911, at the terminal of the Central Railroad of New Jersey, known as Communipaw, in the City of Jersey

City, New Jersey. We quote from the opinion of Judge Holt, in the District Court, as follows (italics ours):

> "The libellant claims that the railroad company violated the law of New Jersey, and the ordinances of Jersey City, in respect to the storage of explosives. In the first place, in my opinion, the liability of the railroad company, while transporting this dynamite, was governed *exclusively* by the Act of Congress of March 4, 1909, which provides that the Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives which shall be *binding* on all common carriers engaged in interstate or foreign commerce which transport explosives by land. Under this act of the Interstate Commerce Commission has formulated and issued regulations for the transportation of explosives, and it is not claimed that those regulations have not been complied with by the defendants. Congress having passed such a law, it clearly governs in my opinion, all common carriers who come within its provisions, *and takes the place of all local laws and ordinances on the subject.*" (Citing *Southern Ry. Co.* v. *U. S.*, 222 U. S. 20; *Northern Pacific Ry. Co.* v. *State of Washington*, 222 U. S. 370; *Southern Ry. Co.* v. *Reid*, 222 U. S. 424.) "If it did not, a railway company transporting dynamite over a long railroad system, passing in the trip through various villages, cities and states, would be subject at every stage of the journey to varying local regulations which probably it could not observe. It is pre eminently just that in such cases there should be a central authority, prescribing what the railroad company, in the transportation of explosives, should do" (195 Fed. at p. 602).

The decision was affirmed in 216 Fed. 72. We quote from the opinion of Judge Rogers, as follows:

> "It is claimed that the respondent failed to comply with the requirements of the laws of the State of New Jersey and with municipal regulations of Jersey City in respect to the storage of explosives. It is sufficient to say that the dynamite which exploded was addressed to Carlisle, Crocker & Co., Montevideo. It was a foreign shipment and a

such was subject exclusively to the Act of Congress of March 4, 1909 (35 Stat. 1135, c. 321; U. S. Comp. St. Supp. 1911, p. 1660). That Act (Section 233) authorized the Interstate Commerce Commission to formulate regulations for the safe transportation of explosives which should be binding upon all common carriers engaged in interstate and foreign commerce which transport explosives by land. The Interstate Commerce Commission accordingly formulated and issued regulations governing the transportation of explosives in interstate and foreign commerce. We have no doubt that the dynamite in question was subject exclusively to the regulations of the Interstate Commerce Commission. When Congress has legislated upon a subject within its constitutional control and has manifested its intention to deal therewith in full, the authority of local jurisdiction is necessarily excluded. See *Northern Pacific Railway Co.* v. *State of Washington,* 222 U. S. 370 (216 Fed. 82)."

An application was made to the Supreme Court of the United States to review this case by certiorari, but the same was denied (238 U. S. 615, 59 L. Ed. 149) and hence the question of the construction of the application of the Explosives Act was not directly under consideration by that court.

We further submit, as the second premise on this phase of the case, that when a statute prescribes a specific duty as the standard of conduct, the test of the defendant's negligence, when it is alleged that it has not followed the prescribed statutory duty, is whether or not it did what the statute itself requires—not whether it exercised care commensurate with the risk—nor whether it did something else other than the duty definitely fixed by the statute.

An illustration of this principle is *Hacket* v. *N. Y. &c., R. Co.,* 58 N. J. L. 4, where the Court held that all that could be required of a railroad company with respect to giving signals of the approach of its trains to the public highway was a compliance with the statute with respect to the giving of signals by bell or whistle follow-

ing the decision of the Court of Errors and Appeals in the case of *New York, etc., R. Co.* v. *Leaman,* 54 N. J. L. 202, where the Court said:

> "When the prescribed audible signals are given in conformity with the statute, whether they are heard or heeded by a traveler crossing the track or not, the company is absolved from negligence so far as concerns this kind of audible warning of the approach of its trains."

Another analogy is found in the statutes relative to liability on the part of railroad companies for damages resulting from fire escaping from locomotive smokestacks. The leading example of such cases in New Jersey is *West Jersey, &c., R. Co.* v. *Abbott,* 60 N. J. L. 150, from which we quote:

> "When the Legislature enacts regulations in respect to any precaution to be taken in the use of a dangerous instrumentality by those whom it has authorized to use it, those regulations define and limit the measure of duty in respect to that particular sort of precaution. That statute which we have had under consideration also enacts that railroad companies shall give certain specified audible signals of the approach of its trains to the crossing of a public highway. It was settled in this court that the regulations in respect to audible signals were exclusive, and if obeyed, would exonerate a railroad company from liability for a collision at a crossing arising from a failure to hear such signals *and it was erroneous to permit a jury to determine whether or not, on account of the prevalence of a dense fog or other impediment to sign and sound, other audible signals ought not to have been given*
> * * *
>
> "In the case before us the Legislature has prescribed what duty a railroad company must perform in respect to the escape of sparks from the smokestacks of its engines. The prescribed duty does not require the company, at any time, to absolutely prevent the escape of such sparks, but only to take and use all practicable means to that end. Proof that they have taken and used such means furnishes a defense in that respect. It is obvious

> that to permit a jury to find that a railroad company was, at any time, under a duty to take sufficient care to prevent the escape of any fire at all, is incongruous with the regulations of the Legislature and at variance with the doctrine of the case last cited."

Other cases in New Jersey in which this principle has been applied to railroad fire cases are:

Hoff v. *West Jersey R. Co.*, 45 N. J. L. 201;
Vallaster v. *Atlantic City R. Co.*, 72 N. J. L. 334;
Goodman v. *Lehigh Valley R. Co.*, 75 N. J. L. 277.

Other classes of cases in which this principle has been applied are actions brought to recover for personal injuries under the "Federal Safety Appliance Act" or under the "Federal Employers' Liability Act." In such cases it has been decided that the injured employees of common carriers engaged in interstate commerce must seek their remedy exclusively in accordance with the provisions of those statutes.

Texas & Pacific Ry. Co. v. *Rigsby*, 241 U. S. 33, 60 L. Ed. 874;
N. Y. Central R. Co. v. *White*, 243 U. S. 188, 60 L. Ed. 667;
N. Y. Central R. Co. v. *Winfield*, 244 U. S. 147, 61 L. Ed. 1045;
Erie R. R. Co. v. *Winfield*, 244 U. S. 170, 61 L. Ed. 1057.

The Federal questions which the defendant urges have not yet been decided by the U. S. Supreme Court. It may be suggested that that court has denied petitions for writs of certiorari to review former decisions of this court. See 249 U. S. 600; 253 U. S. 482; 253 U. S. 483. But the mere fact of the denial of a petition for a writ of certiorari does not in any way indicate the views of the United States Supreme Court on the subject matter under consideration therein. Such a denial is not an adoption by that court of the law of the court below.

The refusal to issue such a writ may merely import that in the specific case the Court may not be convinced or persuaded that the question was of gravity or importance or that uniformity of decision required it.

Hamilton Shoe Co. v. *Wolf Brothers,* 240 U. S. 251, 257, 258; 60 L. Ed. 629;
3 Foster's Federal Practice, 5th Ed., p. 2382;
5 Fed. Stats. Ann., 2nd Ed., p. 856.

In view of the recent decisions of the United States Supreme Court, as announced since the decision by this Court in the case of *New Jersey Fidelity & Plate Glass Ins. Co.,* we respecfully urge that this Court should give further consideration to the point now presented. If the point is well taken, a reversal of the present judgment must follow, as there was fundamental error in the charge insofar as the Trial Judge permitted the jury to consider questions of negligence on the part of the defendant other than those which may have arisen by reference to the explosive regulations and the alleged violation thereof.

III.

The evidence failed to show a violation of any of the interstate regulations pleaded in the complaint or submitted to the consideration of the jury in the charge, or that any such alleged violation thereof was the proximate cause of damage to the plaintiff. It was, therefore, error to refuse to withdraw some one or more of these regulations from the consideration of the jury in accordance with the defendant's request; and it was likewise error to permit the jury to base a verdict upon the conclusion that the defendant had violated any one or more of these regulations, as, in any event, the evidence failed to show a violation of all of such regulations, even if it may have shown a violation of one or more thereof.

In the second count of the complaint the plaintiff quoted certain of the interstate regulations and then alleged a

violation of each of those thus quoted (pp. 9-11). In the charge, the Trial Judge referred to these specific regulations *and also to certain other regulations which were not pleaded and of which no violation was alleged.* No amendment was made to the complaint, and as to the regulations which were not specifically quoted in the second count thereof, the defendant had no knowledge until the Trial Judge quoted the same, that it was his intention to permit the jury to take them into consideration.

For the purpose of showing graphically the sections of the regulations which were pleaded and those which were charged, we append the following table:

Sections Pleaded.	*Sections Charged.*
....	1401 and 1429.
1428.	....
1643 (a)	1643 (a)
1643 (b)	1643 (b.
....	1661 and 1666.
....	1667 and 1913.
....	1681.
1682.	1682.
....	1684.
1689.	1689.

As to the regulations which were thus imported into the charge, without any reference directly or indirectly in the complaint, the defendant submits that it was prejudicial error to permit the jury to take such additional regulations into consideration—at least in the absence of any claim in the complaint, either originally or by way of amendment, that the plaintiff relied upon the violation of such regulations in support of its action.

Under the charge, the jury were permitted to consider whether the defendant had violated the regulations therein set forth. This subject was discussed by the Trial Judge in several parts of the charge, as follows:

> "Those regulations, within the domain which they cover, are exclusive and if the carrier com-

> plies in that domain with those regulations, the carrier has done all that is required to do within that domain'' (p. 790, ll. 28-32).

Again, he said:

> ''Now, you will have observed from what I have read to you that the charge is made that there was a neglect to comply with the statute and regulations made in performance thereof by the Interstate Commerce Commission; and it might be well to look for a moment, first, at the statute, and then at some pertinent portions of the regulations. Let me read to you some pertinent portions of those regulations, because they have a distinct bearing upon many phases of this case.'' (Then follows quotation of and reference to the regulations above mentioned) (p. 794, ll. 15-25).

And again:

> ''I charge you that the sole duty of the defendant to the plaintiffs in regard to the explosives and inflammables, received by the defendant for interstate transportation by land, and still in the course thereof with respect to all matters within the scope of the statutes of the United States and the regulations of the Interstate Commerce Commission respecting same was to comply with said statutes and regulations, and the plaintiffs are not entitled to recover with respect to such subject matter unless they prove a failure on the part of the defendant to so comply, and that such failure was the proximate cause of the injury complained of by the plaintiffs'' (p. 805, ll. 12-23).

When these portions of the charge are read in connection with the citation of the regulations, the conclusion is unavoidable that the jury were permitted to find a verdict against the defendant on the theory that there might have been a violation of one or more of the regulations stated in the charge.

As we have urged above, we think it was fundamental error for the Trial Judge to permit the jury to base a verdict upon any regulations that were not pleaded in the complaint and if we are right in this contention, a reversal of the judgment necessarily follows.

It is well settled that a verdict which cannot be supported on the theory on which the case was submitted to the jury, must be set aside.

Spencer v. *Haines,* 73 N. J. L. 325;
Fritz v. *Sayre & Fisher Co.,* 77 N. J. L. 236;
Carroll v. *Stark,* 85 N. J. L. 438.

But we also go step further and urge that as to at least some of the regulations there was an utter failure to prove a violation thereof on the part of the defendant, and, accordingly, the jury were permitted to base a verdict upon a ground which was without any support in the evidence. If any of our points with respect to these regulations are well founded in this regard, then the conclusion again follows that there was prejudicial error which requires reversal.

We will, therefore, discuss all of the regulations including those which were specified in the complaint, as well as those which were cited in the charge, with a view to considering whether there was evidence to show a violation thereof; and then, to consider further, assuming such violation in fact existed or that there was sufficient evidence from which the jury might have found that there was a violation, whether the same was the proximate cause of the damage to the plaintiffs.

In discussing the specific regulations mentioned in the charge we will attempt to show that there was no proof of a violation by the defendant of any of them; but even if there should be evidence as to a violation of some of them, the judgment should, nevertheless, be reversed *if we are able to show that there was a failure to prove a violation of others which were submitted to the jury.*

The various sections thus specified in the charge will now be taken up according to their numbers.

Sections 1401 (a) and 1429.

These read as follows:

> "1401 (a). As the use of explosives is essential to various business activities throughout the country, it is the duty of interstate railroad carriers to accept and transport such explosives under these regulations. When local conditions make the acceptance, transportation, or delivery unusually hazardous, local restrictions, as provided by paragraph 1429 herein, may be imposed."
>
> "1429. All carriers must report to the chief inspector of the Bureau of Explosives for compilation and publication, full information as to restrictions which may be imposed as provided in paragraph 1401-a against the acceptance, delivery, or transportation of explosives over any portion of their lines."

After citing these regulations, the Trial Judge commented on same as follows:

> "So that you see the carrier is not obliged to accept everything that is offered to it and transport it willy-nilly, but the carrier may avail himself of section 1401, which provides that when local conditions make the acceptance, transportation or delivery unusually hazardous, local restrictions may be imposed" (p. 794, l. 35, to p. 795, l. 2).

If the jury had any right at all to consider these two sections without any reference to same in the pleadings, and if the Trial Judge had any right to submit same to the jury in the absence of such reference, then we point out that there was no evidence to show that on July 29-30, 1916, local conditions were unusually hazardous. The evidence shows that similar explosives had been transported and delivered to and through the Black Tom Terminal for about a year prior to that date. During this period there is no proof that any complaint was made against the defendant by the municipal, or state, or Federal authorities and there is no proof of any earlier accident or fire or explosion in or among the explosives or

the cars and barges transporting same. Plaintiff made no effort whatever to show that conditions were unusually hazardous on the date of the fire and explosion. So far as the regulations are concerned, there is no limitation upon the quantity of explosives that may be transported at any one time or that may be held at any one time in a yard, awaiting delivery to the consignees. There is, accordingly, no standard given in the regulations whereby the carrier may determine whether the local conditions at any particular time are unusually hazardous; and so far as concerns the actual practice, *the custom for a year prior to the fire had been to transport, handle and deliver explosives in substantially the same manner as on the date of the fire and explosion.*

In this connection we may call attention to the fact that the regulations were prepared under a statute entitled "An Act to promote the *safe* transportation in interstate commerce of explosives and other dangerous articles and to provide penalties for its violation." The regulations were prepared by experts on the subject; they were originally formulated on January 15, 1919, effective thirty days thereafter and were revised and republished on July 2, 1914—effective October 1st, 1914. It will be observed that the regulations which were in effect on July 30th, 1916, became effective a few weeks after the beginning of the Great War. During the nearly two years that the war had continued—up to July 30th, 1916—the Interstate Commerce Commission had made no change in any of the regulations—presumably because they had been found efficient for carrying out the purpose of the statute—namely, "the safe transportation of explosives."

It should also be noted that the sections do not *require* the carrier to impose restrictions but merely permit that to be done. The matter is thus left entirely to the discretion of the carrier, and, in the absence of any proof of an abuse of such discretion, there is nothing to show that local restrictions should have been imposed.

The statement in the charge (p. 794, ll. 35-40) that the carrier is not "obliged" to accept everything that is offered is obviously prejudicial to the defendant. As a matter of law it was *obliged* to accept and transport explosives—provided they were packed, &c., as required by the regulations—unless the local conditions were such as to make the acceptance, transportation or delivery unusually hazardous. The burden of proof to show that the conditions were such as to come within the proviso of the section rested upon the plaintiff. No attempt was made by the plaintiff to show that the conditions were "unusually hazardous" on the night in question. On the contrary, the evidence affirmatively shows that the conditions on that night were substantially similar to those that had existed for many months prior thereto.

Dickman had been employed as agent in charge of the Black Tom Terminal since December 15th, 1915 (p. 489, l. 3). From the date when he took charge, the North Pier and the tracks in that vicinity, that is, 13 to 18, has been used exclusively for the handling of explosives and inflammables (p. 493, ll. 10-35).

Mulligan, superintendent of the New York Division, said that the railroad had been transporting explosives and inflammables to the Black Tom Terminal for about a year prior to July 30th, 1916 (p. 576, l. 10). See also Kane, at page 395, lines 20-30.

Section 1428.

This reads as follows:

> "Before any shipment of dangerous explosives or named in paragraph 1661 destined to a point beyond the lines of the initial carrier must ascertain that the shipment can go forward via the route designated."

This section was specified in the complaint, but no reference is made to same in the charge. As the verdict cannot be sustained upon a point which was not submitted to the jury, we need not discuss the application of this section.

If, however, the claim should be made by the plaintiff that the jury had a right to consider this regulation as it was printed in the exhibit containing all of the regulations, then it may be pointed out that there is no dispute about the fact that the explosives were destined to various foreign ports and the further transportation from the defendant's terminal was not to be made by a common carrier engaged in transportation by land, but exclusively by barges or lighters and by ocean steamers. The section, therefore, has no application to the present case, as the regulations, obviously, must be limited to connecting carriers by land—the statute itself being limited to transportation of explosives by land. It may also be observed that many of the cars containing explosives did not originate on the line of the defendant, and even as to those which did so originate, there is no proof that the defendant failed to ascertain that the shipment could go forward "via the route designated."

Section 1643 (a).

This reads as follows:

> "1643 (a). Careful men must be chosen to handle explosives, the platform and the feet of the men must be as free as possible from grit and all possible precautions must be taken against fire. Suitable provision must be made, outside of the station when practicable, for the safe storage of explosives, and every effort possible must be made to reduce the time of this storage. If a shipment of explosives is not removed within 48 hours after notice of arrival at destination, it must be disposed of by return to the shipper, or by storage at the expense of the owner, or by sale, or when necessary to safety by destruction under the supervision of a competent person."

The first sentence of this section obviously refers only to those who *handle* the explosives. As the proof in the case is undisputed that the explosives were in carload lots and that it was the practice of the consignee or owner to unload same, this part of the section obviously does

not apply to the defendant. Defendant's request No. 8 (p. 818) to this effect, should have been charged.

The second sentence of this section which provides for storage outside of the station, likewise does not apply to the defendant under the undisputed facts. Like the first sentence, we submit that this refers to the duty of those who handle the explosives; but in any event, it does not apply to a terminal like the Black Tom Terminal where there is no "station" in the ordinary sense of that word. An additional reason for this construction is that all of the explosives in question were transported in carload lots and were merely "held" in the yard (and not *stored* therein) while awaiting delivery to the consignee. The words "store" and "storage" have a well recognized meaning in railroad parlance and do not apply to goods in carload lots that are merely held in the yard a short time awaiting delivery.

It may be further observed that the entire paragraph comes under a section of the regulations which is entitled "Rules for Handling," hence, none of the paragraphs under said section should be considered to be applicable to a carrier which does not in fact "handle" the explosives at the terminal point.

The last sentence of the section in question should also be limited to those whose duty it was to handle the explosives and should be further limited to less than carload shipments.

Furthermore, while it is true that some of the cars containing explosives had been in the yard more than 48 hours, it was not shown that the car of ammunition in which the fire probably started had been in the yard more than 48 hours "after notice of arrival" and, so far as concerns the cars containing the TNT, those had only been in the yard for two days. In any event, the mere holding of the cars in the yard was at best a condition rather than a cause of the fire and explosion. What should the defendant have done even if some one or all of the cars remained in the yard more than forty-eight hours after

notice of arrival? Can it fairly be said that if the consignees refused to accept delivery promptly that it was the duty of the defendant to blow up or otherwise destroy the ammunition, or return it to the shippers or put it up at public sale? Any such procedure would have been far more dangerous than to leave it in the yard, particularly when the defendant had every reason to expect that the consignees would do as they had done for a year previous, that is, remove the explosives as soon as the ocean steamers were available for transportation.

Finally, if this section does apply to the present case, it can have no bearing upon the question of lability on the present record, as there was no attempt made by the plaintiffs to show that the defendant did not make every effort possible "to reduce the time of storage." The evidence at the trial affirmatively shows that every effort was made, to wit, prompt notice was given of the arrival of the cars, and they were placed in a part of the yard which was most convenient to the unloading track, and the most available track, namely, the north track on the North Pier, was assigned exclusively to the work of unloading the explosives from the cars to the barges.

The point which we now urge under this section was raised by request to charge No. 9 (p. 819). In that request the defendant asked the Trial Judge to charge specifically that the provisions in question did not apply to the defendant under the evidence in the case and that no verdict against the defendant could be based upon any alleged violation of such provisions. The Trial Judge charged specifically that the first sentence of Section 1643-a did not apply (p. 795, ll. 1-10); but he then read the provisions now in question and permitted the jury to consider same as one of the grounds of negligence. These provisions were also included in the complaint (p. 10, ll. 1-12). If, therefore, the provisions have no application to the facts of the case, then it was error to permit the jury to consider the violation of same as a possible ground of negligence.

Since the trial of this case, it has been expressly decided *that these provisions do not apply.* In *Fidelity & Deposit Company of Maryland* v. *L. V. R. R.,* 275 Fed. 922, the Circuit Court of Appeals for the Third Circuit had occasion to review a verdict for the defendant arising out of the Black Tom explosion. In that case the Trial Court charged a request submitted by the defendant which was substantially the same as the one now under consideration. After judgment for defendant, the plaintiff took writ of error to the Circuit Court of Appeals and, among other things, alleged that the Trial Court had erroneously removed this question from the jury, per the defendant's request. The appellate court, however, sustained the judgment and in considering this particular question, said:

> "Section 1643 of the regulations of the Interstate Commerce Commission provides that—
>
> 'Suitable provision must be made, outside the station when practicable, for the safe storage of explosives, and every effort must be made to reduce the time of this storage.'
>
> The plaintiffs charge error to the Court in granting the defendant's request for an instruction to the jury that this paragraph did not apply to it 'under the evidence in this case, and therefore no verdict against the defendant can be based upon any alleged violation of such provision.' The evidence was that all explosives were in carload lots. They had arrived at their destination and were awaiting unloading for transshipment. No move had been made to unload or to store them. The section of the regulations of the Interstate Commerce Commission next preceding the one quoted deals in detail with the method of handling explosives stations and transferring them to and from cars. We think the Court committed no error in reading these sections together and in holding that Section 1643, however interpreted in other respects, relates to the subject matter of Section 1642, and that, in consequence, its provisions *for storage* does not extend to explosives ni carload lots."

Section 1643 (b).

This reads as follows:

> "(b) Unauthorized persons must not have access to explosives or other dangerous articles at any time while such articles are in the custody of the carrier."

This section required that unauthorized persons should not have access to the explosives. It does not require that such persons should not have access to the yards in which, or the tracks on which cars containing explosives happen to be held while awaiting delivery. If, however, the section be considered to apply to this case, then we submit that there was no proof (other than the mere fact of the fire) that unauthorized persons did have access to the explosives, neither is there any proof that such access was the cause of the fire.

On this point it is necessary to refer briefly to the evidence showing that none of the defendant's employees or other persons who were in or about the yard shortly before the fire saw any unauthorized persons in or near the cars where the fire started or, indeed, in any other part of the yard.

Kane, employed as foreman of the watchmen. Went on duty at 5:30 P. M. on Saturday, July 29th. At about 12:30 A. M. was informed by the Dougherty men that there was a fire on the North Pier (p. 392, ll. 30-40). About an hour prior to that time he had made a round of the oil yard, the elevators, the pump house, Pier 7 (including the bulkhead) and the sea wall track known as Track No. 18, on the northerly side of the yard (p. 398, l. 20, to p. 399, l. 20).

The yard was closed at 5 P. M. After that hour no one was permitted to enter except the boatmen; it was a "dead yard," that is, no trains were moved after that hour (p. 403, l. 30; p. 404, l. 10). From the time he went on duty at 5:30 to the time his attention was called to the fire by one of the Dougherty men, there was no fire of any character in or about or around the cars (p. 404, ll. 10-12).

Sloan, night engineer and watchman. His tour included the pump house and Pier 4 (p. 411, ll. 15-30). The first thing that he knew of the fire was about 12:30 or 12:40. Two men came running up to the pump house and said the North Pier was on fire (p. 411, l. 40, to p. 412, l. 5).

Kelly, watchman at the grain elevator. The first he knew of the fire was when he heard whistles blow and he went to the pump house and on reaching there was told by Sloan that there was a fire on the North Pier (p. 418, ll. 1-40).

The other two watchmen, Garrity and Groat, were not called as witnesses, Garrity having died since the explosion.

It appears from the testimony of the three watchmen who were called, that each had made his regular round and was at his post of duty. None of them saw any fire until about 12:30 A. M., when their attention was called to it by the Dougherty detectives. These three watchmen were all called as witnesses in behalf of the plaintiffs, but none of them were asked whether they had observed any strangers on the premises on the night of the fire, and it may therefore be inferred that their testimony on that subject would not have been helpful to the plaintiffs.

There was direct evidence given by certain witnesses called by the defendant that there were no strangers in or near the yard on the night of the fire.

Burns, captain of the squad of the Dougherty Agency (p. 580, ll. 30-35). Went on duty at 6 P. M. in the evening (p. 581, ll. 10-20). At about midnight met a Mr. Eiseman. *Up to that time had not seen any other men or strangers around there* (p. 582, ll. 1-10). Saw Eiseman for the first time when the latter was about opposite the warehouses and walked up to see who he was, and met him about a hundred yards west of the shanty, as he was coming towards the pier (p. 582, ll. 1-20). Had a few minutes' conversation with Eiseman. After Eiseman had started down the pier the witness saw a reflection and called his attention. Walked up a ways to get a better

view, then called the men out of the shanty, directing them to get everybody out of the piers and away. Also went to the nearest fire alarm, which was on Pier 6 (p. 583, ll. 20-30). Turned in the alarm about 15 minutes past twelve —could not say exactly. It may have been 12:30 (p. 584, l. 40, to p. 585, l. 40; p. 588, ll. 10-20).

Eiseman, captain of the Paulina. His barge was fastened at the south side of the North Pier—the Jet being immediately next to the pier, then the Moran 20 and then the Paulina (p. 598, ll. 20-30).

Was walking to his barge after having made a visit to Newark. To get to the North Pier it was necessary for him to go down the roadway and on the north track (p. 592, ll. 30-40). Walked to the end of the roadway and then along the north track—that is, the one next to the water, and did not see anybody until he met Burns (p. 593, ll. 20-25). Stopped to talk to Burns near the bulkhead and was about to go to his boat when Burns said there was a fire in the yard. As he walked along the north track in the direction of the North Pier and before meeting Burns, did not see anything of a fire in the yard or in any of the cars (p. 594, ll. 1-10). As he walked through the yard did not see any watchmen or anybody else in the yard (p. 597, ll. 30-35).

The foregoing evidence shows without dispute that there was no unauthorized person in the yard on the night of the fire.

So far as this point is concerned, there is nothing whatever in the record (unless it be the mere fact of the fire) to show that any unauthorized person did have access to the explosives or that any such person started the fire and, therefore, it was error to permit the jury to find the defendant liable by reason of a supposed violation of this section and it was also error to refuse to charge defendant's request No. that this section be removed from the consideration of the jury.

But if it be said that the mere fact of the fire was sufficient to permit the jury to find that it must have been

started by some person and that such person was unauthorized within the meaning of this section, the answer is, first, that the jury should not have been permitted to guess or speculate as to the origin of the fire, in the absence of evidence on the subject; and, second, there was affirmative evidence from which the jury might well have found that the fire was started by spontaneous combustion. It is unnecessary to go so far as to urge that the jury were bound to find that the fire was started by spontaneous combustion, but we do urge that in view of the affirmative evidence of the observation of the fire shortly after it started, together with the lack of positive evidence by the plaintiff as to the cause of the fire, the jury had no right to consider the question of whether any unauthorized persons had access to the explosives, or that such access was the cause of the fire.

The evidence from which the jury might well have found that the fire was the result of spontaneous combustion was given by several witnesses who observed the fire shortly after it started, as follows:

Nelson, captain of the barge Rockwell. About one o'clock was alarmed by the sound of explosion of shells. Saw three cars about three hundred feet from the bulkhead which were shooting off shells in all directions. There was no fire anywhere else (p. 101, ll. 1-30).

Hansen, captain of the Moran 20. This was on the south side of the North Pier. Was sitting in a chair on his boat when the captain of the Jet told him there was a fire. Climbed up on the watchmen's shanty and saw a fire "on a car up on the track" (p. 165, ll. 20-30). When he first saw the fire could not tell what was burning. "The flame was about six or eight feet up in the air, over the roof of the car" (p. 167, ll. 20-40). The witness indicated the location of the fire when he first observed it as at car P. L. E. 32285. The blaze was about three or four feet high and appeared to be coming out of the door of a car; "on top of the car" (p. 184, ll. 10-20). The fire appeared to be coming out of the top of one car (p. 185, ll. 10-15).

Lottie Townes, lived with her husband in a shanty on the pile stockade, a short distance from the northerly side of the yard. Was aroused by hearing what she thought were shots. Went to the door of the shanty and looked towards the yard (p. 235, ll. 1-40).

> "Q Now, as you went to the door, what did you see? A The car all ablaze, on top" (p. 236, l. 10).

Saw only one car burning. "It was all going up on top of the car (p. 238, l. 5). The flame was coming out of the top of the car (p. 240, l. 18).

Ezekiel Townes, was waked up by his wife and went to the door of the shanty and looked toward the yard.

> "Q Now, as you stood in your front door, what did you see burning? A Fire was coming up alongside of the car, you know, up over the car the fire was" (p. 243, l. 32).

Kane, saw the fire from the platform in front of Store G. Looked towards the North Pier and saw a small blaze at the extreme end of the yard. The fire was very small—about six or eight inches high and about the same width (p. 392, ll. 1-30). Saw the fire "over the tops of the cars" (p. 401, l. 35, to p. 402, l. 10).

Sloan, looked down between the line of cars and saw a blaze at the extreme end, which appeared "about the height of a barrel from the ground" (p. 412, ll. 1-10).

Kelly, saw the fire from the pump room. It seemed about four feet high and the same width. The flames looked to be about "to the top of the roof."

> "Q Coming from the ground up? A Well, I don't know. It seems to be about half ways, about from the middle of the cars like" (p. 419, ll. 15-20).

Could not say if the fire was coming out of the car. The flames were level with the tops of the cars (p. 421, ll. 10-30).

Burns; the fire was in a box car two or three tracks south of the track he walked up. *At that time there was no fire on the ground.* The fire was coming out of the

side door—that is around the edges of the door and the top of the box car (p. 584, ll. 1-20).

Eiseman, saw the blaze up over a box car. Did not see any blaze on the ground (p. 594, ll. 20-30).

The location of the fire, as fixed by the various witnesses, was among the cars containing explosives, as indicated by Exhibit P. 10. Dickman said that all of these cars arrived in the yard sealed (p. 495, ll. 30-40).

The cars where the fire was first observed contained ammunition for cannon shipped from the Bethlehem Steel Company. These shells contained smokeless powder in a brass case (p. 331, l. 30). Such powder is liable to spontaneous combustion if it is improperly made, or by reason of age, or if the storage conditions are bad (pp. 332-333, 337).

This evidence shows clearly that spontaneous combustion was at least a possible cause. Even without any direct evidence at all on this subject the jury would not be entitled to find that unauthorized persons had access to the explosives, in the absence of any proof that they did have such access.

Taking the entire record together, the jury should have been charged, as a matter of law, that there was no proof of a violation of section 1643 (b).

Sections 1661 and 1666.

These read as follows:

> "1661. For the transportation of carloads or less-than-carload lots of—
>
> Low explosives,
> Black powder,
> High explosives,
> Wet fulminate of mercury,
> Blasting caps, Electric blasting caps, } in quantity exceeding 1,000 blasting caps or 1,000 electric blasting caps.
> Ammunition for cannon with explosive projectiles,
> Explosive projectiles,

Explosive torpedoes, or,
Detonating fuzes,
only certified and placarded box cars may be used."

"1666. Placard.—A certified car for the dangerous explosives specified in paragraph 1661, must be protected by attaching to each outside end and side door, the lower edge not less than 4½ feet above the car floor, a standard placard 12 by 14 inches, on which appears in conspicuous red and black printing on strong tag board the following: (Then follows placard.)"

Neither of these sections was mentioned in the complaint, but reference was made to same in the charge (p. 795, l. 20 to 796, l. 20).

There was no pretense that there was any failure to put the proper placard on the several cars, but the plaintiff claimed that the injunction which appears on the placard "Keep fire away" was equivalent to a "regulation."

We submit, in the first place, that it is not to be considered as a regulation at all. This was nothing more or less than a warning to employees that the car on which the placard was placed contained explosives. To say that this warning amounted to a statutory rule, by force of which a carrier would be bound "to keep fire away" at all hazards, under penalty of damages—in the event that it did not keep fire away, is to transform a warning into a prohibition. The obvious purpose of the warning was that all persons who had anything to do with the handling of explosives, whether they were employed by the carrier, or by the shipper, or by the consignee, should, so far as practicable, keep fire away from cars on which said signs were placed; for example, it amounts to a warning to keep lighted lanterns or cigarettes away from such cars, but it clearly does not place upon the carrier the burden of insuring against fire; neither does it apply to a case where a fire has been started by some third party and continues to burn in the vicinity of the car or cars containing explosives.

That this legend on the placard was never intended by the Commission to be a regulation is further shown by the fact that on this very same placard there appears what are called on the placard "Condensed rules for handling this car"; then follow nine paragraphs of directions as to the placing and handling of cars containing explosives; but the direction "Keep fire away" does not appear on the placard as one of these rules.

Sections 1667 and 1913.

These read as follows:

> "1667. A placard of diamond shape printed on strong tag board measuring 10¾ inches on each side and bearing in red and black letters the inscription prescribed by paragraph 1913 must be placed on each outside and side door of a car containing any quantity of smokeless powder for cannon, or smokeless powder for small arms, or ammunition for cannon with empty projectiles, or ammunition for cannon with sand-loaded projectiles, or ammunition for cannon with solid projectiles, or ammunition for cannon without projectiles, or fireworks."
>
> "1913. A placard of diamond shape, printed on strong, thin, white paper for pasting on tank cars, containing an inflammable liquid and on strong tag board for tacking to wooden cars or to wooden boards of suitable size attached for this purpose to metal box cars or tank cars, measuring 10¾ inches on each side, and bearing in red and black letters the following inscription, must be securely attached to each outside end and to each side door of a car containing one or more packages protected by the red or yellow diamond label: (Then follows label.)

Here, again, these sections were not specified in the complaint, and likewise, again, the defendant was prejudiced by the fact that the Trial Judge permitted the jury to consider whether or not defendant had complied with same. In any event, there was an utter failure to prove a violation.

The cars which were billed as containing wet nitrocellulose, benzol and toluol, as well as P. & R. 14537, were

marked with the above placard (p. 159, ll. 30-40). The two cars which contained combination fuses were not marked with any placard (p. 160, ll. 10-15), as cars containing fuses of this kind were not required to be placarded at all (see Section 1663 (b))—the only description of fuses which come in the class of "dangerous explosives" being detonating fuses. The car known as P. & R. 14537 was marked with an inflammable placard, rather than 1661, which require an explosive placard.

As in the case of the explosive placard, so also in the case of the inflammable placard, the defendant claims that the placard is not to be construed as a regulation. However, if it be considered to be a regulation rather than a warning, then the defendant further claims that the injunction on the inflammable placard "Keep Lights and Fires Away" is merely equivalent to an injunction not to bring lights or fires near cars so placarded and cannot be considered to require the employees to put out a fire in the event that one started in or near such cars. Rule 1 of this placard states: "This car must not be next to a car containing explosives." This is the corollary of rule 3 of the explosive placard, requiring that such car must not be placed next to cars bearing the inflammable placard. The defendant claims that even if these directions on the respective placards are to be considered as regulations, nevertheless, they do not apply to cars which are standing in a railroad yard, *but only while they are actually being moved in the course of transportation.*

None of the cars standing on Track 16, which contained high explosives or TNT was "next" to a car marked with the inflammable placards. All of the cars on Track 15 contained ammunition for cannon and there is no regulation and no rule which prohibits such cars being placed next to one another. On Track 13 there were also certain cars containing ammunition for cannon; there was also one car containing benzol, which stood next to the ammunition cars. There is no evidence, however, that the fire started in the benzol car, or in any other of the cars

immediately adjoining same; and, hence, even if the location of the benzol car might be considered as a technical violation of the rules in question, there is still nothing to show that this had anything to do with the start of the fire.

Section 1681.

This reads as follows:

> "1681. Under no circumstances must a car known to require the 'Explosive' placard be taken from a station, including transfer stations or interchange points, a siding or yard, unless it is proply placarded as per paragraphs 1665 and 1666, nor unless the car is in proper condition. The carrier must see that its representative in charge of a freight train makes a thorough check of the cars bearing 'Inflammable,' 'Acid' and 'Explosive' placards with the billing to see that all placards required are attached and that those not required are removed."

The Trial Judge permitted the jury to consider this section, although no allegation with respect to same was made in the complaint.

There was no pretense of a violation of the section. On the contrary, the evidence shows without dispute that the cars were properly placarded.

Section 1682.

This section reads as follows:

> "1682. Every possible effort must be made to expedite the movement of cars containing explosives, and no unnecessary delay must occur at initial, interchange or transfer stations."

There was no attempt made to prove any violation of this section. The evidence shows that the defendant gave prompt notice of arrival, furnished the necessary motive power and did everything possible to expedite the transportation of the cars. There being no evidence whatever to sustain the charge of a violation of this section, such charge should have been withdrawn from the considera-

tion of the jury—in accordance with the defendant's request.

Section 1684.

This reads as follows:

> "Such cars must be frequently inspected to see that the placards and car certificates are intact. Whenever any of these become detached or lost in transit, they must be replaced on arrival at the next division terminal yard, if in through freight train, or at first station stop if in local freight train."

There is no evidence whatever of any violation of this section, and, hence, there was a double error on the part of the Trial Judge—first—in permitting the jury to consider it without a corresponding allegation in the complaint, and, second, in permitting the jury to consider it at all without any evidence to show a violation.

Section 1689.

This reads as follows:

> "They (cars) must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be cut off and allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible and be removed from all danger of fire. They must not be placed on tracks under bridges, and, when avoidable, engines on parallel tracks must not be allowed to stand opposite or near them."

This clearly applies to the locating or placing of cars in yards or sidings, and does not impose upon the carrier the duty of insuring against fire; for example, it might be construed as requiring a carrier to place cars a reasonably safe distance from shops or buildings where sparks might escape from fires. It amounts to nothing more or less than a rule that the cars should be put in as safe a place as possible under the circumstances. In the present case, the cars containing explosives were placed at the extreme easterly end of the yard, where there was no shift-

ing of cars, and, indeed, at night there was no shifting of cars at any point in the yard. It was, of course, necessary to move the cars to a convenient point for unloading, and when that had been done, the practice was to leave them on the North Pier until they had been unloaded by the consignees, and they were certainly removed as far as possible form all danger of fire. Moreover, there is no proof that any violation of this regulation was the cause of the fire or the explosion. The fire started late at night when none of the cars were being shifted. They were all standing in the yard; there were no "shocks"; no car was cut off and no car was allowed to strike another car; none of the cars were placed on tracks under bridges and no engines were standing beside or near them. In other words, there is not a scintilla of proof of any violation of this regulation, unless the expression that the cars "must be removed from all danger of fire" be construed as equivalent to a positive statement that the duty rests upon the defendant to eliminate entirely the danger of fire.

IV.

There was error in the charge to the jury and in the refusal to charge certain requests submitted by the defendant relative to the Federal Anchorage Regulations and the admitted violation thereof by the barges attached to the defendant's pier, particularly Johnson Barge No. 17, at the time of the fire and explosion.

In its answer the defendant set up certain regulations which were entirely separate and distinct from the Inter-State Commerce regulation. These are known as the Anchorage Regulations. The particular parts thereof which are in question read as follows:

"ANCHORAGE FOR EXPLOSIVES."
(See Plates Nos. 1 and 5.)

"27. Vessels carrying gunpowder or other explosives may anchor only as follows:

First. On the shoal ground to the eastward of Rikers Island, East River, from one-fourth to five-eighths of a mile from this island.

Second. On the New Jersey Flats between a line drawn parallel to and 1,500 feet to the south of the Black Tom dredged channel and a line drawn parallel to and 1,500 feet north of the Greenville dredged channel, and to the westward of a line from Bedloes Island to Robbins Reef, provided that they do not anchor within 1,000 yards of Bedloes Island, or within 500 yards of any pier.

Third. Vessels (carrying explosives) of too great draft to use the above anchorages may anchor only in Gravesend Bay, on a line drawn from Fort Hamilton to the western tip of Nortons Point, Coney Island, but not within 1,000 yards of the shore. All vessels laden with explosives while within the port will display at all times a red flag of at least 16 square feet surface at the masthead. Vessels so laden and without masts will display the flag at least 10 feet above the uppermost deck. All such vessels must be at all times in charge of competent persons and must comply with the navigation laws in regard to lights and fog signals" (p. 918, ll. 1-30).

In dealing with this subject we must bear in mind the distinction between the claims for the property of this plaintiff (as well as of the other two plaintiffs whose cases were consolidated with the present case) which was on the barges or lighters and claims for the property of this plaintiff which was in railroad cars on the land. So far as the former claims are concerned, the Trial Judge charged that if the jury found that a violation of the anchorage regulations was the proximate cause of the injury complained of, then that would defeat the plaintiff's right to recovery (p. 801, l. 28; p. 803, l. 30; p. 807, ll. 25-35).

This part of the charge need not be considered on the present appeal, as none of the property now involved was on any of the barges that were charged with violating the anchorage regulations.

It should also be stated that the defendant does not claim that the cause of the damage to the plaintiff's property in the railroad cars on land was an explosion on any of the barges whereon any of the plaintiff's property was loaded; the defendant's claim in this regard is that the plaintiff's property which was on the land was damaged by the explosion of the contents of a barge known as the Johnson 17. These articles were not consigned to the Republic of France nor to either of the other two plaintiffs, but to the Russian Government. Neither the plaintiff nor the defendant had anything to do with same. The defendant's claim is that the explosion of the contents of the Johnson 17 was an intervening and the efficient cause of the damage to the plaintiff's property, that the defendant was not in any way responsible for the damage caused by such explosion, and that, whether or not it was so responsible, the plaintiff had failed to prove what part of its damage was caused by the explosion of the TNT on the Johnson 17, and what part was caused by the explosion of the TNT in cars on the land; and that, accordingly, under such a state of the proofs, the defendant could not be held responsible for the damage to the plaintiff *unless* it was responsible for the explosion on the Johnson 17, as well as for the explosion on the land.

On this point the Trial Judge charged as follows (italics ours):

> "And while we are upon this subject, some point was made that the Johnson 17 if it exploded afterwards and did damage was such an interruption of the original negligence, if there were original negligence on the part of the defendant, that you could not say how much damage was due to the Johnson 17 and how much to the act of the defendant; but you ascertain, gentlemen, whether the original negligence, if there were original negligence, persisted throughout the whole situation, and was respon-

sible as an efficient cause for setting in operation the other results. If it were, the fact that the Johnson was in the line of explosion and took fire and exploded and did damage would not defeat the right of the plaintiffs to recover against the defendant. One of the great cases in the common law of this country, has perfectly settled the doctrine, which I illustrate by the facts of the case itself.

If some one throws a lighted squib into a market place and some one sees it fall at his feet, sees that it is dangerous, and picks it up and hurls it from himself for safety, and it falls near some one else, and the other person picks it up and hurls it from himself, to protect himself, and it at least injures somebody way off, who is to blame? The first man, because he set it in motion, and *he might reasonably have anticipated that anybody who saw that thing coming toward him with* its freight *of danger would realize that the thing to do was to get it away from him* and therefore the man who first started it in motion would be responsible *for all the natural and proximate consequences that flowed from the original act.* And so you ask yourselves, is there unbroken continuity of connection between the original negligent act, if there were original negligent act, or did some culpable intervening agency come in and destroy the continuity? If it did, why, of course, the end of the liability of the defendant would be the entry of the intervening culpable agency. If it did not, the end of the responsibility of the defendant would be the end of the destruction wrought by the chain of consequences that followed the original wrongful act, if there were one" (p. 803, l. 30, to p. 804, l. 38).

The Trial Judge further charged defendant's request No. 63 (p. 833) with certain modifications. This part of the charge reads as follows:

"I have adverted to this point, and, I have thought, made it plain, but I will direct your attention to one phase of it and you will consider this charge of this request in connection with the rest of the matter that I spoke to you of in the same connection: 'In view of the fact that the regulations concerning the transportation of explosives and other dangerous articles by land, article 1647,

> contain a prohibition against the loading of such materials as detonators and high explosives in the same car or storage place, and of the evidence in this case with respect to the danger of thus loading such articles on the same carrier, the jury may legally find the presence on the Johnson barge 17 of detonators and TNT constituted negligence on behalf of the proprietor of such barge, and if it thus finds and also finds that the explosion on the Johnson 17 was the proximate cause of the damage complained of by the plaintiff, then it may not find against the defendant'—unless it also finds that the negligence of the defendant was a proximate cause also. What should have been stated here was, that if they find that the explosion on the Johnson 17 was the sole proximate cause of the damage complained of by the plaintiffs'' (p. 807, ll. 13-28).

Under the part of the charge last quoted, it will be observed that the jury were permitted to find negligence on the part of the Johnson 17 by reason of the fact that it was loaded with a combination of detonators and TNT. But, under the part of the charge first quoted, the jury were permitted to find negligence against the defendant (notwithstanding that they might find negligence on the part of the Johnson 17) providing they concluded that there was an ''unbroken continuity'' between the original negligent act and the final result—that is to say, they were permitted to find the defendant responsible if the original negligence of the defendant (assuming such to be found) persisted throughout the whole situation and was the responsible cause for the other results.

The defendant contended that under the undisputed evidence, an explosion did in fact occur on the Johnson 17 and that the jury should have been charged *as a matter of law* that it could not be held responsible for any damage caused to plaintiffs by reason of such explosion.

The defendant's requests on this subject (in addition to No. 63, already mentioned) were as follows:

> ''60. The undisputed evidence is that Johnson Barge No. 17 with 1,005 cases of TNT and 417 cases of detonators (all obtained elsewhere) was

moored at the North Pier at Black Tom on July 30th, 1916, and there is no evidence that the defendant had any knowledge whatever of the materials thus loaded on said Johnson 17 at that time; and the jury must find under the law as contained in the anchorage regulations of the United States Government, that a boat thus loaded should not have been moored at Black Tom Pier, but should have proceeded to the anchorage grounds as designated in the said United States Regulations, and that the act of mooring her thus loaded at the North Pier at Black Tom was an unlawful act; and therefore defendant cannot be held responsible for any damage occasioned plaintiffs by reason of the explosion thereon.

61. If the jury finds that the Johnson 17 containing 1,005 cases of TNT and 417 of detonators (all obtained elsewhere) was unlawfully moored at Black Tom Pier, and that the TNT thereon subsequently exploded on the night of July 30, 1916, and caused or contributed to the damage complained of by the plaintiffs, the jury cannot legally find the defendant responsible for such damage.

62. There is no evidence from which the jury may determine how much of the damage to the plaintiffs was caused by fire and how much was caused by explosion; there is no evidence that some damage to plaintiff was caused by explosion, and as the defendant cannot be held responsible for the explosion on the Johnson 17 and any damage caused thereby, the jury are instructed that if they find a verdict for the plaintiff the amount of such verdict must be limited to six cents'' (p. 832, ll. 10-40).

The defendant submits that the Trial Judge committed error in the following respects:

(a) He permitted the jury to find the defendant liable to the plaintiff for the result of the explosion on the Johnson 17 notwithstanding the undisputed fact that the presence of the Johnson 17 at the North Pier on the night of the fire and explosion was a deliberate violation of the Anchorage Regulations.

(b) He permitted the jury to find the defendant responsible for the results of such explosion on the Johnson 17, notwithstanding that the plaintiff failed to prove what part of its damage was due to such explosion and what part was due to the land explosion.

We will now proceed to discuss these points.

(a)

It appears without dispute from the record in this case that the Johnson 17 had no permission from the defendant or any of its agents to be at the pier on Saturday night. Doubtless, no such permission could have been given—but whether it could or not, there was no claim in the present case that the defendant had given such permission.

The Johnson 17 was loaded with 1,005 cases of TNT which had come from the West Shore Railroad Company at Weehawken, and with 417 cases of detonators which had come from the Erie Railroad Company at Weehawken (p. 604, l. 1, p. 605, l. 20). They were consigned to the Russian Government, and so far as the record shows, this barge had no occasion whatever to be or to remain at the Black Tom Pier or any other pier of the defendant. The record does not show at what hour or on what date the Johnson 17 arrived at the Black Tom Pier, but there is no doubt about the fact that it was there on the night of the explosion, as both Captain Casperson of the Johnson 11 and Captain Baker of the Frank said that they were waked up by the captain of the Johnson 17 (p. 723, ll. 10-20, to p. 728, ll. 30-40). Captain Baker and other witnesses saw the Johnson 17 after the fire had started. She was then lying at the northerly side, near the easterly end of the North Pier (see map, Exhibit P. 11, and testimony of Casperson and Baker, p. 725, ll. 20-30; p. 731, ll. 10-30).

All of the foremen in charge of the loading of the various barges had frequently been warned to take the

barges to the anchorage grounds when they were loaded. These warnings were given by the agent, Dickman, and also by Inspector Campbell of the Bureau of Explosives (see testimony of Campbell, pp. 325, 611 to 620; of Dickman, pp. 508, 509 and 519; testimony of Fox, p. 574).

A Mr. Ackerman, who was the operator of the Ackerman Lighterage Company, attempted to excuse the practice of his boats in remaining at various piers instead of going to the anchorage grounds, but even he admitted that the practice of stopping at the different piers after the loading had been completed only applied to the boats that were loading at the dock where they afterwards stopped (p. 437, ll. 1-20). Hence, this alleged custom would not excuse the presence of the Johnson 17, as, admittedly, the only load which it had on the night of the fire had been received at the docks of other companies, to wit: West Shore R. R. Co. and Erie R. R. Co.

We therefore have a situation where the Johnson 17 had neither actual permission nor lawful right to be at the North Pier.

Under these circumstances how can it be said to be a question of fact for the jury as to whether or not the defendant should have anticipated its presence? It will be observed that the gravamen of the charge of the Trial Judge on this subject was that the jury might find that the defendant might "reasonably have anticipated" the presence of the Johnson 17. This is shown by the illustration which was cited of the well-known Squib case. Possibly if the defendant had given permission to the Johnson 17 with its load of highly dangerous explosives to be moored at the North Pier on the night of July 29-30, 1916, a different question would be presented, *but the record in this case is absolutely barren of proof of any such permission.*

The defendant was not bound to anticipate that the Johnson 17 or any other barge would violate the anchorage rules—on the contrary, it had every right to antici-

pate that the barges would obey the rules. In this respect, the Johnson 17 was in exactly the same position as the other barges which contained explosives, such as the barges which carried the explosives consigned to this present plaintiff and to the King of Great Britain and to the Aetna Explosives Company. The legal situation with regard to these barges was decided by the State Supreme Court in an opinion filed on June 7th, 1921, in the case wherein Republic of France, the King of the United Kingdom of Great Britain and Ireland, and the Aetna Explosives Company, Inc., took rules to show cause to set aside the verdicts against them in this very trial. In discharging these rules to show cause, the Supreme Court said (italics ours):

> "The situation was this: The barges had without right, and apparently without knowledge of the railroad company, tied up to the Lehigh Valley wharf, one barge to another, and after the fire started had cut loose and were being towed away. * * * In *Meyer* v. *Benton,* 74 N. J. L. 533, the Court of Errors said that the responsibility of the defendants depended upon the question whether injury to the plaintiff or to a class of which the plaintiff was one, *ought reasonably to have been anticipated.* * * * If, however, we took a narrower view of the charge we should be unable to say that this was not a case of trespass. Those in control of the barges had no right to tie up to other barges which were in turn tied up to the defendant's wharf. It was an interference with the possessory right of the wharf owner and no doubt prevented to some extent access to its wharf. This would be a trespass under the best of circumstances, but in the present case the harbor regulations were violated by tying these barges loaded with explosives to a wharf which had been devoted to the handling of explosives in large quantities for a long time. *The defendant cannot properly be held to anticipate that the harbor regulations might be violated. He might properly assume in the absence of notice to the contrary of which there is no proof, that the plaintiff or its agents or employees would not act unlawfully. It*

> *had the right to assume that rules intended for the protection of everybody under very hazardous circumstances would be observed by everybody.''* See 114 Atl. 242.

This decision is conclusive on the point that the defendant was not bound reasonably to anticipate the presence of any of the barges (including the Johnson 17). It is also conclusive on the point that all of the barges which contained explosives (including the Johnson 17) violated the anchorage rules by mooring at the pier of the defendant on the night in question.

The legal rule applicable to a situation of this kind is well settled. It has recently been stated in the case of *Justesen* v. *Pennsylvania R. R. Co.,* 92 N. J. L. 257, in the following language:

> ''The rule is entirely settled that the damages chargeable to a wrongdoer must be shown to be the natural and proximate effects of his delinquency. The term 'natural' imports that they are such as might reasonably have been foreseen, such as occur in an ordinary state of things; the term 'proximate' indicates that there must be no other culpable and efficient agency intervening between the defendant's dereliction and the loss. *Cuff, admx.,* v. *Newark & New York R. R. Co.,* 35 N. J. L. 17; *Wiley* v. *West Jersey R. R. Co.,* 44 *Id.* 217.''

Applying this rule to the *undisputed facts* in the present case, we submit that the defendant was not bound to anticipate the presence of the Johnson 17 at the North Pier in violation of the anchorage rules. If it was not bound to anticipate its presence at that point, then it follows that the danger arising by reason thereof was not such ''as might reasonably have been foreseen by the defendant''; and, therefore, it follows that if the jury found (as they might have found under the evidence) that the damage to the plaintiff was caused by the explosion on the Johnson 17, then the Johnson 17 was an independent, intervening cause which cut off the proximate effect of the defendant's original negligence—assuming that there was such. The result, therefore, is that under the application

of this rule, the Trial Judge should have charged the jury that it was for them to say whether the damage to the plaintiffs was caused by the explosion on land or by the explosion on water; *and that if it was caused by the explosion on water, then the defendant was not responsible therefor, for the reason that it was not bound to anticipate the presence of the Johnson 17 at the North Pier.*

(b)

A further question, under this record, is whether the plaintiff can recover in the absence of proof to show how much of its damage was caused by the explosion on the land and how much was caused by the explosion on the Johnson 17. Let us assume, for the purpose of this discussion, that there was evidence to justify the jury in finding a verdict against the defendant *so far as relates to the first explosion.* If the plaintiff had then shown that it was damaged by the first explosion, the defendant would, perforce, be bound by the previous decisions of this court. But the plaintiff did not offer proof on this point, hence, if we are right in our contention that the Johnson 17 was an independent, intervening cause, the presence of which the defendant was not bound to anticipate, and if the plaintiff failed to show how much of its damage was caused by the explosion on the land, the defendant was entitled to have the jury instructed in accordance with its request No. 62 that if there was any verdict for the plaintiff the amount should be limited to six cents.

V.

For these reasons, the judgment should be reversed and a new trial ordered.

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