# INDEX.


PAGE.

Writ of Error, ..... 1
Judgment, ..... 3

*Plaintiff's Testimony.*

Benjamin E. Baker, direct, ..... 7
Theodore E. Conway, direct, ..... 25
cross, ..... 38
re-direct, ..... 77
re-cross, ..... 79
William G. Price, direct, ..... 81
cross, ..... 83
Joshua L. Elliott, direct, ..... 87
George Inston, direct, ..... 103
cross, ..... 110
re-direct, ..... 110
Abraham Lichtman, direct, ..... 111
William M. Brown, direct, ..... 114
cross, ..... 115
Joshua L. Elliott, recalled, direct, ..... 119
cross, ..... 140
re-direct, ..... 189, 198
re-cross, ..... 195
Frederick C. Lauster, direct, ..... 199
cross, ..... 227
re-direct, ..... 265
re-cross, ..... 266
Jacob L. Stumpf, direct, ..... 267
cross, ..... 270
Samuel G. Maxwell, direct, ..... 273
cross, ..... 276
re-direct, ..... 280
Benjamin E. Baker, recalled, direct, ..... 281, 331
cross, ..... 292
re-direct, ..... 324
re-cross, ..... 328

*Defendant's Testimony.*

William H. Stengel, direct, ..... 335, 343, 345
cross, ..... 336, 344, 346
re-direct, ..... 338
re-cross, ..... 340


New Jersey State Library

PAGE.

Joseph F. Roller, direct, ..... 346
cross, ..... 350
re-direct, ..... 351
re-cross, ..... 352
James Smith, direct, ..... 353, 363
cross, ..... 357, 364
Lewis Strauss, direct, ..... 364
cross, ..... 367
James T. Smith, direct, ..... 370
cross, ..... 372
Abraham Lichtman, recalled, direct, ..... 375
cross, ..... 421, 445
re-direct, ..... 470
re-cross, ..... 473
further direct, ..... 477
James J. O'Neil, direct, ..... 432
cross, ..... 439
Julius Lichtman, direct, ..... 478
cross, ..... 481
Joshua L. Elliott, recalled, direct, ..... 491
cross, ..... 492
Frederick C. Lauster, recalled, direct, ..... 492
Benjamin E. Baker, recalled, direct, ..... 492
Court's Charge to Jury, ..... 495
Defendant's Requests and Exceptions, ..... 518
Plaintiff's Requests and Exceptions, ..... 520

Order, ..... 527
Assignments of Error, ..... 528
Joinder in Error, ..... 536

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# NEW JERSEY

# Court of Errors and Appeals.

CORONA KID COMPANY, SUING FOR THE USE OF CORONA KID MANUFACTURING COMPANY OF MAINE, *Plaintiff*,
*vs.*
JULIUS LICHTMAN, *Defendant*.
} In Tort.

## WRIT OF ERROR.

*(Filed March 13, 1912.)*

NEW JERSEY, *ss.*—The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, Greeting:

[L. S.]

Because in the record and proceedings and also in the giving of judgment which was in our Supreme Court holden at Newark in and for the county of Essex, between Corona Kid Company, suing for the use of Corona Kid Manufacturing Company of Maine, plaintiff, and Julius Lichtman, defendant, of an action in tort, manifest error hath intervened to the great damage of the said Julius Lichtman, as by his complaint we are informed, we being willing that speedy

justice should be done to the parties aforesaid in this behalf, do command you distinctly and openly to send under your seal the record and proceedings aforesaid with all things touching and concerning the same to our judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the fifteenth day of March, next, together with this writ, that the record and proceedings aforesaid being inspected we may further cause to be done thereupon what of right and according to the law ought to be done.

Witness, Mahlon Pitney, Esquire, our Chancellor and president judge of our Court of Errors and Appeals, at Trenton aforesaid, the twenty-fourth day of February, 1912.

S. D. DICKINSON,
*Clerk.*

RIKER & RIKER,
*Attorneys.*

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
[L. S.] *C. J.*

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| CORONA KID COMPANY, A CORPORATION OF THE STATE OF MASSACHUSETTS, SUING FOR THE USE OF CORONA KID MANUFACTURING COMPANY, A CORPORATION OF THE STATE OF MAINE, *vs.* JULIUS LICHTMAN. | In Tort. On Postea. |

Pitney, Hardin & Skinner, Attorneys.

As yet of the seventh day of December, A. D. one thousand nine hundred and ten.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice.

WILLIAM RIKER, JR.,
*Clerk.*

ESSEX COUNTY, *ss.*:

Julius Lichtman, the defendant in this suit, was summoned to answer unto Corona Kid Company, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, the plaintiff therein, suing for the use of Corona Kid Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Maine, in an action of tort, and thereupon the said plaintiff suing as aforesaid by Pitney, Hardin & Skinner, its attorneys, complains: for that whereas the said plaintiff heretofore, to wit, on the seventh day of September, in the year nineteen hundred and five, at Newark, in the county of Essex, aforesaid, was lawfully possessed as of its own property of certain goods and chattels, being hides or the skins of animals, or portions of the same, to wit: twenty-three thousand three hundred (23,300) pounds of grains from cordovan after tanning, of great value, to wit, of the value of twenty thousand dollars; two thousand four hundred and thirty-nine (2,439)

dozen of shank splits, pickled, of great value, to wit, of the value of two thousand dollars; six hundred and forty-nine (649) pounds of pieces of dry tacked-out butt buffings from cordovan butts, of great value, to wit, of the value of eighty dollars; and being so possessed, the said plaintiff afterwards, to wit, on the day and year aforesaid, at Newark aforesaid, casually lost the said goods and chattels out of his possession, and the same afterwards, to wit, on the day and year aforesaid, at Newark, in the county aforesaid, came to the possession of said defendant by finding; yet the said defendant, well knowing the said goods and chattels to be the property of the said plaintiff, and of right to belong and pertain to it, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf, hath not as yet delivered the said goods and chattels, or any or either of them, or any part thereof, to the said plaintiff, although often requested so to do, and hath heretofore wholly refused so to do; and afterwards, to wit, on the day last aforesaid, at Newark, in the county aforesaid, converted and disposed of the said goods and chattels to his own use to the damage of the said plaintiff, twenty-three thousand dollars ($23,000); and the plaintiff saith that by reason of the premises, a cause of action arose to the said plaintiff to have of, and from the said defendant said sum of twenty-three thousand dollars ($23,000), and that thereafter, to wit, on the twentieth day of June, in the year nineteen hundred and ten, at Boston, in the State of Massachusetts, to wit, at Newark, in the county aforesaid, the said plaintiff did sell, assign, transfer and set over to the said Corona Kid Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Maine aforesaid, its said cause of action against the said defendant, and the said defendant hath not as yet delivered the said goods and chattels, or any or either of them, or any part thereof to said Corona Kid Manufacturing Company, a corporation organized and existing under and

by virtue of the laws of the State of Maine as aforesaid, although often requested so to do, and hath heretofore wholly refused so to do, whereby and by reason of the premises a cause of action hath accrued to the said plaintiff suing for the use of Corona Kid Manufacturing Company, a corporation organized and existing under and by virtue of the laws of the State of Maine as aforesaid, to have of and from the said defendant said sum of twenty-three thousand dollars ($23,000), and therefore it brings its suit, etc.

And the said defendant, by Riker & Riker, his attorneys, comes and defends the wrong and injury when, etc., and says that he is not guilty of the said supposed grievances above laid to his charge or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

And the said defendant, for a further plea in this behalf, by leave of the court, saith that the said plaintiff ought not further to have or maintain its aforesaid action thereof against him, because he says that Corona Kid Company, a corporation of Massachusetts, did not on the twentieth day of June, nineteen hundred and ten, nor at any other time, sell, assign, transfer and set over to the Corona Kid Manufacturing Company, of Maine, the cause of action alleged in plaintiff's declaration to have existed in favor of said Corona Kid Company, of Massachusetts, and of this he, the said defendant, puts himself upon the country, etc.

Therefore let a jury thereupon come before our Chief Justice or some other justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Newark, in and for the county of Essex, on the second Tuesday of December, in the year of our Lord one thousand nine hundred and eleven, by whom, etc., and the same day is given to the parties aforesaid there, etc.

And now at this day, to wit, the twentieth day of

February, A. D. nineteen hundred and twelve, before our said Supreme Court, at Trenton, comes the said plaintiff, by its attorneys aforesaid, and the justice before whom, etc., having first sent hither his record had before him in these words, to wit:

Afterwards, to wit, on the second day of February, in the year of our Lord one thousand nine hundred and twelve, at a Circuit Court holden at Newark, in and for the county of Essex, before his Honor, Frederic Adams, a Circuit Court judge, to whom the said cause had been referred for trial by Honorable William S. Gummere, Chief Justice of the Supreme Court, presiding at said Circuit, according to the form of the statute in such case made and provided, comes as well the within named plaintiff, Corona Kid Company, a corporation of the State of Massachusetts, suing for the use of Corona Kid Manufacturing Company, a corporation of the State of Maine, as the within named defendant by their respective attorneys within mentioned; and the jurors of the jury, whereof mention is within made, being summoned, also come, who, to speak the truth of the matters within contained, being chosen, tried and sworn, upon their oaths, say that the defendant is guilty of the grievances within laid to his charge in manner and form as the plaintiff suing for the use of Corona Kid Manufacturing Company, a corporation of the State of Maine, hath within complained against him, and they assess the damages of the said plaintiff suing as aforesaid, on occasion thereof, over and above its costs and charges by it about its suit in its behalf expended, to the sum of twenty-three thousand dollars, and for those costs and charges to the sum of

Therefore it is considered that the said plaintiff do recover against the said defendant its said damages by the jury in form aforesaid found to twenty-three thousand dollars, and also fifty-seven dollars and one cent costs and charges aforesaid, by the court now here adjudged to the said plaintiff and with its assent, which said damages, costs and charges in the whole amount

to twenty-three thousand and fifty-seven dollars and one cent.

Judgment signed this twentieth day of February, A. D. one thousand nine hundred and twelve.

WM. S. GUMMERE, *C. J.*

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand
[L. S.] and the seal of said Court at Trenton, this twenty-ninth day of February, A. D. nineteen hundred and twelve.

WM. RIKER, JR., *Clerk.*

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NEW JERSEY SUPREME COURT, ESSEX CIRCUIT,

TUESDAY, January 23, 1912.

CORONA KID COMPANY, A CORPORATION OF THE STATE OF MASSACHUSETTS, SUING FOR THE USE OF CORONA KID MANUFACTURING COMPANY, A CORPORATION OF THE STATE OF MAINE,
*vs.*
JULIUS LICHTMAN.
} IN TORT.

Before Hon. Frederic Adams, J., and a Jury.

For plaintiff appear Pitney, Hardin & Skinner, by Alfred F. Skinner, William L. Morgan and Corwin Howell.

For defendant appear Riker & Riker, by Adrian Riker and Cecil H. MacMahon.

Mr. Skinner opens for plaintiff.

*Benjamin E. Baker,* sworn in behalf of plaintiff.

Direct examination, by Mr. Skinner.

*Q.* Mr. Baker, where do you reside? *A.* At Wellesley Hills, Massachusetts.

*Q.* And what is your business? *A.* Leather manufacturer.

*Q.* How long have you been in that business? *A.* Thirty-seven years.

*Q.* Are you connected with any company? *A.* I am president at present of the Corona Kid Manufacturing Company and the Corona Leather Works, of Bristol—Corona Kid Manufacturing Company, a Maine corporation, and Corona Leather Works, a Pennsylvania corporation, with factory at Bristol, Pennsylvania.

*Q.* And prior to your connection with the Corona Kid Company, of Maine, were you in the leather business? *A.* I was president of the Corona Kid Company, a Massachusetts corporation.

*Q.* Prior to your connection with that company were you in the leather business? *A.* I have been continuously for thirty-seven years.

*Q.* Were you connected with any company prior to this Corona Kid Manufacturing Company, of Maine? *A.* I was in business for myself, as a firm.

*Q.* You have said that you were president of the Corona Kid Company, of Maine, and prior to that you were president of the Corona Kid Manufacturing Company, of Massachusetts. I asked you whether you were connected with any other company prior to this last one I have named. *A.* The Corona Kid Company, of Massachusetts.

*Q.* And in what capacity? *A.* President and treasurer.

*Q.* And for how long? *A.* From its organization. It was organized on the 25th—the 17th, rather, of December, 1899, and I was elected president.

*Q.* And from that time until when were you president? *A.* Until 1905, when the Corona Kid Manufacturing Company was organized.

*Q.* What business was the Corona Kid Company, of Massachusetts, the earliest of these three companies, engaged in? *A.* The manufacturing of patent leather exclusively from colt skins, horse hides and goat skins.

*Q.* How much of the work of manufacture did the company do in its own plant? *A.* Simply to japan it, or put the shiny finish on.

*Q.* And how did it obtain this material? *A.* We bought the raw stock largely in Russia—that was colt skins or horse hides—as we call it, in the hair, when they were raw, before they were tanned, and then we had a tanner tan them for us.

*Q.* A tanner outside of your own place? *A.* Outside of our own corporation—that we paid so much a foot for tanning, or so much a dozen.

*Q.* Now, at any time in the course of that business—I mean now the business of that company, No. 1—did you enter into any business relations with a man named Guigues? *A.* We did.

*Q.* When was that? *A.* In 1904.

*Q.* Who conducted the negotiations? *A.* I did.

*Q.* Was there any contract made at the end of those negotiations? *A.* There was.

*Q.* Was it in writing? *A.* Yes, sir.

*Q.* I show you a paper dated June 30, 1904, purporting to be a contract between the Corona Kid Company, of Massachusetts, and Albert A. Guigues, of Newark, and ask you whose signature that is under the words "Corona Kid Company" [shown to witness]? *A.* That is mine.

*Q.* This "B." — *A.* "B. E. Baker, President and Treasurer of Corona Kid Company."

*Q.* By whom was that signature affixed there? *A.* By me.

*Q.* And the stamp "Corona Kid Company," by whom was that affixed? *A.* I think that was done by our bookkeeper, who wrote the words "President and Treasurer." He had in his possession the Corona Kid Company stamp, and any papers that had to be stamped, he usually stamped, and then I signed them.

*Q.* And you put your name under it? *A.* I put my name under it.

*Q.* And whose seal is that there? *A.* That is the seal of the Corona Kid Company.

*Q.* Of which you were president? *A.* Of which I was president and treasurer.

(The paper referred to is shown to defendant's counsel.)

*Q.* I do not know whether you saw Mr. Guigues sign or not. Did you? *A.* I don't remember whether I saw that or not.

Mr. Skinner—We have the subscribing witness present who witnessed Mr. Guigues's signature.

I offer this in evidence and ask that it be marked.

Mr. Riker—The offer is objected to on the ground that it has not yet appeared to be made relevant to the issue. Of course, it may be later.

The Court—I will receive it. If it is not relevant, I will strike it out.

[Marked *Exhibit P1.*]

[Mr. Skinner reads portions of *Exhibit P1* to the jury.]

*Q.* Now, Mr. Baker, under this contract, were there any hides shipped by the Corona Company to Guigues? *A.* On one occasion, I think, there were 200, either 100 or 200 hides, just as a sample, to see what he could do with the front.

*Q.* Were there any butts shipped to him? *A.* A great many thousand.

*Q.* What is the distinction between the hides and the butts? *A.* A horse hide is very much thicker at the butt than it is in the forward part of it, which is forward of the hips, and in taning the hides the butt is cut off across a certain line; there is a place where the hide, when it is spread out flat, the hair parts right at the flank; the shell spreads out; it varies about an inch in most hides, but almost on a square line. To

the back of that is the butt; the forward part is known as the front.

*Q.* The butt is the rear part of the hide, then, on the back of the animal? *A.* Yes, sir.

*Q.* About what proportion is that? *A.* About one-fourth of it.

*Q.* And the front is the other three-quarters of the hide? *A.* Yes, sir.

*Q.* Then the shell? Be a little bit more particular and tell us what that is. *A.* That is a peculiar formation over the hips; it is sort of a soft bone; it has very little fibre; it is bony in its nature; but when finished properly it makes very fine leather. There is one shell over each hip. When the butt is cut across and the shanks are cut off and the shell properly finished, it is sort of a kidney-shaped affair, with one shell on one side and one on the other.

*Q.* One over each hip? *A.* One over each hip.

*Q.* And the shanks, what are they? *A.* The shanks are cut off just where the shell stops, and from that to the hoof is called a shank.

*Q.* It is the portion of the hide covering the legs? *A.* The legs; the hind legs.

*Q.* Now, you say you shipped a few hides, but many thousands of butts to Guigues? *A.* Yes, sir.

*Q.* Did Guigues make any reports to you? What would Guigues do when he had the butts treated? *A.* They were usually shipped in carload lots.

*Q.* Where? *A.* To Guigues.

*Q.* And by him what was done? *A.* Then he was supposed to count and report—when an invoice was sent to him of the number, he was supposed to report whether that was correct or not; and from that time on they were in his possession, and he put them through the various processes of tanning.

*Q.* What was done with the shells? *A.* The shells are finished into cordovan, and they were to be shipped

to Boston. The shanks were pickled; that is a process of tanning; the shanks were to be split, the grain part to be finished into patent leather, and they were to be tanned in bark, but the grain was much thinner than the split, in order to make patent leather of it.

*Q.* The shank, as I understand you, was the portion of the hide covering the hand legs? *A.* Yes, sir.

*Q.* Now, did you see any of these—take, for instance, the shank—did you see any of them at Guigues's factory, under treatment? *A.* Yes.

*Q.* Was that back in 1904 or not until later? *A.* No, in 1904.

*Q.* What was the method that you saw Guigues pursue in his treatment of the shank? *A.* Well, for instance, a butt had to be limed; they limed the whole butt together to get the hair off of it; then it was trimmed, the shanks were cut off, and then the shanks were pickled.

*Q.* And then— *A.* Split.

*Q.* What was split? *A.* The shanks.

*Q.* Did you see that done? *A.* I have, frequently.

*Q.* I mean at Guigues's factory? *A.* Yes, sir.

*Q.* Back in 1904? *A.* Yes, sir.

*Q.* When you say "split," what do you mean by that? *A.* That is a machine known as a belt knife machine; you can adjust it to split any thickness that you wish; you can split it, I suppose, an eighth of an inch up to half an inch in thickness by adjusting the knife. And these were split. The grain was the thing that we wanted uniform in weight, because that was to be made into patent leather. The split of the shank was irregular in weight. The thing that we wanted uniform was the grain.

*Q.* And you saw this being done in Guigues's factory? *A.* Yes, sir.

*Q.* Did you see the method of treatment of the rest of the butt—the shell? *A.* Yes, sir.

*Q.* What did you see? *A.* After it had been prop-

erly beamed, after the hair had been taken off, and then the lime properly taken out, it goes through various processes, known as beam work. If it was tanned in bark, then the process in making good cordovan was to shave the grain to get it uniform, and then to shave the flesh from the flesh side to get down to the shell, in order to finish it, to get the smooth surface for cordovan.

*Q.* You say to get good cordovan you shaved the grain? *A.* Yes.

*Q.* What is the grain? *A.* The hair side of the skin.

*Q.* And when you say "shaved," what do you mean by that? *A.* Well, they have a machine—or this is usually done by hand; it is done simply with a shaving knife. Of course, a person not familiar with the business wouldn't understand, but it is usually a hand process, because in making cordovan you get better results by hand shaving.

*Q.* You spoke of making cordovan and this shaving as one of the processes. What is the cordovan? *A.* The cordovan is the bark-tanned leather from the shell of the horse hide.

*Q.* At what stage? *A.* Well, you would call it cordovan directly you commence to the tan; in the transition of the hide to leather, it is called leather directly it goes into the liquor for tanning.

*Q.* When is it completed cordovan? *A.* When it is all completed, black and smooth.

*Q.* When is that, before or after the shaving? *A.* After the shaving.

*Q.* Then the shaving takes off the grain or hair side? *A.* Yes, sir.

*Q.* Leaving the shell that you further treat and call cordovan? *A.* Yes, sir.

*Q.* Did you have any talk with Mr. Guigues of any kind when you were down there about this shaving or about splitting?

Mr. Riker—I object to the question on the

ground that, unless it is connected with the defendant in this case by him having been present and taking part in it, it is immaterial.

Mr. Skinner—If your Honor please, I want to show that there were conversations between the witness and Guigues, not for the purpose of showing anything contained in the statement between the parties, but for the mere purpose of showing the conversation. I will say to the Court that I want to show that Guigues said he could split the grain side off instead of shaving it, and that they then made a supplemental agreement covering the subject, and it was agreed then that Guigues should split the grain off, and charge so much per foot for doing that.

The Court—A supplemental oral or written agreement?

Mr. Skinner—A supplemental oral agreement.

Mr. Riker—[After further discussion]—There is an objection to the written contract, and there is an objection to this proposal to show an oral variation of the written contract, on the ground that it is immaterial and irrelevant. The question is not what they agreed to do; the question is what they did do, and whether the product was disposed of to the defendant. This is not relevant to the issue, the question being what was done, not what was agreed to be done.

The Court—It occurs to me that the fact of an agreement may be so explanatory of the conduct of the parties as to be entirely relevant evidence. Men usually do things in the business world on the footing of some agreement; they do not do it for their health; and I think proof of a contract, such as is suggested is relevant.

Mr. Riker—I want to say this: That this is not proposed to be proved as a contract *inter*

*parties;* it is a contract between the plaintiff and a third party, who is not a party to this suit.

The Court—As part of the history of the production of this article, explaining how it came about, I think it is admissible. The question is admitted.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

*A.* I did.

*Q.* Tell us what it was. *A.* I was going through the factory with him one day, and I found pieces of leather the shape of the cordovan; it was very thin; I picked it up. I said, "What is this?" That had been tanned in bark; it was then with the grain; it was smooth and a nice piece of leather. He said, "I have discovered a new way of handling the cordovan; I can run it through the splitting machine and split off the grain and save the grain, and then make good cordovan out of the shell. Now, instead of shaving it and getting waste, I split it and get the grain." I said, "Let us see it done." We immediately went to the beam-house, where his splitting machine was located; we got some butts that had already been trimmed, the shanks had been taken off; there was the leather, or the butts, ready to be put into cordovan. We put it through the splitting machine. The first one was too thin; it didn't have the strength. The second one, the machine was adjusted so as to make it heavier; it came out very much better. And I suppose we did about a dozen, in order to get the machine properly adjusted. And then from that time on the grains were split from the shell instead of being shaved, and those grains were supposed to be sent to Bristol to be tanned—

Objected to.

Mr. Skinner—Strike it out.

*Q.* I want you to give the conversation. You were telling us of a conversation you had there with Mr. Guigues and that you had seen the process of splitting. Was there anything further said? *A.* Except that it should be done in future.

*Q.* What was said about that? *A.* That it was of more value to split the grain than it was to shave it; that I could take this grain and use it, whereas before it had been waste; and he claimed that he could make just as good cordovan after having split the grain as he could if it had been shaved, giving two pieces instead of one.

*Q.* What was said then? *A.* He was to split the grain, to tan them in chrome suitable to be finished into patent leather.

*Q.* Was any price agreed upon? *A.* Five cents a foot.

*Q.* Was anything said as to what was to be done with the tanned grain splits?

Mr. Riker—I think I am entitled to ask when this occurred.

*Q.* When did that occur? *A.* That occurred, I should say, along in the latter part of 1904, perhaps in December.

*Q.* Have you any way of fixing the time? *A.* Well, the way I fix it is that I had been to Russia—had been going over annually to the fair to buy colt skins—and I returned that year in October, and I went directly to Boston, and I didn't get to Newark for some little time, and I know we had had—I had seen a lot of cordovan finished and a lot of the shanks in the factory, but as to the absolute date I am not quite positive, but I am quite sure it was either the latter part of November or early in December.

*Q.* This split, as I understand you, was tanned from the shell? *A.* Yes, sir.

*Q.* The grain was split off of the shell? *A.* Yes, sir.

*Q.* And when the splitting was done what was the condition of the shell as to tanning? *A.* Well, it was ready to be tanned; after it was split, it was then ready to be tanned the grain in chrome, the shell in bark.

Mr. Riker—Now, I move your Honor to strike this testimony out, because the specification under which this suit is brought does not involve that kind of material at all. The description of the goods is "grains from cordovan after tanning," and this description is the alleged splits made before tanning, and that is not included in the specification in the declaration. Therefore it is immaterial and irrelevant.

Mr. Skinner—I might ask a further question on this, if your Honor please, in order to meet Mr. Riker's objection better than any argument of mine.

*Q.* When does the process of tanning begin? *A.* The process of tanning begins directly——

Mr. McMahon—Tanning what?

Mr. Skinner—Leather.

Mr. MacMahon—Chrome or what?

Mr. Skinner—Both.

Witness—The process of tanning is supposed to start directly you put the hide to soak in water, with the hair on, to soak it.

*Q.* And then what next? *A.* You have to soak it to get it soft; then it is limed, or if the sulphite process is used, it is put into sulphite; and after that the lime, if it has been limed, has to be thoroughly removed, and if it is sulphite, that has to be removed, and the hide has to be cleansed, ready to receive the next process.

*Q.* And what is that? *A.* Pickling, or put into the bark; if it is bark tan, it goes into the liquor and stays perhaps a month, the liquor being strengthened from time to time; if it is done in chrome it takes three or four days.

*Q.* How much had been done to these grain splits, if I may call them that, or how much had been done to the shell, before the grain was split off in the way you have been describing? *A.* It had been soaked, it had been limed.

*Q.* [By Mr. Riker.] It had not been tanned? *A.* It had been limed and sometimes it had been pickled before it was split.

Mr. Riker—I renew my objection, because the specification is "after tanning," and the process described by this witness shows that it is not tanned until after it has gone through the liquor. That is tanning.

Mr. Skinner—I have been at a loss to understand the objection. If I understand, Mr. Riker, you mean the interrogatories?

Mr. Riker—No, sir; the declaration, being the specification upon which this suit is brought.

Mr. Skinner—The declaration says that "Whereas the plaintiff on the 7th of September, 1905, was possessed of certain chattels, being hides or skins, to wit, 23,300 pounds of grains from cordovan after tanning."

The Court—It says "tending."

Mr. MacMahon—We agree that it should be "tanning."

Mr. Skinner—We agree it should be "tanning."

The Court—I deny the motion to strike out. Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* [By Mr. Skinner.] I think you described the splitting. Well, now, Mr. Baker, was there any system of reporting by Guigues as to the disposition made by

him of the butts that were sent to him for tanning?

Mr. Riker—That question is objected to, your Honor, on the ground that the reporting cannot bind the defendant in any way.

The Court—I think it may be a part of the history of the case.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

*Circuit Court Judge.*

*A.* He was supposed to report every day the number of skins he put into soak; if there were any damaged skins that were not worth tanning or became damaged in the lime, to report how many each day, how many were soaked and how many were ready to tan.

*Q.* Now, then, anything further? *A.* When the skins were shipped—ready for shipment—he reported keep a run of what was in process, we knew how many how many had been shipped, and from that we could he had soaked, or supposed to have soaked, and how many he shipped, so that we could tell what he had remaining on hand.

*Q.* And were there any complaints by you to Guigues of any kind during the year 1904; that is, at any time between November, 1904, and September, 1905, as to shortages in hides?

Mr. Riker—I object on the ground that complaints made between these parties are not relevant or material and may tend to prejudice the defendant.

Mr. Skinner—I want to be fair with the Court. I think that this is going to be made admissible certainly by something that comes later, if it is not already now. I expect to show, if your Honor please, that there was a combination between Guigues and Lichtman to defraud the

Corona Company; I expect to show that they were joint tort feasors.

Mr. Riker (after argument)—If the Court please, while I recognize that a line pointed out on which evidence may be made relevant justifies its introduction at what seems to be a premature time, I do not think that the explanation given by Judge Skinner of the purpose and the method in which he expects to connect it and make it relevant has that effect, for this reason: This is a suit in trover and conversion against Julius Lichtman; it does not involve any allegation of a collusion or conspiracy between the parties, and therefore this defendant is not advised, as he is entitled to be by all rules of pleading, of the issue that he is expected to meet. The issue here is that the defendant obtained certain articles, which he converted. It now appears that this is said to be justified on a charge of collusion and conspiracy and is to become relevant because of that, whereas the issues in the case do not involve anything of that sort, nor do they involve a collusion or fraud. And I say, from any point of view, this issue is rendered doubly immaterial and irrelevant because it is accompanied by a statement that tends, and is intended, to prejudice the jury in the trial of this case.

The Court (after further argument)—My opinion is that this course of business between the plaintiff and Mr. Guigues is something that may be laid before the Court and jury, and I therefore overrule the objection that was made to the question that was asked, which, I think, related to whether there had been protests or objections. I think it fair to the case that we should have the history of the transaction between the plaintiff and the bailee. You may have the question answered.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

Mr. Skinner—I will ask the question over.

*Q.* Were there any complaints as to shortages for the period between November 28, 1904, and January 21, 1905? First as to that particular time. *A.* Well, I can't say positively just of the particular date. I think there was, because at that time we had commenced to balance up our books; we had received a great many goods from Guigues and we had shipped him a great many, and there did not seem to be as large a balance—

Mr. Riker—Now, if your Honor please, this is not an answer to the question.

The Court—This is the witness's reason why he thinks there probably were complaints.

Mr. Riker—I understand that, but it contains statements of fact which may or may not be important in this cause.

The Court—Well, have you finished your answer?

Witness—There were complaints made. As to the exact date, that is the thing I am not absolutely positive, but there were complaints made, positively.

*Q.* When the complaints were made, what answer or explanation was made by Mr. Guigues?

Mr. Riker—I object on the ground that he is not certain that there were any made in the period; therefore it is not important what they were or how they were answered.

The Court (after discussion)—The question now is, I think, whether the witness recollects as to this particular class of occurrences within this period.

Mr. Skinner—What do you say about that?

(Question read.)

Mr. Riker—I renew my objection on the ground that it appears that there were no complaints within the period, so far as this witness remembers.

Mr. Skinner—He also said that he thought they were, but he could not remember any, he could not be certain.

10 *Q.* (By the Court.) Have you any recollection as to any complaints or answers to complaints within this particular period? *A.* There were numbers of complaints made, and I think around that period, and his explanation was—

Mr. Skinner—No, wait a minute. I want to be fair to Mr. Riker.

*Q.* You say "around that period." What do you mean? *A.* About that time. We commenced the 1st of January to balance our books to find out just how 20 much merchandise he had had in Newark.

The Court—What were these dates?

Mr. Skinner—November 28, 1904 to January 1, 1905, was the period.

The Court—Practically the months of December, 1904, and January, 1905.

*Q.* Now, give us the best recollection you have on that subject. *A.* Well, I think there were complaints made; I know that there were complaints made, but I should think within that period, for the reason that we 30 commenced to balance our books, and there was an apparent shortage, and we wanted to find out where it was.

Mr. Riker—Now, if your Honor please, I would ask to strike that out. The "apparent shortage" is the vicious part of this answer. It is not responsive to the question, and it injects into this case something that I shall strenuously endeavor to keep out.

The Court—I decline to strike it out.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Now, give us your reason for thinking that there were complaints about this period.

Mr. Skinner—May I add something to this that I think is worth while, if your Honor please? I think we have been in error as to the date. We are not limited by the 21st of January, 1905. I think that limitation occurs in the answers to the interrogatories made by us, which counsel did not want to have used.

Mr. MacMahon—Simply that it will require the testimony to be stricken out afterwards.

Mr. Skinner—Am I right?

Mr. MacMahon—You are right so far.

Mr. Skinner—The declaration gives the date as September 1, 1905, so that I think the witness may testify to any conversation or any complaint or anything that we have been discussing prior to the date alleged in the declaration, and not limited by any date which has been suggested by counsel.

The Court—How is your question affected by your discovery as to the other date?

Mr. Skinner—That he is not so limited as to the period of time. My question is, between the 28th of November, 1904, and September 7, 1905.

Witness—A number of complaints were made.

*Q.* Within that period? *A.* Yes, sir.

*Q.* [By Mr. Skinner.] Now, I ask you what answer was made by the Guigues to these complaints?

Mr. Riker—I object on the same ground: that the fact of an answer would be admissible, but the substance of the answer is not evidence, on the ground that it is a conversation or com-

munication between the parties, not in the presence of the defendant in this suit, and, therefore, not binding on him.

The Court [after argument.]—The testimony is alleged to be admissible as tending to show a fraudulent conspiracy between the defendant and Guigues, which conspiracy will, it is said, explain the fact of the obtaining of the goods by the defendant. The Court, in dealing with a question of that kind, has to depend sometimes on the assurance of counsel that a certain line of proof will be followed up, and to take the testimony on that assurance. It is impossible to prove a case all at once. Upon the understanding that this is to be followed up in the way that counsel indicates, I will allow it and testimony of similar character to be received, in order that he may develop his case as he has it in mind. If the demonstration fails, the evidence, of course, is good for nothing.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. Skinner—I realize, if your Honor please, that the Court is depending upon the assurance of counsel that such proof shall be forthcoming, and I realize that if it were not forthcoming the attempt might have prejudiced the defendant, and I am, therefore, perfectly willing and now offer to interrupt the examination of this witness and produce that proof now.

Adjourned until to-morrow, Wednesday, January 24th, 1912, at ten o'clock A. M.

SECOND DAY.

WEDNESDAY, January 24th, 1912.

Met pursuant to adjournment.

Present, counsel as before stated.

[The witness is directed to stand aside for the present for the purpose of allowing plaintiff to produce evidence of the alleged fraud.]

*Theodore E. Conway,* sworn in behalf of plaintiff.

Direct examination, by Mr. Skinner.

*Q.* Mr. Conway, where do you live? *A.* I live at 386 Clinton avenue, this city.

*Q.* And what is your occupation? *A.* Well, I am now superintendent of the Marokene Works, in Elizabeth.

*Q.* Have you been engaged in the leather business, the business of tanning? *A.* All my life.

*Q.* Were you at any time connected with Albert Guigues? *A.* I was superintendent there.

*Q.* Of what? *A.* Of the factory, the whole works.

*Q.* Where was the factory? *A.* On Madison, Monroe and Ferry streets.

*Q.* Do you know when Mr. Guigues started his business? *A.* I do.

*Q.* What connection, if any, did you have with the commencement of his business? *A.* Why, I superintended the erection of the machinery and remodeling the plant.

*Q.* What business did he do with the plant and machinery that you superintended? *A.* Why, he manufactured leather for patent leather for Mr. Baker, of Boston.

*Q.* Well, have you seen Mr. Baker? *A.* I have.

*Q.* Do you see him now? *A.* Yes.

*Q.* Is this the gentleman here [indicating]? *A.* That is him.

*Q.* What concern was Mr. Baker connected with?

*A.* Corona Kid Manufacturing Company, or the Corona Kid Company.

*Q.* Did Mr. Guigues commence operations in his factory with the tanning of hides from the Corona Kid Company? *A.* He did.

*Q.* How long did he do that, to your knowledge? *A.* Well, I can't tell exactly. He done it as long as I was in his employ.

*Q.* And how long was that? *A.* Well, I was there about eighteen months to two years.

*Q.* Do you remember when you went into his employ? *A.* Well, I can't remember the exact date; I will have to refer to my books at home.

*Q.* Well, give it as near as you can. *A.* Well, it was somewheres in the early part of 1904; the exact date I don't know.

*Q.* [By the Court.] When you went there? *A.* Yes, sir.

*Q.* [By Mr. Skinner.] Was there any other work done at that factory while you were in Guigues's employ than the work that you have mentioned upon the hides of the Corona Company? *A.* No other work—practically no other work; there might have been one or two samples, but practically all the work was for the Corona Kid Company.

*Q.* Now, you spoke of Guigues's work being the manufacture of leather. What did this manufacture include? *A.* Why, we received either salted hides or dry hides that came from the Corona Company, soaked them and tanned them and split them and put them in condition for japanning.

*Q.* Then what did you do? *A.* Then shipped them to the Corona Kid Company.

*Q.* What was the kind of hide that first came to Guigues's works from the Corona Company? *A.* Why, it was the butt part of a horse hide, or horse butts.

*Q.* What portion of the horse hide is the butt? *A.* Well, it is the butt end of the hide, running somewhere about eighteen inches.

*Q.* By the "butt end" you mean what? *A.* Well, the tail end of the hide, this part here [indicating on a hide produced].

*Q.* And what part of the hide is it with reference to the back or belly, top or bottom, of the animal? *A.* Well, that is the flanks and the side of the hide; this is the belly [indicating].

*Q.* What part is the butt? *A.* The butt is the tail end of the hide, the lower part of it.

*Q.* Well, I guess perhaps I had better ask you to show it to me. I have here something that, I think, will be admitted, but I will ask you, what is this that I show you [hide shown to witness]?

Mr. Riker—What is that?

Mr. Skinner—It is a full hide.

*A.* Well, it looks like a horse hide; yes, it is a horse hide. You want to know the butt part?

*Q.* Wait a minute. The small end, as distinguished from the broad end, the part having the holes in, is what part of the animal? *A.* That is the head of the animal.

Mr. Riker—If this is going to be used, it ought to be marked as an exhibit.

Mr. Skinner—I thought I could have him describe the different parts as shown here, and then offer it as an exhibit to speak for itself afterwards. It can be used for illustration without being an exhibit.

The Court—Counsel may wish to cross-examine on the offer. Do you offer it?

Mr. Skinner—I offer this hide as an exhibit, and I said that I proposed to use it for the purpose of showing to the jury the portions of the hide that are referred to in the testimony of the other witnesses, and generally illustrating their testimony.

By Mr. Riker:

*Q.* Is that the kind of hide that you referred to in your testimony as being tanned? Was it tanned in the same manner that the hides were while you were there? *A.* Yes.

*Q.* What is the character of the tannage that is in that particular hide? *A.* Chrome tan.

*Q.* Did you tan with chrome at the time you were testifying to? *A.* When I was testifying?

*Q.* At the time you were testifying to, did you tan in chorme. *A.* The butt or the front?

*Q.* The whole hide that was tanned? *A.* That is tanned in chrome.

*Q.* Did you at that time in that shop tan in that way the whole hide? *A.* Yes.

*Q.* Did you not tan in bark? *A.* Yes.

*Q.* What proportion of the hides did you tan in bark and what in chrome? *A.* Well, I would like to explain the matter a little there, so that everybody can understand it. At the time, we were then tanning mostly all butts, and they were tanned in bark.

Mr. Riker—Well, I object to the offer on the ground that this does not appear to be the kind of hide that was tanned at that time in this method.

The Court—I understand the skin to be offered, not to illustrate any particular method of tanning, but merely as a means of identifying the different parts of the skin, which had run by different names.

Mr. Skinner [after argument]—Is it objectionable as an illustration and not as an exhibit?

Mr. Riker—Well, I do not think it is. If it can be used to advantage in going upon the record, so that the record contains by aid of this hide a more complete description, why, then I have no objection to it at all; but the difficulty would be, in order to get a record, we ought to have the thing as an exhibit, so that if by chance

there should be a review, the reviewing court will have the same thing that the jury has.

Mr. Skinner—I was using it as an illustration, and was rather pushed to the offer of it as an exhibit by the suggestion of my friend, so I said I would offer it as an exhibit; but I have no special anxiety to use it as an exhibit. I want to have this witness explain and use it as a diagram or use it as an illustration.

The Court—Then the question is whether there is any objection to the offer of this hide as an exhibit, the offer being withdrawn and the hide being used for the purpose of illustrating to the jury.

Mr. Riker—If it is used merely as a diagram, I have no objection, if it tends to clarify the matter to the jury.

Mr. Skinner—He said this part was the head [indicating].

By Mr. Skinner:

*Q.* Now, the broad part of the hide is what end of the animal? *A.* That is the butt; the butt runs down the full end of this; this is the tail end of the hide, and that is the head; this is the butt, running up to where this mark is [indicating].

*Q.* Then the end you have in your hand is the rear end of the horse hide? *A.* Yes, sir; the rear end, or tail end, or butt.

*Q.* Now, you will notice on this hide that there is a portion marked out in blue pencil, two circular lobes. Does that represent any part of the hide? *A.* That represents the shell or cordovan of the hide.

*Q.* And the shell that you speak of is what? *A.* [indicating.] The shell is a hard substance in here, running just about where my hand does, and around in here. Nature provides it. It grows between the two layers of hide substance in the center—a hard shell.

*Q.* You say "where my hand is." That is, on each

of these two, lobes that are within this blue pencil portion? *A.* Yes, sir.

*Q.* [By the Court.] Where is in on the animal, on the buttock? *A.* Right on the buttock, where the whip strikes it. It protects the animal.

*Q.* [By Mr. Skinner.] Well, these outlying portions immediately joining the portion marked off in blue and that you have been describing as the shell, what are they [indicating]? *A.* Those are the shanks of the butt.

*Q.* What portion of the animal does that part of the hide cover? *A.* The hind legs.

*Q.* What name is given to the portion of the hide other than the shell and shanks that you have just described, this front part of it [indicating]? *A.* That is a horse front.

*Q.* A what? *A.* A horse front.

[The hide shown to witness is marked "A" for identification.]

*Q.* Mr. Conway, what was done in Guigues's factory with the pieces of hide? I think you said that you first had the butt portion of the hide. What did that portion of the hide include? *A.* Why, I can't quite understand that question, Mr. Skinner.

*Q.* Well, take this hide on which you have pointed out to us the shell and the hind shanks and the other portions. I ask you now with reference to that what part of the hide came to you first for tanning? *A.* Why, the butt part.

*Q.* And what did that include? Did it include the shanks? *A.* It included the shanks and the butt.

*Q.* The hind shanks and the shell? *A.* Yes.

*Q.* And what did you do in the factory to those pieces of hide? *A.* When it arrived we soaked it, then unhaired it, and tanned it in extract or bark, and then split the piece, and then finished it into cordovan.

*Q.* How was the splitting done? *A.* With a band machine.

*Q.* And what did the process of splitting consist of?

*A.* Taking a piece off the grain side of it, and sometimes a flesh split, leaving the center of the butt, or cordovan, for cordovan leather.

*Q.* Were the shanks split? *A.* Then we afterwards cut the shanks off, and some of those we tanned and others we pickled.

*Q.* Was the splitting done with the whole butt, including the shanks, or after they were cut off? *A.* Why, we done it both ways.

*Q.* Was there any shaving apparatus there? *A.* Yes.

*Q.* What did that do? Why, at the first, when we first started to tan these butts, we shaved the grain off and also shaved the flesh.

*Q.* And afterwards what? *A.* Afterwards we started to split them, taking a split off the grain and a split off the flesh.

*Q.* Do you know what was done with the shell after you had finished this process? *A.* Yes.

*Q.* What? *A.* Shipped to Boston.

*Q.* What was done with the grain split that had been taken off the shell? *A.* In some instances, where we tanned them and where we pickled them, we sold them.

*Q.* And in other instances? *A.* Well, or pickled them.

*Q.* But in some instances, you say, you sold them. *A.* In all instances, we sold all the grains and all the splits; we never tanned or finished any of those ourselves; they were all sold. The only thing that we tanned and shipped away to the Corona Kid Company was the shell, or the cordovan. Now, the grain split and the flesh split, they were either tanned or pickled, and sold.

*Q.* Either one or the other? *A.* Either one or the other.

*Q.* Do you know to whom they were sold? *A.* Yes.

*Q.* To whom? *A.* Mr. Lichtman; J. Lichtman & Son.

Q. To what extent, can you tell? A. Well, practically all of them.

Q. When did that begin, approximately? A. I can't remember exactly, but practically all the stuff that was made there, the splits were sold to Lichtman.

Q. By "Lichtman" whom do you mean? A. I believe the firm name is J. Lichtman & Son; I won't be positive about it.

Q. Did you ever see a Mr. Lichtman there? A. Yes.

Q. Which one? A. The gentleman before me.

Q. That is, the gentleman sitting next to Mr. Riker? A. Yes.

Mr. Riker—This is Mr. Abe Lichtman.

Q. What did you see him doing around there? A. Why, he came to me—I received my orders from the head of the firm to deliver the splits to him. Oftentimes he came in and spoke to me about them and the delivery of them.

Q. Did you receive any other instructions from the head of the firm—I suppose you mean Mr. Guigues, do you? A. Mr. Guigues.

Q. As to your handling of those splits? A. No, only from Mr. Guigues.

Q. Well, from him did you get any other instructions as to how you were to deal with them. A. Yes.

Q. What?

Mr. Riker—I object. I want to renew my objection made yesterday afternoon, knowing that your Honor has overruled it, but desiring to call your Honor's attention to the case of *Bordine* v. *Combs, in 15 New Jersey Law, page 412*, the holding in that case being that, by the force of the form of the action, the very pleadings on behalf of the plaintiff admit that the goods came lawfully into the possession of the defendant; and that all this testimony looking to the characterization of the method in which the goods came into the possession of the de-

fendants is not only irrelevant, but improper, under that decision. * * * In order that the record may be complete, I want to put in the objection that it is a conversation between the parties, not in the presence of the defendant.

The Court [after argument]—I have noticed in looking over some of our cases the form of expression used by Chief Justice Hornblower. "In trover, the question is not whether the defendant came rightfully or lawfully to the possession of the property; that he did so is admitted by the very form of action. The only question is whether the defendant has wrongfully converted the plaintiff's property." (It was a question that arose as to the record of a judgment.) "Suppose, therefore, on the trial the defendant had produced and read the record, and then proved that he had bought the mules at a constable's sale; what effect could such evidence have had on the issue? It would not have proved title in the defendant, as against the plaintiff, nor disproved a conversion by him, if the property in fact belonged to the plaintiff." The thing that seems to have been in the Chief Justice's mind is that the judgment was immaterial, because the most it would have shown would be title in the defendant by a legal proceeding. The question would still remain whether there had been a conversion, and the fact of a sale under the judgment would not have proved title in the defendant nor have disproved a conversion by the defendant as against the plaintiff. * * *

[After further argument]—My view of the matter is this: I do not think it necessary to decide the question as to punitive damages at present. There will be no question on either side as to the truth of certain proportions. For example, I read from the case of the *West Jersey*

*Railroad Company* v. *The Trenton Car Works Company, in 3 Vroom 517:* "A conversion may consist in the taking of a chattel without the license of the owner, and by the party so taking it applying it to his own use. In every case in which the inquiry arises whether there has been a conversion, the only point to be settled is whether the defendant applied to his own use the property of another without his permission, and without legal right. His motive for so doing, or the state of his knowledge with reference to the right of such owner, are of no importance, and cannot in any respect affect the case." And the last paragraph in the case of *Matthiessen & Weichers Refining Company* v. *McMahon's Adm'r, 9 Vroom 536, at page 548*: "The evidence was plenary that the property had come to the defendant's possession. If the defense of a purchaser was not sustained, possession under a claim of title was of itself a conversion."

It is said by the plaintiff that he desires to prove that these goods came to the possession of the defendant. In order to show that the goods came to his possession, he must show how they came to his possession; otherwise he cannot show the fact, perhaps. He claims that they came to the possession of the defendant surreptitiously. Why should the Court desire to prevent the plaintiff from showing the facts and circumstances under which the defendant acquired this property? What ultimate effect the fact, if it be a fact, that the acquisition, if it were a surreptitious acquisition, may have on the various questions as they arise in the case, I am not now going to determine.

The next question is whether the testimony of conversations between the witness and Mr. Guigues should be excluded because they are

declarations of a person not a party to the suit, and so secondary and not receiveable under the general rule. That seems to me to depend upon the question whether the effect of the testimony after it is received is going to be to establish a collusive relation between the defendant, Mr. Lichtman, and Mr. Guigues, so that the rule as to a fellow conspirator would apply, and the declaration of one would bind the other. It is impossible for the Court to see how good a case the plaintiff is going to be able to make on that subject, but I think I ought to permit him to make the attempt. For that reason I overrule the objection.

Mr. Riker—In order that the record may be complete, I would like to have it also appear as part of our objection that that question of collusion is not within the pleadings or the issue.

The Court—Very well.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[The last two questions are read.]

*Q.* What instructions? *A.* That I received from Mr. Guigues?

*Q.* Yes. *A.* Well, on these goods I was instructed by Mr. Guigues to keep it all quiet and cover it over when Mr. Baker came into the factory.

*Q.* Now, you have said that Lichtman came to the factory. Did he ever come there at any time when the goods were covered up under those instructions. *A.* Yes.

Mr. Riker—One minute, now. I would like that question to be made more specific, so I may know whether it was Mr. Julius Lichtman, the defendant in this suit, or some other Mr. Licht-

man. It makes a good deal of difference perhaps.

The Court—That is a reasonable request, I think.

Mr. Skinner—Would it do if I said, "Which Mr. Lichtman was it?"

The Court—I will strike out the answer for vagueness.

*Q.* Did the defendant, Mr. Julius Lichtman, come to the factory, I mean within your own knowledge, at any time when these goods were covered up under Guigues's instructions? *A.* Yes.

*Q.* Can you tell us any particular date? *A.* No, that I cannot.

*Q.* Well, how far back would such a call go? *A.* Well, while these goods were for sale, it was all during while I was superintendent there, and I had no other business dealings, except with this one man, the gentleman in front of me.

*Q.* Well, do you understand that this is Mr. Abe Lichtman? *A.* This is the gentleman that I had the dealings with; his first name I have no knowledge of.

*Q.* When you said that Mr. Julius Lichtman came there, did you mean this gentleman? *A.* This gentleman here. He done all the dealings, so far as Guigues and I were concerned.

Mr. Riker—I am put in a little difficulty—

The Court—The witness corrects his testimony by saying that when he said Mr. Julius Lichtman, the defendant, came to the factory, when the goods were covered up, he had in mind the gentleman who sits by the side of counsel at the table and whose name appears to be Mr. Abe Lichtman.

Mr. Riker—I would like to have that stricken out, because it is not strictly responsive to the line of questions. Perhaps I am a little late, but in view of the way the question got in, I think I am excusable. My objection is that Mr. Abe

Lichtman is not connected with the defendant as yet.

The Court—Judge Skinner does not object to the answer as not responsive, and he cannot object to it on that ground. You may object to it on some other ground.

Mr. Riker—If a question is strictly legal and proper, and the answer is irresponsive, so that it puts in the case improper matter, I am entitled to object to the answer as not responsive. That is the trouble in this case.

The Court—I will let it stand, with the explanation that the witness has made.

Mr. Riker—Did I make my ground clear: that Mr. Abe Lichtman, who now appears to be the person, is not connected with the defendant by the evidence?

The Court—I will let it stand as a statement of fact.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Now, Mr. Conway, did you see that Mr. Lichtman, Mr. Abe Lichtman, at any time when the goods were in the condition you have described—covered? *A.* Yes.

*Q.* What did you see Mr. Abe Lichtman doing around that factory, anyway? *A.* Why, he oftentimes came there and spoke to me about the delivery of the goods.

*Q.* The delivery of what goods? *A.* Why, the goods that Mr. Lichtman bought.

*Q.* Which Mr. Lichtman? *A.* The gentleman in front of me.

*Q.* When was that? *A.* At this time.

*Q.* How far back was that? *A.* Well, to the beginning of this suit. There was no other goods sold in that place, except through this gentleman in front of me, Mr. Abraham Lichtman.

*Q.* So that he is the only gentleman you saw there dealing in the goods from the commencement of the factory? *A.* Yes, sir; he done practically all the dealings there.

Cross-examination by Mr. Riker.

*Q.* When did you enter into the employ of Mr. Guigues? *A.* Well, I can't tell you exactly now. I have got the dates home. I was just called up from Elizabeth, and I can't tell you exactly the date. I started the building, started the plant, and was the only superintendent they had there from the beginning, when he rented the plant.

*Q.* Did you know that he rented the plant from me? *A.* Yes, sir; I did.

*Q.* And when you say it was in 1904 do you speak under correction? *A.* Well, I may, yes, I may be corrected. I haven't posted myself on that. There was no other superintendent there from the erection of the plant, or the remodelling of the plant, for eighteen months afterwards; I then left his employ, and during this suit, I think I was superintendent there when these goods in question were sold.

*Q.* Can you state the time with any exactitude when you left? *A.* No, I cannot; I will have to get back—I will have to go home and find out from my books exactly. I was called up from my plant on this case, and I can't remember exactly the dates; but there was no other superintendent in that plant at that time.

*Q.* Are you sure that this was not in the year 1902? *A.* No, I am not sure about it.

*Q.* You are not sure of that? *A.* No.

*Q.* It was immediately after the premises were rented? *A.* Yes, just as soon as the premises were rented I took hold there.

*Q.* So that all you have testified to may have occurred during the years 1902 and 1903, may it not? *A.* It may possibly; I can't remember the dates.

*Q.* It certainly occurred within the first eighteen months after Mr. Guigues went into possession of my factory? *A.* That is it exactly.

*Q.* Had you been employed by Mr. Guigues prior to that time? *A.* Never worked for him at all.

*Q.* Why did you leave him? *A.* Why, he agreed to give me so much stock in the company, and through some disagreements, and so —

*Q.* Well, Mr. Conway, do you not know that there was no corporation at the time you are testifying to? *A.* Yes, there was no corporation.

*Q.* Then what stock was he going to give you? *A.* Because he was simply going to incorporate the concern, as you know as well as I do.

*Q.* And you were disappointed because he did not give you what you wanted? *A.* Not altogether; to some extent, yes.

*Q.* And you had a dispute with him? *A.* Yes, over several things; I had a dispute nearly every month.

*Q.* And because of that you left? *A.* There was several reasons why I left.

*Q.* What were the other reasons? *A.* I didn't think he was a man of his word and didn't live up to his agreements.

*Q.* And you say he had trusted you so far as to make you a party to a collusive arrangement with Mr. Lichtman, do you? *A.* I was the superintendent; I received my instructions from him.

*Q.* What were the instructions exactly? *A.* To deliver this different line of goods to Mr. Lichtman.

*Q.* What else? *A.* In regard to these goods, to keep it quiet and keep them covered whenever Mr. Baker came in—the owner of the goods.

*Q.* When did he give you those instructions? *A.* When I was employed there; I can't remember the date.

*Q.* How often? *A.* Several times; probably a dozen times.

*Q.* How did you know Mr. Baker was the owner of the goods? *A.* I saw the bills, where the shipments came from.

*Q.* What was your position in the factory? *A.* Superintendent.

*Q.* What did you have charge of? *A.* Charge of the plant, the running part of the plant.

*Q.* Well, did you have charge of the office? *A.* No, nothing to do with the office whatever. I had access to the office whenever I wanted to, but that was out of my jurisdiction.

*Q.* As superintendent, what did you do? *A.* Well, the general duties of a superintendent, running the plant, seeing that the work was turned out right, the delivery of goods and receiving goods, as general superintendent of the plant.

*Q.* When these horse hides came into the factory did you receive them? *A.* The shipping clerk did.

*Q.* I did not ask you that. *A.* I would receive them, naturally, but I couldn't receive all the goods. We had a man for receiving those goods, and he was under my instructions.

*Q.* Did you count them? *A.* Yes, all counted. I didn't personally count them.

*Q.* I asked you did you count them yourself? *A.* It would be impossible. I had charge of it.

*Q.* If you will answer yes or no, without trying to explain, we will get along much better. *A.* No, I didn't count them.

*Q.* You did not count them? *A.* No, sir, not personally.

*Q.* Well, can you count them in any other way? *A.* Yes, I can give instructions.

*Q.* You would not call that counting them yourself, would you. *A.* No.

*Q.* And then what did you do with them after they

were counted? *A.* They were then put in the process of manufacture.

*Q.* What did you do with them, if anything? *A.* Why, I didn't do anything with them.

*Q.* You did not do anything with them? *A.* No, sir.

*Q.* Did you have any part in any stage of the process of finishing these horse hides to return them to Boston? *A.* Yes.

*Q.* What? *A.* Oftentimes I would do some part of the work on them and show a man how to do it; sometimes I would tan them personally; sometimes I would go and unhair the skins personally.

*Q.* Where did you get your knowledge of the process of tanning horse hide? *A.* Before that I was superintendent of the Woodside Tanning Company; they tanned nothing but horse hides.

*Q.* They treated nothing but horse hides? *A.* Well, seventy-five per cent. of it was horse hides.

*Q.* What was the other twenty-five per cent.? *A.* Calf skins, goat skins.

*Q.* What was the percentage of horse hides? *Q.* I should judge seventy-five or eighty per cent.

*Q.* How long were you there, and when? *Q.* You have got me on the exact date. I was superintendent there about close to a year and a half or two years, something like that.

*Q.* Have you had practical experience in all the stages in the process of tanning horse hides? *A.* Yes, sir.

*Q.* What is the first process after the hides are received and counted? *A.* They are put in soak.

*Q.* And the next? *A.* They are then unhaired, or put in the lime.

*Q.* And when you say "put in the lime," was there cyanide used also. *A.* No.

*Q.* You did not use the cyanide process? *A.* You probably mean sulphite.

*Q.* Well, that was the next process? *A.* Yes, sir.

*Q.* What the next? *A.* Why, then there are a few

details—I don't suppose you want them; they are in the tan—the principal part.

*Q.* What is the next after the lime? *A.* After they come out of the lime they are unhaired; we call it deliming or unhairing.

*Q.* What is the next step? Then they are tanned.

*Q.* You do nothing between. *A.* Yes, they go through a process of neutralizing the lime, what we call baiting.

*Q.* When are they scraped, the flesh part taken off? *A.* They are scraped at first, when they are fleshed.

*Q.* When is that? *A.* They are scraped again after deliming. There we didn't scrape them. We put them on a machine—practically the same thing; that is fleshing; instead of using the hand, we used machines there for it; also in the process of baiting; they may be run through a machine; that is to take the fine hairs out.

*Q.* Next what was done with them? *A.* They are then put into a paddle and tan-chromed.

*Q.* Put in paddle-wheels and chromed? *A.* Yes, sir.

*Q.* And then what? *A.* After they were tanned they were split. When you come to the tan part of it, oftentimes they were tanned in different manners; sometimes we tanned them direct and sometimes we split them in the pickle. After the dry hide comes in the plant it is unhaired, and the process of baiting and scraping, as you call it. We sometimes pickle the stock. About this time I don't believe there were many of them pickled, although there were some—not the butts; they were put direct into the tan, not chrome, but an extract, or vegetable tannage.

*Q.* When you were there? *A.* Yes.

*Q.* You used mostly the bark tannage, did you not? *A.* On these butts, yes—no, we used both, although it was mostly bark in this case; bark or extract.

*Q.* When did you trim the hides? *A.* Oftentimes we would trim the hides somewhat, take off the head and shanks and pates, after they were soaked; we also trimmed the hides after they were processed, or pickled,

depending on what we were putting the butts into. If the butt was going directly into the tan—sometimes when we couldn't tan as fast as we received them, it was put in pickle; that is a process of preserving the hide until we could tan.

*Q.* So that at times you trimmed them in part before they went into the pickle? *A.* Yes.

*Q.* And sometimes after they came out of the pickle? *A.* Yes.

*Q.* Or out of the tannage? *A.* Yes.

*Q.* Will you describe to the jury just what you did in the way of trimming? *A.* Well, when the butts came in there —

*Q.* We can use this hide for the purpose of illustration. Now, Mr. Conway, has that hide been trimmed [the hide marked "A" shown to witness]? *A.* No, that is the whole hide.

*Q.* That has not been trimmed? *A.* No.

*Q.* Before you split a horse hide of that character you trim it, do you not? *A.* Yes.

*Q.* Now, that is tanned, then, after the process of pickling or tanning, as the case may be? *A.* Yes.

*Q.* Now, will you point out on that hide just what was done when you come to trim it preparatory to splitting? *A.* [Indicating.] Well, where this mark is across the hide, about eighteen or twenty inches down, that is the butt of the horse hide; that is the butt, right across there; that part folded over is the butt of the horse hide.

*Q.* Well, then what? *A.* This is the shanks of the butt [indicating].

*Q.* Now, that would be taken off? *A.* That would be taken off.

*Q.* Now, what would you do with the shank? Would you further trim the shank? *A.* Yes.

*Q.* Show us what you would take off of them. *A.* Well, no, that shank wouldn't want any trimming at all.

*Q.* Well, would you, as a rule, trim the shank? *A.* Sometimes, yes.

*Q.* I ask you whether as a rule during the period that you are testifying to did you trim the shanks? *A.* No.

*Q.* When you did trim them what did you take off? *A.* Sometimes a small piece, like that [indicating].

*Q.* Take off the end there? *A.* But not always.

*Q.* What else did you do when you came to trim? *A.* You see, from where this line is drawn here, we trim it across here, this being the shank part and this the butt part; also on the other side, we cut off the same way [indicating]. That is all the trimming there was to it.

*Q.* Didn't you always take off the knuckles? *A.* That is what I said first, the knuckles here on the shanks [indicating].

*Q.* Didn't you always take them off? *A.* No, sometimes we would just slit them, and the knuckles would come out all right; not always, because it is a small piece, and we wanted all we could get out of it; we didn't always take the knuckle off.

*Q.* [By the Court.] What is the knuckle, something at the foot of the shank? *A.* Yes.

*Q.* [By Mr. Riker.] It is the tip end of this shank, is it not, down the leg? *A.* Yes.

*Q.* What size were those knuckle pieces that you took off, within limits, I mean? How large would they run? *A.* Well, you can see, there has never any been taken off of that. It is hard to make an exact estimate how large it was. There is the whole thing; nothing has been taken off it.

*Q.* You said this hide had not been trimmed? *A.* Yes, that has got the knuckle on it.

*Q.* That knuckle you would take off, would you not? *A.* No, I wouldn't; it is all right; there is nothing the matter with it.

*Q.* That is all right, is it? *A.* Yes.

*Q.* But the great number of the hides were not all

right and had to have that knuckle taken off, did they not? *A.* Not a great many, no. It wouldn't pay to tan them, at that rate. Sometimes we would find knuckles, here and slit it down, but, as a rule, not. That has got the knuckle on and there is nothing the matter with it.

*Q.* Did you have any hide of that size and character shipped there in the time you were superintendent, as to which you are testifying? *A.* Yes, sir.

*Q.* What is that hide? *A.* It is a horse hide.

*Q.* Is it a Russian horse hide? *A.* It looks like a domestic.

*Q.* It is a green salted hide, is it not? *A.* It looks like it; it is very hard to tell here; it is tanned.

*Q.* Did you have green salted hides to deal with? *A.* Both green and dry, but at this time they were mostly all dry hides.

*Q.* Now, what else did you take off in trimming besides the knuckle? *A.* That is about all that I can remember.

*Q.* Did you take off the ears and the snouts and the pates? *A.* That is not in the butt.

*Q.* I am talking of the hide now. *A.* In the hide, yes.

*Q.* Of course, with the butts you did not take any off except the knuckle pieces? *A.* We didn't always take them off; when they were good we didn't take them off.

*Q.* During the period that you are testifying to, the portion of the knuckles, or the knuckles, that you took off the hides were only those that were not good? *A.* Yes, they were bad.

*Q.* And constituted what you would designate as offal in the trade? *A.* Yes, that is right.

*Q.* And that was your consistent and your usual practice while you were there at Mr. Guigues's factory? *A.* Yes, sir.

*Q.* Now, after you had trimmed the butts, what was the next process? *A.* Why, after the butts were trimmed we tanned them.

*Q.* Well, if they had been already tanned you would retan them, do you mean? *A.* In reference to what you are speaking about, of course, the offal, we trimmed it before they were tanned, and that was glue stock. You would not call offal tan stock.

*Q.* So that these knuckle pieces were, in fact, taken off before they were tanned at all? *A.* Yes.

*Q.* And after they were tanned you did not trim them at all; you simply put them into the splitting machine? *A.* Yes.

*Q.* And what kind of splitting machine did you use down there? *A.* What they call a hand machine.

*Q.* Belt knife? *A.* Or belt knife machine.

*Q.* Did you use that during all the time you were there as the next process? *A.* Yes.

*Q.* How many pieces did you split the butt into? *A.* Sometimes into two pieces, sometimes into three, according to the substance.

*Q.* What were those two or three pieces, how do you designate them? *A.* The upper part, or grain side, we call that a grain split; and the center piece we would call the cordovan, and the under part, or flesh side, we would call a flesh split.

*Q.* Now, is or is not a horse hide of irregular thickness? *A.* Irregular.

*Q.* Did you make the grain split by the splitting machine? *A.* Yes, sir.

*Q.* From the beginning of your time, while you were there? *A.* No.

*Q.* When did you begin to do that? *A.* I suppose we had been running on those butts somewheres about a month when we started to split them.

*Q.* And during that month what had you done with reference to that part of the hide? *A.* We shaved it off.

*Q.* And what became of those shavings? *A.* Well, we didn't do anything with them then.

*Q.* They were not even glue stock, were they? *A.* No, no good for anything; we didn't even sell it.

*Q.* Did you not burn them? *A.* No, we couldn't burn it.

*Q.* You did not have any furnace in which you burned those things? *A.* Yes, but you couldn't burn this; it wouldn't burn; it would put the fire out.

*Q.* Now, the next piece under is the valuable piece, is it not? *A.* Yes, that is the cordovan.

*Q.* The flesh split, what did you do about that? *A.* Generally, as a rule, we pickled it; that is, putting it into condition, you know, to hold it, so that we could sell it, so that it wouldn't decay or go bad.

*Q.* Did you split these hides before they were tanned? *A.* Sometimes; sometimes we split it before tanning; sometimes after tanning.

*Q.* Well, if they were split after tanning, did you pickle the flesh splits? *A.* No, we sold them just as they were.

*Q.* If you split hides that had been pickled, did you then pickle the flesh splits? *A.* Well, if they had been pickled before we never pickled them again.

*Q.* Did you split any hides that had been either tanned or pickled? *A.* Yes.

*Q.* Can you, as a matter of fact, split a horse butt unless it has either been pickled or tanned? *A.* No, not very well.

*Q.* Well, then, were there any of these flesh splits cut off of anything except a pickled or a tanned horse hide? *A.* No.

*Q.* Then, why did you pickle the flesh split after you cut it off? *A.* Well, as I say, the pickling part of the process, it must be done before it is tanned; we never pickle a split after it is tanned; it is impossible. The idea of pickling these skins was to preserve them. If I said I pickled a flesh split after it is tanned, it is a mistake. I either misunderstood you or you misunderstood me.

*Q.* I understood you to say that you pickled a flesh split after it had been cut off; I think you said you did.

*A.* I meant after it had been cut off in the pickle, or beforehand, not after it is tanned.

*Q.* Can you split a hide so as to get a flesh split unless the hide has been either tanned or pickled? *A.* Well, it can be done, yes.

*Q.* Did you ever do it? *A.* Yes.

*Q.* Down at the Guigues factory? *A.* Yes.

*Q.* Now, in what stage of a hide in the process of finishing can it be split at all on a splitting machine? *A.* It can be split in all shapes and styles, or anything, split in the raw, split in the pickle and split after it is tanned.

*Q.* And you say that there were, to your knowledge, horse butts of which this valuable cordovan leather was afterwards split without having been either pickled or tanned? *A.* Oh, yes, we have split them in every condition down there; I don't believe there is any process but what we split them.

*Q.* Then I understand you now to say that during the time while you were at Mr. Guigues's factory, to your knowledge, there were horse butts split before tanning? *A.* Yes, there were.

*Q.* How many? *A.* You see, that is a hard question to answer, Mr. Riker. We averaged something like two or three hundred dozen a day. It is impossible for me to tell you; I don't believe any man living could tell you.

*Q.* Is it not necessary, Mr. Conway, as a matter of fact, in order to prepare a hide at all for splitting that it must be plumped? *A.* Yes.

*Q.* What process prior to the tanning or the pickling results in pumping a hide so as to fit it for splitting? *A.* One of the first processes, you can plump a hide with lime or sulphite; the next process, you can plump a hide by pickle. That is about all.

*Q.* Is it not a fact, Mr. Conway, that the result of pickling a hide is to shrink it? *A.* Well, it depends on how you pickle it; you can—the more acid you put to it the more plump your hide is; the more salt the

lighter your hide. Consequently you do as you like; with the pickle you can plump it or make it low and flat. It depends on what you want.

*Q.* What is the reason for pickling a hide? *A.* To preserve it.

*Q.* And does not the process of pickling tighten up the fibre? *A.* Yes, sir.

*Q.* So that it does not plump it? *A.* Yes.

*Q.* It does not prepare it for splitting? *A.* No, I do not say that. You can preserve it one month or one month and a half, or three months or a year. We can plump it for splitting by decreasing the amount of sale and adding more to your acid.

*Q.* Now, Mr. Conway, while you were there what became of these knuckle pieces, pates and ears and other things? *A.* They were sold as glue stock.

*Q.* To whom? *A.* I don't remember now exactly the man that bought the glue stock; Baeder Adamson or Lane, or what—I can't recall now exactly all the odds and ends of the glue stock. I think we sold it to Baeder Adamson; I won't be sure about that; but they were sold as glue stock.

*Q.* Did not Julius Lichtman, the defendant in this suit, buy the offal at times? *A.* No, sir.

*Q.* Never while you were there? *A.* No, sir; not one instance, that I know of.

*Q.* [By Mr. MacMahon.] Whom are you winking at, Mr. Conway? *A.* I saw my son back there; I suppose he wants me.

*Q.* [By Mr. Riker.] Mr. Conway, after the hides were split— *A.* I bought a large plant in Elizabeth, and we work on guncotton, and it makes me a little nervous. I have got a new man down there.

*Q.* That reminds me, Mr. Conway. You sell your products to the plaintiff in this suit, do you not? *A.* No, never sold him anything; never had any dealings with him; in fact, to-day is the first I have seen

the man since last October; never saw him except when he came in the factory.

*Q.* I asked you whether your concern does not sell its product to the plaintiff in this case? *A.* No, sir; never did; never have.

*Q.* Never dealt with them? *A.* No dealings whatever.

The Court—That is, the Corona Kid Company?

Witness—No, sir; never had any dealings with them whatever, or I either.

*Q.* Do you sell your products to patent-leather manufacturers? *A.* No, sir; no patent-leather manufacturers.

*Q.* You do not make amyl? *A.* No, it all goes to upholsterers.

*Q.* After the butts were split, what was done with them in the factory while you were there? *A.* Sometimes they were tanned in bark and sometimes in chrome; probably ninety-five per cent. of all the butts were tanned in bark, or vegetable tannage.

*Q.* After they were split? *A.* Yes, sir; after they were split; they couldn't be done otherwise, unless you tan the whole hide. They are always tanned after they are split, as a rule.

*Q.* Were they tanned or retanned? *A.* Tanned.

*Q.* They had not been put through the tanning process at all before they were split, at all? *A.* Well, I won't say that. Sometimes we split them, as I said before, before tanning; then again we split the hides after they were tanned. It would depend on the substance. As I told you, a horse butt runs irregular. It if was a light butt we would split it in the pickle, taking the grain split off, and then if it was a heavy butt we tanned it, and after tanning it split it, depending on the substance we got out of the butt.

*Q.* In any event, after splitting you would tan it? *A.* No, don't put it that way. I said sometimes after tanning I would split it—both ways.

Q. Well, after you had split the hide that had been split, and you tanned the butts that had been split, what would you do with it? A. Tanning a butt that had been split previously?

Q. Yes. A. That was all that was done to it; we would finish it into cordovan—a regular process of coloring and blacking and stuffing with grease. There is quite a lot of detail.

Q. Then what? A. Then it was shipped to the Corona Kid Company.

Q. What about the shanks? A. They were cut off after they were baited; they were pickled separately.

Q. And then what was done with it? A. Sometimes we would tan them and sometimes we would sell them in the pickle.

Q. Now, these shanks, how were they tanned, when you did tan them? A. Well, some tanned in chrome and some in vegetable tan and some in pickle, those three. I think I may be mistaken. The majority of the shanks were tanned in chrome at that time, or pickled. I don't think we tanned very many in the vegetable tan.

Q. [By the Court.] What do you mean by tanning in chrome? A. That is kind of a solution of bichromate of potash; we reduce that, the salt or green oxide, and the oxide has tanning qualities in it; it converts the gelatine in the hide over into leather, the same as a vegetable tannage would, only this is a metallic tannage.

Q. [By Mr. Riker.] When you speak of the shank, what do you refer to? A. The shank is the two ends of the butt, where it is marked off; they are on each end of the butt.

Q. What is the size, what would be a fair average size of a shank cut off during the time you were in the Guigues factory? A. Three or four feet.

Q. Three or four square feet? A. Yes.

Q. Surface? A. Yes, sir.

*Q.* [By the Court.] Both together? *A.* No, each one.

*Q.* [By Mr. Riker.] And these were treated in the way you have described, either pickled or tanned? *A.* Yes, sir.

*Q.* Or both pickled and tanned? *A.* Yes, sir.

*Q.* Is that right? *A.* That is right exactly; yes, sir.

*Q.* And then what became of them? *A.* Well, the tanned ones mostly—we finished up quite a good many of the tanned ones, and the pickled ones, we shipped quite a good many to Lichtman, both the split and the grain; in fact, all the splits of the shanks were sold to Lichtman, I guess ninety per cent.

*Q.* Then you split the shanks, too? *A.* Yes.

*Q.* How many pieces? *A.* Two, grain and flesh.

*Q.* Grain and split? *A.* Grain and split.

*Q.* The split is the flesh side of the skin? *A.* Yes.

*Q.* And the grain, of course, is the other? *A.* Yes.

*Q.* Which ones did you tan? *A.* Why, we always tanned the grain side.

*Q.* Always tanned — *A.* Not always, but we never tanned the flesh side, I don't think; they were always sold in the pickle mostly.

*Q.* You never tanned the flesh side, they were sold in the pickle? *A.* Mostly, yes.

*Q.* When you said you always tanned the grain side, did you mean by that that you tanned all the grain sides? *A.* When we did it, the only thing we tanned the grain side.

*Q.* And all the grains that you did not tan, what would you do with them? *A.* Oftentimes we would pickle those.

*Q.* Why didn't you tan all of them? *A.* Because we couldn't tan them as fast we made them.

*Q.* Is that the only reason? *A.* That is the only reason I know of.

*Q.* Is it not a fact that you did not tan a part of the grain sides of these shank splits because they were not fit for tan stock? *A.* No.

Q. Then if you had not pickled them they would become offal? A. No.

Q. What would they become? A. If we had not pickled them we would tan them.

Q. Is that the tanned product, grain product, of the shank more valuable than the pickle? A. Yes.

Q. What is the use of the tanned grain of the shank? A. Why, we put that into patent leather, at that time we did.

Q. The pickled stock you could not use for patent leather, or did not use for patent leather? A. Well, I don't know whether we did or not; I don't think we did, no.

Q. And if the grain was imperfect, would you tan it for patent leather? A. Not always; sometimes we would put it to other purposes.

Q. If the grain split of a shank, then would you tan it? A. Yes.

Q. For what purpose? A. For shoe leather.

Q. For patent leather? A. No. We tanned a great many in chrome tan for shoe leather, and considerable of shank, but not for patent leather.

Q. What is the use to which the pickled stock it put? A. I don't know what Lichtman done with it; it was sold to him in pickle, that is all I know.

Q. You do not know of any use for pickled stock? A. Well, it depends. Are you talking about shank splits now?

Q. Yes. A. Well, yes, you could use it; it could be used for tanning—vegetable tan—it makes a nice insoling; it can be tanned in chrome for lining stock, and for a dozen different purposes.

Q. Can it be finished or japanned to advantage? A. Not japanned.

Q. Could it be finished with japan suitable for dull finish for topping stock? A. That is a hard question to answer.

Q. Why? A. It may be that somebody is doing it; I can't do it.

*Q.* Then, so far as you know, that is not suitable for finishing with a dull finish suitable for topping stock? *A.* I wouldn't say that; it is possible somebody is doing that.

*Q.* I am asking you, so far as you know? *A.* No.

By the Court.

*Q.* What is topping stock? *A.* I suppose he means for tops of shoes, don't you, Mr. Riker?

Mr. Riker—Yes.

Witness—Yes, it can be used for that purpose, for topping stock, but not for patent leather topping stock; it can be used for dull finish, but not matched stock.

By Mr. Riker.

*Q.* Did you ever japan that kind of stock for use as topping stock? *A.* No, but I have used it for other purposes—not japanned.

*Q.* Mr. Conway, when you speak of a shank, what part do you mean? *A.* Well, the two extreme ends of the butt—I marked it off there—on each end of the butt, the shanks.

*Q.* When you use the word "shank," do you refer to the grain or to the split? *A.* Well, a shank has split and flesh, both, just the same as any other part.

*Q.* But when you speak of the shank piece do you mean the grain or the flesh split? *A.* I mean both.

*Q.* You mean both? *A.* Yes, sir.

*Q.* Now, if you were asked to tan and chrome the shanks of horse-hide butts, what would you tan, with reference to the grain or the flesh split? *A.* Well, it would depend. You will have to state that a little more—

*Q.* I say if you were asked to tan in chrome the shanks of horse hides, of horse-hide butts, what part, with reference to the two splits, would you tan? *A.* I would tan the shanks.

*Q.* Well, what part, both parts? *A.* You say shanks.

They are not split in what you say—just ordinary shanks. Do you mean splits?

*Q.* Would you tan, then, as a practical tanner, the whole shank without splitting it? *A.* I have done it.

*Q.* If you were asked to tan in chrome the shanks, would you tan them before you split them, as a practical tanner? *A.* Well, Mr. Riker, they are tanned both ways. We tanned down there thousands and thousands of dozens split before tanning; and we also tanned thousands of dozens, the whole thing, never being split.

*Q.* If you were asked to tan in chrome the shanks of horse-hide butts and finish with a smooth finish, so that they can be japanned, what part would you then tan? *A.* I would tan the grain part.

*Q.* That is all you would tan, is it not? *A.* Yes.

*Q.* And if you were asked to finish all of said shanks that were unsuitable for japanning with a dull finish suitable for topping stock, what would you finish that way? *A.* Well, we would finish a few of the splits— That is pretty hard to answer that.

*Q.* Well, can't you answer that? *A.* No. Just repeat that again.

*Q.* [Question read.] *A.* I would finish the grain part.

*Q.* Now, as a matter of fact, is that not the only part of the shank that could be used for those purposes, because of the irregularity of the flesh split? *A.* For what purpose?

*Q.* For those two purposes, japanning or finishing with a dull finish suitable for topping stock. *A.* No, you can use a split for shoe leather. The grain must be used, as a rule, for patent leather or for shoe stock, but the split can be used for various purposes, either tanned or pickled.

*Q.* Could you use it for japanning or topping stock? *A.* The grain or the flesh?

*Q.* The flesh? *A.* You could use it.

Q. Did you ever know of it being used for that purpose? A. I am no authority on that; there may be some people doing it.

Q. Have you ever done it yourself? A. Yes.

Q. You have done it? A. Yes.

Q. Where? A. Down at Guigues's; we done some down there.

Q. You japanned— A. No, we didn't japan it; we finished it. We took the splits and tanned it in chrome and put a size on it and fixed it up so that it made a fair shoe leather; it wouldn't make first class, but it made very good shoe leather for linings and outside stock.

Q. Topping, is that? A. Yes, it could be made use of for topping stock, cheap shoes.

Q. Anything can be used for topping stock? A. Yes.

Q. Did you ever see any of this particular material used for topping stock? A. Yes.

Q. Where? A. Down there. We finished up the samples and sent them on to Boston. For some reason or other, we would get more money for them in the pickle, I thought. I didn't know why they didn't continue it.

Q. Well, did these particular pieces go to Boston? A. Everything went to Boston that was finished, as a rule.

Q. Were you in the shipping department of this concern of Guigues's? A. I was in every part of it.

Q. And you had under your observation the shipping of all the stock that went out of there? A. We had a shipping clerk under me that shipped the stock.

Q. And where did you ship the goods to? A. Went to Boston.

Q. All of it? A. No, the butts went to Boston and the fronts went to Bristol.

Q. Did you have anything but butts from the Corona Kid Company at the time you were in there? A. No, they were all butts at that time.

*Q.* Then why do you say the fronts went somewhere else? *A.* Well, afterwards. You know, when we first started we tanned nothing but butts, but after awhile we got tanning butts and fronts both.

*Q.* While you were there did you tan fronts? *A.* Yes, sir; thousands of them.

*Q.* When did you leave there? *A.* I can't give you the exact date; I can find out home by my papers.

*Q.* When did they begin to tan fronts? *A.* I left some time a little after they incorporated themselves; probably two or three months after they were incorporated I left.

*Q.* You can remember the time, can't you? *A.* I did not incorporate them. With reference to the time when you left, when did they begin to tan fronts? *A.* Oh, they tanned fronts before that; they tanned fronts, I suppose, three months after they started there, or four months, probably five months after they started that plant they started to tan fronts.

*Q.* Now, Mr. Conway, you say that Mr. Guigues gave you some instructions with reference to covering up some stock? *A.* Yes.

*Q.* Who was present when that instruction was given? *A.* Who was president?

*Q.* Who was present? *A.* No one but myself and Mr. Guigues.

*Q.* Where was the instruction given? *A.* Given to me in my office.

*Q.* How often was that instruction repeated? *A.* Probably half a dozen times, roughly speaking.

*Q.* Why was it repeated? *A.* Because I generally got word a day or so before Mr. Baker arrived, and then he would come up and tell me.

*Q.* Then it was only in anticipation of Mr. Baker's arrival that he instructed you to cover things up? *A.* Well, that I couldn't say.

*Q.* Can't you say whether Mr. Baker did or did not, in fact, arrive almost immediately after these instructions were given? *A.* Well, in some instances. When

it first started we found that we were getting a split off the grain and off the flesh side, off the grain in particular, that was valuable, that was bringing him in a good deal of money, and he then told me, "You want to keep this quiet, Conway, so that other people can't find out anything about it"; and I did. I covered it over when Mr. Baker came, and Mr. Baker knew nothing about it, and as far as whether Mr. Lichtman knew or not, I am not positive of that; I don't think he did know anything about it, because I kept it very quiet.

*Q.* You say that Mr. Lichtman, so far as you know, did not know anything about this? *A.* Well, I will have to refresh my memory on that thing. It may be possible that Mr. Lichtman did know; I think he did, in fact; Mr. Lichtman knew as much about it as I.

*Q.* How do you know that? *A.* Mr. Lichtman was there; we were very intimate together; Mr. Lichtman knew the conditions of the factory the same as I did.

*Q.* We are now confining our examination to the instructions given by you to Mr. Guigues as to concealing these things from Mr. Baker. You say Mr. Lichtman knew that— *A.* What?

*Q.* — of your own knowledge? *A.* From my own knowledge, I know he knew it.

*Q.* How do you know that? *A.* Because Mr. Lichtman was there several times, and we talked over the thing, about this, and Mr. Lichtman knew about it. I have talked personally with Mr. Lichtman down there; he knew the conditions and knew my orders.

*Q.* When were those conversations between you and Mr. Lichtman? *A.* While I was superintendent there; I can't remember the exact dates now.

*Q.* This is the Mr. Lichtman that you are speaking of [indicating]? *A.* That is the only gentleman I had any dealings with; this gentleman here.

*Q.* Who else was present during these conversations? *A.* I don't believe anybody was.

*Q.* What did you say to him during those conversations? *A.* Probably during the course of the conversa-

tion, talking about these splits, and he knew; I told him the conditions and my orders about it; he knew all about it; I told him personally.

*Q.* I want you to state what was said by you and what was said by Mr. Lichtman. *A.* It is hard for me to remember exactly, but I did convey to Mr. Lichtman about the stock, about the covering of it over, and that Mr. Baker knew nothing about it.

*Q.* When? *A.* The exact dates I can't remember; it is too far back.

*Q.* How many times did you have that conversation with Mr. Lichtman? *A.* That I don't know.

*Q.* More than once? *A.* Yes, probably three or four times.

*Q.* How did you come to speak to Mr. Lichtman about that? *A.* Well, Mr. Lichtman comes pretty near knowing what goods he is buying and all about it. He talked with me about it, about the splits, as superintendent there, and this subject would come up.

*Q.* Now, Mr. Conway, were you present yesterday afternoon when Mr. Baker was on the stand? *A.* No, sir.

*Q.* You were not here? *A.* No, sir.

*Q.* Can you tell any further part of a conversation with Mr. Lichtman at which this particular matter was discussed? *A.* I can't just at present; I was just trying to think; but I remember tell Mr. Lichtman—speaking to him several times about those splits and the conditions, and all about it; and to tell the exact date and time, I can't at this time, so many years after.

*Q.* [By the Court.] You were not asked for the dates. As I understood, you were asked if you could state anything that was said further than what you have mentioned? *A.* No, I can't remember, Judge.

*Q.* [By Mr. Riker.] Now, you have said that there was conversation in regard to the condition of this stock. What was the conversation by either one, you or Mr. Lichtman, in regard to the condition of the stock? *A.* Naturally, Mr. Lichtman was the buyer,

and he would like to know whether it was No. 1, what the condition was, how big they were, the measurement, and how thick they were, and all these different questions would come up, and, naturally, we would get talking about the stock. There were thousands of dozens of that pickled stock down there, and no one knew anything about it except myself, and, naturally, Mr. Lichtman would speak to me about it. That is as near as I can remember, Mr. Riker; to go into further details, I can't remember.

*Q.* Did Mr. Lichtman complain of the condition of the stock in which he received it? *A.* Oh, sometimes, yes. I remember one time in particular he complained about it. Mr. Guigues came to me and spoke to me about it, and he said he owed him $7,000, and after he received the goods he refused to take it, and offered him five.

*Q.* Was Mr. Lichtman there then? *A.* No, sir.

*Q.* Just answer the question. What complaint did Mr. Lichtman make of these goods? *A.* Naturally, if the goods wasn't right up to sample, he would say they wasn't all right, they wasn't running all right.

*Q.* Do you remember of his complaining that they were soaked with oil? *A.* No.

*Q.* Or that they were burned? *A.* No.

*Q.* Do you remember his making complaints? *A.* No, not about that.

*Q.* Any complaints? *A.* Yes.

*Q.* What were the complaints? *A.* Sometimes on the way they were shipped; they wasn't wrapped up in bundles properly, and the sizes wasn't put in together properly, too many small pieces.

*Q.* Too many small pieces? *A.* Yes, sir.

*Q.* Do you know how they were sold to Mr. Lichtman? *A.* Well, I know that they were sold to him by the dozen or the pound, both, sometimes by the feet.

*Q.* Did you make the sales? *A.* No, Mr. Guigues made the sales, and I received the orders to hand them over to Mr. Lichtman.

*Q.* Then how did you know whether they were sold? *A.* Well, wouldn't I know under the conditions? Who would know?

*Q.* Answer the question. *A.* Why, they would tell me to ship Mr. Lichtman so many, so many feet or so many bundles of stock, and there is only one way of selling it, unless you give it away.

*Q.* You have testified that there are three ways, by the foot, by the pound or by the number. *A.* Well, that would depend on the class of stock.

*Q.* There are three ways? *A.* Yes. It depends on the stock.

*Q.* What do you mean by saying there is only one way then? *A.* Well, there is one method of selling this stock, that is all I know.

*Q.* That is, to sell it? *A.* To sell it according to the rules.

*Q.* What is the rule? *A.* The rule is to sell by the feet or the pound or bundle or the dozen.

*Q.* And that is only one way, is it? *A.* That is one way in general, yes.

*Q.* Mr. Conway, directing your attention to the year between the 30th day of June, 1904, and the 30th day of July, 1905, were you employed by Mr. Guigues during that period? *A.* I don't remember the date; I couldn't tell you now; I will have to look that up. The dates have gone out of my head. With regard to the exact time, I will have to look that up in my books home.

*Q.* Were you in his employ after June 30, 1905? *A.* That I don't know at present.

*Q.* You cannot say that, either? *A.* No. I can very easily find out.

*Q.* You were, however, there while he was tanning fronts? *A.* Yes.

*Q.* For the Corona Kid Company? *A.* Yes.

*Q.* Now, after the factory was first put in operation by Guigues—the Ferry street factory I am speaking of—did he split the shanks? *A.* Not at first.

*Q.* What did he do with the shanks? *A.* Tanned them in chrome, the whole substance.

*Q.* And then what did he do with the flesh side? *A.* They didn't have any flesh; I say he tanned them—

*Q.* With the flesh side? *A.* You asked me what he done with the shanks.

*Q.* Yes. You say he tanned them in chrome tan? *A.* The whole substance.

*Q.* And did he do anything with the—— *A.* We didn't have any split at all.

*Q.* But did he prepare the shank in any way for tanning? *A.* No.

*Q.* By any treatment on the flesh side? *A.* No more than we would flesh it, take the flesh off.

*Q.* Did he not level it? *A.* No, not on all these shanks.

*Q.* Any of these shanks—do you know whether he didn't level some of them? *A.* Well, he possibly did, yes.

*Q.* And that leveling was done with a knife? *A.* Yes.

*Q.* Not a machine, but with a hand knife? *A.* With a machine.

*Q.* He did it with a machine? *A.* Yes.

*Q.* But not with a splitting machine? *A.* That I couldn't tell you.

*Q.* Did he have a machine that would level outside of the splitting machine? *A.* No, except a shaving machine.

*Q.* Did he shave those shanks? *A.* No, not in that state—yes, he did some, too.

*Q.* And when did he begin to split the shanks? *A.* I guess about a month after he started down there.

*Q.* That was at the time he began to split the butt, was it not? *A.* Yes.

*Q.* Did you see any of those flesh splits from the shank? *A.* Yes.

*Q.* What was the character of them? *A.* Why, they were flesh splits; that is all I could say.

Q. How large? A. Well, about two to three feet.

Q. [By the Court.] Square feet? A. Square feet; yes, sir.

Q. [By Mr. Riker.] Were they of uniform thickness? A. No, sir; irregular.

Q. Very irregular, were they not? A. Yes, some light and some heavy.

Q. And irregular in the same piece? A. Yes.

Q. Light in spots and thicker in other spots? A. Yes, sir.

Q. And the material in part that went into these flesh pieces after the splitting was done before that time had been simply shaved off and became part of the glue stock, had it not? A. Yes.

Q. Now, in what condition, Mr. Conway, did these flesh splits from the shank measure two or three feet, at what stage of the processes through which they went through the factory? A. Well, measure in the pickle and the tanned state both, very little difference.

Q. Two or three square feet? A. Yes, sir.

Q. Now, Mr. Conway, when you got your instructions to cover up certain stock, what stock was it you covered up? A. Mostly the tanned grains off the butt.

Q. Mostly the tanned grains off the butts?

Q. Where did you put those grains that you treated that way? A. Mostly on the top floor, except where they were in the process of manufacture. Of course, we stopped the machines and covered the machines with canvas or something, so that no one could see it, if anyone was near.

Q. How many of those particular pieces of skin or hide or leather had you in the factory at one time at the maximum? A. Well, we was averaging then a hundred dozen butts a day, so that we would have at least a week's work on hand.

Q. That would be six hundred of these grains? A. Oh, no, it would be a hundred dozen, I said; we were running a hundred dozen a day.

*Q.* Six hundred dozen? *A.* More than that, about two to three thousand dozen, in the process of manufacturing in the factory.

*Q.* Two to three thousand dozen of these grain splits on hand at the time? *A.* Yes, sir.

*Q.* Now, you were instructed by Mr. Guigues, as you have said, to conceal them? *A.* Yes.

*Q.* Where did you conceal that many dozen dozens? *A.* Well, you can very easily do it in a large plant.

*Q.* Where did you do it? *A.* The only place I would conceal them would be after they would be split, and they would be covered with canvas. A man might walk past them and not notice whether they were split or what they were.

*Q.* I asked you where— *A.* Mostly by the splitting machines.

*Q.* Have you not said that you put them on the top floor? *A.* After they were split, yes.

*Q.* And when you had this number of thousands of these grain splits on hand which you were concealing at Mr. Guigues's direction, you put them on the top floor? *A.* Yes.

*Q.* Of which building? *A.* Both buildings.

*Q.* Both the Madison and Monroe street buildings? *A.* Yes.

*Q.* Why did you put them up there? *A.* So that people wouldn't notice them up there.

*Q.* What are the dimensions of those two buildings, if you happen to remember? *A.* About 60 by 150, I guess.

*Q.* 60 by 150, two buildings; that is 60 by 300 feet long? *A.* Yes.

*Q.* You concealed these grain splits. Was not the top floor of these two buildings where you had the drying apparatus? *A.* No, the top floor on the Madison street side is where we finished all the cordovan butts exclusively, nothing else; on the top floor of the lower street we used for for various purposes, for storing.

*Q.* Steam heat up there? *A.* Yes, sir.

*Q.* And on the Madison street building, on the top floor you had the finished product of the cordovan? *A.* Yes, sir.

*Q.* And there is where you concealed these splits by direction of Mr. Guigues? *A.* Yes, sir.

*Q.* Was not that the place where Mr. Baker went to examine the finished stock? *A.* No, sir; he went downstairs; we kept him out of there as much as possible.

*Q.* You did not let him see the finished stock? *A.* Not these finished splits.

*Q.* Did you not let him see the finished cordovan stock? *A.* Yes.

*Q.* Was not that on the top floor of the Madison street building? *A.* No, that was on the second floor of the Madison street building.

The Court—I think perhaps, Mr. Conway, you sometimes answer a question without quite understanding it. I understood you to say that the finished cordovan was on the top floor. You now say it was on the second floor?

Witness—It is finished on the second floor. You see, on the third floor it was just a drying loft and stuffing loft for the cordovan and for storage purposes.

*Q.* Is the third floor the top floor? *A.* No, there is a fourth floor.

*Q.* What was the fourth floor used for? *A.* The same purpose.

*Q.* Drying room? *A.* Yes.

*Q.* And stuffing room? *A.* Yes.

*Q.* And were not these splits sent up to the fourth floor of the Madison street building to be dried from the oil? *A.* No. For instance, they were split out of the oil; they were split after they were stuffed once.

*Q.* Were they not sent up to the fourth floor of the Madison street building, to the same floor where the cordovans were sent, for the same purpose, of drying

them? *A.* No, we never dried any cordovan on the top floor of the Madison street side.

*Q.* What did you use the top floor of the Madison street side for? *A.* Madison street is the lower street, isn't it?

*Q.* No, the upper street. *A.* Madison street on the upper floor was used for drying cordovan then.

*Q.* And that is the place where you sent the butt part of these butt splits? *A.* Yes.

*Q.* And for the purpose of drying them, was it not? *A.* No, because they were dried before we split them, and if we dried them they would lose weight.

*Q.* Why did you dry the cordovans there and not the splits there, then? *A.* Because the cordovan had to be dried before we could finish it.

*Q.* You say they were dry when they were split? *A.* Yes.

*Q.* Well, how would they lose weight if they were put in the drying room? *A.* Well, the oil would evaporate out of them.

*Q.* Then they were not dry? *A.* Well, you would call them dry. They would probably lose ten per cent. more in weight.

*Q.* And Mr. Baker was allowed to go up on the top floor of the Madison street building to examine the cordovan stock, was he? *A.* Well, I wouldn't say that; as a rule he did not, but if he did, they were covered over.

*Q.* The cordovans? *A.* No, these splits. That is all we had to hide, was the splits.

*Q.* In the open loft of the building? *A.* Yes, sir.

*Q.* On the fourth floor, that is the whole clean sweep of the building, with the center beams to support the roof? *A.* Yes, sir.

*Q.* That is all there was at that time? *A.* Yes, sir.

*Q.* And that is all there was in it when you were there, except the steam pipes? *A.* Yes.

*Q.* Where in that place did you conceal these partic-

ular pieces of leather? *A.* Mostly down at the lower end.

*Q.* Which is the lower end? *A.* Down towards the Lafayette street side.

*Q.* And that is down by the elevator, is it not? *A.* Yes, sir.

*Q.* That is where the elevator shaft is? *A.* Yes, sir.

*Q.* And that is where you concealed them? *A.* Yes, sir.

*Q.* How many did you have there at one time in that particular loft? *A.* I don't know exactly.

*Q.* Thousands of dozens? *A.* Yes, sir.

*Q.* And how did you conceal them? *A.* They were tied up mostly, a great many of them tied up and covered over, lying there with other splits and other things.

*Q.* What space on the floor did all those bundles occupy? *A.* Sometimes they would cover the whole floor, very near, the lower end of it, except up near the elevator, or near the stairs.

*Q.* And you covered them with what? *A.* With canvas and old splits and other things.

*Q.* So that they would not evaporate too rapidly; isn't that it? *A.* Not altogether; we tied them up together so as to conceal them.

*Q.* You mean to say now that you tied them up in order to conceal them from Mr. Baker, at the direction of Mr Guigues? *A.* That is right.

*Q.* And that you did not cover them up for the purpose of enabling them to be dried in a proper manner, not too rapidly? *A.* No, that wouldn't make any difference, not to cover them over, so far as that is concerned.

*Q.* Then the only purpose of covering them over, these bundles that covered the whole of the top floor of this building, 60 by 150, was to conceal them, was it? *A.* That is right.

*Q.* Were you there with Mr. Baker when he went up to that floor? *A.* Why, I don't think I ever went

up with him on that floor; as a rule I didn't go with him.

*Q.* You did not go with Mr. Baker? *A.* No.

*Q.* Then how do you know that he went there? *A.* Well, I see him.

*Q.* You were with him all the time? *A.* No, but I never see him up there. He might have gone up there sometimes.

*Q.* Were you with him all the time? *A.* No, I wasn't with him all the time.

*Q.* Well, how do you know whether he went there or not? *A.* I don't know.

*Q.* Now, the rest of these grain splits that you have been testifying to, where were they concealed? *A.* On the top floor of the Monroe street building.

*Q.* What was that used for? *A.* Part of it was used for stuffing, stuffing tables, and part of it was used for storing and drying.

*Q.* And what did you store and dry there? *A.* Oh, every kind of leather we tanned.

*Q.* Including these grain splits, did you not? *A.* No.

*Q.* How many of these splits did you have at that place? *A.* Oh, it is hard for me to tell. You can naturally think as much as you like. The whole tank was filled. I can't give you an estimate. So much stock was on each floor. It was all in the process of manufacture; some would be on the first floor and some on the second and third, and some in the cellar and some on the top floor.

*Q.* But you were instructed by your chief to conceal this particular class of goods. Now, you say that there were two places— *A.* We not only concealed it on the top floor, Mr. Riker, but any part of the building. Part of the stock was in manufacture. For instance, I never allowed Mr. Baker to see a split butt at that time, and if there was any splitting to be done the men stopped the machines, and they went at other work, and we covered it over.

*Q.* Why did you not allow him to see it? *A.* Because I received orders.

*Q.* So that you practically set down the factory when Mr. Baker came there? *A.* No, I shut down the splitting machine.

*Q.* You did no splitting while Mr. Baker was there? *A.* I won't say that; we might be splitting in the beam-house.

*Q.* Where were the splitting machines? *A.* Some in the beam-house and some in the tan-house and on the Madison street side, on the first floor.

*Q.* The splitting machines were in the Madison street buildings on the first floor, were they not? *A.* Not altogether.

*Q.* What machines were there in the beam-house? *A.* Four splitting machines, I think, 57-inch machines.

*Q.* In the beam-house? *A.* Yes.

*Q.* And how many on the first floor of the Madison street building? *A.* Two—I think there were three machines.

*Q.* What class of splitting work did you allow Mr. Baker to inspect? *A.* The only thing he did inspect would be out in the beam-house.

*Q.* And what were you splitting there? *A.* Raw stock.

*Q.* Into what? *A.* Into splits and into grains.

*Q.* Butt grains? *A.* Yes. It might have been fronts, you know.

*Q.* Well, were they? *A.* They were not.

*Q.* And shanks, were you splitting them? *A.* We didn't as a rule; we did a few, not many—well, yes, we did do quite some afterwards, splitting shanks in pickle.

*Q.* Did you conceal the flesh split of the shank also? *A.* Well, as far as quantity is concerned, yes.

*Q.* What? *A.* So far as quantity is concerned.

*Q.* What do you mean by that? *A.* Well, we kept them hid in the cellar as much as possible, the pickle flesh splits.

Q. What cellar? A. Down on the Monroe street side.

Q. Isn't that where you did your pickling? A. Yes.

Q. So that when you were pickling them they were concealed in that cellar, were they? A. All in back. And also we pickled them on the tan side, on the Monroe street side, the tan-house.

Q. That was that center building that Mr. Guigues converted over there? A. Yes.

Q. There was no tan-house or tan yard in the Madison street building while you were there, was there? A. Yes, I put them in there.

Q. There was? A. Yes.

Q. Except for sampling, did you split any raw material? A. Yes.

Q. How much? A. Oh, hundreds and hundreds of dozens.

Q. What do you mean by "raw"? A. Why, after it comes from the lime, after the stock comes from the line.

Q. And that was done in the beam-house? A. Yes.

Q. Were you in charge of Mr. Baker when he came to the place? A. No.

Q. Mr. Guigues was there as a rule, was he not? A. Yes.

Q. Did you accompany him on his trips through the factory? A. Yes.

Q. Always? A. No.

Q. Did he ever go into the basement of the Monroe street building, that you know of? A. Yes.

Q. Did he see those shank splits in pickle? A. Yes.

Q. You did not conceal them, did you? A. No.

Q. Did you try to conceal them? A. As far as quantity is concerned.

Q. Then you concealed some of them; is that what you mean? A. Yes, that is it.

Q. How did you conceal those that you did conceal? A. By putting other things in front of it and packing

stock around it, so that he never knew how many there was there; that was the intention.

*Q.* So far as you ever observed, did he ever attempt to count a quantity of any particular kind of stock? *A.* No, that would be impossible, there was such large quantities of it there.

*Q.* There were such large quantities that he could not do it? *A.* Yes.

*Q.* What else did you do in the way of concealing the flesh splits and the shanks, if anything? *A.* Well, that is about all.

*Q.* Did you ever hear Mr. Baker make any remark upon any part of this stock that he saw? *A.* What class of stock do you mean?

*Q.* I am speaking now of the shank splits. *A.* Well, I can't remember any particular remark just at present.

*Q.* When did you begin your concealment of this particular class of stock from Mr. Baker? *A.* Why, I think it was about a month after I went to work there when we started to split the grain off.

*Q.* Now, do you remember a visit of Mr. Baker in December, 1904, at which Mr. Guigues demonstrated to Mr. Baker the process of splitting off the grain split from the butts? *A.* Yes, in one process; that was the process of splitting them in the raw.

*Q.* That was a process of producing a grain split from the butt, which theretofore had not been susceptible or capable of producing a grain split? *A.* As far as Mr. Baker knew.

*Q.* As far as Mr. Baker knew? *A.* Yes.

*Q.* And you were present when Mr. Guigues showed Mr. Baker how it was done? *A.* What?

*Q.* How this grain was split off? *A.* When?

*Q.* In December, 1904 *A.* What part of the process? You see, there is quite a difference. I admitted a few moments ago that he did see us split the grain off in the raw stage.

*Q.* So that he saw this process in the raw stage? *A.* Yes.

Q. And you were present when Mr. Guigues showed it to him? A. Yes.

Q. He did not see it after it was done? A. No.

Q. How do you know? A. Well, as far as a person can know. I don't think I would keep getting my orders continually if he knew about it.

Q. You never saw Mr. Baker present when the process of taking off the grain split was being carried on on the tanned butt? A. No.

Q. But you were present when Mr. Guigues showed him the process before the hide was tanned? A. Yes. The splitting of it?

Q. Yes. A. Yes, he saw that.

Q. And that was a new process, was it not, so far as Mr. Baker knew? A. Yes, so far as Mr. Baker knew.

Q. Was it not a new process, so far as you knew? A. No, I had seen it done, but never in such a large way.

Q. You never saw it put into practical operation before, did you? A. Yes.

Q. Where? A. Down there; we had done it before that.

Q. Experimentally, have you not? A. Yes, experimentally.

Q. And after the experimental had been carried on, Mr. Guigues showed Mr. Baker the process of splitting the butt grain off the hide in the raw? A. That is right.

Q. Is it a more difficult process or is it an easier process, to split the grain off of the raw hide or off of the tanned hide? A. Well, they are both difficult processes.

Q. Well, which is the more difficult? A. I don't know.

Q. Which one of them is the more difficult? A. Well, I should judge it would be harder to split in the raw than it would be after it is tanned.

Q. Now, were you with Mr. Baker and Mr. Guigues during the whole of that interview at which these things — A. No.

*Q.* Were you there when Mr. Baker found pieces of leather in the shape of a cordovan? *A.* Pieces of leather in the shape of a cordovan?

*Q.* Yes. *A.* I don't quite understand that question. Whereabouts?

*Q.* Did you hear Mr. Baker remark at any time about finding pieces in the shape of cordovan? *A.* I don't understand. How could it be? You ask me if I found Mr. Baker finding pieces of cordovan?

*Q.* If you heard him remark on that occasion when you were with him and Mr. Guigues and this matter of splitting was opened up—did you hear what Mr. Baker said? *A.* No.

*Q.* You did not hear anything of the conversation at all? *A.* No.

*Q.* You did not hear him ask Mr. Guigues what it was that he had in his hand, referring to a piece of leather? *A.* No.

*Q.* Did you hear Mr. Guigues say that he had discovered a new way of handling the cordovan? *A.* He might have said it; I didn't hear him say so.

*Q.* You did not hear it? *A.* No.

*Q.* Did you hear him say to Mr. Baker that he could run the cordovan through the splitting machine, and split off the grain, and save the grain, and then make a good cordovan out of the shell? *A.* No, I never heard such a thing.

*Q.* You did not hear that? *A.* No.

*Q.* Then did you go with them to the beam-house? *A.* I went there several times with Mr. Baker to the beam-house.

*Q.* With Mr. Guigues and Mr. Baker, when this process was demonstrated to Mr. Baker? *A.* Well, not exactly that process, but other processes were going on. We were walking about, and naturally we would go together.

*Q.* Did you see Mr. Guigues get some butts that had already been trimmed, and shanks taken off, and then

put them through the machine in the presence of Mr. Baker? *A.* No.

*Q.* You did not see them? *A.* No, not that I can remember.

*Q.* Do you remember whether there were several pieces run through the machine for the examination of Mr. Baker? *A.* I don't remember personally, no. I remember one instance when there was some hides split when Mr. Baker was there and myself and Mr. Guigues.

*Q.* Split off the grain, split off the cordovan? *A.* Well, I can't remember just exactly what it was, but I remember there was some splitting done while Mr. Baker was there, but there was never any in the tanned condition, I don't think.

*Q.* Do you know when that was? *A.* I don't remember the dates, no.

*Q.* What part of the year? *A.* No, I cannot.

*Q.* Winter? *A.* No, that is too much. I have got too much on my mind.

*Q.* You cannot tell about dates at all? *A.* This thing just came up yesterday, and I can't post myself in a day.

*Q.* Is it not a fact that prior to the splitting of the cordovans in that way this grain split was wasted? *A.* No, it was split after it was tanned then.

*Q.* I ask you whether, prior to the application of this process of splitting to the cordovan so as to get off a cordovan grain split, whether that part of the hide had not been waste? *A.* Yes.

*Q.* It had been? *A.* Yes.

*Q.* Now, after that particular interview at which this demonstration was made by Mr. Guigues, did he tell you to conceal those grain splits? *A.* Yes.

*Q.* From Mr. Baker? *A.* Well, only the tanned splits, not the raw, only the tanned splits.

*Q.* How many of those splits were split from hides in the green stage—that is, before they were tanned—how many were there, how many of these grain splits? *A.* Grain splits?

*Q.* Yes. *A.* Or do you mean the splits from the grain side?

*Q.* Well, perhaps I do not use the exact language. *A.* How many in the factory?

*Q.* Yes. *A.* We were running a hundred dozen a day. It took two weeks to a month in the process of manufacture, and each department would have a hundred dozen.

*Q.* I am speaking of the splits from the green hide. *A.* I think we split on the average of a hundred dozen a day.

*Q.* Of that kind? *A.* Yes, sir.

*Q.* In the raw? *A.* Yes, sir.

*Q.* And there was no effort to conceal those at all? *A.* No.

*Q.* What was done with them? *A.* They were tanned, some of them in chrome, and sent to Bristol to be japanned.

*Q.* Then some of the grain splits were, in fact, sent to Bristol to be tanned? *A.* Yes.

*Q.* How many of them? *A.* I don't know; not very many; it only went for a short while, and then they complained about it.

*Q.* Who complained about it? *A.* Mr. Baker.

*Q.* What was the complaint?

Mr. Skinner—Testify of your own knowledge, Mr. Conway.

I think this is going beyond the bounds of reasonable cross-examination, and has been for some time. I object to it as not cross-examination.

Mr. Riker—My recollection is that the matter of the processes under this man as superintendent was gone into on direct examination.

The Court—This part of the cross-examination seems to me to be more defensible than some other part of it. The objection now is that the witness was speaking of something that Mr.

Baker said without perhaps having knowledge of it.

Mr. Skinner—I think at least that he ought to be cautioned to tell what is within his own knowledge.

The Court—The witness will bear in mind that in speaking of anything that Mr. Baker said he must relate only those things that he heard Mr. Baker say.

Mr. Riker—I am asking what the complaints were that Mr. Baker made.

*Q.* You said he complained. *A.* Why, the stock probably was too light.

*Q.* [By the Court.] That was the stock that went to Bristol? *A.* Yes, sir.

*Q.* [By Mr. Riker.] That was the complaint that was made by Mr. Baker of these particular grain splits? *A.* Yes.

*Q.* And was it then discontinued—the sending of them? *A.* Yes.

*Q.* Because they were too light? *A.* Yes.

*Q.* How long did you continue to hide those particular grains? *A.* As long as I was there.

*Q.* As long as you were there? *A.* Yes, sir.

*Q.* Beginning about a month after you started there, as I understand you? *A.* Yes, sir.

*Q.* Until you quit, this method of hiding was pursued by you? *A.* Yes, sir.

*Q.* And you had a special injunction every time Mr. Baker was expected to arrive to hide these particular goods? *A.* Yes.

*Q.* And on those special times did you do any special thing in the way of hiding them? *A.* I gave orders; I didn't do it.

*Q.* Well, what change did you order made from the condition it was in when you received your instruction from your chief? *A.* I simply gave orders to cover the stock over wherever and in whatever department it was.

*Q.* Covered it over with what? *A.* With canvas. They knew what it meant.

*Q.* Everybody in the factory knew what it meant? *A.* Yes, you could ask anybody; they knew what it meant; at least, the heads of the departments.

*Q.* All the hands knew what it meant? *A.* Yes, pretty nearly.

*Q.* And that was the method you took to conceal the stock? *A.* No, I didn't say that; I said when I got my orders to conceal the stock I gave orders to the different departments, and they, naturally, covered it over and understood what it meant.

*Q.* How many men were there in the employ of Guigues at that time? *A.* I can't remember exactly.

*Q.* Well, about? *A.* Well, I suppose it was two or three hundred men.

*Q.* How many? *A.* Two or three hundred men.

*Q.* And they all knew about it? *A.* Well, not all of them; the principal men—the head of each department knew about it, and I wouldn't say—there was a lot of Greeks there; of course, they couldn't understand English; and a lot of Italians; they couldn't talk English; they wouldn't know about it; but the principal men there, the heads of the departments, knew it.

*Q.* How often did Mr. Baker come there while you were there, can you state? *A.* Why, roughly speaking, I think he came there about every two weeks or three weeks; something like that.

*Q.* Did anyone come with him? *A.* That I don't know. There were instances where other people came with him; I don't know who they were.

*Q.* Do you know a man by the name of Inston? *A.* No, I never met the gentleman, so far as I know.

*Q.* So far as you know? *A.* So far as I know.

Re-direct examination, by Mr. Skinner.

*Q.* Did the taking off of the grain split have any effect at all upon the weight of the other piece? *A.* Why, yes, it would make it so much lighter.

*Q.* You know that goods were shipped to the Corona Kid Company, do you not? *A.* Yes.

*Q.* And what kind of pieces or goods were shipped to them? *A.* Well, nothing but finished stock.

*Q.* No, that is the condition of the piece, but I mean what kind of pieces with reference to whether they were butt grain splits or shank splits or shells or — *A.* The majority of them was cordovan splits.

*Q.* What does that mean? *A.* The good part of the butt, the part of the butt suitable for cordovan. That was shipped to Boston in a finished state.

*Q.* Was there anything else shipped, if you know? *A.* Not to Boston.

*Q.* Well, to Bristol? *A.* There were a few splits.

*Q.* And how about shanks? *A.* No shank splits, that I remember.

*Q.* Is one part of the shank split called the grain split, or isn't that term applied? *A.* Well, you might call it a grain split or flesh split.

*Q.* Which part was shipped to Bristol? *A.* The grain split.

*Q.* That is, the hair side? *A.* That is, the hair side.

*Q.* Now, you say they do not tan offal in your trade or business? *A.* No, sir.

*Q.* They do not pickle it either, do they? *A.* No, sir; sell it as glue stock.

*Q.* Do they tan or pickle any pieces of the skin that are usable commercially as leather? *A.* I don't quite—

*Q.* I will put it in another way. If a piece of the hide can be tanned into leather would it be offal? *A.* No.

*Q.* The pieces of butt grain splits that Lichtman got were of about what size? *A.* About 3 to 4 feet.

*Q.* Now, you spoke of the shank splits as being 3 or 4 square feet? *A.* Yes.

*Q.* What do you say about the butt grain splits? *A.* Well, I don't think they would average over 4 feet, at the furthest—the butt.

Q. You are talking, then, of the average? A. Yes, of the average.

Re-cross-examination by Mr. Riker.

Q. Mr. Conway, the chief value of the butt is the cordovan, is it not? A. Yes, sir.

Q. And the grain split is taken off of the cordovan, or butt piece, not with the purpose of making that any particular size, but for the purpose of producing the cordovan below, is it not? A. Well, I do not think the cordovan is as good where it is split off as it is where it is shaved.

Q. I did not ask you that; I asked you whether the piece that was taken off, the grain split off the butt, is not a secondary consideration, and whether the cordovan is not the main thing in the butt? A. Well, the cordovan is the main value, of course, but it does make a difference in the value whether you shave it off or whether you split it off.

Q. But you did not attempt to make the butt split, the grain split of the butt any special size; you took it as it was necessary to get it off from the cordovan? Wasn't that what you were doing? A. I won't say that.

Q. You mean to say that you took off a grain split without regard to what effect it would have on the cordovan? A. We have done a good deal of that.

Q. You have done a good deal of that? A. Yes, because the split was all velvet and the cordovan wasn't.

Q. What do you mean by that? A. Why, Guigues could get something for the split and sell it; he couldn't sell the cordovan.

Q. But the cordovan was what he was sending in its finished shaped to his principal, was it not? A. Got so much a foot for tanning and finishing it.

Q. And you mean to say now that he split, knowingly, a grain split off the cordovan without regard to what effect it would have on the cordovan? A. I wouldn't

say that altogether, but he sacrificed the cordovan a good many times.

*Q.* And when you sacrificed the cordovan what did you do with that particular grain split? *A.* Well, either pickled or sold it.

*Q.* Or sent it to Mr. Baker, at Bristol? *A.* No.

*Q.* Why do you say that? *A.* Because I say we tried it, and we stopped it; it was shipped on for a short time, probably a month, and there was complaints about it, and we stopped it.

*Q.* You sent it untanned, did you not? *A.* No, we tanned it.

*Q.* And sent it on finished? *A.* Yes. And they stopped it. Naturally, these grain splits accumulated in the pickle, and some of them in the tan, and Mr. Lichtman bought them.

*Q.* When you measured your butt, 3 or 4 feet, had it been trimmed? *A.* Well, there isn't much trimming on a butt.

*Q.* Well, isn't there? *A.* Only the shank.

*Q.* The grain splits off the cordovan, were they 3 or 4 feet, too? *A.* Well, they might average a little more than that; they might average 4 or 5 feet; I should judge 4 feet average is all right.

*Q.* Did they have any trimmings on them? *A.* No.

*Q.* They were uniform, were they? *A.* Yes.

*Q.* They were the same dimensions as the cordovan? *A.* Yes.

*Q.* And they ran a uniform thickness? *A.* No, but that didn't make any difference; we couldn't shave it afterwards, or resplit; we had to let it go, some thicker and some thinner.

*Q.* And some, in some cases, as thin as a sheet of paper? *A.* Yes, some in the pickle water, but not often.

*Q.* And sometimes they were nothing but shavings, were they? *A.* No, we could split them all—practically all of them.

*Q.* And in a great many cases there was a little piece

on the edge, and it would taper off to a shaving, isn't that right? *A.* Yes.

*Q.* How do you explain that with your almost immediately prior testimony that the grain split came off the same size as the cordovan? *A.* So far as measurement is concerned.

*Q.* And still you say it tapered off to a shaing? *A.* Yes, but the measurement would be the same. There is no piece of leather split that would be the same substance all the way through; they are bound to vary somewhat.

*William G. Price,* sworn in behalf of plaintiff.

Direct examination, by Mr. Skinner.

*Q.* Mr. Price, what is your business? *A.* Leather manufacturer.

*Q.* How long have you been such? *A.* Thirty years.

*Q.* And what kind of business have you done? *A.* On different hides, you mean?

*Q.* Well, have you done the business of tanning hides? *A.* Tanning?

*Q.* Have you tanned hides of your own or have you tanned hides for other people? *A.* I have tanned hides for my own benefit, and also for other concerns.

*Q.* How much of that kind of business, the tanning for other people, have you done? I tanned for John R. Evans & Company.

*Q.* For how long a time? *A.* Three years.

*Q.* Generally, I do not ask any particular one, but how long have you been in the business of tanning hides for other people? *A.* Fifteen years.

*Q.* Are you familiar with the customs of the trade so far as they have to do with the tanning of hides for other people? *A.* I am, thoroughly.

*Q.* Is there any custom of the trade as to any part of the hide being retained by the tanner? *A.* There are.

*Q.* What is the custom?

Mr. Riker—I object to the testimony at this

stage, because I cannot see its relevancy. This tanning was supposed to be done under a contract, and under custom. It is explicit as to what shall be done, so far as I can see.

Mr. Skinner—That is the very point in which it is not. The contract says nothing about what shall be done with waste or trim, or anything of that kind, and would, like many other contracts of that kind, have to be read in the light of trade custom or usage.

At one o'clock P. M. the court takes a recess of one hour.

After recess.

The Court—I overrule the objection.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

*Circuit Court Judge.*

*William G. Price,* resumes the stand in behalf of plaintiff.

Direct examination (continued), by Mr. Skinner.

Do you understand what the question is? *A.* Yes.

*Q.* Go ahead and answer it. *A.* Give me that again, please.

[The stenographer reads from the record as follows: "*Q.* Is there any custom of the trade as to any part of the hide being retained by the tanner? *A.* There are. *Q.* What is the custom?"]

Witness—There are.

*Q.* What is the custom? *A.* Well, the offal.

*Q.* What is meant by the word "offal" in the custom of the trade? *A.* "Offal" means parts of the hide that doesn't manufacture leather; in other words, it is fit for glue stock.

*Q.* Now, the splits, or divisions of the hides such as butt grain splits—that is, the splitting from the butt of the grain side of it—is that such as can be used for leather? *A.* Yes, sir.

*Q.* And by the custom of the trade does that go to the man who shipped the hide or is it retained by the tanner? *A.* It goes to the man who ships the hide.

*Q.* And how about the shanks, that part of the hide called the shanks, whether split or not, does that go back to the man who shipped the hide or is it retained by the tanner? *A.* It goes back to the man who ships the hide.

*Q.* Is the split from the flesh side of the butt a split that can be used for leather? *A,* It is.

*Q.* And under the custom of the trade which does that go to, the manufacturer who shipped the hide to the tanner, or is it retained by the tanner? *A.* It goes back to the man that shipped the hides.

*Q.* And if the shank itself is split, do either of the pieces that result from that splitting go to the tanner? *A.* It does not.

*Q.* And as to both of them, where do they go? *A.* They are supposed to be manufactured into different kinds of leather and returned —

*Q.* I mean do they go back to the manufacturer? *A.* They go back to the man that shipped the hides.

Cross-examination by Mr. Riker.

*Q.* What is your business, Mr. Price? *A.* Leather manufacturer.

*Q.* What kind of leather? *A.* All kinds of leather, horse, cow and goat.

*Q.* What has been your experience with horse leather? *A.* I have manufactured, I suppose, on an average from sixty to seventy-five dozen a day for the last two years.

*Q.* For whom? *A.* For the Corona Kid Manufacturing Company.

*Q.* For the last two years? *A.* Yes, sir.

*Q.* And with that exception, have you manufactured any horse leather? *A.* I have.

*Q.* When? *A.* In Germany, in 1901.

*Q.* How long did you continue that? *A.* Well, I suppose about a year.

*Q.* Did you do that under contract or for yourself? *A.* I did that under contract; I had a contract with Cornelius Heyl & Company, Worms, Germany.

*Q.* They are the great patent leather men, are they not? *A.* That is right.

*Q.* And you had a contract that covered the whole subject-matter, did you not, in that case? *A.* Again, please?

Mr. Skinner—I object to the question. What contract he had with Mr. Heyl seems to me to be absolutely irrelevant.

Mr. Riker—I want to test his knowledge of the trade custom.

Mr. Skinner—I renew my objection, that the contract with Mr. Heyl can in no way operate to test his knowledge or experience.

The Court—The question is whether it would throw any light on the existence of a custom that the witness invokes.

Mr. Riker—That is all.

The Court—For that purpose I will admit the question.

Plaintiffs pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Did you have a contract covering the whole subject-matter? *A.* Yes, sir.

*Q.* And with that exception have you had any experience in the matter of tanning horse hides? *A.* I did not.

*Q.* Where are you tanning now for the Corona Kid Company? *A.* At Chester, Pennsylvania.

*Q.* Have you ever done any in New Jersey? *A.* I did, in Merchantville, New Jersey.

*Q.* For whom? *A.* For John R. Evans & Company.

*Q.* What kind of leather? *A.* Goat hide.

*Q.* Any horse hides? *A.* No horse hides.

*Q.* Is there any difference between glue stock and offal? *A.* Well, offal in our line of business is supposed to be glue stock.

*Q.* In your use of the word, offal simply means glue stock. *A.* It does.

*Q.* Is hair glue stock? *A.* No, but—

*Q.* Is it offal? *A.* It is offal. It is used for different purposes. Hair isn't an offal in regard to leather; hair isn't leather. You say the offal in regard to glue stock, is it glue stock? I answered that question by saying that the offal is glue stock.

*Q.* I asked you what was the difference between offal and glue stock, if there was any? *A.* I answered the question by saying that the offal was glue stock.

*Q.* I asked you whether hair also is not part of the offal? *A.* You can't make glue out of hair.

*Q.* I asked you, is hair part of the offal, Mr. Price?

The Court—You may answer the question.

*A.* That is part of the offal.

*Q.* When you were working in Germany, in 1901, did you split the flesh split from the shank?

Objected to as not cross-examination.

Mr. Riker—I am trying to find out in his own trade and experience what was included within the term "offal." He has been testifying as to certain things, that flesh split, for instance, from the shanks were not part of the offal.

The Court—I suppose the witness in speaking of a trade custom is confining his testimony to an American trade custom. That be so, the custom under a German contract on the other side, where I understand the witness was work-

ing, does not throw much light on the matter. * * * If the objection is urged, I will sustain it. If Judge Skinner does not care about his objection, I will let the witness answer the question.

Mr. Skinner—I objected primarily for the purpose of keeping the case within proper limits, and I think I ought to retain my objection for that reason.

The Court—Then you do not waive it?

Mr. Skinner—No.

The Court—I sustain it.

Defendant's counsel pray an exception to the ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Then the only experience that you have in this country is in the last two years, in the employ of the Corona Kid Company; is that it? *A.* That is all, on the horse.

Re-direct examination, by Mr. Skinner:

*Q.* Is there any difference in the trade custom that you have been speaking of with reference to goat leather, horse leather or cow leather? Is there one custom, I mean—

Mr. Riker—I object as not re-direct examination, and the question of the custom as to other trades is not of any importance.

Mr. Skinner—It is not another trade; it is the same trade, the same custom; and it is directly responsive to the cross-examination, because the last question of Mr. Riker's was that this man's experience was limited to horse hides, and I want to show that his knowledge of the custom is not limited to horse hides; in other words, if his knowledge of the custom is to be

assumed to be limited by his experience in the trade, I want to show that the trade custom is the same in all forms of the leather manufacture that he has had experience in.

The Court—I think you may answer the question.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

*A.* There are not.

*Joshua L. Elliott,* sworn in behalf of plaintiff.

Direct examination by Mr. Skinner.

*Q.* Mr. Elliott, where do you live now? *A.* Flemington, New Jersey.

*Q.* How long have you lived there? *A.* Two years last September.

*Q.* That would be 1908. Prior to September, 1908, where did you live? *A.* Newark.

*Q.* For how long? *A.* Lived there since 1900.

*Q.* During that period, between 1900 and 1908, did you have any connection with the business of Albert A. Guigues, in this city? *A.* I was employed by Albert A. Guigues in March, 1904.

*Q.* Until when? *A.* I resigned from the Albert A. Guigues Leather Company in January, 1908.

*Q.* That business, then, was incorporated in the meantime? *A.* In October, 1905; I think October was the month.

*Q.* What was the nature of your employment by Mr. Guigues during the first portion of that time, March, 1904? *A.* Bookkeeper, general manager of the office, billing clerk, and, in fact, I had entire charge of the office.

*Q.* Later did you have any other position there? *A.*

After it was incorporated—Mr. Conway resigned around 1905—Mr. Guigues put me out in the factory as assistant to him.

*Q.* That was after 1905, and that was after the incorporation? *A.* Yes.

*Q.* Well, then, we do not care about it. Now, as the bookkeeper of Mr. Guigues, what did you do in the way of the books for his business? *A.* Why, I had to keep all records of the office.

*Q.* Did you ever see Mr. Baker there? *A.* Oh, on several occasions.

*Q.* I mean to ask you, Mr. Elliott, now particularly about the period from the commencement of your employment until the time that you mentioned as the time of incorporation, I think September or October, 1905. At the time that you entered Mr. Guigues's employment where was his place of business? *A.* Ferry, Monroe and Madison streets.

*Q.* Do you know whether he had been there any length of time, or was the business then started? *A.* Oh, he started the business there.

*Q.* How was that plant equipped, what was the general nature of it? *A.* Before he went there?

*Q.* No, after he went there. *A.* Why, he equipped it for tanning horse hides.

*Q.* And what goods were tanned by him there, goods from what company? *A.* In the beginning, the Corona Kid Company, horse butts.

*Q.* And later what? *A.* Why, colt skins, horse fronts and some few kip skins.

*Q.* Now, the earlier part was horse butts? *A.* Yes, sir.

*Q.* By that term do you mean the portion of the horse hide that is over the buttock of the animal? *A.* Yes.

*Q.* Including the part that goes over the hind legs, or the two shanks? *A.* Yes, sir.

*Q.* Did you know that the goods that he was working

on came from the Corona Kid Company? *A.* Yes, sir.

*Q.* How? *A.* Why, I knew of the contract.

*Q.* How did you know that they were the goods of the Corona Company? *A.* Because they were shipped to us from the Corona Kid Company and received as such.

*Q.* Were there few or many of these butts at the time we are mentioning, 1904 and 1905? *A.* Oh, there were lots of them.

*Q.* Well, give us some rough idea. *A.* Well, we were putting through there anywhere from a hundred to 200 dozen a day for about a year, so that you can see what it is.

*Q.* Was that any part of this time that I have mentioned, 1904 and 1905? *A.* When we were receiving them?

*Q.* This period when you put them through at the rate of about one or two hundred dozen. *A.* Oh, yes.

*Q.* Was that in 1904 and 1905? *A.* 1904 and the early summer of 1905.

*Q.* Did you ever see Mr. Julius Lichtman there at Guigues's works? *A.* Very seldom.

*Q.* Did you ever see this Mr. Lichtman [indicating]? *A.* Yes, I have seen Mr. Abe Lichtman.

*Q.* Mr. Abe Lichtman. More than once? *A.* Yes.

*Q.* Do you know anything at all about any portion of the butts that came from the Corona Kid Company going from the Guigues factory to Mr. Julius Lichtman? *A.* Well, the tanned grain splits and the horse shank splits and some buffings.

*Q.* During the period of 1904 and 1905? *A.* Yes.

*Q.* Prior to the incorporation of the Guigues Company? *A.* Yes, sir.

*Q.* Did you keep any record of the goods that went to Mr. Lichtman? *A.* Yes, sir.

*Q.* Under instructions from anyone? *A.* Mr. Guigues.

*Q.* How did you keep that record? *A.* A set of private books.

*Q.* Tell us what Mr. Guigues's instructions were, if you remember? *A.* Why, the first shipment went out—

Mr. Riker—One moment. Before he answers the question I desire to object on the ground heretofore offered; that is, that conversations not in the presence of the defendant are not admissible to bind the defendant.

The Court—I will make the same ruling as I have heretofore, without repeating myself and giving the reason.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Tell us the instructions. What instructions did you have from Guigues about the goods? *A.* When the first shipments went out I started to make a record of them in regular form, and he says, "You shouldn't put them in the"—that is, in the Albert Guigues leather works; that is, in his books; that I should get a separate set of books and keep those records in; that was for his own private use; and I went to the Baker Printing Company and got a journal, a cash book and a ledger, and kept a record in those three books.

*Q.* What did you keep a record of in those books? *A.* Of the stuff that was shipped out to Mr. Lichtman.

*Q.* Did you keep in those books records of shipments to other people than Lichtman? *A.* There were some small shipments to others, yes, sir.

*Q.* How about the shipments to the Corona Kid Company, where did they appear? *A.* They were kept in the regular set of books in Guigues's office.

*Q.* When was the last you saw those three books;

that is, the private books? *A.* Around January 1st, 1908.

*Q.* Where were they then? *A.* I put them in the safe.

*Q.* At the Guigues works? *A.* Yes, sir.

*Q.* Do you know where they are now? *A.* I do not.

*Q.* Did you ever make a copy of them? *A.* I did.

*Q.* I show you a paper, or some papers, here consisting of yellow sheets, and ask you if that is the copy that you made [shown to witness]? *A.* It is.

[The papers shown to witness are marked *P 2* for identification.]

*Q.* In those three books you said that you made a record. What kind of a record? I do not ask you to tell me what the books contained, but just the character of the entries? *A.* Dates, the classification of the stuff, the number of pounds and price per pound and the extensions.

*Q.* While you were there what was the character of goods that went back to the Corona Kid Company? *A.* Well, the finished cordovan went to Boston and the tanned shank grains went to Bristol, and some tanned butt grains went to Bristol for japanning.

*Q.* Anything else? *A.* And later on, when we got to manufacturing the fronts and colt skins, they all went to Bristol.

*Q.* But prior to that time? *A.* No, during the 1904 period that was the stuff.

*Q.* Now, during that period, up to the time of the incorporation of the Guigues business, that you have mentioned, was there anything tanned for the Corona Kid Company other than the butts? *A.* Very few. There was one or two packs or horse hides run through, colt skins to try out. Butts was the principal business.

*Q.* You talk about butt grain splits. Isn't that the term? *A.* Yes.

*Q.* What do you mean by that? *A.* I mean the grain off of the horse butt.

*Q.* Which side of the hide is the grain side? *A.* The hair side.

*Q.* Then is the butt grain split, the hair side of the butt split off? *A.* Yes, sir.

*Q.* Some of those, you say, went to the Corona Kid Company? *A.* They went to the Corona Kid Company when they were chrome tanned.

*Q.* Give us a description of the kind of goods that went to Lichtman. *A.* Well, the butts were tanned in bark for cordovan and then were stuff, the oil process, and they were split, and the grain split went to Mr. Lichtman off all the butts.

*Q.* And when the grain split went to Mr. Lichtman what was its condition as to tanning, was it or was it not tanned? *A.* It was tanned.

*Q.* Then were there any instructions given you by Mr. Guigues as to these sales or shipments to Mr. Lichtman?

Mr. Riker—The same objection as to the last conversation.

The Court—The same ruling.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Were there any instructions? *A.* As to the shipments made to Mr. Lichtman?

*Q.* Yes. *A.* Yes, sir.

*Q.* What? *A.* That this certain class of goods were to be shipped to Mr. Lichtman and billed up to him.

*Q.* Was anything said to you further about those Lichtman goods? *A.* They were shipped over, and I either sent over for a check or Mr. Lichtman brought it in, and he instructed me to get it out before Mr. Baker got there.

*Q.* What was that instruction? *A.* Why, that was both sides, so far as that is concerned.

*Q.* What do you mean by "from both sides"? *A.* Mr. Lichtman and Mr. Guigues both.

*Q.* Did you get that sort of instruction from Lichtman? *A.* I did.

*Q.* From which Mr. Lichtman? *A.* I presume it was this one—over the telephone; I recognized his voice as such.

*Q.* So that it came over the telephone? *A.* Yes, sir.

*Q.* Tell us what that was. *A.* Simply Mr. Baker would be here to-morrow——

Mr. Riker—I desire to interpose an objection on the ground that this Mr. Lichtman has not yet been connected with the defendant in this case; you cannot bind him by conspiracy; and also on the ground that this appears to be a reliance on the telephone, which I do not understand to be a recognized means of identification.

The Court [after argument]—The question that constantly presents itself to a trial judge is not with respect to what certain testimony conclusively proves, but what it tends to show. Now, there is some evidence in the case from which an agency might be inferred in the business by Mr. Abe Lichtman for Mr. Julius Lichtman. As to the telephone call, I have no doubt that testimony of telephone messages in a voice recognized by the receiver is competent.

Mr. Riker—Your Honor will remember that he said he presumed it was his voice.

Mr. Skinner—He added, "I recognized his voice."

The Court—He did not see him, but he thought he knew his voice.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[The stenographer reads the last question and answer.]

Witness—And that I should ship the goods out before he got there.

*Q.* [By the Court.] This is what you got over the telephone, is it? *A.* Yes, sir.

*Q.* [By Mr. Skinner.] Did you ever see Mr. Abe Lichtman around the works there? *A.* Yes, sir.

*Q.* What was he doing there? *A.* Looking at the stuff; looking over the stuff that he was getting from there, and different lines of stuff throughout the factory.

*Q.* Did you ever get any payment for Mr. Guigues from the Lichtmans for the goods shipped to them? *A.* Did I ever get any payments for Mr. Guigues?

*Q.* Yes. *A.* Sure, I got the checks; most of them passed through my hands.

*Q.* Did you get any of them other than by mail; that is, personally? *A.* Oh, yes, I would go over for them, and part of the time he would come over and bring them.

*Q.* Who do you mean would come over? *A.* Mr. Abe Lichtman.

*Q.* Then the payments for these goods were made by Mr. Abe Lichtman? *A.* Yes, sir. The check was signed "Julius Lichtman."

The Court—The check was handed to the witness; it was the check of his father.

Witness—"A. Lichtman, Attorney," I think.

*Q.* [By the Court.] You think that was the check? *A.* Yes, sir; "Julius Lichtman, A. Lichtman, Attorney," I think.

*Q.* [By Mr. Skinner.] Did you make up and render to Julius Lichtman any statements of the account as

between him and Guigues? *A.* Different settlements, yes, when a settlement was made. Sometimes we would receive checks on account, but when a settlement was made we would make up statements.

*Q.* And the statement would contain what?

Objected to.

Mr. Skinner—We now call for the production of the receipted bills in the possession of Julius Lichtman, the defendant, for goods purchased from Guigues during the period mentioned, also the checks.

Mr. Riker—Just what is it you want?

Mr. Skinner—Any and all receipted bills for goods purchased by Mr. Lichtman from Albert A. Guigues during the years 1904 and 1905, up to September 8th, also the checks for the same period.

Mr. MacMahon—That is all we have [handing papers to plaintiff's counsel].

Mr. Skinner—The receipted bills, haven't you those?

Mr. MacMahon—No.

Mr. Skinner—Then the record will show that in response to my call there is given to me a number of checks—there are eleven—and that the defendant says that he is not in possession of any receipted bills.

Mr. Riker—No, he does not say that; he says that there were none, and therefore he produces none.

Mr. Skinner—That is the statement of the defendant, Julius Lichtman?

Mr. Riker—That is the statement made on behalf of the defendant made by his counsel.

Mr. Skinner—I will return one of the eleven checks, making ten only that he produces, the one that I returned not being to the order of Mr. Guigues. I call particularly for a check of the date of December 30, 1904. It is not included in those that the defendant produced.

Mr. Riker—That is all. We produce ten additional checks [handing papers to plaintiff's counsel].

Mr. Skinner—I again call particularly for the check of the date of December 30, 1904, not finding it among these. I think perhaps I have it. I mean to say that our credit is two days later. I was asking with reference to a date that we believed to be the date of payment, and I find one of December 28th that, I think, is the one I am asking about.

*Q.* I show you, Mr. Elliott, a check bearing date December 28, 1904, for $890.21, signed "J. Lichtman, A. Lichtman, Attorney," and ask you if that resembles in any way the checks that you have been speaking of as received by you? *A.* Yes, sir.

*Q.* How does it resemble them? *A.* Well, it is the same check I handled.

Mr. Skinner—I offer this check in evidence. [Marked *Ex. P3.*]

Mr. Riker—I understand the rule to be that, the checks having been called for, they are in evidence when produced in response to the call of the plaintiff.

Mr. Skinner—I do not feel myself bound by counsel's understanding, but I object to his statement of it now.

Mr. Riker—I understand when they are called for by either party they are in evidence.

The Court—I will rule on the question when it arises.

Mr. Skinner—I again call specifically for a check of February 7, 1905, or within a day or two prior to that.

Mr. Riker—February 6, 1905 [handing paper to plaintiff's counsel].

Mr. Skinner—Possibly we have not yet got all the checks within that period. Then I will

call again for all the checks within the period that I have just named.

Mr. Riker—The trouble is that your call is for all the checks, and we therefore have not sorted them out, and you ask us to sort them out now. Your call is for all the checks. We have got all the checks here, in accordance with your call. There is another one [handing paper to plaintiff's counsel].

*Q.* Now I show you, Mr. Elliott, check bearing date December 2, 1904, by J. Lichtman, to the order of A. A. Guigues, $2,000, and ask you if that is one of the checks that came to Mr. Guigues [shown to witness]? *A.* It looks as though it is the same check; this is Guigues's indorsement.

Mr. Skinner—I offer it in evidence.

[Marked *Ex. P4.*]

Mr. Skinner—I offer in evidence a check bearing date January 30, 1905, for $1000.

Marked [*Ex. P5.*]

Mr. Skinner—Also check of February 6, 1905, for $248.60, to the order of Guigues.

[Marked *Ex. P6.*]

*Q.* Now, Mr. Eliott, as you made these entries in the three books you have spoken of—I think you said that you made up statements. To whom did you ever render any of those statements in person? *A.* Mr. Abe Lichtman.

*Q.* Do you recall whether any of those checks that I have been offering, *Exhibits P3, P4, P5 and P6,* were received by you under those circumstances?

Mr. Riker—Under what circumstances?

Mr. Skinner—Circumstances of the tendering of a settlement statement to Mr. Abe Lichtman.

*A.* I couldn't positively specify the check that I received at any particular time; that is, I can't identify these checks and refer to any exact date out of my head that I took any of them.

*Q.* Well, have you any recollection— *A.* I went over there several times after money.

*Q.* No, but have you any recollection of going there after money with a statement and getting it at the—

Objected to as leading.

Mr. Skinner—He has said that he went there with a statement and got the money.

*Q.* Did you ever do that at or around any of the dates that appear on those two checks? *A.* Yes; that is, during the months after July, any time thereafter, right along.

*Q.* July of what year? *A.* 1904.

*Q.* Well, now, this paper that was marked P2 for identification, I think you said that that was a copy of the private books that you kept. Who made the copy? *A.* I made it.

*Q.* When did you make it? *A.* During the 1st of January, 1908.

*Q.* I ask you to use those yellow sheets, marked P2 for identification, as memoranda to refresh your memory, and after thus refreshing your memory, to tell us whether there were any goods sold to Mr. Lichtman between November 28, 1904, and January 21, 1905, both of these dates inclusive.

Mr. Riker—Objection is made to the use of those papers for the purposes suggested on the ground that the originals are not accounted for, and that a copy of a memorandum is not a memorandum that can be used to refresh memory. The original is the thing that is capable of use, and if this testimony is competent, if this way of testifying is legal at all, it must be based upon the original and not upon a copy. I further object on the ground that the books of Mr. Guigues are not evidence of anything except as admissions against himself, where he is directly concerned, and are not evidence in a controversy between third parties; that if they are evidences at all they are evidence under the law merchant

between the parties, and not between third parties.

The Court [after argument]—The reference to Wigmore seems to authenticate the use of a copy for the purpose of refreshing recollection. The books were not in the custody of the witness; they were not books for which he was responsible after he left the employ of Mr. Guigues. I hardly think he ought to be required to hunt them up. I think that this paper is admissable for the purpose that I indicate. That leads me to overrule the objection.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. Riker—Now I desire to cross-examine upon what he proposes to use.

The Court—Yes, you may do that.

By Mr. Riker:

*Q.* Now, Mr. Elliott, the original books which you have made a copy of for some unexplained reason, what did you enter in those? *A.* The original books was a journal——

*Q.* What did you enter? *A.* The shipment of stuff that went out to Lichtman.

*Q.* Did you make the shipments? *A.* I made part of them personally.

*Q.* And the other entries that you made in the books of the shipments, who gave you those? *A.* Other than those I shipped myself?

*Q.* Yes. *A.* From a little shipping book that was used in this one department, shipping the stuff to Mr. Lichtman, a little book of that size (indicating), a little book with a fold in it, and the gross weight was put in there, and the net weight and the balance; if there

was any allowance or anything, it was put there; and it was transferred from there to the journal.

*Q.* Did you verify those shipments that were supposed to be contained in that little book? *A.* I weighed part of them myself.

*Q.* Those are the ones that you made yourself? *A.* Those are the ones that I transferred, that I made myself?

*Q.* Yes. *A.* Those I personally shipped myself.

*Q.* Yes. *A.* I didn't testify to that.

*Q.* What part of the entries of shipments were of shipments made by yourself? *A.* What part of the shipments were made by myself?

*Q.* What part of the entries that you put in the book— *A.* I made the entry from the little shipping book, whether I shipped it or whether the shipping clerk shipped it.

The Court—I think you were answering before the question was completely asked.

*Q.* What I want to ask is what entries in the books that you have produced for refreshment of memory copies of were shipments made by you personally? *A.* Oh, there were several of them.

*Q.* Can you identify them and pick them out? *A.* I can identify probably five or six of them, but I can't identify them all.

*Q.* How many years ago is this, Mr. Elliott? *A.* Oh, 1904 and 1905 and 1906 and 1907. This isn't pertaining to the butts split alone, you understand.

*Q.* I am talking about the entries in the books of which you produced copies to refresh your memory, and I ask you as to the entries that show shipments to Lichtman. How many of those were made by you personally? *A.* That I can identify?

*Q.* Yes. *A.* Why, I should judge there would be three or four, not over five or six, at the outside.

*Q.* And as to the other entries or shipments, you simply took a memorandum furnished to you by some-

one else? *A.* I took the book, the little shipping book. I saw the stuff before it went out, and so I know the stuff did go. As to the exact weight to the ounce, I can't swear to.

*Q.* How do you know it went, if you didn't see it go? *A.* I ordered the truck and saw the truck go by the window a dozen times, delivered over there. A telephone call came up. "This stuff isn't right, there is too much pickle in it."

*Q.* But the entries you were refreshing your memory of were not things that you did yourself, with possibly two or three or five or six exceptions? *A.* I can identify two or three, perhaps five or six, that I did myself, but I can't identify each individual shipment; some special stuff I can identify.

Mr. Riker—I object to the use of the memorandum except for the purpose of those shipments that he can identify.

By Mr. Skinner:

*Q.* Mr. Elliott, let us understand a little more clearly about this book. Some of the entries, I understand you to say, that were made in the private books, were made by you from some other book, called the shipping book, was it? *A.* A little shipping book, a little folding book.

*Q.* What was the course of business there as to the use of that little shipping book. Who had that, or who made the entries there? *A.* Why, generally, a kid by the name Bambrick, I think; that is, a boy about seventeen years old; he wasn't a kid. Well, he had that record; that is, he made records in it; and I did, and I don't know whether Mr. Conway did or not; but I know those two.

*Q.* Did you have any direction or supervision over the boy, Bambrick? *A.* Yes, he was generally in the office, one of the office staff.

*Q.* Did he have any duty at all with reference to these entries after he had made them? What was he to do with them? *A.* Turn them in to the office.

*Q.* What? *A.* Turn the book in to the office to say the stuff was shipped; that was as far as it went.

*Q.* When you say that he turned that in to the office, do you mean throw them in the door? *A.* No, brought them in and laid them on the desk, said, "Mr. Elliott, the stuff is shipped; here is the book."

*Q.* And what would you do? *A.* Billed the stuff, enter it in the journal and carry it along under the last column.

*Q.* How far does that apply to the entries of shipments in the private book that were not made by you? *A.* I don't exactly catch that question.

*Q.* As to the entries in the book of shipments that were not made by you, were all of them shipments that were reported to you by this young fellow, Bambrick, or were only part of them shipments that were reported to you by Bambrick, as to those that you had not looked after yourself?

Mr. Riker—Not including the ones that he made himself. There were some made by himself.

*A.* There were some made by other parties.

Mr. Riker—Now, I object to it on the ground it is immaterial. The question is the use of memoranda to refresh this man's memory of facts within his own knowledge. Now, the fact of whether those were reported to him by Bambrick or somebody else is not a material fact in this cause, and, therefore, the question is immaterial.

The Court [after argument]—I would like to examine this question a little further before ruling. I have never gone so deep into the subject of memoranda before.

Mr. Skinner—I think I should ask the Court at this point to permit the interruption of this witness' testimony, for the purpose of showing what inquiry has been made as to the existence

of the original books, thus possibly relieving the case of any question as to the admissibility of the memoranda.

The Court [after discussion]—You may go on.

Mr. Skinner—I will therefore withdraw Mr. Elliott for the present.

[The witness is directed to stand aside for the present.]

*George Inston,* sworn in behalf of plaintiff.

Direct examination, by Mr. Skinner.

*Q.* Mr. Inston, what is your employment? *A.* Expert accountant and auditor.

*Q.* Employed by whom? *A.* Lucius Beebe & Sons, of Boston.

*Q.* And have you ever had any connection with the Corona Kid Company in its different forms? *A.* With the Corona Kid Manufacturing Company.

*Q.* Did you ever visit the factory of Albert A. Guigues, in this city? *A.* I have.

*Q.* What do you think was your earliest visit? *A.* I should think some time in the early part of 1906.

*Q.* What did you do on the various occasions that you were at the office of Mr. Guigues, with reference to the books? *A.* I was sent down to—

Mr. Skinner—No.

*Q.* [By the Court.] What did you do? *A.* I examined the books.

*Q.* [By Mr. Skinner] Well, for whom did you go to the office of Mr. Guigues? *A.* Corona Kid Manufacturing Company.

*Q.* And as its representative, what did you do when you were there? I mean simply the general character of your work while there. *A.* I examined the books of account.

*Q.* Do not answer this question until Mr. Riker has an opportunity to object. Did you ever hear anything

of any private books showing the sales by Guigues to any other persons than the Corona Kid Company? *A.* Yes.

*Q.* Did you ever make search for those books? *A.* I did.

*Q.* When was it? *A.* I should say that was in February, 1908.

*Q.* And where was it? *A.* At the Guigues Leather Company's plant, foot of Lister avenue and Lockwood street.

*Q.* Why did you make it? *A.* Because I was told that there were three—

Objected to.

*Q.* What did you look for? *A.* Three special books, a journal, cash-book and day-book—a ledger.

*Q.* Was Guigues there? *A.* No, sir.

*Q.* Did you find them? *A.* No, sir.

*Q.* Did you find any books? *A.* Oh, yes, the regular factory books, which I had seen before.

*Q.* Before that had you seen Guigues? *A.* Yes, sir; the night before.

*Q.* And where was that? *A.* At the Manhattan Hotel, New York.

*Q.* And was anything said at that interview about the books I have mentioned?

Objected to.

Mr. Riker—I object on the ground that the testimony is incompetent, as being testimony of a conversation not in the presence of the defendant.

The Court—Under the theory I have adopted in trying this case, there was a foundation laid for this inquiry, so I will overrule your objection.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* [Question read.] *A.* Yes, sir.

*Q.* Just tell us what was said about the books.

Objected to on the same ground.

Objection overruled.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*A.* Mr. Baker, Mr. Guigues and myself were at the Manhattan Hotel, and a general conversation—

*Q.* Tell us what was said about the books, and nothing else. *A.* Mr. Guigues said that if I would come to the factory on the following day at eight o'clock in the morning, he would permit me to examine these three special books, which he described to me as being three narrow books; that is, they were long and thin, just the regular foolscap size books.

*Q.* He said that you could examine them? *A.* Yes, sir.

*Q.* Was what he said the first that was said about those books at that conversation? *A.* Well, I asked him the direct question whether the books existed.

*Q.* Tell us what you said about that. *A.* I asked Mr. Guigues whether there were a separate set of books kept in which special sales had been made, and he said there were, and that these books were in the safe at the factory, and if I would meet him there at eight o'clock on the following morning, he would permit me to make an examination of them.

*Q.* And you went there the next morning? *A.* I did, sir.

*Q.* And was he there? *A.* No, sir.

*Q.* And did you make any inquiry about the books? *A.* I did.

*Q.* Tell us what you did. *A.* I waited around for about two hours, perhaps, and then a telephone message came, and Mr. Garner, the then treasurer of the company, stated it was for Mr. Guigues and that Mr. Guigues stated that he had fallen off a car—

Objected to.

Objection sustained.

Mr. Skinner—I will consent that it be stricken out.

*Q.* I want only about the books. You heard something, and then you went on and did what? *A.* Then I asked Mr. Garner for the books, and he opened the safe and made a search for them, and I saw exactly the search, and they were not there; and then Mr. Garner said that the books—

The Court—No.

(Question read.)

*Q.* Did you do anything further in your attempt to get the books than to watch Mr. Garner's search?

The Court—Answer that yes or no.

*A.* Yes, I did.

*Q.* What did you do? *A.* I went to the accountant who was examining the books of the Guigues Leather Company.

*Q.* Who was he? *A.* I think it was Mr. Smith—some audit company in the Globe building.

*Q.* What did you do when you got to Mr. Smith? *A.* I presented a letter from Mr. Garner, who gave me an order to get those books.

*Q.* Who was Mr. Garner? *A.* He claimed to be the new treasurer of the company after Mr. Elliott resigned.

*Q.* Where did you see Mr. Garner? *A.* At the factory. It was he who searched for the books.

*Q.* So that after Garner searched for the books, he gave you some letter to Smith, and you went to Smith and asked him for the books? *A.* Yes, sir.

Q. And what did he say?

Mr. Riker—I object. This inquiry was made in 1908, not for the purpose of this suit, and the proper source of inquiry is Mr. Guigues. He is the person who owns the books, according to the testimony which you have introduced, and he is the proper person to explain what books are not available. He is available. You have his address.

Mr. Skinner—Why do you say that?

Mr. Riker—We have it. I will give it to you.

Mr. Skinner—Then I will call for it now.

Mr. Riker—I will give it to you.

The Court—The question is whether what Mr. Smith said is competent. I think it is not.

(After discussion the question was withdrawn.)

Q. You say something about Smith being the accountant of the company.

Mr. Riker—No, he said he was an accountant in the Globe building, as I understand the testimony.

Witness—He was an accountant—

Mr. Riker—Was it not Scott?

Witness—No, I think the name was Smith. The New Jersey Audit Company; I think it was called The New Jersey Audit Company.

The Court—Well, whatever his name was, he was the accountant of the New Jersey Audit Company.

Witness—He was the accountant of the Guigues Leather Company; he had the books there, the regular factory books, sir.

Mr. Skinner—If your Honor please, I think I ought to be permitted to show, that, asking A for the books, he was told by A, "Go to B, who has got them," and B says, "I have not got them; C has got them," and that he goes around from pillar to post without getting them.

The Court—Well, I think you have done that in an indirect way. "You made application to Mr. John Smith. Did you get them?" "No." "You asked for them?" "Yes." "Did you get them?" "No." "Pursuant to anything that Mr. Smith said to you about the books, did you do anything else—did you go to see anybody else?" That is often done.

*Q.* Did you get them from Mr. Smith, or Mr. Scott, or whatever his name was?. *A.* No, sir; but he gave me two check books and a personal bank book of Mr. Guigues's, in which the checks were entered.

The Court—Shall we call him Smith?

Witness—I am pretty sure the name was Smith.

The Court—Well, we will call him Smith.

Witness—Of the New Jersey Audit Company.

*Q.* What became of those books? *A.* I took them over to the—

*Q.* Ultimately what became of them?

Objected to.

*Q.* Have we got them now? *A.* I don't have them.

*Q.* (By the Court)—A bank book and two check books; is that what I understand? *A.* Yes, sir; a bank book of the Federal Trust Company and two check books.

*Q.* (By Mr. Skinner)—Do you know where they are? *A.* No, sir.

*Q.* After that did you go to anybody else looking for those three private books? *A.* Yes, sir; I went to Mr. Guigues.

*Q.* And what did you say to Guigues and what did he say to you? *A.* I went to Mr.t Guigues, and I told him I was disappointed in his not meeting me, and he said he had been looking for those books himself and hadn't found them and couldn't find them and didn't know where they were.

*Q.* Since that time have you had any other conversa-

tion with Mr. Guigues on the subject of the books? *A.* Yes, sir; on several occasions.

*Q.* Tell us what was said about the books. *A.* On each occasion that I saw Mr. Guigues, the time that he was being examined in bankruptcy proceedings, I asked him specifically about those books, and he always denied knowledge of them and said that they didn't seem to be in existence.

*Q.* What was the time you speak of, when he was being examined in bankruptcy? *A.* I think that was in the latter part of 1908.

*Q.* Later than that have you seen them at all? *A.* No, sir; but I inquired from the former bookkeeper and stenographer.

*Q.* Where did you go? Whom do you mean? *A.* I went to see Mr. Francis, who was—

Mr. Riker—This is all taken under the same objection, if your Honor please.

The Court—You do not object to the hunt for the books?

Mr. Riker—No.

The Court—Well, that is all we are inquiring about now.

*Q.* Whom did you go to? *A.* Mr. Francis.

*Q.* Who was he? *A.* He was the bookkeeper of the Guigues Leather Company.

*Q.* When? *A.* In 1908.

*Q.* Did you get the books from him? *A.* No, sir. He said that he had made every—

*Q.* Did you ask for them? *A.* I did, sir.

*Q.* Whom did you go to after that. *A.* I went to see Miss Bauerfelt, the stenographer for the Guigues Leather Company.

*Q.* Did you get the books? *A.* No, sir; she simply described them.

*Q.* And have you made any further inquiry? *A.* Yes, sir.

*Q.* Where? *A.* From Mr. Elliott.

*Q.* Anything further? *A.* No, I think that is the ex-

tent of it. I couldn't find him anywhere; nobody had them.

Cross-examination, by Mr. Riker.

*Q.* When did you inquire for Mr. Elliott? *A.* Well, I inquired for Mr. Elliott when he was in the bankruptcy court, at Newark, giving testimony.

*Q.* After he had been discharged by the Guigues Leather Company? *A.* Oh, yes.

*Q.* No longer in their employ? *A.* Yes.

*Q.* And had not been for some time when you inquired? *A.* I inquired, yes.

*Q.* That is the time you inquired? *A.* Yes, sir.

*Q.* You asked him whether he had the books? *A.* I asked him if he had any knowledge of it.

*Q.* That was in August, after Mr. Guigues had discharged him? *A.* Yes.

*Q.* You went to him for knowledge of Mr. Guigues's book at that time, did you? *A.* Yes, sir.

*Q.* Now, this bank book and two check books that you got from Smith or Scott, private books of Mr. Guigues's, what did you do with them? *A.* I examined them.

*Q.* What did you do with them? *A.* I took them to the office of Pitney, Hardin & Skinner and made an examination there.

Redirect examination, by Mr. Skinner.

*Q.* Mr. Inston, counsel said in his question, as it was framed, that you were asked if you saw Elliott after he was discharged by Mr. Guigues. Do you know whether he was discharged or not? *A.* Mr. Elliott told me that he had left the employ. I didn't know that he was discharged; he told me that he resigned.

Mr. Skinner—Now I call for the address of Mr. Guigues.

Mr. Riker—His address is Kingston, New Jersey.

*Abraham Lichtman,* sworn in behalf of plaintiff.

Direct examination, by Mr. Skinner.

*Q.* Mr. Lichtman, you are the son of Julius Lichtman, are you not? *A.* Yes, sir.

*Q.* I want to preface my question by saying to you that I am going to question you only about the whereabouts of Mr. Albert A. Guigues, and to ask you to be good enough to confine your answer to that subject so far as my questions are confined to that subject.

Mr. Riker—I do not think that is a material question at this time. We have given these gentlemen at their call an address of Mr. Guigues, and we cannot now have Mr. Lichtman subjected to examination upon our information that we gave them in answer to a call. This is not part of the case.

Mr. Skinner—It was volunteered as a part of our attempt to account for these books, and when the statement of counsel was made that we knew where he was, I called attention to the fact that that was hardly justified, and then he said that he knew, and I asked him for the address. It may be that we will do something further in the matter of accounting for the non-production of the books.

The Court—I see no objection to the line of inquiry proposed.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is signed and sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Mr. Lichtman, the information just given in open court that Mr. Guigues was in Kingston, New Jersey, came from you, did it not? *A.* Yes.

*Q.* How do you know that Mr. Guigues is now at

Kingston, New Jersey? *A.* Now I couldn't say; the last I knew.

*Q.* Then you were not giving the information as to Mr. Guigues being there now? *A.* Well, I don't know where he is at this present minute.

*Q.* Do you know where he was yesterday? *A.* No, sir.

*Q.* Or the day before? *A.* No, sir.

*Q.* Or the week before? *A.* No, sir.

*Q.* What is the latest information that you have as to where Mr. Guigues is? *A.* Well, I couldn't say exactly, but it was somewhere around when this case was first put against us, when this suit was commenced. I naturally made it my business to find out where Mr. Guigues was and where he stood on this matter, what he had to say, and—

*Q.* Did you find him? *A.* No, sir.

*Q.* And when was that? *A.* What is that?

*Q.* That was when the suit was begun? *A.* Yes sir; not right away.

*Q.* Back in 1910? *A.* Well, I couldn't say exactly; I don't remember the date.

*Q.* Well, was it in the year 1910? *A.* Well, if you will allow me to talk a little further, I will answer your question. I was in Europe at the time these papers were served on the firm, and my own papers, and, naturally, there was no answer given until I returned from Europe, and then we, naturally, hired counsel—

*Q.* And then it was after you returned from Europe? *A.* —and, naturally, I wanted to know by what means at all this suit was dared to be commenced—

*Q.* Well, it was after your return from Europe that you sought to find Mr. Guigues, was it? *A.* Absolutely.

*Q.* And when did you return from Europe? *A.* I can't say exactly now.

*Q.* Approximately? *A.* Well, no; I go so very often that it is pretty hard to be exact.

*Q.* Were you not married at that time?

Mr. MacMahon—This is since the case was started. That was only last December.

*Q.* Have you any way of fixing the year of your inquiry for Mr. Guigues? *A.* Yes, sir; I have by looking up letters.

*Q.* Not without that? *A.* No, sir. I think I telephoned Mr. Elliott to give me the information.

*Q.* I am asking about the time. *A.* Well, I am trying to fix the time by that.

*Q.* Well, can you fix it by that? *A.* I think so.

*Q.* Well, when was that? *A.* I will have to get my copy-book to look up the matter. And I also wrote another letter to Mr. Guigues's brother in Newark, which I got from the directory, and asked him if he wouldn't be kind enough to advise me, if he possibly could, of the address of his brother, where I could get him, and, naturally, I wrote Mr. Guigues in Newark, and he answered me by saying, "My brother can, no doubt, be found at Kingston, New Jersey."

*Q.* When was that? *A.* I can't say.

*Q.* Well, you are so very exact— *A.* No, I am not exact; I can't be exact.

*Q.* Is that the last you heard? *A.* You want an exact answer, and I can't give it.

*Q.* No, you are mistaken; I want the best answer you can give. *A.* The best answer will be that I can give you exactly to-morrow morning, when my copy-book, the firm's, will be produced, and you can see where I tried to find him.

*Q.* Was that the last time anybody told you anything as to where Guigues was? *A.* Yes, sir.

*Q.* And whatever information you gave here to-day in court as to Mr. Guigues's present address was based on this information that you have been telling us was received some time ago, the exact date you do not remember? *A.* Yes, sir.

*Q.* And to-morrow you can tell us when that was? *A.* Yes, sir; you can have the exact date of the letters.

*Q.* I do not want them; I want the time, that is all. *A.* All right.

*Q.* At any rate, it was more than a year ago, was it not? *A.* That I can't say. Those things are—

*Q.* Well, at any rate it was more than six months ago; can you not say that? *A.* I will tell you exactly tomorrow morning.

*Q.* Can't you tell me now whether it was more than six months ago? *A.* For the reason that I want to be exact.

*Q.* Can't you say now that it was at least six months ago? *A.* I am rather sure.

*Q.* Well, you can be dead sure that it was more than three months ago? *A.* Absolutely not.

Cross-examination waived.

*William M. Brown,* sworn in behalf of plaintiff.

Direct examination, by Mr. Skinner.

*Q.* Mr. Brown, you are an attorney-at-law of this State? *A.* Yes, sir.

*Q.* And have you been counsel for Mr. Albert A. Guigues? *A.* I have been.

*Q.* And have you had knowledge of his whereabouts? *A.* Yes, sir.

*Q.* Where did he live in 1904 and 1905? *A.* Perth Amboy.

*Q.* Do you know whether he left his residence there? *A.* He did.

*Q.* When was that? *A.* I think that was in 1908, or thereabouts.

*Q.* And do you know where he went to live after that? *A.* He went to a farm at Kingston, near Princeton, New Jersey.

*Q.* And do you know how long he stayed there? *A.* I don't know exactly how long he stayed there; I never was down there to see him. I know that he told me about six months ago—he came in the office, and he told me that he hadn't been there in a year and a half, he sold the place.

*Q.* And did he tell you anything, then, at this time about six months ago, as to where he was at that time? *A.* I asked him where he had been, and he said he had been down on Long Island, in New York. He didn't give any address.

*Q.* Do you know where he is now? *A.* I do not.

Cross-examination, by Mr. Riker.

*Q.* Are you Mr. Guigues's counsel now? *A.* Well, I haven't seen him to do any business for him in about a year and a half.

*Q.* You have had no communication with him? *A.* Well, he came in to see me about six months—probably six or eight months ago, I think.

*Q.* Well, then, you have seen him within a year and a half?

The Court—He said he had done no business for him.

*Q.* Did he came to see you on a matter of business at that time? *A.* No, sir; merely a matter of knowing where I was going shooting in the fall.

*Q.* And he told you that he was on Long Island? *A.* Told me that he had been on Long Island, in a hospital.

*Q.* Where? *A.* I couldn't name the place.

*Q.* Did he name it at the time? *A.* He certainly did. I asked him what hospital he was in, and he said what it was.

*Q.* What did he say about New York? *A.* He said he was living in New York.

*Q.* Did he give you his address? *A.* No, sir; I asked him for his address, and he said he didn't want anybody to know his address.

*Q.* Was he going shooting with you? *A.* Yes, sir. That was the latter part of October.

*Q.* But he did not tell you where you could find him or where you could address a letter to him? *A.* He did not.

Mr. Skinner—Now, with the testimony that

we have before the Court as to the books, the search for them, their disappearance; the statement by the owner of the books, first, that he could not find them, that they had disappeared—first his promise to let them be examined, and then his statement that he could not find them; the inquiry that has been made to find the owner, Guigues, and the fact that any such inquiry is unavailing, that Guigues is out of the State, out of reach of subpœna; that to find him would be useless, so far as compelling his appearance here is concerned; it seems to me that we are in the situation, then, of having here copies of books of entry made in the course of business, and that these copies are evidential; that the books themselves would be; that the copy may be offered in evidence in place of the original; and I offer these yellow sheets, the copies referred to, in evidence.

I think I should also make my offer on a separate ground. I also call the Court's attention to the fact that these yellow sheets have been testified to by Mr. Elliott as being the record of his past recollection of the events that are recorded here on these sheets.

Mr. Riker—You are offering it as an exhibit?

Mr. Skinner—I offer it as an exhibit, as a document in evidence, as having probative force of itself, and not simply to be used as a memorandum by the witness, refreshing his memory, and that it then comes, from those two points of view, within the admissibility of copies of books of entry, the original having been found to be unavailable; and I have authority here in support of that position.

Your Honor will remember that these entries in the books were statements or entries made by Guigues through his subordinate, at the direction of Guigues, and that Guigues was one of two people engaging in a joint wrong that was being

perpetrated upon the plaintiff company, and that these statements by Guigues, made by him or his subordinate by his direction, would be statements that would bind the other joint tort feasor.

Mr. Riker—If your Honor please, I object to it on two grounds: First, that these yellow slips purport to be copies of certain books belonging to one Guigues, and that there has been no attempt made, so far as this evidence shows, by the plaintiff in this case to produce Guigues or account for his absence, or any application to this Court for a commission to take his testimony outside of the State, for the purpose of showing that these books are unavailable, and in the absence of such testimony, testimony of what happened in 1908, nearly four years ago, as to an inquiry, has no relevancy whatever. Mr. Guigues may have lied at that time; he may have had some reason for sequestrating or concealing these books that does not exist now.

The other objection is fundamental, on the ground that the books themselves are not in evidence in this cause.

The rule of evidence, as I understand it, which admits books of account at all, is based upon the custom of the law merchant, which allowed the books of dealings between merchants, as between themselves, to be admissible in evidence as to those transactions; that as to dealings between third parties, the books are evidence of admissions against the party that has made them in suits connected with his transactions with the other party to the suit, and that they are not admissions binding anybody else.

Mr. Guigues is not a party to this suit. There is nothing in this record which charges a conspiracy or collusion or fraudulent dealing between Guigues and the defendant in this suit, and these books, therefore, are not admissible as

against Mr. Lichtman, the defendant in this suit, because they are not made so in any possible way, either in the pleadings or by the evidence in the cause, and therefore they are not evidence and cannot be used and cannot be admitted as evidence in this cause, because they were not entries of dealings between the parties to the suit.

[Counsel argue.]

Adjourned until to-morrow, Thursday, January 25, 1912, at ten o'clock A. M.

THIRD DAY.

THURSDAY, January 25, 1912.

Met pursuant to adjournment.

Present, counsel as before stated.

Mr. Riker—Now, if the Court please, before the Court passes upon the admissibility of the offer of the exhibit, I suppose the Court would desire to have all the matter before it. I have not had the opportunity of examining Mr. Elliott, who produced the copy, on the *voir dire*, and I think I should before your Honor passes on the admissibility of it as an exhibit.

The Court—You may exercise that right.

Mr. Riker—Before I examine Mr. Elliott on it, I will ask counsel how much of this exhibit is included in his offer?

Mr. Skinner—Well, I think the truthful answer to Mr. Riker, stating the fact of yesterday and my offer of yesterday, would be that all of it is offered; I am willing to state now that, if Mr. Riker objects to part of it, I am willing to confine my offer to such portions of it as relate to the period covered by this suit.

Mr. Riker—Well, I certainly should object to anything going in that was not relevant to the

issue. I should feel that to be my duty to the Court.

So that the offer is now confined, as I understand it, to such parts of the exhibit as cover—

Mr. Skinner—If they can be separated. Let me see if they can be. [Counsel examines paper.]

The offer as now reduced is the offer of pages 3 and 4 of the exhibit, and your Honor will understand that in making this reduction of the offer I do not wish to be understood as conceding in any way that I might not properly offer the whole. I may later offer the rest of it.

Mr. Riker—The offer now is confined to these pages marked at the top in numerals "3" and "4." That is your specific offer now.

*Joshua L. Elliott* resumes the stand in behalf of plaintiff.

By Mr. Riker.

*Q.* These pages, Mr. Elliott—showing you these sheets of paper—have no date of year on them, have they? *A.* These have not.

*Q.* Were there any dates in the original books? *A.* Yes, sir; and there is dates on the other sheets.

*Q.* I ask you as to the items that are there contained in those particular sheets of paper, whether the original showed any dates of years? *A.* Yes, sir.

*Q.* Then that is not a copy of the original? *A.* Yes, sir.

*Q.* And still you say that the originals contained the dates of years, and these do not? *A.* They do.

*Q.* These do contain the dates of years? *A.* Yes, sir. Do you want to see it?

*Q.* What dates of years do they contain? *A.* 1905 [indicating on the paper].

*Q.* January 3, 1905, is the only date that appears on that of the year. Is there any date in the original

books—on the preceding sheet, page 3? *A.* No, none on that.

Mr. Skinner—I ask that the record show that in asking these questions addressed to the witness to tell what appeared on the original book, Mr. Riker is showing the witness the two sheets that have been offered as a refreshment of his memory.

*Q.* Now, Mr. Elliott, what was your position with Mr. Guigues? *A.* From March, 1904, up to the time Mr. Conway resigned I had general charge of the office.

*Q.* What time was that? *A.* From March, 1904, for about a year and a half, I should judge, when he resigned. The remainder of the time I was assistant to Mr. Guigues in the factory, throughout the factory in general.

*Q.* Confining your attention to the period first mentioned, what were your duties? *A.* I had charge of the office in general; that is, all receiving records were turned in to me, all shipping records were turned in to me, all cash passed through my hands, and the books in general, the office force was under me, as well as, you might say, the shipping department was under my supervision; I had to give out the soaks and check up the shipments, and O. K. all those things before they were billed.

*Q.* Did you keep the books? *A.* I did.

*Q.* In your own handwriting? *A.* Yes, sir.

*Q.* When did you make these yellow page copies which you have testified are copies of certain books of Mr. Guigues's? *A.* It was along in December, 1907, I should judge, the latter part of December, or the 1st of January, prior to my resignation shortly.

*Q.* Before or after you resigned? *A.* Before.

*Q.* How long before? *A.* Oh, somewhere between two and four weeks.

*Q.* Was Mr. Guigues present when you made this copy? *A.* He was at the factory, in the office and out

of the office; I don't know whether he knew it at the time or not.

*Q.* Did you ask his permission to make a copy of his books? *A.* I did not.

*Q.* How did you come to make a copy of his books without his permission? *A.* Why, did I, is that what you mean?

*Q.* Yes. *A.* Simply for self-protection, you might say.

*Q.* Then you were interested in making a copy of Mr. Guigues's private books? *A.* For my own self.

*Q.* What was your interest in making a copy of Mr. Guigues's private books? *A.* At that time I was secretary and treasurer of the Guigues Leather Company, and I didn't know to what extent this thing might rest on me if it ever came out, there was so much of it to keep under cover, and I simply made a copy of these books, in case it came out, that I could show where it went to and who sold the stuff, and so forth.

*Q.* You were afraid that you might be implicated in a fraud? *A.* I was.

*Q.* So you prepared yourself with what you call a copy of books? Of account—private books of account of Mr. Guigues's for that purpose? *A.* Yes, sir.

*Q.* And you say that Mr. Guigues knew that you were making this copy? *A.* I did not say it.

*Q.* Did you compare the copy with anyone? *A.* No one; I checked it back myself.

*Q.* What time of the day or days did you devote to this protective work? *A.* Anywhere from half-past seven o'clock in the morning till five in the afternoon; I couldn't specify the exact hour and minute, but any time during the day.

*Q.* Why did you put it upon sheets of yellow paper? *A.* That was memorandum paper I had in the office.

*Q.* Why didn't you put it in a book? *A.* I had no book.

Q. Whose paper was it that you were using? A. It belonged to the Guigues Leather Company.

Q. Did you copy all the items that appeared on the books that you allege you copied? A. How is that?

Q. Did you copy all the items on the books in question. A. I did.

Q. Now, Mr. Elliott, this is a copy of what? A. The ledger.

Q. Of the ledger. A. Yes, sir.

Q. Were there other books? A. There was a journal, a cash book, and they were transferred to the ledger.

Q. So that this is simply a copy of one of a series of three books? A. A copy of the final result.

Q. How many accounts were there in the ledger? A. I should say there were five or six.

Q. Have you copied them all. A. There was two or three small ones that I didn't copy.

Q. Then it is not so that this is a complete copy of the book from which these entries are alleged to be taken? A. It is a complete copy of that account.

Mr. Riker—I object to the offer now on the further ground that this appears to be only a copy of a set of books, and that a copy of a ledger, which is only admissible in connection with the books of original entry.

The Court [after argument]—The question, then, is as to the admissibility of certain pages of yellow paper, which are said to be so many of a number of sheets of yellow paper as relate to the transactions within the period which is dealt with in this action. These pages are said to be a copy of entries in a certain ledger, one of three books regular kept by a Mr. Guigues, not a party to this suit, showing the account between him and the defendant in this case. The non-production of the ledger and of the other books is sufficiently accounted for, and the question therefore presents itself to me just as it would if we had the ledger here in court.

I agree with the learned counsel for the defendant that no New Jersey case has yet gone so far as to make a memorandum itself evidential. I will consider it first from the point of view of a memorandum, and then from the point of view of an exhibit. We have cases which go so far as to say that a witness may testify from a memorandum which he made at or about the time of the events which were referred to in the memorandum. He may not merely look at is to refresh his memory; he may use it as a reminder of facts —even more, perhaps, than a reminder of facts, but as a private record made at the time of events, which he intended to record accurately, which he then knew about; and the existence of this memorandum is thus of itself strong presumptive proof of the accuracy of its own statements. Never in my experience has a memorandum gone to the jury; it has been used as an aid to the witness. Just so far as these pages are a memorandum, or a copy of the memorandum, made by the witness at the time of the transactions which they record, he may use them as a memorandum. A copy, I am satisfied, under the references that have been handed to me, is as good as the original, provided it is shown to be an accurate copy. I do not see how the aid which a memorandum may give to a witness can cover any facts other than those of which he had personal and actual knowledge, for only as to those would he have any memory to be refreshed. So that there again I agree with counsel for the defendant, as I understand it. So that, as these papesr may be supposed to be a memorandum, their use would be limited by the witness, who made the memorandum originally and who made the copy of it, to the record of such facts as he originally knew about.

Now as to this memorandum considered as an exhibit.

To simplify the question, suppose we had the ledger itself here, what could we do with it? I agree again with the learned counsel for the defendant that the use of it which is proposed would be outside of the rule of law merchant admitting a man's own books as evidence in his own favor against the other party to the suit. That was a rule which was an exception to the common law. It was introduced in the great commercial country of England from the necessity of the case. Ordinarily a man is not allowed to make evidence in his own favor, but the transactions of business and commerce are so complex, so voluminous, that no human memory can carry them, and therefore it was thought to become necessary to permit the introduction and the use of books regularly kept, in the due course of business, as *prima facie* proof, at least, of the transactions which they record, although it present the anomaly of a man making evidence in his own favor.

This is not that case at all, and if this ledger, if it were here, could be used, it would be upon considerations entirely outside of this rule of the law merchant and which would be equally persuasive if the law merchant did not exist.

What, then, is the situation? The point in a trover case is conversion. The question always is, Did the defendant appropriate to his own use, to the exclusion of the plaintiff's right, property of which the plaintiff had the right of possession? I do not say that is a model definition, but, at any rate, it is near enough to the definition to be recognizable. The great question is always whether that is proved by the plaintiff. The acquisition of another man's property by the defendant might be either lawful or unlawful; it might be either wrongful or not

wrongful. And that is all that Chief Justice Hornblower means to say in the case recited. All that he means to say is that the point of the case is the conversion. Whether the conversion was wrongful or otherwise is narrative matter, a link in the evidential chain; something perhaps necessary to be proved in order to make it satisfactorily appear to the Court and jury how the defendant got into possession, and yet that is not the material characteristic of the suit. It is not the test of liability. The test of liability is the proof or disproof of the conversion itself. We are all familiar with the rule that there are a certain class of cases in which demand is necessary in a trover case. Demand is necessary where the acquisition of the property was not wrongful. Where the acquisition was wrongful, the wrongful character of the act dispenses with the necessity of notice. That, of course, implies that there is a class of cases in which resort may be had to the instrumentality of an action of trover where the acquisition of the property was a wrongful act. There is a case in New Jersey, of which I had a memorandum yesterday and which I have not before me now, which states it in so many words; but I will read from Bigelow on Torts, page 444. After discussing many cases of wrongful asquisitions, it says: "In most of the cases above stated, proof of the wrongful act of the defendant is sufficient to establish a conversion, without evidence of a demand for the goods and a refusal to restore them. In other cases, a demand and refusal are essential to the action." Perhaps I am spending too much time on this point, but I want to say that it could never have been the intention of Chief Justice Hornblower to assert that trover would not lie where the defendant came wrongfully into the possession of the goods.

Now, then, what is the situation? It is said that the defendant has some of the goods of the plaintiff, and that he got them wrongfully, and, specifically, that he got them collusively, by collusion with a man who is not a party to this suit, Mr. Guigues. Evidence has been introduced tending to prove—I will not be understood to say anything more than that; I express no opinion as to the merits of this case; I can form no opinion at this stage of the case; I merely say that thus far it is the fact that evidence has been introduced tending to prove collusion between Mr. Julius Lichtman and Mr. Guigues in respect to the acquisition by Mr. Lichtman through the hands of Mr. Guigues of property of the plaintiff. That being so, sufficient foundation has been laid for the application of the rule of evidence. I may not state this just as counsel would state it; in fact, my attention having been directed to other parts of the case, I have not looked up the books to see just how they put it. Counsel before me have great experience in this department. My idea of the rule is that where two persons collude together to defraud a third, statements, declarations and writings of one done and made in promotion of the common unlawful purpose, in furtherance of the joint collusion, are evidential against the other. If that be so, there can be no objection to the reception as an instrument of evidence of these sheets. Unless I have stated that rule incorrectly, I should so decide.

This thought has occurred to me: that is, whether this rule as to persons who collude together is limited to cases where both persons in collusion are parties in the same suit, or whether it is equally applicable to a case where one of them is a party to a suit and the other is an out-

sider. I see no reason why there should be any such limitation.

That is the way the matter lies in my mind, and unless counsel can point out to me that I am wrong in some of my assumptions, I should state my conclusion to be that this objection is overruled.

Mr. Riker—Well, I will ask the Court to include in its consideration of the fact that this is an issue outside of the pleadings; that we are called upon, without notice in the pleadings, to meet it, and it is an independent issue; and if this case is to be now loaded up with transactions between this Mr. Guigues and the defendant in this cause, either writings or alleged conversations, as to which Mr. Lichtman, the defendant in this case, could have no possible knowledge, he is called upon to meet an issue of which he is not apprised by the pleadings; and therefore I submit that that ought to be considered by the Court in passing upon this qustion.

The Court—I have considered that, but I have supposed, as I think I indicated, that this not being the point of the case, but merely a collateral matter, which perhaps has to be developd in order to make the point of the case—that is, the actual conversion—intelligible, it is not a matter that requires any more attention than any other development of the case on its natural, logical lines. It often happens that counsel are surprised by the evidence of their adversaries. As long as the pleadings state the point, that seems to be one of the infelicities of litigation.

Mr. Riker—The manifest difficulty in this matter is that this same method of getting into a case evidence which would be clearly illegal is susceptible of being adverted to and adopted by plaintiffs in every case of this character, with the result that they inject into the case conversations

and hearsay evidence and manufactured books, or any other thing that they want to bring in in their main case. Of course, it may all fall by the wayside upon the defense coming in, but it affects the jury, and it seems to me, therefore, that unless we are apprised of an issue of this sort, every defendant in every trover case is liable to be surprised by an issue that is suddenly injected into the case, of which he has no knowledge, and cannot be supposed to have protected himself from by preparation.

The Court—My difficulty is just here. I do not see how, it being admitted, or it being assumed—I do not know that you admit it; I assume that this suit is properly brought; that is, that this controversy lies in trover. You perhaps differ from me there.

Mr. Riker—On this phase of it, the way it is being presented now, I say decidedly not; that it is a suit in trespass. That is the point.

The Court—I assume that a wrongful conversion may always be laid in trover, and making that assumption, I am unable to see how the Court can prevent the plaintiff from attempting to prove how the conversion was effected.

I overrule your objection.

Mr. Riker—I desire to place an exception on both matters, on the use of the copies for any purpose and the admission of the copies as evidence.

Exception allowed; let it be sealed, and it is sealed accordingly.

*Circuit Court Judge.*

[The two yellow sheets referred to are marked *Ex. P2.*]

By Mr. Skinner.

*Q.* Now, Mr. Elliott, this sheet of *P2* that bears the No. 4 at the top has a date, I see, "905, January 3d,"

and an item opposite that date. In what order were the entries made by you in the books of which these sheets are partial copies?

Mr. Riker—One moment. The exhibit speaks for itself, and the order in which they are entered, I think, is immaterial and irrelevant. I object to it on that ground.

The Court [after argument]—I think it is quite usual to ask such questions for the purpose of determing the system which was followed and the regularity of the method. It may assist us to understand it, that is all, if we know the method that was pursued.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
*Circuit Court Judge.*

[Question read.]

*A.* They were made in there the day the goods were shipped out. Is that what you mean?

*Q.* I think so; I think that answers the question. I show you *Exhibit P4*, check dated September 2, 1904, for $2,000, by Lichtman, to the order of Guigues, and signed "J. Lichtman, by A. Lichtman, Attorney," [shown to witness,] and also call your attention to the item on sheet No. 4—sheet of *Exhibit P2* numbered at the top "4"—of December 2d, "Cash, $2,000," and ask you if *Exhibit P4* has any connection with that entry? *A.* This is the check that appears there as a credit in his account.

*Q.* And this item following on the sheet, the item "Discount, 9," what does that mean? *A.* A discount for cash payment.

*Q.* A discount allowed Lichtman? *A.* Yes, sir.

*Q.* And following that, the next item is, "December

19th," it looks like "Cancel inv. 1129, 3860," what does that mean? *A.* That is a canceled invoice.

*Q.* And what is a canceled invoice? *A.* Well, it is a private charge to Mr. Lichtman which for some reason was canceled.

*Q.* Then it is a credit? *A.* It is a credit.

*Q.* Then the next item, of December 20th, is "Check, $890.21." I show you *Exhibit P3,* check of Lichtman, by A. Lichtman, Attorney, to Guigues, December 28, 1904, for $890.21, and ask you if that had any connection with the transaction of which December 20th is the entry [shown to witness]? *A.* December 30th, that is.

*Q.* December 30th? *A.* Yes, sir.

*Q.* What is that? *A.* That is a check in settlement of the account to that date.

The Court—On that date or up to that date?

Witness—Up to that date.

*Q.* Under that same date, December 30th, and carrying on the item, appears the word "Discount, $49.99." What was that? *A.* That was discount allowed for cash.

*Q.* Then was this check of $890.21 the check to the balance? *A.* I think it was, yes.

*Q.* I call your attention to an entry on this same page of *Exhibit P2* of the date of January 31, 1905, "Ck., $1,000." What does that mean? *A.* Check.

*Q.* Whose check? *A.* Mr. Lichtman.

*Q.* I show you *Exhibit P5,* check of Lichtman to Guigues, January 30, 1905, for $1,000, and ask you if that was the check that was entered in this item to which I just called your attention [shown to witness]? *A.* Yes.

*Q.* I call your attention to the item on the same page of February 7, 1905, ditto mark under the word "Ck.," and then "$248.04," it looks like, and ask you if that had any connection with this check, *Exhibit P6,* February 6, 1905, Lichtman to Guigues, of $248.60 [shown to witness]?

Mr. Riker—I object to the question on the

ground that this witness is now being called upon to use this paper to refresh his memory, and that the Court has ruled that unless it appears that these transactions were within the witness's own knowledge that this paper is not to be used for that purpose.

The Court—Perhaps I am not quite sure of the question which is asked the witness, whether it is an appeal to his memory or to his knowledge as a bookkeeper, or both.

Mr. Skinner—I asked him if there was any connection between the exhibit and the transaction referred to in the item to which I called his attention.

[After further discussion, the question is withdrawn.]

*Q.* Mr. Elliott, when a check was received from Mr. Lichtman, who made the entries in the book kept by you? *A.* Me.

*Q.* Then so far as this *Exhibit P2* is a copy of credit entries, payments by check, is it a copy of payments made to you and within your own knowledge or payment made to somebody else and reported to you?

Mr. Riker—Now, if your Honor please, I object to that question on the ground that, by this witness's own testimony, this is a ledger entry and it is not a copy of an original entry.

The Court—I think the question may be answered.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

*A.* It was payments made to me and also payments made in the office that came through my hands.

*Q.* What do you mean by saying it came through

your hands? *A.* The check came through my hands and was deposited in the bank by me.

*Q.* Now, I renew the question that I withdrew before, and ask you if there is any connection between the check *Exhibit P 2* and the item of February 7th on sheet marked "4" of *Exhibit P 2*? *A.* It is in balance of the account down to that date.

The Court—Which was what date?

Mr. Skinner—The entry was February 7, 1905.

*Q.* Mr. Elliott, I call your attention to item of November 28, 1904, on this Exhibit P2, "646 dozen sk. splits." What does that mean? *A.* Shank splits.

*Q.* What were shank splits? *A.* The flesh side of the shank.

*Q.* And the item of December 2d is "1,000 pounds b. splits," or a ditto mark under the word "splits." What does that mean? *A.* The grain splits of the butt; the "b." designates the butt.

*Q.* And the item of January 3d, 1905, "649 pieces of buffing," or "buffs," what does that mean? *A.* 649 pounds of buffing; that is the grain, dried, tacked out and dried.

*Q.* The grain from what? *A.* Butts.

*Q.* Now, Mr. Elliott, did you see the hides in their various processes of treatment there—tanning? *A.* Yes.

*Q.* What kind of hides were they, what animal? *A.* Horse butts.

*Q.* What portion of the hide is the butt? *A.* The rear end.

*Q.* Did you know where the hides came from? *A.* I did.

*Q.* How? *A.* The invoices came through the office, through my hands, conversations; it was generally understood; a contract with the people.

Mr. Riker—I move to strike that part of the testimony out as hearsay.

Mr. Skinner—I have no objection.

The Court—Which part?

Mr. Riker—"Generally understood," that part.

The Court—Yes, strike that out; it is too vague.

*Q.* Did you ever have any talk with Mr. Guigues about whose hides they were?

Mr. Riker—This question is objected to on the ground already offered as to similar conversations, unless it was in the presence of the defendant.

The Court—For the reasons previously stated, the objection is overruled.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealel, anl it is sealed accordingly.

FREDERIIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

*A.* Certainly.

*Q.* And did he tell you whose they were? *A.* Why, yes.

*Q.* Were you familiar with the factory processes at that time, or was your work confined to the office? *A.* My work as a general thing was confined to the office, but it was necessary for me to make out reports and things at times that took me out in the factory, and in that way I got familiar with the entire work of the factory.

*Q.* What was done with the butts as they came to Guigues's factory, confining yourself now to this period of November and December, 1904, and January, 1905. What was done with them? *A.* Why, they were sent into the warehouse, received, checked up according to the invoices, and then they were put through the factory; that is, in process to make leather out of them.

Q. What was done with the shanks? A. The shanks were cut from the butts and were split; the grains were chrome-tanned and shipped to Bristol for japanning.

Q. What was shipped to Bristol? A. The grains.

Q. What was done with the shell portion of the butt? A. That was made into cordovan leather, shipped to Boston.

Q. Was there any splitting done? A. There was.

Q. What do you call that? A. The grain from the butts were split off, and the flesh, and the shanks was split.

Q. The grain was the hair side of the shank, was it? A. Yes, sir.

Q. What was done with those grains? A. Sold.

Q. I mean the grains from butts. Were any of them shipped to the Corona Company? A. Later on.

Q. Well, at first? A. No, not at first.

Q. You spoke of some of these portions as being sold. Sold to whom? A. Julius Lichtman.

Q. Anyone else? A. Of these grains, now.

Q. Well, any of the parts? A. Yes.

Q. To what extent? A. Oh, samples, small lots, or something similar to that.

Q. What was sold to Lichtman? A. Why, the grains from the butts, the splits from the shanks, buffings, which is grain from the butt also.

Q. How do you know they were sold to Lichtman? A. Well, they were shipped to him, he paid for them.

Q. Did Mr. Baker, the president of the Corona Kid Company, ever come to the factory? A. Yes, sir.

Q. Did you see him there? A. Yes, sir.

Q. Did you ever go to Mr. Lichtman's office? A. Yes, sir.

Q. For what purpose? A. After checks.

Q. For what? A. After checks, carry statement, get money.

Q. What would the statements contain? A. Contain an itemized record of the account.

Q. Well, by "record of the account," what do you

mean? *A.* From the ledger, for a certain period, covering from one settlement to another.

*Q.* Would it contain a statement of the shipments? *A.* Yes.

*Q.* Contain a statement of the credits? *A.* Yes.

*Q.* By discount and by payments on account? *A.* Yes.

*Q.* And then a balance? *A.* Yes.

*Q.* What would you do with that? *A.* Leave it there.

*Q.* Did you ever see Mr. Julius Lichtman? *A.* Mr. Julius Lichtman?

*Q.* Yes. *A.* I have seen him on several occasions.

*Q.* I mean on any occasion when you presented one of these statements? *A.* I can't say that I did.

*Q.* Whom did you see? *A.* Mr. Abe Lichtman.

*Q.* This gentleman here? *A.* Yes, sir.

*Q.* What did you do with the statement when you got there and saw Mr. Abe Lichtman? *A.* I would simply walk in the office and say, "Abe, I have got a statement of this account, and the boss wants you to send him a check for it, if you could," and all right.

*Q.* What do you mean by "all right"? *A.* I got it.

*Q.* When you gave this statement to him did he say anything? *A.* Why, he would take the statement and look it over, and if it was all right he would give me a check for it.

*Q.* Well, when Mr. Abe Lichtman received the statement and said, "All right," what did he do with the statement? *A.* Generally put it on his desk.

*Q.* When you handed it to him what did he do with it? *A.* He took it part of the time, almost invariably, and took his bills and checked it up by his bills and see if it was O. K.

*Q.* What were the bills? *A.* Invoices rendered to him.

*Q.* By whom? *A.* By me.

*Q.* And having done that, did he say anything? *A.* He says, "All right."

Q. And that is all? A. That is all, yes.

Q. That is all Mr. Lichtman said? A. Yes.

Mr. Skinner—Now, I call for the production by the defendant of the receipted bills, or invoices.

Mr. MacMahon—We stated yesterday that there were none.

Mr. Skinner—I call for the books of Julius Lichtman.

Mr. MacMahon—There is no book of account of Julius Lichtman with Guigues or any other dealer in offal or scrap, the check book and the returned checks being the only records of accounts between them.

Mr. Skinner—Well, I will call for the check book.

Mr. MacMahon—It is not here. I do not think it is included in your notice, but we will get it; we will telephone down and have it sent up.

Q. Mr. Elliott, where were the shank splits, butt grain splits, and so forth, that were sold to Mr. Lichtman kept in the factory before their shipment to Lichtman?

Mr. Riker—Now, you are confining your evidence to the period covered by this suit, I suppose?

Mr. Skinner—Yes.

A. The shank splits we kept in the Ferry street building, where we have the old japan shop; it was torn out, and it was kept in there right as you go through the old frame office and turn to the left, the first door after you pass the Ferry street building. That was the shank splits.

Q. What part of that building? A. Well, let me see, now. The west end, the ground floor.

Q. Were they with other things or— A. That is principally what was in there. There was only a small

space there, until later we took the wall out and made it all one floor. It was a very dark, secluded spot.

*Q.* What made it dark? *A.* There was no windows in it.

*Q.* And what do you mean by "secluded"? *A.* You wouldn't notice it; you would pass by it and never notice it.

*Q.* Was there anything kept there other than the Lichtman goods? *A.* There was not at that time.

*Q.* Was there any other part of the factory where the Lichtman goods were kept? *A.* The grains were kept in different parts, as Mr. Conway explained yesterday, on different floors of the building, some on the top floor of each building, and they were bundled up, and so forth; and at times the splitting machines would be running when Mr. Baker was there, and word was telephoned through the factory that he had arrived, and everybody would drop their jobs and get on something else, and cover up what they had there.

*Q.* Did you ever see Mr. Abe Lichtman at the factory? *A.* Oh, yes.

*Q.* Did you ever have any conversation with him about the goods that were to be purchased? *A.* Yes, he asked me to show him the goods that Mr. Guigues had been showing him, and so on, and I would do it.

*Q.* And was there anything said between you and Mr. Abe Lichtman as to the ownership of the goods—that is, of the hides from which these parts had been taken?

Mr. Riker—I object to that question on the ground that it is a question as to conversations with Mr. Abe Lichtman as to matters not within the agency, if any has been shown.

The Court—I think there is sufficient foundation for the question. The objection is overruled.

Defendant's counsel prays exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

*A.* On one occasion specifically.

*Q.* What was that? *A.* That was in the Market street building, when Mr. Lichtman was in the Market street building. I went over there for a check one day, and he had been to Boston, and we were talking about getting stuff from over to the factory, and he said he had been to Boston and saw Mr. Baker, and Mr. Baker offered him some splits and that the price was very high, and that he came very near saying to him that he was buying those things in Newark off Guigues for less than half the money. That is what he said; that was the conversation.

*Q.* How large were the shank splits that were sold to Lichtman, Mr. Elliott? *A.* Well, in the average at that time, I should judge, about forty feet to the dozen, 3 or 4 feet apiece.

*Q.* How large were the butt grain splits?. *A.* Well, they would average around 5 feet, I should judge.

*Q.* How much? *A.* Around 5 feet each; that is, the butt grain splits.

*Q.* You mean square feet? *A.* Square feet, yes.

*Q.* And the buffings, how large were they? *A.* About the same size.

*Q.* As which? *A.* As the grain splits.

Mr. Riker—I ask to have that stricken out, if your Honor please, as there is nothing in the specifications as to buffings.

Mr. Skinner—What specifications do you refer to?

Mr. Riker—Any of the specifications in the pleadings. "Pieces of dry tacked out buffings."

Mr. Skinner—I will change my question so as to avoid the objection.

*Q.* What was the size of the pieces of buffing? *A.* Anywhere from eight inches square up to 2 square feet in a piece.

*Q.* And do you know from what part of the butt these buffings had been taken? *A.* From what part of the hide?

*Q.* Yes. *A.* From the butt.

*Q.* What part of the butt? *A.* The grain, the hair side.

*Q.* From what part of the butt, as to whether it was the shell or the shank? *A.* It was the shell part.

*Q.* Now, what was the difference between the grain split, butt grain split, and the pieces of buffing? *A.* Why, the buffing was taken off more uniform, uniform in thickness.

*Q.* [By the Court.] In which case? *A.* The buffing. And when they were split off grains they were split so as to make the cordovan uniform, the flesh side.

*Q.* [By Mr. Skinner.] What can you say about the size of these butt grain splits, as to their thickness? *A.* Well, they would vary in thickness; they would be thicker in the center than they would be at the edges.

The Court—Have we had an explanation of the term "buffing?"

Mr. MacMahon—No.

Mr. Skinner—I thought that either this witness or one witness had said that the buffings were taken from the shell, as the grain splits were, but were smaller.

*Q.* [By the Court] Just what does the word "buffing" mean? It means bookbinding; there is a buffing [indicating on book]; it is a very thin grain split.

*Q.* [By Mr. Riker.] Is that a buffing? *A.* A buffing, bookbinding buffing.

*Q.* [By Mr. Skinner.] Well, what do you say about these grain splits, as to whether they were taken off thick or thin? *A.* The grain splits were taken off as thick as they could get them.

Cross-examination, by Mr. Riker:

*Q.* Mr. Elliott, during the period this particular suit, which the counsel for the plaintiff has designated as November and December, 1904, and January, 1905, what was your position with Mr. Guigues? *A.* In charge of the office and factory reports, and so on.

*Q.* Did you have anything at all to do with the manufacture of leather? *A.* I had no personal supervision of it, but I was in the factory as much as I was in the office, endeavoring to learn the business.

*Q.* Not as part of your duty, but for your own edification? *A.* Yes.

*Q.* So that during that period your observations were made with the object and purpose of instructing yourself in the business; is that it? *A.* Yes, sir.

*Q.* Your duties, for which you were paid, were the duties connected with the office, were they not? *A.* At that time.

*Q.* And in what did those duties consist? *A.* Well, in the first place, taking care of the books.

*Q.* What do you mean by that? *A.* Taking care of the office books, which was a very small thing because we only had one customer; that is, the Guigues Leather Company only had one customer.

*Q.* What do you mean by that? Did you have no other customer? *A.* Mr. Guigues had a customer or two.

*Q.* Was there any difference between Mr. Guigues and Mr. Guigues in that particular matter? In other words, was there a corporation at that time? *A.* No.

*Q.* What do you mean by saying there was only one customer, then? *A.* The Corona Kid Manufacturing Company took our entire outfit of the factory, and we made one invoice a day to them; and the other customer was Mr. Lichtman, and one or two other small items of his own personal customers of the goods that he had taken and sold to them.

Q. Then there were more than one customer during this period? A. Yes.

Q. And it was Mr. Guigues that had all these customers at that time, was it not? A. Yes, sir.

Q. Now, who were these other customers? A. Well, Mr. Guigues—that is, his personal account—this question that is in now?

Q. I am asking you what were the other customers? A. Mr. Lichtman, and there was two or three small lots of stuff. One was sold to a party by the name of Eisinger, in Europe, and another small item sold to a party out in Ohio, the Taylor-Poole Company, in Cincinnati, Ohio.

Q. Anybody else? A. Those are all I remember now.

Q. Do you remember anybody by the name of Spiegel? A. Yes, sir.

Q. He was another one? A. Later on.

Q. Not during this period? A. Not during this first period; I am quite positive of that now.

Q. What? A. This first period.

Q. I am speaking of the period up to the end of January, 1905. A. I think he started in there along the summer of 1905, or the early part of the year 1905; I am not absolutely positive as to the date or month.

Q. Do you remember anybody by the name of Neider? A. Yes, sir; I do; Mr. John Neider had—I don't know exactly what it amounted to in dollars and cents, but probably four or five dollars.

Q. Do you remember what he bought? A. Yes, sir; it was those same buffings that are in question, I am quite sure.

Q. Was that during this period? A. I can't answer that positively.

Q. Do you remember anyone by the name of Freeman? A. A truckman?

Q. Do you know anyone by the name of Friedman? A. I don't know him. Friedman & Company?

Q. Yes. A. New York?

*Q.* Yes. *A.* I do. I don't know them, but I know of them through these records; that is, these transactions; yes, sir.

*Q.* And that was another customer? *A.* Yes, for, I should judge, a week, or something or other like that; I don't know exactly how much, but it was a very small item.

*Q.* What was it this customer was buying, if you know of your own knowledge? *A.* He got some of those butt grain splits, and I don't know of anything else.

*Q.* Oh, he got some of those? *A.* A few.

*Q.* Do you know of someone by the name of S. L. Agoos? *A.* Boston?

*Q.* Yes. *A.* They are right near the Corona Kid Company, in Boston.

*Q.* Did they deal during this period with Mr. Guigues? *A.* They came there and got a few finished butts, a very few of them, just one small item.

*Q.* Finished butts? *A.* Yes, sir.

*Q.* Do you know a concern by the name of Valentine & Minges? *A.* No, sir.

*Q.* Do you know Waterman and Minges? *A.* That appears in the sheets. Yes, sir; I know them.

*Q.* You know them? *A.* I don't know them; I know them the same as the others.

*Q.* They were dealing at this time with Mr. Guigues? *A.* One small transaction.

*Q.* What was that, if you know of your own knowledge? *A.* I don't remember.

*Q.* You do not remember what that was? *A.* I don't remember the exact item.

*Q.* What books were you keeping, or were kept under your charge during this period at Mr. Guigues's? *A.* You might say "Mr. Guigues 1 and 2;" I don't know which you mean. We had two different sets of books there, Mr. Riker. Do you mean the whole thing?

*Q.* I ask you what book you kept for Mr. Guigues

during this period. There is only one Mr. Guigues. *A.* Do you want a list of the factory books, and so on?

*Q.* What books were kept by you or were under your supervision during this period for Mr. Guigues? *A.* The purchase book of supplies in the factory, a record book of the receiving of hides, a stock book, when the hides were received and when they were shipped, and so forth; then I kept a cash book, and I had a journal, and then the purchase and private ledgers.

By the Court.

*Q.* You spoke of a purchase book first? *A.* Yes, sir.

*Q.* Then a cash book? *A.* Yes, sir.

*Q.* And then a journal? Yes, sir.

*Q.* This is another purchase book? *A.* A purchase ledger; the footings from the purchase book were carried to the purchase ledger and totalled. Then I had these other books that were referred to.

By Mr. Riker:

*Q.* What were they? *A.* Journal, cash book and a ledger and a little shipping book—that was generally thrown in the drawer—covering the shipments made to Mr. Lichtman.

*Q.* Now, in this last set of books you entered what? *A.* The shipments of the goods to Mr. Lichtman, and these other small items that you referred to a little while ago.

*Q.* All of these items that did not concern goods that had been received from and were returned to the Corona Kid Company? *A.* Yes.

*Q.* Those goods that went back to the Corona Kid Company's place or places were included in these other books that you have described, were they not, *A.* Yes.

*Q.* And those books were confined entirely to the dealings with the Corona Kid Company? *A.* No, sir.

*Q.* What else was in them? *A.* The purchase ledger contained the material accounts that we bought.

*Q.* Those other books were confined entirely to items that concerned the goods that were returned to the Corona Kid Company, did they not? *A.* Well, the goods that we bought from the tanners' supply houses were not returned to the Corona Kid Company.

*Q.* Well, they were used in the goods that were returned to the Corona Kid Company? *A.* Yes, sir, used in manufacturing their goods.

*Q.* So that each of those books showed transactions with the goods that were sent back to the Corona Kid Company? *A.* Yes.

*Q.* And those other three books that you have described concerned the matters that were outside of the goods returned to the Corona Kid Company? *A.* Yes, sir.

*Q.* They contained the entries of the offal that was sold? *A.* No.

*Q.* Where were they put? *A.* In the regular books.

*Q.* The offal? *A.* Yes, sir. Baeder-Adamson Company, Swift & Company, Illinois Leather Company.

*Q.* Now, drawing your attention to the period of time of November and December, 1904, and January, 1905, you say that the proceeds of the offal were entered in Mr. Guigues's books that concerned the Corona Kid Company's returns? *A.* Positively.

*Q.* What became of the proceeds, the money received for the offal? *A.* Well, it went in the Guigues Leather Works, you might say; it went to the benefit of them, went to the profit and loss account of Guigues——

*Q.* It went to Guigues? *A.* Sure, it went to Guigues.

*Q.* There was no company then? *A.* No, no company then until September, 1905.

*Q.* Now, during this period when you went into the factory for your own edification, what did you see being done with hides at that time with reference to their treatment? What was the first process that you saw? *A.* From cutting them loose in the warehouse to bundling them up, nailing them up, in the shipping-room.

Q. What was the first process? A. Soaking them, as a general thing; in some instances, in green salted hides, they were trimmed first.

Q. And after that? A. Went through the lines; that is, the unhairing process.

Q. And after that what was done? A. Well, generally they went through the beam-house, in general; that is, removing the flesh and hair, put them through the process to kill the lime in the hide, cure the hide, and then put in the pickle, and from there to the tan yard, and from there to the coloring mills, and from there on to the oiling department and drying department and the staking room, and then to the shipping room—this is the chrome I am speaking of.

Q. You are speaking of the chrome? A. Yes. The bark went from the tan yard to the stuffing room and it was dried—it wasn't dried, but it was split out of the tan, and it went to the different dyeing rooms, and it was colored and hand-shaved and finished and polished —that is, a bright finish—and shipped.

Q. Now, confine your attention to the tanning during this period, what process of tanning was used with reference to these horse butts? A. Bark for the butts proper, and the shanks, chrome.

Q. All during the whole period?

The Court—What do you mean by "the whole period?"

Mr. Riker—November and December, 1904, and January, 1905.

A. Well, some butts was tanned in chrome, I think, at that time; that is, grains.

Q. How much of your time did you spend in the tan yard Mr. Elliott? A. About half of it.

Q. About half of your time in the tan yard? A. Yes.

Q. Did you observe the process of splitting the hides? A. Yes, sir.

Q. In what condition were the hides split? A. This

in reference here? That is, the butts were split out of the tan and the shanks out of the pickle.

*Q.* Is that true of all the splitting that you saw done? *A.* No, split at different stages of the game.

*Q.* Well, now, at what other stage of the game were they split *A.* Out of the limes.

*Q.* At what other stage of the game did you see these hides split? *A.* Did I mention put of the bark tan?

*Q.* Well— *A.* Out of the tan and out of the pickle and out of the limes, is the only ones I specifically remember. There might have been others, but I don't remember.

*Q.* That is the only stage of the game at which you saw the splitting. And how often did you observe this process? *A.* Oh, sometimes every few hours I would go through the factory. You couldn't get through there without running over them.

*Q.* Where were they? *A.* In the beam-house, the first floor in the Madison street building.

*Q.* Where was your office? *A.* Corner of Ferry and Madison; it was in the frame building.

*Q.* And the beam-house was— *A.* Between the two buildings.

*Q.* Between the two buildings. Were the splitting knives in there? *A.* Up in the upper end, near the engine-room.

*Q.* In the Madison street building? *A.* Yes, sir.

*Q.* Every time you went out in the factory you went through both of these places? *A.* I could go that way; I don't remember exactly—every time I went through the factory I didn't draw a diagram of it.

*Q.* At the time you went into that place had you any practical knowledge or experience in the matter of tanning hides? *A.* No, sir.

*Q.* You have testified to the size of the grain taken off of the cordovan. How was that grain taken off? *A.* Splitting machine.

*Q.* You saw that process? *A.* Yes.

*Q.* And was each grain that was taken off uniform in thickness? *A.* No.

*Q.* Well, what was its character with reference to thickness? *A.* It would be a little heavier in the center than it would be on the edges. Not every one of them would be that way; some of them would be pretty near uniform, but the majority of them was a little heavier in the center. They split it so as to make the other piece level.

*Q.* They split it so as to make the cordovan complete? *A.* Yes, sir; in those instances.

*Q.* The leather? *A.* In those instances, only they went down deeper than they should.

*Q.* You speak now as an expert leather man: that they went deeper than they should? *A.* Yes.

*Q.* Confining yourself and your testimony to November and December, 1904, and January, 1905, you now say that they at that time split the grain off of the cordovan deeper than they should? *A.* Yes.

*Q.* Did you weigh any of these splits? *A.* They were all weighed.

*Q.* Did you weight any— *A.* Yes, sir.

*Q.* — of the splits off of the cordovan? *A.* Yes, sir.

*Q.* What weights do you remember of any separate splits? *A.* I didn't pick up any one split and weigh it. It weighed several loads.

*Q.* You do not remember ever having weighed a single split? *A.* Not one individual split, no.

*Q.* Can you state the average weight of the splits? *A.* Oh, I should judge it would average a pound and a half or two pounds, from a pound and a half—around a pound and a half, something like that, yes, to the best of my knowledge.

*Q.* You are speaking from a general recollection, are you? *A.* Yes, sir.

*Q.* And what was the area of those splits that you have testified to? *A.* Oh, average about five square feet.

*Q.* Five square feet, and a pound and a half the average weight. Now, Mr. Elliott, what was the rate of payment, as you remember it, by Mr. Lichtman's and Mr. Guigues for these particular articles? *A.* The rate of payment?

*Q.* Yes, what charge? *A.* Twenty cents a pound.

*Q.* Then, on the average that would be thirty cents for these grain splits. Did you know that the Corona Kid Company had agreed to pay Mr. Guigues for this same material shipped to them at five cents a square foot? *A.* Did I know it?

*Q.* Yes. *A.* I knew he was to get the five cents a foot for chrome tanning.

*Q.* Five cents a foot. Well, Mr. Elliott, during this period it was bark-tanned, was it not? *A.* Bark-tanned?

*Q.* Yes. *A.* Cordovan.

*Q.* Did you not hear Mr. Baker say that he agreed to pay five cents a square foot for these grains during this period? *A.* After he discovered he could do it.

*Q.* Now, on an average of six feet, at five cents a square foot, that is thirty cents, is it not? *A.* It seems to be.

*Q.* That seems to be the same amount, then, from the Corona Kid Company that he was getting from Lichtman & Company? *A.* Yes.

*Q.* And you say that word went through the factory whenever Mr. Baker was coming to conceal these particular articles from his observation? *A.* Yes, sir.

*Q.* Because you did not want him to see them? *A.* Mr. Guigues did not want him to see it.

*Q.* Mr. Guigues did not want him to see them? *A.* No.

*Q.* And Mr. Guigues was to get the same price for them from Mr. Baker that he was from Lichtman? *A.* For those particular things, yes. Those things helped sell other things, though.

*Q.* And still he wanted to conceal them from Mr. Baker, did he? *A.* Yes, sir.

Q. Do you know what Friedman & Company paid for this same stuff? A. Oh, I think somewhere around eleven and fifteen cents; something like that.

Q. They paid from eleven to fifteen cents for what Lichtman paid twenty; is that it? A. Yes, sir. The quality wasn't the same as Lichtman got, though; it was the same class of stuff.

Q. Do you know how much they sold to Friedman & Company? A. I don't remember.

Q. Do you remember when it was sold? A. Shortly after the factory started; I don't remember the date nor the month.

Q. Before Lichtman began to deal for it? A. Probably about the same time. I don't remember that, because it all started as soon as the factory started.

Q. The selling of these things started as soon as the factory started? A. Shortly after the factory started. Of course, when the factory started there was a soaking process, but as soon as they got to that stage they started selling.

Q. Mr. Guigues began to sell these things that you have been testifying to? A. Not the grain splits, but the other parts of the stuff. At first there were some of these grains that were shaved, and shortly after that they went to taking the splits off, and then he went to selling it; that is, this particular article.

Q. This part that afterwards became the grain split was simply shaved off in shreds and pieces? A. Yes, at first, until they got the machine——

Q. Until they got the machine it was simply shaved off with a knife? A. Yes, sir. They didn't have the splitting machine first.

Q. And that stuff went into the glue stock, did it not? A. No.

Q. It was not even good for glue stock? A. No, sir; the fertilizer people.

Q. Did you burn it? A. No, the fertilizer people took it.

*Q.* [By the Court.] When was it that you got the splitting machine? *A.* I should say we started up in May or June, and we got the splitting machines along in July.

*Q.* [By Mr. Skinner.] What year? *A.* 1904.

*Q.* [By Mr. iker.] You mean to say that Mr. Guigues did not have splitting machines from the start? *A.* I guess you are referring to the one that we bought from you; but I think we bought that later. No, sir; we didn't have splitting machines right from the start.

*Q.* You did not have one splitting machine from the start? *A.* We might have had it in the factory, but it wasn't erected, wasn't ready for operation.

*Q.* Were the shaving machines in operation at that time? *A.* Yes.

*Q.* Do you know why these butts were shaved at that time? *A.* Why, to get them down to uniform thickness and thin enough.

*Q.* Why didn't he split them? *A.* I just told you.

*Q.* Because he did not have a splitting machine? *A.* Sure, the splitters wasn't in operation.

*Q.* Don't you know that with the lease of the factory went a splitting machine in good order? *A.* That big machine of yours?

*Q.* Yes. *A.* We never split a butt on a machine of yours all the time it was on the factory.

*Q.* Just what was it that Guigues sold to Julius Lichtman during this period? *A.* The period in question now?

*Q.* Yes. *A.* Well, those grain splits, you might call them, and the buffings and some shank splits. The buffings come under those——

Mr. Skinner—Pieces of buffing, you mean?

Witness—Those pieces of buffings are the same things as buffings, only they are smaller, that is all; that is under the head of buffings. And some shank splits.

*Q.* Anything else? *A.* I think that is all.

Q. That is all you remember? A. Yes, sir.

Q. Did Mr. Guigues sell them any tear-offs? A. Yes. Not in this period.

Q. Not in this period? A. No.

Q. And pieces, buffing pieces, and things of that description? A. Later on.

Q. Not in this period? A. Questioning about this one period now, aren't you?

Q. I am. A. No, there was none of that; I don't remember of any.

Q. You do not remember them? A. No.

Q. Has your memory failed at all since 1908? A. Oh, I can't remember every little detailed statement.

Q. You cannot remember whether, as a matter of fact, you did sell during this period—Mr. Guigues did sell, to your knowledge, things of that description? A. Well, the records will show it, if you look at it there. I can't remember.

Q. I am not asking you for the record; I am asking you now for your recollection. A. No, I can't remember.

Q. Now, the shank splits that were sold during this period, Mr. Elliott, confining yourself to that, what were they? A. The flesh side of the shank.

Q. Now, when in this period did Mr. Guigues begin to sell these things to Mr. Lichtman? A. Within this period, now?

Q. Yes. A. He had previously sold some, but he sold some during this period.

Q. Well, did he sell them throughout the whole of this period? A. He finished up shipping out some that he abandoned, I think, during this period.

Q. He finished up— A. Shipping out some—

Q. Shipping out some that he had on hand that had been accumulating prior to this period? A. Yes.

Q. When did Mr. Guigues begin to split the shanks? A. Oh, I should judge, along in July, the 1st of July, or something like that.

*Q.* 1904? *A.* 1904.

*Q.* When did the factory actually start in operation? *A.* Well, I should judge, Mr. Riker, along the 1st of May; as soon as we got the vats completed they started to soak.

*Q.* Along the 1st of May? *A.* I should think it was along the 1st of May when the first soaks were put in.

*Q.* How long did it take a hide to go through the factory so as to reach the point of splitting? *A.* Oh, according to the splitting; if it goes in limes it takes longer than it does in the sulphite.

*Q.* Well, on the average? *A.* Oh, I should think a week or ten days; that is, to split out of that process. If you wait until you bark-tan it, it takes two or three weeks, I should judge. I am not positive about that.

*Q.* Was that the time you began to split the shanks? *A.* He began the splitting of shanks the first thing, that was the first splitting done.

*Q.* When was that? *A.* Oh, I should judge, along in June, something similar to that, the latter part of May, or something.

*Q.* After the hides got to the point where they could be split? *A.* Yes.

*Q.* I thought you said you did not split the butts because you did not have a splitting knife? *A.* That is right; he didn't. The shanks piled up there before, and the shanks were the first things split, to get them into chrome tan.

*Q.* So that these particular things piled up, as you describe it, waiting until he could get some other splitting knife than the one I leased him? *A.* The one you leased him was a whole hide length, 108-inch machine, or something; I have forgotten the exact dimensions.

*Q.* That was the latter part of May, you think, when he got a splitting machine on which he could operate these shanks; is that it? *A.* Along the latter part of May, I should think. I couldn't say exactly, because machinery was coming in there from forty different people almost.

*Q.* You were pretty busy in the office, were you not, at that time? *A.* I was checking up the machinery and checking up the stuff coming in; I had the receiving of the hides to do; I was out in the factory checking them off. At that time the factory wasn't in operation, and I had it all to do.

*Q.* [By the Court.] How many splitting machines were there in use? *A.* To my best recollection, there were somewhere between five and eight, all Hooper machines, and later on—

*Q.* [By Mr. Riker.] Whose hides were these that were received during May and June? *A.* The Corona Kid Company's.

*Q.* Do you know under what arrangement those hides were received? *A.* I did.

*Q.* You did. How did you know that? *A.* By seeing the contract, talking with Mr. Baker, talking with Mr. Guigues.

&. That is *P1*, the contract that you spoke of? *A.* It was the original contract. I don't know what *P1* is. [Defendant's counsel hands paper to witness.] I witnessed that.

*Q.* That is the one you referred to, is it not? *A.* Yes, sir.

*Q.* I draw your attention to the fact that that is dated the 30th of June. *A.* I see it.

*Q.* Well, is that the one under which this accumulation of shanks that were disposed of during the period—shank splits—was made? *A.* This was the first contract that he had with the Corona Kid Company.

*Q.* That is the 30th of June, 1904? *A.* Yes. And hides had been shipped there depending on this contract to be signed since Mr. Baker and Guigues got together.

*Q.* Was there anything done with them before that contract was signed, the 30th of June? *A.* I just told you we started soaking along in May.

*Q.* Without any contract? *A.* Verbal, depending on this written contract.

*Q.* Well, now, in your observations in the factory for self-improvement, did you happen to see the shanks being leveled up by hand or by a leveling knife or machine? *A.* No, sir; they were split in the splitting machine.

*Q.* That was never done, within your observation? *A.* No, not the shank splits.

*Q.* They were never shaved off so as to level the grain, in your observation, during that period? *A.* To level the grain? What are you talking about? A shank split ain't got no grain.

*Q.* Well, to level the hair side. *A.* Oh, the shank, yes, the grains, were sometimes leveled on the machine.

*Q.* And was not that the process at the beginning apply to the shanks, so that there were no shank splits at the beginning? *A.* Oh, no, there was too much to shave off.

*Q.* What was the area of those shanks? *A.* Square feet, 3 or 4.

*Q.* Three or four. The area of the cordovan, you have testified, was about 6 on the average? *A.* Oh, the average, 5.

*Q.* I think you said 6. *A.* I don't think I did; I think I said 5.

*Q.* Well, we will say 5. And the cordovan was not too much to shave off, was it, in the beginning? *A.* It was a much quicker job to split it, you know.

*Q.* I asked you whether they did not shave it off at the beginning? *A.* They had nothing to split it with.

*Q.* But they shaved it off? *A.* Sure.

*Q.* By hand or with a shaving machine? *A.* Sure, in order to get the factory in motion.

*Q.* But the splits they were in no hurry for, so they piled them up? *A.* The shanks?

*Q.* The shanks, yes. *A.* Simply held them back until they got the splitting machine in operation.

*Q.* Well, now you say you did level up or shave some of these shank pieces. What were those that you were testifying to? *A.* They were put in patent leather, chrome-tanned, and sent to Bristol.

*Q.* When were they done? *A.* Along about the same time, as soon as the splitting machine started up.

*Q.* Do you mean by that after they had gone through the splitting knife, they were then taken and shaved? *A.* Some of them, yes, some of them were shaved; all of them were not shaved. It isn't necessary to have every hide, you know.

*Q.* Do you mean to say that after these shanks were split so that the piece suitable for japanning was taken off, that they took that piece after it had been split on the knife through a process of shaving it? *A.* Yes, sir; sometimes.

*Q.* What times? *A.* Well, when they were going through the factory, they were taken and shaved right from the splitting machine.

*Q.* What made it necessary to shave those pieces that had gone through the splitting knife? *A.* Probably to level them, or make them a little lighter. There is different reasons.

*Q.* So that those pieces that were treated in that way had been made too thick on the splitting knife; is that it? *A.* Possibly so.

*Q.* Well, what became of the other pieces? *A.* That was the shank splits.

*Q.* And how big were those shank splits? *A.* Just as big as the grain; there is one on one side and one on the other; one is the hair side and the other is the flesh.

*Q.* Does your knowledge and experience in the factory indicate to you that the shanks were of uniform thickness throughout? *A.* Generally they were that way when they went to the tan.

*Q.* Now, Mr. Elliott, during this period, you say, you visited Mr. Lichtman's place of business; that is, in November and December, 1904, and January, 1905? *A.* I didn't say distinctly that period.

*Q.* Oh, you were not testifying as to that period? *A.* I was asked if I ever had a conversation with Mr. Lichtman.

*Q.* Well, had you ever had any during that period? *A.* It was in 1905; I think it was along just before he—oh, it was along in the summer of 1905.

*Q.* So that you did not visit Mr. Lichtman's place of business at all during the period covered by this suit, then? *A.* It was along during the year of 1905, after we were running; I couldn't specify the exact date I went there, but it was along during the year 1905.

*Q.* Did you see Mr. Julius Lichtman during this period— *A.* Mr. Abe Lichtman?

*Q.* Won't you wait until I ask my question? Did you see Mr. Julius Lichtman, the defendant in this case, during this period? *A.* Oh, several times.

*Q.* Where did you see him? *A.* Over to his place, over to our place, on the street.

*Q.* But, Mr. Elliott, have you not stated that you do not remember that you went at all to Mr. Lichtman's place at all during this period? *A.* Oh, I went to Mr. Lichtman's place; but you were referring to the conversation; I went to Mr. Lichtman's place during this period, but you were referring to this particular conversation I had with Mr. Lichtman during this period.

*Q.* You must have misunderstood the question. I think the question was whether you went to Mr. Lichtman's place during this period? *A.* Oh, yes, I have.

*Q.* You went there during this period? *A.* Yes.

*Q.* Where was Mr. Lichtman's place during this period? *A.* Market street, 413, I think.

*Q.* That is, November and December, 1904, and January, 1905, Mr. Elliott. *A.* I am quite sure that is where his place of business was.

*Q.* You are positive about that now, Mr. Elliott? *A.* I am positive that I went to his place of business in Market street several times during the year 1904, absolutely positive I did.

*Q.* And whom did you see during that period, November and December, 1904, and July, 1905, at Market street. I will extend that period. Whom did you see at your visits at the Market street place of 1904? *A.* During the year 1904, you mean?

*Q.* Yes. *A.* Oh, I saw different people there, people I knew, and Mr. Abe Lichtman and Mr. Julius Lichtman.

*Q.* Were all of these visits after the 1st of May, 1904? *A.* Oh, yes.

*Q.* Were they after the 1st of June, 1904? *A.* Well, they might have been after the 1st of June, but they were after the 1st of May, because I wasn't down there before then.

*Q.* I am asking you whether they were after the 1st of June, 1904? *A.* Possibly. I don't remember the exact date of the first trip.

*Q.* Did you have any association or connection or acquaintance with the Lichtmans until after you went into the Guigues place? *A.* No, sir.

*Q.* In connection with these transactions? *A.* No, sir.

*Q.* And during the first part of the transaction of the business by Guigues these things were not sold to Lichtman at all, were they? The Lichtmans had no dealings with this concern the first few weeks, did they? *A.* Not the first few weeks we were operating, no.

*Q.* Did they? *A.* No.

*Q.* How many weeks was it before they had anything to do with the Lichtmans? *A.* Oh, somewhere between eight or twelve weeks, eight or ten weeks, from the first soaks. The 1st of May was about the time the first soaks went in.

*Q.* About eight or ten weeks from the 1st of May? *A.* I should judge about eight or ten weeks.

*Q.* That would be after the 1st of July, then? *A.* Yes, sir.

*Q.* Along about the middle of July? *A.* Yes, I should say so.

*Q.* Can you identify any one interview with Mr. Julius Lichtman after the middle of July and before the last of the succeeding January; July, 1904, and January, 1905? *A.* Not Mr. Julius Lichtman.

*Q.* You cannot say that you had any talk with Mr. Julius Lichtman, the defendant, during that period? *A.* I can't remember any particular talk, but I had talked with him, but I couldn't say what about now.

*Q.* And such talk as you had was held where, if you remember? *A.* In Ferry street, in the factory, or the Market street store.

*Q.* You cannot say which is was? *A.* Both.

*Q.* You had several, but you do not know what the conversations were? *A.* I can't exactly recall that, no, not word for word. It was relative to the stuff he was buying.

*Q.* And where in the Ferry street plant did you see Mr. Julius Lichtman? *A.* Do you mean what particular spot in the factory?

*Q.* No. *A.* Well, in the factory.

*Q.* In the factory or in the office? *A.* In the office.

*Q.* In the office? *A.* Yes.

*Q.* Did he go out into the factory, so far as you know? *A.* Oh, occasionally. He would go and look at a lot of stuff; he wouldn't go in the factory every time He came there very seldom, Mr. Julius Lichtman did; it was possibly most always Mr. Abe Lichtman, but Mr. Julius Lichtman did come there.

*Q.* I am speaking of the period from the middle of July, 1904, to the last of January, 1905, if you can separate that in your memory, and I asked you if Mr. Julius Lichtman came to the Ferry street plant, and you said yes. *A.* This goes to when?

*Q.* The last of January, 1905. *A.* And begins when?

*Q.* Well, as soon as you began dealing with Lichtman, which was, as I remember it, about the middle of July. That was your testimony. *A.* Permit me to say that I wouldn't absolutely testify that he was there prior to January, 1905.

Q. Prior to February, you mean? A. Well February, 1905, or whatever the case is. I wouldn't absolutely say that I saw him there at the Ferry street place at that time.

Q. Now, Mr. Elliott, you have testified to some conversations with Mr. Abe Lichtman. A. I did.

Q. One in particular. When did that occur? A. Oh, it was along in 1904 and 1905, along during these transactions.

Q. Well, Mr. Elliott, it certainly was not before the middle of July, 1904, was it? A. No, sir. July, 1904, you say?

Q. The middle of July, 1904; it was not before that time? A. No, it wasn't before that.

Q. How late, within what limits of lateness, would you put it after that? A. Prior to his going to Europe the next year, I think.

Q. When was that? A. He spoke of going to Europe the day we were in the office.

Q. When was that. A. I think it was 1905. I won't be positive about this, because it is several years ago, but I remember the conversation; I remember where we were when we had it; but I don't remember the exact date.

Q. You have not anything to fix the date except the fact that Mr. Lichtman was going to Europe? A. He spoke of that that day.

Q. Don't you know that Mr. Lichtman has been a frequent traveler to Europe during that period? A. Oh, I know he has been several times.

Q. And spoke of it several times when you were there? A. Yes, sir.

Q. Covering the whole period of your operations, did he not? A. He didn't tell me every time he was going to Europe, no.

Q. Well, these trips that you are speaking about were scattered throughout the period, were they not? A. Well, you spoke of one trip at that time. That was

the only time I ever spoke to him about going to Europe.

*Q.* That is the only time he spoke to you about going to Europe? *A.* Yes.

*Q.* But you just said that he spoke about it several times. Did you mean your last answer? *A.* I mean to say that he went to Europe several times, but he never came to me and stated that he was giong to Europe, or something similar to that effect.

*Q.* Who was present at the time of this conversation which has impressed itself upon your mind so vividly? *A.* Nobody but him and I.

*Q.* Nobody but him and you? *A.* No.

*Q.* Where did it occur? *A.* In the little office in the Market street building and on the left side of the building.

*Q.* At what place on Market street? *A.* His storehouse.

*Q.* The storehouse on Market street. What number? *A.* I think it was 413, to the best of my recollection.

*Q.* That is, Julius Lichtman's place of business on Market street? *A.* To the best of my recollection it was 413.

*Q.* It did not occur at the Ferry street plant at all? *A.* No.

*Q.* Now, will you just repeat exactly what he said to you and what you said to him on that occasion? *A.* I went over after some money, rendered a statement. He spoke about being down to Boston. I asked him if he had seen Mr. Baker. He said, yes, he had, and Mr. Baker had offered him some splits, and he came very near saying that he was buying the same stuff from Guigues for less than half the money; and he said no more.

*Q.* Did he say what kind of splits he was offered by Mr. Baker? *A.* I think it was butt splits.

*Q.* Butt splits? *A.* Not the grain; the other side, now, the cordovan part.

*Q.* Those were the cordovan part? *A.* Yes.

*Q.* Well, then, you were referring in that conversation to Mr. Lichtman's saying that he had purchased the cordovans from Mr. Guigues at about half the price that Mr. Baker was offering them to him for? *A.* At about that time?

*Q.* Yes. *A.* That wasn't within this period. You have pulled me out of this period, now.

Mr. Riker—Well, then, I ask your Honor that that testimony be stricken out, and I ask that it be stricken out on the further ground that the specification in this suit does not deal with cordovan at all; that this conversation, so far as it relates to anything, relates to matters not in the suit and not within the period sued on.

The Court [after argument]—You say that during this period there is nothing in the declaration and no evidence about and no evidence of the sale of cordovan splits; is that what you say?

Mr. Riker—Yes, sir.

Mr. MacMahon—Of cordovan as distinguished from grain.

The Court—The word "splits" seems to be used only with reference to shank splits, and the witness says that his conversation was held not during this period That I take to be unimportant, because an admission may be made at any time. The question is whether it is relevant as relating to the dealing in an article, the transaction about an article, which this declaration does not mention. Nevertheless, it strikes me that it is competent, in view of the continuing relations, not exactly between the same parties, but the continuing business kept on, and had a certain unity, and statements like this might be useful to characterize the transaction —not only to characterize the particular trans-

action, but might throw some light on the animus of one or both of the parties. I think it is competent. I deny the motion.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let is be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

10

*Q.* When was this? Can you fix now the time? You say it was not within this period. Can you fix the time of this conversation? *A.* I think it was along in 1905.

*Q.* Are you sure it was not in 1906? *A.* No, sir; not absolutely sure it was not in 1906, no.

*Q.* Don't you know that Julius Lichtman in 1906 was buying from the Corona Kid Company— *A.* Yes, sir.

20 *Q.* One moment. —delivered from the Newark factory of Mr. Guigues these very goods? *A.* He was buying some of them; yes, sir; some from Mr. Baker and some from Mr. Guigues.

*Q.* And they were sold to Mr. Lichtman by the Corona Kid Company through Mr. Guigues, were they not? *A.* No, sir.

*Q.* They were delivered by Mr. Guigues to Mr. Lichtman through the Newark factory, were they not? *A.* They were delivered from our factory to Mr. Licht-

30 man.

*Q.* And sold for the account of the Corona Kid Company? *A.* And sold by Mr. Baker for his own account; we had nothing to do with the selling; they didn't go in our books at all.

*Q.* But they were bought at your factory by Lichtman from Guigues? *A.* No, sir; from Mr. Baker.

*Q.* Why, Mr. Elliott, you said that they were. *A.* No, I did not.

[By request of defendant's counsel, the sten-

ographer reads from the record as follows: "*Q.* Don't you know that Julius Lichtman in 1906 was buying from the Corona Kid Company— *A.* Yes, sir. *Q.* One moment. —delivered from the Newark factory of Mr. Guigues these very goods? *A.* He was buying some of them; yes, sir; some from Mr. Baker and some from Mr. Guigues."]

*Q.* Then you mean by that that Mr. Guigues was selling to Mr. Lichtman independently these articles? *A.* Mr. Guigues was selling to Mr. Lichtman; yes, sir. The invoices that you have got in your hand were covered by sales that Mr. Baker made.

*Q.* And these particular goods were goods that were at the factory of Guigues in Newark and were delivered there to Lichtman, and sold by Mr. Baker for the Corona Kid Company's account? *A.* Yes, sir.

*Q.* And was it not at that time that this conversation with Mr. Abe Lichtman occurred? *A.* Possibly so; it was at the same time that he was getting—that is, when Mr. Baker offered him some of the same class of stuff that he was getting from Mr. Guigues.

*Q.* Do you remember how long these purchases from the Corona Kid Company by Lichtman of these particular articles continued? *A.* No, but it was quite a long while. I don't remember exactly the month it started, and the month it terminated, I knew it was going on at the time I was connected there.

*Q.* Don't you know that it extended over a period of a year? *A.* It might have; it might have been two years; I don't know exactly.

*Q.* And during that period, you say that while Mr. Lichtman was buying these articles from Mr. Baker for the Corona Kid Company account he was also buying the same articles from Guigues at a less price? *A.* Yes, sir.

*Q.* So that he was paying to the Corona Kid Company for the same article twice as much as he was paying to Mr. Guigues; is that it? *A.* I don't say exactly

twice as much; I don't know whether it was exactly twice as much. I didn't keep Mr. Baker's books.

*Q.* Well, you did not keep any—— *A.* I only know what he said, that is all.

*Q.* You did not keep any account of these goods that were delivered to Mr. Lichtman for the Corona Kid Company account out of the factory of Guigues? *A.* In the stock book, in the factory. A report was sent to Boston, delivered to Mr. Lichtman.

*Q.* And you never made any attempt to determine, or have made no attempt to determine from recollection, how much those purchases delivered to Lichtman amounted to? *A.* From the factory?

*Q.* Yes. *A.* I tried to find out, you mean?

*Q.* Yes. *A.* No.

*Q.* Have you any idea? *A.* No.

*Q.* Can you give any estimate at all in regard to it? *A.* No, I cannot, Mr. Riker.

*Q.* Would you say it was less than $50,000? *A.* That is a pretty broad question. I don't know how many he got.

*Q.* Well, if you cannot answer it, do not answer it. But I understand from you that your interpretation of what Mr. Abe Lichtman said to you was that he was buying from Guigues stolen cordovan at about one-half of what he was paying to the Corona people? *A.* Splits, I said.

*Q.* Butt splits? *A.* Yes, there was some butt splits. There was a dozen different kinds of articles all during the time. That was during this period, mind you.

*Q.* Yes. *A.* And I can't say that this conversation was during this period.

*Q.* But I ask you, having refreshed your memory as to the delivery of these things to Lichtman by direction of the Corona Kid Manufacturing Company, whether that served or tended to fix the date of your conversation? *A.* No, it would not.

*Q.* It has no refreshing power at all? *A.* It might

have been 1905 or 1906. I can refer to another conversation, if you would like to have that, and give you the time of that.

*Q.* Do I understand that there is another conversation with Mr. Abe Lichtman? *A.* Outside of this period; yes, sir.

*Q.* On this same subject matter? *A.* Yes, sir.

*Q.* Do you not remember testifying on your direct examination that there was only one conversation? *A.* I did not; he asked me if I had any conversation, and I specified this one in particular.

*Q.* And then you say that there is another; is that it? *A.* There is.

*Q.* You say that there was another conversation? *A.* Yes.

*Q.* Well, you cannot identify this one that we are dealing with any more particularly than you have done? *A.* This one that I am talking about now?

*Q.* Yes. *A.* Yes, sir.

*Q.* Can you? *A.* Yes, sir.

*Q.* How? *A.* I can tell you the month it happened in.

*Q.* I am speaking of the time that he told you that he could buy the same goods from Guigues at half the price that he could from Baker. *A.* It is my impression it was along in the summer—either in the summer of 1906 or 1906. I will admit that is a broad time, but I can't give the exact time it happened.

*Q.* [By the Court.] Are you speaking of the conversation that you have been detailing or the one that you last mentioned. *A.* The one we have been speaking of.

*Q.* You were over at Mr. Lichtman's office on Market street for what purpose on that occasion? *A.* In this particular case?

*Q.* Yes. *A.* For a check.

*Q.* There was no one present but Mr. Abe Lichtman? *A.* And myself.

*Q.* Well, was there anything else said at that interview on this subject that you recall? *A.* No.

*Q.* What reply did you make to him? Did you make any reply? *A.* Laughed.

*Q.* You laughed? *A.* Yes, that is about all.

*Q.* And that was all that was said, was it? *A.* That was all.

*Q.* I will have to ask you now to repeat once more just what Mr. Abe Lichtman said, as nearly in his words as you can, as he spoke them. *A.* I went in there and asked for a check, presented a statement for the account; he checked it up, O. K'd it, and everything; and he said, "I was down to Boston the other day." I said, "Were you? Did you see Mr. Baker?" He said, "Yes. I was talking to him about buying some stuff over there, the splits—"

*Q.* The splits? *A.* "Splits" or "butts," one or the other; I wouldn't specify exactly, but it was merchandise under that head, what he was getting. And he said, "I came very near saying, 'I am getting them in Newark from Guigues for less than half what I am paying you for it.' and I shut up my mouth."

*Q.* You are not certain as to the character of the goods that he was speaking about, now, are you? *A.* It was the shell goods that he was getting; it was some of the splits that he got out of the factory. He got several different grades of stuff out of there.

*Q.* Mr. Lichtman got several different grades of stuff at that time? *A.* Yes. I don't know about that particular time, but from 1904 to 1908.

*Q.* Well, this conversation, wasn't it later than 1905 or 1906? *A.* No, sir; in 1905, around September, I think he was getting those cordovan splits and shells.

*Q.* The shells themselves? *A.* Yes.

*Q.* Not— *A.* Not the grain, the other side. At this time Mr. Baker was getting the grain.

*Q.* Mr. Baker was getting the grains, what year was that? *A.* 1905.

*Q.* Where were they sent? *A.* They had been sent to Bristol, and the grains were piled up in the factory awaiting instructions.

*Q.* And Mr. Guigues was getting the valuable part of the horse hide? *A.* Yes.

*Q.* Yes, taking the other side. That was the summer of 1905 or 1906? *A.* 1905, I think.

*Q.* Now, Mr. Elliott, you handled these checks that have been shown you, didn't you? *A.* Yes, sir.

*Q.* And you handled all the checks that came to Mr. Guigues? *A.* Possibly every one of them.

*Q.* Throughout the whole period? *A.* Yes, unless it happened to be on a day, or something, that I went to New York, or some place like that, and they should be deposited, and he did it himself and handed me a memorandum. That occurred, I remember, on one or two occasions.

*Q.* Let me ask you to describe just what you did with the checks, just what connection you had with the checks, which you handled, as you say, all but the occasional ones that came when you were absent? *A.* They were taken and credited up in the cash-book, that is what you mean, isn't it?

*Q.* No, what did you do with the paper check? *A.* Took it to the Federal Trust Company.

*Q.* Took it to the Federal Trust Company? *A.* Yes, sir.

*Q.* And deposited it? *A.* Yes. Indorsed it with a rubber stamp.

*Q.* You indorsed it? *A.* Yes, sir; with a rubber stamp.

*Q.* And that, with the few exceptions you have testified to, continued throughout the whole period? *A.* Yes, sir.

*Q.* Do you remember saying at your examination on August 17, 1908, in the bankruptcy court, in answer to the question, "What did you do with the checks?" you said, "Handled them through the office; didn't come into my possession?" *A.* I said that?

*Q.* Do you remember saying it? *A.* No, sir.

*Q.* You did not say it? *A.* I don't remember saying it.

*Q.* It was not true, if you did say it? *A.* I don't remember saying it.

*Q.* I asked you if it was true, if you did say it? *A.* No.

*Q.* It is not true? *A.* No.

*Q.* It was not true at that time? *A.* No.

*Q.* It was not true at that time? *A.* No.

*Q.* And it is not true now? *A.* No.

*Q.* Do you remember at that particular time, on that examination, making this answer in response to this question: "Did you ever see Mr. Francis hand any of the checks to Mr. Guigues?" Answer: "I never noticed it at any particular time"? *A.* I never noticed Mr. Francis hand him any checks.

Mr. Skinner—The question is whether you remember that testimony?

Witness—No, I don't remember that.

*Q.* [By the Court.] Who was. Mr. Francis? *A* The bookkeeper that was there when I went in the factory.

*Q.* [By Mr. Riker.] Did you testify to that effect? *A.* I don't remember.

*Q.* Is it true, if you did?

Mr. Skinner—I object. That is highly improper.

The Court—I suppose the question could be put in the form, "Was it a fact?" I think that would be unobjectionable. I cannot say that this is objectionable legally.

[Question withdrawn.]

*Q.* When did you leave the employ of Mr. Guigues —Mr. Guigues or the Guigues Leather Company? *A.* January, 1908.

*Q.* Why did you leave? *A.* Simply to keep from telling lies.

*Q.* That was a moral reason. *A.* There was about

fifteen or twenty creditors running there every day for money, and he was dumping them on my shoulders and going to the other end of the mill.

*Q.* You were getting tired of telling so many lies? *A.* Yes.

*Q.* It was not an objection to the telling of the lie, but to telling so many lies? *A.* That is the idea; you have got it right.

*Q.* You knew, did you, that Mr. Guigues was purloining goods belonging to others and selling them to others? *A.* I did.

*Q.* Early in the game? *A.* I did.

*Q.* That did not induce you to leave Mr. Guigues's employ when you did leave, did it? *A.* I just explained that.

*Q.* Telling the lies? *A.* I got tired of it.

*Q.* Tired of telling lies? *A.* Yes, and I saw that there was nothing in the future to keep on telling lies for, and it was bound to finish there.

*Q.* But it was within your own knowledge; you knew that this was a criminal matter, did you not? *A.* Yes.

*Q.* And was there not a criminal charge made against you at the time you resigned? *A.* Tried to be one made.

*Q.* Was there not one made? *A.* I think there was, after I had resigned, about three or four weeks.

*Q.* Was it not in connection with your business relations with the Guigues Company that the charge was made? *A.* They tried to connect it with that.

*Q.* Mr. Elliott, when was it that you made the copies of Mr. Guigues's private books? *A.* Along in December, I should say, 1907. I quit there January 8th, I believe, and it was within three or four weeks prior to that time.

*Q.* It was from two to four weeks prior to the time when you quit? *A.* Somewhere along there, yes.

*Q.* How long did it take to make those? *A.* Oh, two or three days, at different times.

*Q.* When Mr. Guigues was out of the office? *A.* In

the office and out of the office. The office was different there than it is here.

*Q.* Did you tell him that you were abstracting his private records? *A.* I answered that no before.

*Q.* You did not tell him? *A.* No.

*Q.* You did not draw his attention to the fact that you were taking something that did not belong to you? *A.* I did not.

*Q.* What induced you to make this copy of Mr. Guigues's private books?

Objected to as repetition.

Objection overruled.

*A.* I answered the question; for self-protection. I knew the thing was bound to come out some day.

*Q.* How did Mr. Guigues's books furnish you self-protection? *A.* For instance, I looked at it this way. I had no legal advice on the matter and didn't know anything about it. I sized it up this way. I knew the Guigues Leather Company was in bad straits, and if anything should happen to the Guigues Leather Company's books, or office records or anything—I was secretary and treasurer of the company, of the Guigues Leather Company—if anything should happen to their books whereby they were destroyed, if a fire got in there and burnt the records all up, Mr. Guigues would have just as much chance to put the thing on me as it was on him, that he could say this stuff was sold and went through the Guigues Leather Company, "and here is the treasurer that handled the funds," and so forth. I looked at it this way.

*Q.* You handled the checks for these particular goods? *A.* Mr. Lichtman's?

*Q.* Yes. *A.* Yes, sir.

*Q.* How were they made payable? *A.* To Guigues.

*Q.* How were they deposited? *A.* In a special account in the Federal Trust.

*Q.* You thought that money might be in some way traced to you? *A.* I didn't know, but I wanted to be sure.

*Q.* Then it was a highly precautionary measure that you took in view of a possible contingency that you did not understand? *A.* Yes, sir.

*Q.* How were you interested in those books personally? *A.* Which book?

*Q.* The books that you copied. *A.* Simply to keep them.

*Q.* How were you interested in the contents of those books? *A.* Deposits to Mr. Guigues's credit.

*Q.* What personal substantial interest did you have in the contents of those books? *A.* None; I was simply employed to do as he said.

*Q.* Why did you not copy the whole of those books? *A.* Well, I can answer that by saying that I took this one big account, and I copied a couple of others, and a lot of others were very small accounts that I didn't bother with.

*Q.* Which accounts were they that were so small that you didn't bother with them? *A.* Oh, there were some on there; I think a couple of Mr. Neider's and one of Friedman's, didn't amount to but very little; the Taylor-Poole, I don't think that amounted to very much.

*Q.* Can you state from recollection—you say that the Friedman account was a small account—can you state from recollection how much it amounted to? *A.* No, sir; I cannot.

*Q.* Would you be willing to say that it was less than $2,000? *A.* I would not, Mr. Riker; I don't remember whether it was a hundred or five thousand dollars, to be frank and candid about it; I don't know.

*Q.* That account dealt with the same character of goods that Lichtman afterwards got, didn't it? *A.* Some, some of the same kind, not all.

*Q.* Well, was the bulk of it the same kind? *A.* I think so.

*Q.* Well, why did you not protect yourself against the possible attack as to those goods that were of the same character as the Lichtman goods? *A.* Well, these accounts that I did get I considered were sufficient to

prove the existence of the books and to show where the bulk of the stuff had gone.

*Q.* You thought your copies proved the existence of the books? *A.* These were absolute copies from the books and verified the books, and would prove that these books actually existed and that the stuff did not go through the company's books.

*Q.* Why did you not put them in more permanent and complete form? *A.* I can understand that form.

*Q.* You can understand it? *A.* Yes.

At one o'clock P. M. the court takes a recess of one hour.

After recess.

*Joshua L. Elliott* resumes the stand in behalf of plaintiff.

Cross-examination (continued), by Mr. Riker.

*Q.* Did you ever know the plant on Ferry street until you went there with Mr. Guigues? *A.* No, sir.

*Q.* On the corner of Ferry and Madison streets there was a two-story frame structure, was there not, when you went there? *A.* Yes, sir.

*Q.* On the corner of Monroe street and Ferry street, running along the Ferry street front, there was a two-story factory building, was there not? *A.* On Ferry street?

*Q.* Yes. *A.* Running from the frame building over to Monroe street?

*Q.* Yes. *A.* Yes, sir.

*Q.* Where was this seclusive place located in which you say the shanks were concealed? *A.* The Ferry street building, the west end, the ground floor.

*Q.* Were there any windows to that ground floor? *A.* I remember there was a partition in that building; we had some bake ovens, and so forth, in there, and there was a partition in that building that we later took out, and at this time there was no windows; that is, there was windows on the inside. There was no light

came in there from the outside; on the inside it was very dark; there was no light showing in there to amount to anything at all.

*Q.* Does that part of the two-story factory building running along Ferry street from Monroe? *A.* I beg your pardon!

[Question read.]

*Q.* Along the Ferry street front? *A.* It was near—it was on the end where the frame building is, Madison and Ferry; it was on that end—in that end.

*Q.* You know that had been occupied by the Lock Washer Company, do you not? *A.* The Lock Washer Company had a sign there at that entrance, on Ferry and Monroe streets, when I went there.

*Q.* And there was a two-story factory building? *A.* On that street, yes.

*Q.* Was this bake oven place that you refer to part of the factory building? *A.* It was part of that building; there was a wall in there.

*Q.* You are quite sure of that, are you? *A.* Quite sure.

*Q.* It was an old japan oven, was it not? *A.* I think so.

*Q.* And there were two stories, one above the other, were there not? *A.* In that particular end?

*Q.* Yes. *A.* I couldn't possibly say. I know there was a cellar on the side nearest to Ferry street.

*Q.* There was an old boiler downstairs? *A.* Yes, sir.

*Q.* That was the old heating apparatus, the old bake oven, of the bake shop of I. W. Dawson—of Dawson & Company? *A.* But as far as there being a second floor in there, I don't think there was in that end.

*Q.* Well, you are mistaken. *A.* Well, I am not positive about that.

*Q.* Toward the Ferry street side of that bake oven there was a thick blank wall, was there not, part of the end of the bake oven? *A.* On the Ferry street side?

*Q.* Yes. *A.* Where that kind of a sub-cellar was built for the boiler?

*Q.* Yes. There was a wall went up, a blank wall? *A.* I think so; I remember the wall there.

*Q.* No openings that you could detect that ever existed in it? *A.* I never noticed any; I couldn't say positively about that.

*Q.* And on the yard side there were two double doors, wooden doors, were there not? *A.* At that end?

*Q.* Yes. *A.* I think so. They were later bricked up.

*Q.* With just a small light of glass in each one of the leaves of the doors? *A.* I don't remember the glass.

*Q.* Pretty high up? *A.* I don't remember the exact kind of doors that was used there.

*Q.* That was almost immediately toward the tanning yard and beam yard of Guigues, was it not? *A.* The beam-house, the lower end of the beam-house.

*Q.* What was put in there? *A.* Pickled shank splits.

*Q.* Where was the pickling of the shank splits carried on? *A.* The apparatus, you mean?

*Q.* Yes. *A.* At that time, the beginning of the factory, I think it was done in the cellar over on the Monroe street side.

*Q.* You heard Mr. Conway testify as to where that was carried on, did you not? *A.* I was here, and I think I did. I do not remember what he said though, possibly; I do not.

*Q.* Then you do not remember. Well, were these pickled shanks after they were pickled kept in the Monroe street building, any of them? *A.* Pickled shanks or splits?

*Q.* Splits or shanks. *A.* The shanks was. I should say all the shank splits were put in this building as fast as they accumulated; there might have been some laying around the machines.

*Q.* What were the dimensions of this building that you speak of? *A.* This one particular spot, I should say, was probably 20 or 25 feet long and probably somewhere near twelve or fifteen feet wide; something like

that. I don't say positively, but it was along about that size.

*Q.* These were splits, as I understand you, that were put in there? *A.* Yes, sir.

*Q.* Where was the splitting operation carried on? *A.* At that time, I think, in the beam-house.

*Q.* Almost immediately adjoining this old japan oven? *A.* Yes. It was up near the engine-room, where the splitting machines were, up above the vats.

*Q.* And this unlighted room or space in the old japan oven was used for the storage of that refuse from the splitting machines, was it not? *A.* At that time.

*Q.* And that is all there was to the concealing of those splits, was there not? *A.* Of those particular splits.

*Q.* And all the splits that were put in there was simply refuse taken from the machines as the shanks were split and put in there, because it was handy? *A.* Well, it was shank splits. I don't know whether you call it refuse.

*Q.* Do you mean to say now that those things were put in there for the purpose of concealing them from anybody? *A.* I do.

*Q.* When did they stop using that place for the storage of these splits? *A.* Well, practically when we stopped making them.

*Q.* And when was taht? *A.* 1905, I should judge.

*Q.* Then, so far as the shank splits are concerned, they were always put in that particular place? *A.* I don't say each and every one; there might have been a load in some other part of the building that were shipped out before Mr. Baker got there, that didn't reach there, shipped out before they got there.

*Q.* But so far as placing them, as you say, for the purpose of concealment, that was the place where they were put? *A.* That was the place where this particular class of stuff would be put.

*Q.* What was the condition of these splits? *A.* Pickled.

*Q.* Were they wet when they were put in there? *A.* You might consider that different from what I do. They were in a pickled state and drained off; they were considered dry; that is, they were pickled, but the pickle wasn't driven off of them, if that is what you mean by being dry; simply pickled and laid out and dried as far as they would naturally, and then split and rolled up and bundled and put in there.

*Q.* Where were they laid out to dry? *A.* In different parts of the factory, before they were split. They went through the pickle and were put on trucks and horses and things, and allowed to drain before they were split.

*Q.* Before they were split? *A.* Yes.

*Q.* And after they were split they were taken from the adjoining beam-house into this first floor room that was not used for any other purpose? *A.* At that time it wasn't.

*Q.* Was it ever used for any other purpose? *A.* Yes.

*Q.* What? *A.* After we stopped making these shank splits we went into tanning the hides, and then we had to have more room for the storage house and all the available space we could get, even the old cellar where the boiler was floored over, put a floor in there, and opened up all that part of the building for the storage of old hides.

*Q.* And you used this in connection with these other things for the storage of hides later on, I understand you to say? *A.* Yes.

*Q.* But until you began to do that, you could store these splits in this particular place that you have described? *A.* Yes, sir.

*Q.* Where was this concealed place with reference to the office? *A.* With reference to what?

*Q.* With reference to the office. *A.* In passing out through the office?

*Q.* No. I am now speaking with regard to proximity, or near the office. *A.* It was right near the office.

*Q.* Rather joining it, was it not? *A.* Yes, separate building, that is all.

*Q.* Were the wooden doors to this japan oven locked? *A.* There was a door about 4 or 5 feet from the end of that building; these wooden doors, as I remember, that you speak of, were bricked up, that you refer to, and another opening was made in the building further up, and there was one narrow door there, an ordinary door, about 3 or 4 feet, I should judge, from the end of the building next to the office, and there there was a door that was kept—I don't remember whether it was locked or whether it was fastened from the inside; I don't remember positively how it was fastened; I wouldn't undertake to say.

*Q.* That was right opposite the door out of the office, was it? *A.* The Madison street building. You understand, there was a straight wall there; there was no doors there, but when we went there we put a door in the end of that wall, so that you could go straight from the office through in the Madison street building without going in the beam-house at all to pass this door.

*Q.* I am talking about the Madison street building; the building that you are describing was on Ferry street. *A.* It wasn't necessary to go past that door to get into the factory.

*Q.* There was a door on the side of the frame office building leading out into the yard? *A.* Yes.

*Q.* And from that there was a door into the old japan oven? *A.* After you got into the beam-house, to the left side.

*Q.* But on the face of the wall of the japan oven opposite the office, there was no door there? *A.* In the end of the building?

*Q.* Yes. *A.* No.

*Q.* There was a staircase on the outside, was there not? *A.* Yes, out in the alley.

*Q.* There was a staircase up to the second floor? *A.* Yes.

*Q.* And was there not a double frame door, a wooden door, which used to be the door through which you took the hides to japan them? *A.* I think that is the one we bricked up; that is the double door.

*Q.* And you did not have any entrance there on that side at all? *A.* There was a door there about 3 or 4 feet from the end of the building.

*Q.* When you built your beam-house or tan-yard, or whatever that was, in the middle of the block, that wall went over to the entrance of the old japan oven? *A.* Yes.

*Q.* And there was a door left in there by which you could go from the beam-house directly into this old japan oven, was there not? *A.* Yes.

*Q.* And these shank splits that were taken off in the beam-house were simply taken out of this door and into the storage room? *A.* Sure. We had to have a door to take them in, you know.

*Q.* Now, is it not the practice to store them in that particular pickled form in a place where there is not light and air? *A.* I don't know about that. I know where that was stored.

*Q.* The knives, the splitting machines, were in this new building that I have drawn your attention to, and when the shanks were split, these flesh sides of the splits were simply taken out and put into this room, where there were no windows or any light; is that what was done? *A.* Yes, sir.

*Q.* And that is what you describe as to concealing them, is it? *A.* It seemed to work. That is what I described.

*Q.* And your interpretation of the placing them there was that they were put there for the purpose of concealing them, is that it? *A.* Yes, sir; instructed that way.

*Q.* Who was instructed? *A.* I was; the factory in general; that is, the foremen.

*Q.* You will just confine yourself to your instructions.

Who gave them to you? *A.* Not personally, no; that is, I wasn't instructed to personally go get those things and put them in there myself.

*Q.* You had no instructions on the subject at all, had you? *A.* I was instructed to see that the stuff was out of the way of Mr. Guigues.

*Q.* Then you did have instructions? *A.* Yes.

*Q.* Where were you instructed to put them? *A.* In that room.

*Q.* What place did you have to put them in except that room? *A.* Well, you know, that is a pretty big factory.

*Q.* I know all about it, Mr. Elliott; almost as much as you do, I expect. *A.* More, I expect.

*Q.* What other place did you have that was convenient for putting these pieces of shank splits except there? *A.* They could have been put in other places.

*Q.* What suitable place was there? *A.* That was the most suitable place for that particular stuff, because it was turned out right there in the beam-house.

*Q.* What is a buffing, Mr. Elliott? *A.* A very thin grain split, I should judge; I would class it as that; that is my definition.

*Q.* A thin grain split? *A.* Yes.

*Q.* Then does it in your definition correspond with the grain split of the cordovan? *A.* No, sir.

*Q.* Well, then, what is it if it isn't that in this case? *A.* In this case there is a grain split after tanning; that is, it was split off of the butt after it was tanned; and, as I previously said, it was not a uniform thickness. It was split down in the shell, all they could get off.

*Q.* Down to the cordovan, or shell? *A.* Yes, and a buffing, a split the other way, turned in the machine, I think, so as to make a uniform thickness; that is, split a uniform thickness off the grain instead of the shell.

*Q.* Do you distinguish in this respect between a hand buffing and a machine buffing? *A.* I am not familiar with hand buffing.

*Q.* You do not know anything about hand buffing? *A.* No.

*Q.* Then do you know or do you not know from your experience what is properly termed a buffing when it is taken off by the machine? What then is it? *A.* It is a grain piece.

*Q.* Then how does it differ from the grain splits that have been testified to? *A.* I have just explained it.

Mr. Skinner—I object to that.

*Q.* Explain it again. I am so thick that I do not understand it. *A.* The grain split taken from the butt after tanning is not uniform in thickness; it is thicker in some places—that is, in the center—than it is on the edge. Now, the buffing is split so as to make a uniform thickness.

*Q.* Where is the buffing taken off of? *A.* The grain side, but it is a different process of splitting to accomplish that.

*Q.* You mean to say there is first taken off the grain split and then a buffing before you reach the cordovan? *A.* The grain is the buffing.

*Q.* And that is taken off by the machine? *A.* Sure.

*Q.* And is the part next to the hair, is it not? *A.* Yes.

*Q.* Now, then, is it not the buffing that you are speaking of? *A.* In these grain splits?

*Q.* Yes. *A.* No, sir.

*Q.* In what respect does it differ? *A.* I just explained that. A buffing is taken off in uniform thickness, and it is very thin, and after this is taken off it is necessary to take off more of that substance between the shell and the buffing in order to get the shell down to the proper weight to finish into cordovan.

*Q.* Then the buffing you have described is the piece underneath the grain split, is that it? *A.* No, sir; it is the grain.

*Q.* It is the grain itself? *A.* Yes.

*Q.* Which has had some substance afterwards taken off? *A.* There is a substance between the grain and the shell. These grain splits, as we call them, this sub-

stance was taken off with a splitting machine, but in the buffing that substance is left on there, and the grain is taken off in a uniform thickness to make the buffing.

*Q.* Now, Mr. Elliott, to return to the books of which you have produced a copy. What did those books contain? *A.* Records of accounts.

*Q.* Of what kind of accounts? *A.* Merchandise, you may term it, that Mr. Guigues sold.

*Q.* Do you remember in August, 1908, at the hearing in the bankruptcy matter being asked what was contained in these books? [No response.]

The Court—Do you remember? That is the only question.

Witness—No, I do not.

*Q.* Well, do you remember saying on that hearing that these books contained nothing but the sales of the offal, as you call it? *A.* I don't remember.

*Q.* Did they contain anything but sales of offal? *A.* Why, certainly.

*Q.* Did you have your copy of the books in question at the time of that examination? *A.* I don't think so.

*Q.* When did you take the copy? *A.* This yellow copy?

*Q.* Yes. *A.* The latter part of December or the 1st of January, 1908.

*Q.* Well, don't you remember that the hearing was in August, 1908? *A.* I don't remember the exact date; I know I was up there.

*Q.* It was after you had taken off the copies of these books? *A.* Oh, yes.

*Q.* Is it not a fact that these books did not contain anything but sales of the offal? *A.* They did contain sales of stuff otherwise than offal, and no offal; there was no offal in it, in other words.

*Q.* You have testified here on cross-examination that the books of the company —

The Court—You now refer to the bankruptcy proceedings?

Mr. Riker—No, here on this cross-examination.

*Q.* — that the general books of Mr. Guigues contained the entries with reference to the offal? *A.* The general books, yes.

The Court—That means the regular books, I suppose?

Mr. Riker—The regular books.

*Q.* What do you include in the offal that you refer to in that connection? *A.* The regular books?

*Q.* Yes. *A.* Fleshings taken from the hides, and trimmings, the same as the ears and noses and knuckles and hair.

*Q.* Do you remember testifying in the bankruptcy examination, to which I have already drawn your attention, in this language: "The glue stock was turned in to the A. A. Guigues Leather Company; that is what I considered the A. A. Guigues Leather Company was entitled to"? *A.* The glue stock was turned in to the A. A. Guigues Leather Company.

*Q.* "That is what I considered the A. A. Guigues Leather Company was entitled to." Do you remember testifying to that? *A.* Well, it was turned in to it.

Mr. Skinner—The question is, Do you remember testifying to it? not whether it was so.

Witness—I do not; I don't remember the exact questions that were put to me at that time.

*Q.* Well, is it a fact that that was what was turned in to the A. A. Guigues Leather Company? *A.* The glue stock was sold to Swift & Company and Baeder-Adamson Company; it was turned in to the Guigues Company.

*Q.* And that is what you considered the A. A. Guigues Leather Company was entitled to? *A.* I did.

*Q.* Do you distinguish between glue stock and offal? *A.* Well, the glue stock down there, the fleshings and the trimmings I have just referred to and the hair was considered offal.

The Court—That is hardly an answer to the question.

Witness—What was the question?

*Q.* [By the Court.] Do you distinguish between offal and glue stock? *A.* It is the same.

*Q.* [By Mr. Riker.] What? *A.* It is the same thing.

*Q.* It is the same thing? *A.* Yes.

*Q.* That is your understanding, is it? *A.* It is.

*Q.* What do you understand to be hair? *A.* That is offal.

*Q.* Is that glue stock? *A.* No, but it comes under the heading of offal; it is hair.

*Q.* Then there is a distinction between offal and glue stock, is there not? *A.* Offal covers glue stock and hair, too.

*Q.* What else does it cover? *A.* That is about all, as far as my knowledge is concerned.

*Q.* Does it include, so far as your knowledge is concerned, scraps of leather and trimmings? *A.* It wasn't called that at the Guigues Leather Company, and that is where I got my knowledge.

*Q.* When did you last see these books from which you produce what you say is a copy? *A.* Along during the first part of January, 1908.

*Q.* Where were these books when you last saw them? *A.* In the safe.

*Q.* Did you ever show them to anyone? *A.* Why, the people in the office saw them; I didn't call in any outsiders and show them to them.

*Q.* Now, Mr. Elliott, these sudden instructions to cover things up that you testified to, what is the earliest one that you can recall? *A.* I should judge, along in June, 1904.

*Q.* Is there anything that fixes that date in your memory? *A.* No, sir. It was shortly after the factory started.

*Q.* That was before Lichtman was dealing with your people, was it not? *A.* Well, possibly a short while.

*Q.* Well, was it not before? *A.* I can't say that it was.

*Q.* Well, if it was in June— *A.* I didn't say it was in June; I say about that time. I don't know the exact date; I don't remember the exact dates that Mr. Lichtman started dealing.

*Q.* Didn't you say he started dealing about the middle of July? *A.* Some time in July, I should judge. You said, "About the middle of July?" and I said, "I guess so."

*Q.* You said about ten weeks after the factory started? *A.* Well, possibly it was about the time that I was given these instructions to cover it up. I don't know the exact date.

*Q.* I was asking you particularly about the special notice to cover things up. How did it come to you at that time? *A.* Who from?

*Q.* Yes. Well, how? *A.* Mr. Guigues.

*Q.* Well, you were the bookkeeper at that time, were you not? *A.* Yes, sir.

*Q.* You had nothing to do with the factory? *A.* Well, I was out in the factory, as I previously explained. I had the daily reports of the factory to make out, and it was necessary to be in the factory to get the information.

*Q.* Well, perhaps I misunderstood you; but is it not a fact that your only excuse for being in the factory was that you were there for self-instruction in the processes of the business? *A.* Sure, and I would get these reports, and I just simply learned what I could regarding the business.

*Q.* Was not Conway the superintendent in charge? *A.* Mr. Conway was the superintendent in charge of the tanning—well, he was the factory superintendent.

*Q.* What reports were you to get from the factory and make? *A.* Well, mornings I was to make up from the stock book what we call the soak; that is, the hides.

*Q.* That is, from the stock book? *A.* Yes, the hides that were to be put in the vats for soaking.

*Q.* Where was the stock book kept? *A.* In the office.

*Q.* What else did you have to do? *A.* I would take the report out to the warehouse, and I would say to the foreman of the warehouse, or if Mr. Conway was there, either one or the other, so and so, "Soak so many butts of that to-day," and turn it over to him, and when it was put in soak, turn over the vats to him. I kept a record of the day they went in the vats, how long they stayed in there and when they were due to be pulled out.

*Q.* Who furnished you the record? *A.* It was turned in on a printed form we had in the office. When I told them what to soak, either Mr. Conway or the foreman in charge of the warehouse, we simply worked the thing together.

*Q.* You did not give any instructions to the workmen at all, did you? *A.* Not necessarily to the workmen; no, sir.

*Q.* And all you did was to carry messages for Mr. Guigues to the superintendents; isn't that all? *A.* Mr. Guigues generally delivered his own messages.

*Q.* Well, when you had anything to do with the people in the factory, that was all you did, was it not? *A.* Not necessarily, no.

*Q.* Well, what else did you do, if it wasn't necessary? *A.* I would be through the factory, and Mr. Guigues would come along sometimes and instruct me to do a certain thing; that is, to get up a lot of this stuff, get it together—Mr. Conway was working at something else—get a bunch of men and get it out of this corner and get it in another.

*Q.* Now, this first conversation, that you think may have occurred in June, 1904, or July, the hurry call to conceal things, where was the message delivered to you? *A.* The exact spot I can't tell you; I was in the office there or around the factory.

*Q.* You do not know whether you were in the office or in the factory? *A.* I don't remember exactly where I was standing, no.

*Q.* Do you remember who gave it to you? *A.* I remember Mr. Guigues gave me all of them.

*Q.* What did he say to you? *A.* He simply said, "Get this stuff out of the way; I am going to dispose of it."

*Q.* What else? *A.* To put it away.

*Q.* What did he refer to? *A.* At that time it was the shank splits and the grain.

*Q.* Well, where were they? Did he point them out to you? *A.* Well, the shank splits were in the beam-house and the grains were in the Madison street building.

*Q.* Did he take you around and point the things out to you? *A.* Yes.

*Q.* The shanks were where? *A.* In the beam-house.

*Q.* In the beam-house? *A.* Yes.

*Q.* Were they the shanks or the splits? *A.* Both.

*Q.* Both the shanks and splits? *A.* Both. The machine was running.

*Q.* And he said he was going to dispose of the whole lot? *A.* No.

*Q.* Well, what was it he was going to dispose of? *A.* The shank splits.

*Q.* And to get them out of the way? *A.* Yes.

*Q.* And those were all that he pointed out to you? *A.* No.

*Q.* Well, what else did he point out to you? *A.* Grain.

*Q.* Confining yourself for the present to the shank splits, did he point out anything else? *A.* In that particular place and pile, that is all.

*Q.* Right in that particular place and pile, he said to get them out of the way, he was going to dispose of them? *A.* Yes, sir.

*Q.* [By the Court.] He said he was going to dispose of them? *A.* Yes, sir.

*Q.* [By Mr. Riker.] And then what did he do? *A.* He showed me the grains.

*Q.* Where were they? *A.* In the Madison street building, the first floor.

*Q.* That is some distance from the place where he showed you this pile of shank splits? *A.* I should judge a hundred feet.

*Q.* Where was the superintendent in charge of the beam-house at that time? *A.* He just told him the same thing, I presume, from what Mr. Conway told me.

*Q.* Did you hear it? *A.* I did not.

*Q.* Did you have any control or authority over the beam-house? *A.* I did not.

*Q.* Was it any part of your duty to remove the shank splits? *A.* It was anybody's duty that Mr. Guigues told. He advised the different foremen through Mr. Conway and part of the time individually to keep the stuff out of the way.

*Q.* Did he take you right away from that pile of shank splits into the Madison street building? *A.* To the best of my memory, we went right to there.

*Q.* What did he point out there? *A.* The grains.

*Q.* The grain splits? *A.* Yes, sir.

*Q.* Where were they? *A.* There was quite a few of them around on the floor there.

*Q.* Those are the ones that he pointed out to you and told you to get out of the way? *A.* Yes, sir.

*Q.* Anything else? *A.* I believe that is about all at that time.

*Q.* I want you to confine yourself to that time. *A.* That is about all that I remember at that time.

*Q.* That is all he said to you, as far as you remember? *A.* Yes, sir.

*Q.* And what did you do in consequence of what he told you? *A.* At that time?

*Q.* Yes. *A.* The stuff was removed and put in the place, I think, at that time, in acordance with Mr. Conway's instruction. I won't say exactly who superintended the job, but we were advised to keep it out of the way.

*Q.* What did you do with reference to those instruc-

tions? *A.* Every time I came along through the factory and saw anything I moved it. At this particular time, I don't remember whether I picked these pieces up personally and carried them and put them away or whether I got men and did it, or whether Mr. Conway did it, but it was done.

*Q.* Did you see them taken away and put anywhere? *A.* I saw the shank splits removed.

*Q.* Where were they put? *A.* In this room that we were speaking of.

*Q.* In this separate room that you are speaking of? *A.* Yes.

*Q.* What was done with the grains? *A.* I don't remember which building they were put in. They were generally kept up on the floors of the building, and I don't remember where those particular grains were put.

*Q.* Did you see them put away? *A.* I don't remember seeing them personally taken from that spot.

*Q.* Did you not testify on your direct examination—I may be in error; that is my recollection—that you got telephone messages about covering things us? *A.* Yes.

*Q.* Did you get any such? *A.* Yes, sir.

*Q.* Whom did you get them from? *A.* Well, I spoke to Mr. Lichtman on different occasions, and he told me Mr. Baker was coming, and that I should get that stuff out of there before he came.

*Q.* Did he explain to you how he knew Mr. Baker was coming? *A.* He did not.

*Q.* Did you know Mr. Lichtman— *A.* I presumed it was direct to him several times, and he said it was; I don't know.

*Q.* Did Mr. Lichtman telephone to you that Mr. Baker was coming to Mr. Guigues's place; is that the way you want to be understood? *A.* He said it was Mr. Lichtman; I don't know who it was.

*Q.* Well, the man on the other end of the telephone told you that he was Mr. Lichtman? *A.* Yes.

*Q.* And that he wanted to tell you that Mr. Baker

was coming to Mr. Guigues's place, is that what you say? *A.* Yes, sir.

*Q.* And he didn't explain how he happened to know what Mr. Baker was going to do? *A.* He didn't say.

*Q.* And this was when? *A.* During the transactions.

*Q.* Well, see if you can fix upon some date in some specific case. *A.* Oh, I should judge around 1905, 1906, 1907, not on any specific date; no, sir.

*Q.* On a number of occasions? *A.* Yes, sir. I can't specify exactly how many.

*Q.* Well, about? *A.* Well, about a dozen or fifteen.

*Q.* Mr. Lichtman, or a man saying he was Mr. Lichtman, on the other end of the telephone, told you that Mr. Baker was coming to your place? *A.* Yes, sir.

*Q.* And you did not understand how he knew what Mr. Baker was going to do with his own contractor, Mr. Guigues? *A.* I didn't hear anything about that.

Redirect examination, by Mr. Skinner.

*Q.* Mr. Elliott, just referring to telephones for a minute. Was there any telephone system through the factory? *A.* Yes.

*Q.* Where did that telephone system run? *A.* In the Monroe street building and in the Madison street building.

*Q.* Well, aside from the buildings; I do not care which one it was, but did it run from the office? *A.* Yes, sir.

*Q.* To what? *A.* Well, at that time Mr. Conway's office, on Monroe street, and to the shipping department, the second floor of the Madison street building.

*Q.* When was that system put in? *A.* Oh, I should judge, along in the latter part of 1904 or 1905; I don't know; some time after the factory was started.

*Q.* Do you know anything about the reason why it was put in, of your own knowledge, by any talk with

Mr. Guigues? *A.* Well, it was put in for two different reasons. At times when people would call Mr. Guigues on the 'phone he would come to the office in order to reach the 'phone, and when he put that in he could answer the 'phone from the upstairs without coming to the office. That was the main reason it was put in for, but afterwards he got using it for—

*Q.* Was that telephone system ever used at any time, within your personal knowledge, with reference to the Corona Kid Company's goods and the covering up of them? *A.* Yes, sir; I used it myself.

*Q.* How? *A.* Telephoning to the shipping department that Mr. Baker was there, and if any stuff was up there to get it out of the way, and telephone the other side of the factory the same thing.

*Q.* Did anybody else use the telephone system but you in the same way? Have you ever seen anybody else use it? *A.* Mr. Francis.

*Q.* Doing what? *A.* He telephoned to the different departments that Mr. Baker was there.

*Q.* When was that? *A.* Oh, it must have been—Mr. Francis came there along in 1906 or 1907, I guess.

*Q.* Well, the room that you spoke of as containing these shank splits, you said that the door was bricked up; you spoke of a door as being bricked up; was that the door in this room or was it in some other part of the building? *A.* It led to this room.

*Q.* Led to it? *A.* Yes, sir.

*Q.* Do you remember when it was bricked up? *A.* Directly after we started, when it was reconstructed there.

*Q.* You said that the material that was recorded in the purchase book was used, I think, on goods that were made up for the Corona Kid Company. How about—*A.* Well, of course, the splits, and so forth, that was tanned was tanned with the same material; that is, the grains, these grains that I refer to.

*Q.* How about the material that was recorded in the

purchase book that was used in the stuff that went to Lichtman? *A.* Well, I say, it was tanned all together.

*Q.* Did Mr. Guigues have more than one bank account? *A.* Yes, sir.

*Q.* How many? *A.* Two in the Federal Trust Company.

*Q.* And any others, to your knowledge? *A.* Later on he had a small one down at Perth Amboy.

*Q.* That was later? *A.* That was later.

*Q.* At this time did he have two? *A.* Two.

*Q.* What was the first one of those two? *A.* "Albert A. Guigues."

*Q.* And the other? *A.* "Albert A. Guigues, special."

*Q.* Into which account did the checks that were received from Mr. Lichtman go? *A.* Albert A. Guigues, special.

*Q.* Into which account did the checks that were received from the Corona Kid Company go? *A.* Albert A. Guigues.

*Q.* You said in answer to Mr. Riker that there was another conversation that you had with Mr. Lichtman outside of the particular period that he was questioning you about. Was it before or after the period that we have been discussing? *A.* After.

*Q.* The room that you have described as being 25 by 12 or 15 was how high? *A.* I don't know whether there was a second floor there. The building was the same height as the main building, which was a two-story building, but this particular end, I don't remember whether there was a second floor there or not, but I think there was.

*Q.* Was there anything in that room but pickled stock? *A.* Not at that time.

*Q.* By "that time" you mean November and December, 1904, and January, 1905? *A.* Yes, sir.

*Q.* Was there any other part of the building used at any time as a place of storage of goods sold to Lichtman? *A.* Well, those grain splits were kept in other buildings.

*Q.* Who was the shipping clerk? *A.* At that time Mr. Lauster had charge of the shipping.

*Q.* That is, in what time? *A.* This period.

*Q.* November and December, 1904, and January, 1905? *A.* He had charge of the bark only, the bark end of the factory.

*Q.* You mean the bark tan house? *A.* Yes, sir. And I think the chrome was shipped out through a Mr. Witzel.

*Q.* What did Mr. Lichtman pay for butt grain splits? *A.* Twenty cents a pound.

*Q.* And how many pounds would there be to a split, on the average?

Mr. Riker—He has testified to that.

*Q.* At the rate per pound that Mr. Lichtman was paying, what would be the average price per skin that he paid for the butt grain splits?

Objected to as repetition.

*Q.* Mr. Elliott, I will take the statement or recollection of your testimony kindly given by counsel, by which it appears that the price per hide paid by Mr. Lichtman was thirty cents a skin for these butt grain pieces—

Mr. Riker—Twenty cents a pound.

Mr. Skinner—Twenty cents a pound, a pound and a half to the skin, making thirty cents a skin.

*Q.* In what state of tanning or kind of tanning were they delivered to Lichtman? *A.* Out of the bark tan.

*Q.* Do you mean that they had been through the bark tan? *A.* Had been, yes.

*Q.* Now, the same skins, if they went to Mr. Baker, or the Corona Kid Company, would be tanned in what way? *A.* Chrome.

*Q.* Would the chrome-tanning process be in substitution for the bark tanning, or additional? *A.* As to the cost of it?

*Q.* No, would the skins that went to Mr. Baker be bark-tanned and chrome-tanned, or only chrome-tanned? *A.* Chrome-tanned.

*Q.* And the other part of the butt, from which these shank skins were taken, would be tanned how? *A.* Bark.

*Q.* And the shank splits that went to Mr. Baker would be tanned how? *A.* The shank grains?

*Q.* Yes. *A.* Chrome.

*Q.* Now, if the shell of the butt and the grain of the butt and the shank and shank splits were to be tanned all together—I mean all the same, in bark—when would the splitting be done, before or after tanning? *A.* After tanning in the bark.

*Q.* If part of the hide was to be tanned in bark and part to be tanned in chrome, when would the splitting be done? *A.* Out of the pickle.

*Q.* And would the tanning then be in one piece or two? *A.* In two pieces.

*Q.* In one process or in two? *A.* Two.

*Q.* For the extra process, the chrome-tanning, for Mr. Baker of the grain, Mr. Guigues got five cents a foot, I think it has been testified——

Mr. MacMahon—For what?

Mr. Skinner—For the tanning in chrome of the grain—that new arrangement that he made with Mr. Guigues for five cents a foot—of the splits, the grain splits.

*Q.* Have you any knowledge at all of what that costs Mr. Guigues to do, that chrome-tanning of the grain split, or aren't you sufficiently expert for that? *A.* It used to cost us from three and a half to four cents on an average—four cents.

*Q.* Then if he got five cents for it and it cost him four, he made one cent a foot, eh? *A.* About a cent a foot profit.

*Q.* You testified in your cross-examination that you resigned and that three or four weeks after you resigned charges were made against you by Guigues. At the time that you resigned did you get any letter of recommendation from Mr. Guigues? *A.* I did.

*Q.* Have you it with you? *A.* I think I have that.

*Q.* Just look. *A.* [Witness examines contents of pocket.]

*Q.* Have you it? *A.* No, I haven't it in my pocket.

*Q.* Well, after your resignation and at the time or after the charges were made did you have any conversation with Mr. Guigues about the charges and these sheets that you have? *A.* I did.

*Q.* And when was that conversation? *A.* During January, 1908.

*Q.* And what was it?

Objected to.

Mr. Skinner—It is the same line as before, if your Honor please. I am going to try to show a conversation with one of the two joint feasors and an attempt made to suppress——

Mr. Riker—As to the character of one of the employees.

Mr. Skinner—Oh, no, not at all. ——attempt made to suppress these sheets. That is what I am going to show.

The Court—Go on.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Go on. *A.* I met Mr. Guigues in New York after he had started this——

*Q.* Just tell us the conversation without detail. *A.* Mr. Guigues came to me in the presence of Mr. William Brown and a brother of mine that is dead now, and he said to me, "Jack, I want to settle this thing the easiest way." He said, "Give me up all those sheets you have got in your possession, or those papers that you have in your possession against me, and I will go to Newark and withdraw the charges against you."

And I said, "You have got nothing on me. You can go as far as you like, I won't give you the sheets."

Re-cross-examination, by Mr. Riker.

*Q.* Do you know of any of the cordovans ever having been subjected to pickle while you were there? *A.* How is that question?

*Q.* Were any of the cordovans while you were in that factory pickled? *A.* Cordovan is finished leather; you don't pickle it.

*Q.* The butts then, the shell. *A.* The butts were pickled.

*Q.* They were? *A.* Certainly.

*Q.* How many of them? *A.* How many butts were pickled?

*Q.* Yes. *A.* Thousands and thousands; I don't know how many.

*Q.* And when did that pickling process take place? *A.* As soon as the factory started.

*Q.* What? *A.* After the mill started. It was part of the process.

*Q.* That was part of the process of finishing — *A.* Of tanning leather.

*Q.* The pickling is part of the process of tanning the leather? *A.* Certainly.

*Q.* The leather that was to be divided into two different processes later on, chrome and bark tannage, was split after the pickling you have testified to? *A.* Yes, sir.

*Q.* Were the butts treated that way from the beginning, pickled and then split? *A.* No.

*Q.* Then what was it? *A.* Tanned and split.

*Q.* Do you mean to say they were pickled after they were tanned? *A.* No, sir.

*Q.* They they were pickled first, then put into the tan and then split? *A.* Yes, sir.

*Q.* How were they tanned, by what process? *A.* Bark-tanned.

*Q.* And then split? *A.* Then split.

*Q.* And then after that was done part was chrome-tanned and part bark-tanned? *A.* Part split out of the bark tan and part chrome-tanned?

*Q.* Yes. *A.* No.

*Q.* You were testifying on redirect examination to the finishing of some of these butt splits, grain, by the chrome process, and part by the bark process. *A.* That is right.

*Q.* How did it happen that there was a different process applied to the same process? *A.* Well, there is different processes applied to different substances of leather in every factory.

*Q.* But these are the grain splits? *A.* These grain splits Mr. Baker wanted chrome-tanned and sent to Bristol to put in patent leather.

*Q.* And Mr. Lichtman wanted bark-tanned, and so the others that were sent to Mr. Lichtman were bark-tanned, is that so? *A.* They were bark-tanned, yes, sir.

*Q.* Which is the longer process, chrome-tanning, or bark-tanning? *A.* Bark-tanning is a longer process.

*Q.* Is the bark less or more expensive than the chrome tannage? *A.* Well, now, at our place there—I can only speak from actual experience—we got a certain price per foot for the cordovan finish and we got a certain price per foot for the chrome-tanned in the blue state—that is, in the colored state—and they did their own japanning.

*Q.* Well, I want to know from you, as applied to these butt grain splits, which was the more expensive process of finishing, tanning, after they were split out of the pickle, chrome or bark tannage, if you know? *A.* I don't know positively.

*Q.* Well, you knew about the cost of the chrome tannage; how does it happen you do not know about the bark tannage? *A.* Well, the chrome tannage was carried to a certain state with us and stopped. Mr. Baker did his own finishing. The cordovan we finished, and I could figure on the chrome-tan up to the

coloring stage, I kept a weekly record of what was used, of the different ingredients through the factory, the different chemicals; I knew how many hides had been shipped, and I could strike an average what it cost. The bark tan cost in the neighborhood, to finish the leather, mind you, I think about five cents, six cents, somewhere around six or seven; I don't know exactly the exact cents.

*Q.* And that was the character of tannage that was applied to the article sold to Lichtman, was it not? *A.* It was bark-tanned, split, in that state; yes, sir.

*Q.* So that it cost nearly double the amount to tan the things that were sold to Mr. Lichtman as compared to the same things sold to the Corona Kid Company or Mr. Baker? *A.* No, sir.

*Q.* What was the difference, then? *A.* Mr. Lichtman's splits were taken out of the bark tan only.

*Q.* Well, how much did it cost to get them to that stage? *A.* Well, there is practically very little difference in tanning the whole butt or splitting this off and tanning it separate. You understand me, it don't cost you but a fraction, say, more to tan a whole butt than it would to tan it with this buffing or grain split taken off.

*Q.* I am trying to get you from your experience in that factory to tell me the difference in the cost of preparing these buff splits for delivery to Mr. Baker, the Corona Kid Company, not completed in the chrome tannage— *A.* Chrome-tanned, colored.

*Q.* —which I understood you to say was about four cents. *A.* That is about what it runs.

*Q.* Now, the same articles put through the bark-tanned process, in which you say they were delivered to Mr. Lichtman, I want you to tell me how much it cost to do that. *A.* Well, we never figured that cost anything, because the hide had to go through the same process, anyhow; that was velvet; we never figured that cost.

*Q.* Then it cost four cents to partially finish, by the

chrome-tannage process, these splits, and it didn't cost anything to finish them by the bark-tannage; is that what you mean? *A.* It cost just as much to take it through the bark; that is, incomplete, as it was split. The cost wasn't enough to figure. You have got to take it through the same process, anyhow, to get cordovan leather.

*Q.* How was the butt finished? *A.* What kind of finish?

*Q.* Yes. *A.* Bark tan, finished in cordovan leather.

*Q.* And where you were going to turn these splits over to Mr. Baker, or the Corona Kid Company, you took the butts out of the tannage and split them and then subjected them to chrome-tannage, did you? *A.* I think you got that mixed up. Ask it over again.

*Q.* [Question read.] No, sir.

*Q.* What did you do? *A.* The part that Mr. Baker had tanned and sent to Bristol, they had never been bark-tanned; they were split out of the pickle and then chrome-tanned and sent to Bristol.

*Q.* And the only ones that Mr. Lichtman got were those that had been part of the butt that had gone through the bark tannage complete; is that it? *A.* Of the butts, yes.

*Q.* And those that had been treated in that way you split on the splitting knife, did you, so that you got off this grain? *A.* Yes, sir; shortly after we started; first there was a few shaved off.

Further direct examination, by Mr. Skinner.

*Q.* The hides that went to Lichtman, were they split before tanning or after tanning? *A.* The butts were split after tanning and the shank splits were split before tanning.

*Q.* Mr. Elliott, what became of the charges against you that had been referred to? *A.* They were thrown out.

*Frederick C. Lauster,* sworn in behalf of plaintiff.

Direct examination, by Mr. Skinner.

*Q.* Mr. Lauster, where do you now live? *A.* On East Park street, in this city.

*Q.* What is your present occupation. *A.* The selling of leather.

*Q.* How long have you been in the leather business? *A.* Since 1889, about twenty-three years.

*Q.* What phases of the leather business have you had experience in? *A.* In all its branches.

*Q.* Well, selling as well as manufacturing? *A.* Manufacturing and selling.

*Q.* Are you familiar with the processes of tanning horse hides in their various parts? *A.* I am.

*Q.* Are you familiar with the product, or finished leather, known as cordovan? *A.* Yes, sir.

*Q.* Grain split from the butt? *A.* Yes.

*Q.* Shanks and shank splits? *A.* Yes.

*Q.* Buffing? *A.* Yes.

*Q.* Are you familiar with the values of those articles? *A.* Yes.

*Q.* Were you ever in the employ of Albert A. Guigues? *A.* I was.

*Q.* In what capacity? *A.* I had charge of the finished product of the bark tannery.

*Q.* And for how long? *A.* Nearly two years.

*Q.* During what two years? *A.* Started in—well, when they started in to manufacture, I think it was about June of 1904.

*Q.* And from that time on for about two years? *A.* From that time on.

*Q.* Did you see the goods that came to that factory to be tanned? *A.* I did.

*Q.* What sort of business was done in that factory? *A.* Tanning of horse butts entirely.

*Q.* Were the horse butts that were tanned hides that were the property of others than Mr. Guigues? *A.* They were the property of the Corona Kid Company.

*Q.* And did Mr. Guigues carry on the business of tanning hides for other people than the Corona Kid Company? *A.* No.

*Q.* To what extent was the business carried on, what volume, roughly speaking? *A.* Oh, 200 dozen butts a day.

*Q.* And by butts you mean the rear portion of a horse hide? *A.* Yes.

*Q.* And the treatment given to the butt was what at first? *A.* For what purpose?

*Q.* Well, for the Corona Kid Company, what was the treatment, what was done with the butts that were sent there? *A.* As they came in in the raw?

*Q.* Yes. *A.* They were put through the regular course of tanning, started in the beam-house.

*Q.* And at the end of the process in what condition were they? *A.* The butt proper was finished in cordovan, and the shanks were tanned in chrome, suitable for japanning, for patent leather.

*Q.* And the butts that were finished in cordovan reached that condition by some treatment. What was done to them? *A.* They were tanned in the regular bark process combination.

*Q.* Bark tanned? *A.* Yes, sir.

*Q.* Well, was there any portion of the butt that was taken off? *A.* After tanning and stuffing, the butts were split, the grain was split off.

*Q.* Was there any shaving done while you were there, I mean? *A.* Before the machine was set up for the dry splitting there was some hand shaving done.

*Q.* Was this splitting done to the shank as well as the shell? *A.* The splitting was done to the shank, but in a different state.

*Q.* What portion of the butt as it came from the Corona Kid Company went back to the Corona Kid Company, and in what condition? *A.* What portion?

*Q.* Yes. How much of the butt that came there went back, or, to put it in another way, in what finished con-

dition did the hide go to the Corona Kid Company, and in the bringing of it to that condition how much of the hide had been utilized? *A.* The shanks and the cordovan went back to the Corona Kid Company.

*Q.* And by "the cordovan" you mean the shell—— *A.* The finished shell.

*Q.* Did you see any portion of the hides that came from the Corona Kid Company go out of the factory to any other persons than the Corona Kid Company? *A.* I did.

*Q.* In what condition as to tanning did they go? *A.* The butt grains were bark-tanned, and went out in that condition, after being split from the butt, and the splits from the shanks in pickle.

*Q.* So that the butt grains went out bark-tanned and the splits—shank splits you mean? *A.* Shank splits.

*Q.* ——went pickled? *A.* Yes.

*Q.* By the shank grains do you mean the hair side of the shells split off? *A.* The hair side.

*Q.* Do you know to whom those parts that you have last mentioned went? *A.* The first ones, I believe all the bark went to Friedman & Company, or Friedman Brothers—I don't know what the title is—in New York, and after that mostly to Julius Lichtman.

*Q.* These first ones covered about what period of time, do you remember, to Friedman? *A.* Well, I think it was in July of 1904.

*Q.* July, 1904? *A.* Yes.

*Q.* You mean that it was only in that month? *A.* Those are the only ones that I recollect.

*Q.* And after that to Lichtman mostly? *A.* After that to Lichtman.

*Q.* Did you ever see Julius Lichtman around the factory there? *A.* I don't recall ever seeing Julius Lichtman there.

*Q.* Have you ever seen Abraham Lichtman? *A.* Yes, sir.

*Q.* This gentleman here [indicating]? *A.* Yes, sir.

Q. More than once? A. Several times, many times.

Q. Do you remember the first shipment or sale to Julius Lichtman? A. I do.

Q. Did you have anything to do with that first sale? A. I did.

Q. Did you meet either of the Lichtmans in connection with it? A. I did.

Q. Which one? A. Both Julius and Abraham.

Q. Where was that? A. At their factory, on Market street.

Q. How did you come to go there to see them? A. Mr. Guigues had sold some of the grains to this Friedman concern, of New York, and wanted to find others to buy them, and asked me if I knew of anybody else that would be interested, and I told him I thought Mr. Lichtman was, and he told me to go and see them and try to get them down, and I went to their factory, on Market street.

Q. Did either of them come down? A. Mr. Abraham.

Q. Did you see him when he got there? A. I did.

Q. Tell us what took place. A. I introduced him to Mr. Guigues.

Q. And then what? A. He bought some of the goods at that time.

Q. What goods? A. These bark grains.

Q. And after that were there other purchasers? A. Several.

Q. What? A. Many of them.

Q. Well, did you ever receive any word from either of the Lichtmans with reference to any of these goods after that first time? A. Not directly.

Q. What kind of goods was it that they bought? A. Butt grains, pickled splits, and they had a few—butt grains, pickled splits, and some buffing pieces they had.

Q. And during what period of time were the shipments of the kind of goods that you have just referred to? A. All the time that I was there.

*Q.* And during the time that you were there, and during that whole time, was there any other kind of goods shipped than the grain splits, shank splits and buffings? *A.* Yes.

*Q.* What? *A.* Some shank grains—

Mr. Riker—Well, they are not in this suit.

Mr. Skinner—All right. Never mind that.

*Q.* Where were the goods that went to the Lichtmans kept in the premises of Guigues? *A.* The pickled stock was all on the Monroe street side, the shank splits were put into the building on the Ferry street end.

*Q.* Now, the Ferry street end, is that the end that Mr. Elliott was telling about? *A.* That is the building that Mr. Elliott described, on Ferry street.

*Q.* And the other one was on Monroe street? *A.* The bark tannery was on the Monroe street side.

*Q.* Did you say anything about shank splits, or shanks, which? *A.* Shank splits.

*Q.* [By Mr. Riker.] Those were in the Monroe street building? *A.* Some of them; that is where they were pickled.

*Q.* [By Mr. Skinner.] And what was in the Ferry street building? *A.* Pickled shanks, splits.

*Q.* And where were the butt grain splits kept? *A.* In the Madison street factory.

*Q.* You say that the pickled shank splits were kept, I thought you said, in both buildings? *A.* They were pickled—the chrome tannery was on Monroe street, and they were pickled in the chrome tannery.

*Q.* That was the Monroe street building? *A.* That was the Monroe street building.

*Q.* But after tanning where were they kept, if at all? *A.* After pickling?

*Q.* After pickling. *A.* They were put up in dozens and stored in the Ferry street building.

*Q.* Was the pickling one of the tanning processes? *A.* Well, not necessarily; just a preservative.

*Q.* This room that you have been describing, to

which they were taken after they were pickled, was what, the Monroe street building? *A.* Ferry street.

*Q.* The Ferry street building. What sort of a room was that? *A.* Why, it was a brick building, with a blind wall on the outside, on the street side; there was an areaway between the office and the building.

*Q.* Upstairs, downstairs, or where? *A.* On the ground floor.

*Q.* What about the butt grain splits, where were they kept? *A.* They were kept in the Madison street building.

*Q.* Did you have any charge of them at all? *A.* I had the weighing of them and having them put up in bundles of a hundred pounds.

*Q.* And after that was done were they stored away? *A.* They were.

*Q.* In what room in the Madison street building? *A.* There was a room over the engine-room, in the court.

*Q.* What kind of a room was it, how was it built, or in what condition was it? *A.* It was a two-story building; it was on the second floor, with one door leading to it from the drying-room.

*Q.* How was it lighted?

Mr. Riker—That is, the second floor of the Madison street building?

Witness—The second floor of the Madison street building.

*Q.* How is it lighted? *A.* It had one window and a door leading into the yard.

*Q.* The side walls were of what material, glass or wood or brick, or what? *A.* I believe they were solid brick walls; I am not sure.

*Q.* Was there any curtain in that? *A.* Not in that room.

*Q.* Was there any other room where any of these other goods were kept? *A.* Yes, there was a room over the office, on the corner of the frame building.

*Q.* What was kept there? *A.* Something kept in there.

*Q.* What was kept in there? *A.* The buffings.

*Q.* Did you receive any instructions from Mr. Guigues as to the keeping or storing of these goods that went to the Lichtmans?

Objected to on the same grounds.

Same ruling.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*A.* Yes.

*Q.* What were they?

Objected to on the same grounds.

Same ruling.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*A.* I had a private room in the Madison street building where we kept the majority of the buffings; we had four or five thousand dozen stored; and I was the only one that had a key to that door; no one else was allowed in there.

*Q.* I asked you whether you received any instructions from Mr. Guigues about these goods? *A.* I received the usual instructions.

*Q.* What were the usual instructions? *A.* To keep them under cover.

*Q.* In what connection? *A.* Why, word was passed through the factory that Mr. Baker was coming, to have things put away.

*Q.* Did you receive that word? *A.* I did.

*Q.* Did you ever get it from Lichtman? *A.* No.

Q. Or either of them? A. No.

Q. I wish you would just describe that room of which you say you alone had the key a little more thoroughly. A. It was a room in the end of the brick building on Madison street, the front end. The office was on the corner of the frame building, then the second building, a brick building, and then on the second floor there was a room about the size of this courtroom.

Q. You mean clear down to the rear wall? A. No, I should say from here, about the size of this room.

Q. Within a few feet of the size of this whole room? A. Yes.

Q. Go on and describe it. A. It had evidently been used as an office by some other concern that was in there; it had partitions with ground glass, and a wash-basin, and things of that kind; and the windows were covered with black muslin.

Q. Did you see the black muslin put up? A. I did.

Q. Did you have anything to do with putting is up? A. Not directly.

Q. Did you receive any instructions from Mr. Guigues with reference to that black muslin? A. I did.

Q. What was it? A. I was told to have it put up.

Q. Told by Guigues? A. Yes, sir.

Q. The black muslin that was put up was put up on what part of the partition? A. Over the ground glass.

Q. [By the Court.] On the partition, you say? A. Yes, on the partition, on the inside of the partition.

Q. [By Mr. Skinner.] And this was a partition between what? A. Between the finishing room and the—I think there was a stairway that went downstairs alongside of it—the entrance on Madison street.

Q. The room that the goods were stored in, you said about the size of this courtroom, was that called the finishing room? A. No.

Q. Was this partition in that room, or was it one of the boundaries of that room? A. It was part of that room, partitioned off from that room?

Q. So that the partition partitioned off a part of this

room that you say was about the size of this courtroom; is that right? *A.* I am afraid I exaggerated the size a little when I said the size of this courtroom, but it was a large room.

*Q.* At any rate, the partition formed a subdivision of this room? *A.* It did.

*Q.* Now, the goods that you said were stored and as to which you had these instructions, were they behind this partition? *A.* They were inside of the room.

*Q.* The room formed by the partition? *A.* By the partition.

By the Court.

*Q.* You say one large room about the size of this courtroom from your seat out; in that there was a partition? *A.* No, there was a partition in this room; the room was about 150 feet long.

*Q.* First we have a room 150 feet long, and then there was this room partitioned off about the size of this courtroom? *A.* Yes, sir.

By Mr. Skinner.

*Q.* So that in that room, one side of the partition where the goods were stored was a room about the size of this courtroom? *A.* Yes, sir.

*Q.* Did you receive any other instructions from Guigues about that room, about access to it? *A.* I received instructions to keep the door locked and keep the key in my pocket and let no one else go in there.

*Q.* What was kept in there? *A.* Nothing but tanned buffings.

*Q.* To whom did those tanned buffings go? *A.* Why, there were a few sold to—I think John Nieder had a few and Charles Nieder had a few dozen; I am not sure about any others. The balance went to Mr. Lichtman.

*Q.* What was the room on the other side of the partition? *A.* That was the finishing room, the finishing of the cordovan, and shipping room.

By the Court.

*Q.* That was larger than this room? *A.* Oh, yes, that was a large room. That building was about 150 feet long, so you can imagine.

*Q.* Well, this room is about 50 feet or more? *A.* Well, that room wasn't as long as this courtroom; I exaggerated that.

*Q.* Well, how large was it? *A.* About half as large as this courtroom.

*Q.* Half as large? *A.* Yes.

By Mr. Skinner.

*Q.* Was it so that anyone could look into the room where the buffings were from the outside of it? *A.* They couldn't.

*Q.* What prevented their looking in? The ground glass and the covering on the inside.

*Q.* This black cloth? *A.* Black cloth.

*Q.* Can you tell us about the size of the goods that went to Lichtman? Take, for instance, the butt grain splits, I think we have called them. *A.* They would average about five feet.

*Q.* Five square feet? *A.* Five square feet.

*Q.* And the shank splits? *A.* The shanks would average three to four feet.

*Q.* And the buffings, or pieces of buffings? *A.* The pieces of buffings that are in this particular suit would run about on an average of a foot and a half, I should say.

*Q.* And were there buffings of other sizes at other times? *A.* Yes, whole buffings, the whole size of a butt, and they were even larger than the butt, because they were tacked up.

*Q.* Then the condition of the butt grain splits that went to Mr. Lichtman, what about them? I mean as to the tannage. *A.* They were bark-tanned.

*Q.* And the shank splits were what? *A.* In pickle.

*Q.* And the pieces of buffing or buffings? *A.* They were bark-tanned.

*Q.* Now, you have said that these butt grain splits were about five square feet on the average? *A.* Yes.

*Q.* Now, I want to show you this piece of leather, and ask you how the butt grain splits that you have been mentioning compared with this in size and shape [producing a piece of leather]?

Mr. Riker—One moment. I do not understand that this is an exhibit, a standard of comparison to go to the jury. What is it offered for?

Mr. Skinner—It is not offered at all. I asked him how the skins that he described compared with this, using it as an illustration.

Mr. Riker—How is that going on the record?

Mr. Skinner—It might be that I could afterwards make an exhibit of it, but I certainly could not until I have proved its substantial identity. It is the same as though I would show a witness a picture, and ask whether it was a picture of the scene in question, how it compares as a depiction of the scene, and the witness says, "Yes, it compares with the scene."

Mr. Riker—I object to the use of it as an illustrtaion.

[Counsel argue.]

*Q.* Mr. Lauster, is there any difference in the size of a butt grain split because it is chrome-tanned rather than bark-tanned? *A.* There shouldn't be any.

[Counsel argue further.]

The Court—I am afraid that the use of this article might introduce some confusion into the case.

*Q.* Mr. Lauster, do you know what use is made of the butt grain splits, bark-tanned? *A.* I do not.

*Q.* Or of the shank splits? *A.* Shank splits could be used for different purposes.

*Q.* You say they are used for different purposes? *A.* Yes, sir.

*Q.* Give some of them. *A.* They could be bark-tanned and used for inner soling, and things of that kind, for bag linings, handles, trunk corners, straps, and numerous things; chrome-tanned, they can be used as glove leather, described as glove leather, for heavy mittens for drivers, and things of that kind.

*Q.* Are you speaking of the grain side of the shank? *A.* No, the shank split.

*Q.* And the grain side you call the shank? *A.* The grain side you call the shank, or shank grain.

*Q.* In the tanning trade is there any meaning to the word "offal," any trade usage or custom about it?

Mr. Riker—I offer the same objection that I offered to the testimony of Mr. Price in that regard.

The Court—That this is a matter of contract?

Mr. Riker—That this is a question as to what is in this particular contract.

The Court—The contract says nothing about it, I believe?

Mr. Riker—The contract says what shall be returned to the Corona Kid Company, as I read it.

The Court—I will receive evidence of the custom of the trade, if there is one.

Mr. Riker—I also object to this witness's testimony in this regard on the ground that he has not qualified as an expert for this purpose.

The Court—Well, he may answer this question yes or no. It practically asks for his knowledge.

*Q.* [By the Court.] Do you know? *A.* I do.

*Q.* [By Mr. Skinner.] Have you had any experience in the business of tanning hides for others? *A.* I have.

*Q.* Other than your experience in the Guigues factory? *A.* Yes, sir.

*Q.* What was that experience? *A.* Particularly in these splits, with L. Loehnberg & Sons, of Belmont avenue—formerly of Belmont avenue.

*Q.* Here in Newark? *A.* Yes, sir.

*Q.* Anywhere else? *A.* No.

*Q.* How long with Loehnberg & Sons? *A.* I was there about two years.

Mr. Riker—May I cross-examine on his qualification.

The Court—Yes.

By Mr. Riker.

*Q.* What did Loehnberg tan? *A.* Loehnberg tanned all kinds of bark-tanned slabs and splits.

*Q.* What kind of hides did you tan down there? *A.* Bark tan. We tanned cow, steer and bull hides, regular hides.

*Q.* [By the Court.] Horse hides? *A.* The ones that I tanned there were horse shanks and horse splits tanned in chrome, as well as the cow splits.

*Q.* [By Mr. Riker.] Was that at Loehnberg's that you did that? *A.* That was at Loehnberg's.

*Q.* When was that? *A.* I don't remember the exact date; about four years ago.

*Q.* Any horse butts? *A.* No butts.

*Q.* Have you had any experience with horse butts at any place except Guigues's? *A.* I have.

*Q.* Where? *A.* At the Hamburg Cordovan Leather Works.

*Q.* When was that? *A.* About fourteen years ago.

*Q.* Were those done there under contract or by the owner? *A.* They were done by the owner, I believe. I wasn't familiar with the office business.

*Q.* You do not know? *A.* I do not know.

*Q.* You do not know whether they were done by contract or by the owner? *A.* I do not; I know they were done; that is all.

*Q.* And the ones that you did at Loehnberg's, were they done by the owner or under contract? *A.* They were done by the owner.

*Q.* Did you ever work for Stengel? *A.* I did.

*Q.* When? *A.* About two years ago.

*Q.* You do not work for him any more? *A.* I do not.

*Q.* Did you do any horse butts there? *A.* No, sir; I wasn't there in the capacity of a tanner.

Mr. Riker—I object to the witness's testifying as an expert, as it appears that he has not tanned horse butts anywhere except at this place.

Witness—I do not believe there were any horse butts ever tanned in the Stengel tannery.

[Former question read as follows: "In the tanning trade is there any meaning to the word 'offal,' any trade usage or custom about it?"]

The Court [after argument]—The question treats the tanning trade as one branch of industry, as a unit. The witness apparently answers it in the same sense. Now, on the face of it, the witness might be asked as to what that general custom applicable to this entire industry is, if there is one. If it should turn out on cross-examination on the offer that the usage varied according to the different hides that were used, that would present a different question. That has not yet arisen.

Mr. Skinner—I will forestall any such possibility by adding that to the question, so that it shall be comprehensive.

The Court—First we want to learn from the witness whether there is a usage.

You may answer that question, whether there is a usage in the tanning business, or a custom, as to the meaning of the word "offal."

Witness—There is.

By Mr. Skinner.

*Q.* Is that usage confined to the tanning of one kind of hide, or is it used as to the tanning of hides generally? *A.* It is, yes.

*Q.* Now, if hides are sent to a tanner to be tanned—I mean hides that belong to someone else—to be re-

turned to the person who sends them after tanning, in the absence of anything agreed upon between the parties, what is there of trade usage or custom as to the right of the tanner to retain any portion of the hides thus sent to him?

Mr. Riker—The question is objected to, if your Honor pleases, and the objection is based upon the limitation of the question to cases of contract, as to which this witness has not qualified.

[Question withdrawn.]

*Q.* What is the general trade usage or custom and any meaning given by it to the word "offal" in the tanning trade?

Mr. Riker—I object to the question, if your Honor please. That is a general question. I think it is irrelevant. The question whether there is a general trade usage, unless it is applied to this particular subject-matter of inquiry, is not material to this inquiry.

The Court—I think the question may be answered. Probably it will be followed by others.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*A.* The glue stock and the hair would be the offal.

Adjourned until to-morrow, Friday, January 26, 1912, at ten o'clock A. M.

FOURTH DAY.

FRIDAY, January 26, 1912.

Met pursuant to adjournment.

Present, counsel as before stated.

*Frederick C. Lauster,* resumes the stand in behalf of plaintiff.

Direct examination (continued), by Mr. Skinner.

*Q.* Mr. Lauster, at the close of yesterday's examination you said that the glue stock and the hair would be offal. *A.* Yes, sir.

*Q.* Now, I want to ask you, if hides are sent by the owner to a tanner to be tanned and returned to the owner, is there any trade usage or custom as to what the tanner is to return?

Mr. Riker—One moment. The question is objected to as a hypothetical question not supported by the proven facts in this case.

Mr. Skinner—May I amend the question?

The Court—Yes.

Mr. Skinner—Strike out the words "and returned to the owner"—"to be tanned."

Mr. Riker—Now, I object to the question for the same reason. This witness may testify, if he has the experience and knowledge to do so, as to the general custom of the trade, without respect to contract. If he is to be asked as to a trade usage based upon a formal contract, he must show that he has knowledge of a trade usage in connection with such a contract, and it must also appear in the evidence that there was such a contract. Now, the contract that appears in this suit, that has been offered and admitted in this suit, is not the contract that is involved in that question.

The Court [after argument]—I conceive that a nice question may arise in any case where there is a contract and where there is proof of a

custom as to whether and how far the custom which so exists may subsist in connection with the particular contract that is proved. Much would depend, I suppose, on the terms of the contract, and much, of course, on the exact testimony as to custom. I think that I had better take the testimony, and leave the question as to the effect to be given to it for future discussion, so that I may have the views of counsel as to whether to any extent, and if so, to what extent the contract and the custom may stand together. I have never read this contract, and I do not know yet what the testimony is to be as to the custom. Perhaps I had better read this contract before the matter is disposed of. [The Court reads the contract referred to.]

[After further argument.] You may answer the question.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read as amended.]

*A.* The tanner is supposed to return all parts of a hide that are suitable for producing leather.

*Q.* What do you mean my "suitable for producing leather?"

The Court—What is the custom?

Mr. Riker—I object to the question on the ground that it calls for an answer from an expert in language, not an expert in leather. He has answered. There can be no question about "suitable for producing leather."

The Court—Go on.

*Q.* What do you mean by the words "suitable for

producing leather?" *A.* Will it be necessary to give a description of the parts?

The Court—The question is a general question, and I should suppose it would be susceptible of a general answer.

*Q.* I do not ask you to enumerate what would be included within that, but what do you mean by "suitable for producing leather?" I want just another statement of those words or a statement of those words in another form. [No response.]

The Court—Perhaps the witness's difficulty is to understand what seems to him obvious. Let it go at that.

*Q.* Do you understand my question, Mr. Lauster? *A.* I don't understand it thoroughly. Can I have the question repeated by the stenographer

[Question read.]

*Q.* You say you do not quite understand that. I will put this question to you. What is the process of producing leather. *A.* All kinds of leather or horse butts —the general production of leather

*Q.* The general production of leather. What would you call the process of producing leather? *A.* The hides are brought to the factory in the raw state, put in soak, soaked in lime for dehairing, from dehairing to the bating, or curing, from the curing to the tanning, and from tanning in some instances, to splitting, and sometimes before tanning it is split, in the pickled or raw state, and after tanning the parts are finished as desired.

*Q.* Now, under the trade usage or custom that you have referred to, if hides are sent to a tanner to be tanned, would the tanner return the splits that he took off of the shanks, or would he retain them?

Mr. Riker—I object to that question on the same ground as the last hypothetical question.

The Court—Objection overruled.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

The Court—Confine yourself now to the custom that you have referred to. If your knowledge of the custom enables you to say what the custom is and what the case is in this particular instance mentioned in the question, you may say so.

*A.* The splits would surely be returned.

*Q.* And are these splits from the shanks, or are they not, suitable for producing leather, to use your own phrase? *A.* They are.

*Q.* And in the same case, of hides sent to a tanner to be tanned, under this trade custom, would splits from the butts be returned by the tanner or retained by him? *A.* They would be returned.

Mr. Riker—One moment. I now will make my objection more specific. This question is objected to because, so far as this case shows, hides were not sent to Guigues to be tanned.

Mr. Skinner—That is the same question exactly that I asked before with reference to splits from the shanks.

The Court—Well, the objection I understand to be now that the question is irrelevant because the contract in this case does not contemplate the kind of tanning which the question specifies.

[Question withdrawn.]

*Q.* Mr. Lauster, I will ask you this. If horse hides butts are sent to a tanner to be tanned, under the trade custom that has been referred to, what would be done with any splits from the butts? Would they be returned by the tanner or kept by him?

Mr. Riker—I renew the objection for the same reasons as offered for the question which was sought to be amended.

The Court [after argument]—I will now allow the question to be answered, subject to such further consideration to the effect to be given to this testimony as a further study of the contract may enable me to give it.

Mr. Riker—I want to ask for an exception, but I am wondering whether I ought to put the ground of my exception on the record.

The Court—I think you had better do it.

Mr. Riker—On the ground that the production of the evidence to the jury, whatever the ruling is, serves to prejudice the defendant.

The Court—I think I can control the matter in my charge. This jury is not going to be misled.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

*A.* They should be returned to the owner.

*Q.* And are or are not such splits from the horse hide butts of the character that you described as suitable for producing leather? *A.* They are.

*Q.* And under the same circumstances, what would become of buffings or pieces from the butts? Would they be returned by the tanner or retained by him?

*A.* Returned by the tanner.

Same objection.

Objection overruled.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
*Circuit Court Judge.*

*Q.* And would or would not such buffings or pieces of buffing be suitable for producing leather? *A.* They would.

*Q.* If horse hide butts were sent to a tanner to tan the shells of these horse hide butts, under the trade usage or custom that you have referred to, would or would not any splits from these horse hide butts be returned by the tanner or would they be retained?

Mr. Riker—Now, if your Honor please, I object, because this witness, in the first place, has not shown any knowledge of a trade custom or usage in connection with such a contract, and, secondly, because there is not in the evidence any facts proved which will sustain the hypothetical question in the form in which it is made.

The Court [after argument]—After all, is not the question more simple, and does it not resolve itself very much into a question for the Court? The witness having stated what he understands the general custom to be, with a contract in the case, the Court is bound to enforce the contract, to apply that, and if there is a general custom which is consistent with the contract, that the Court would recognize. Now, if there is any reconciliation to be done between the custom and the contract, is not that part of the Court's duty?

Mr. Skinner—I do not see how the Court can reconcile the custom and contract without having the custom before it?

The Court—We have the witness's statement as to the general custom, which amounts to this, I take it: that what is available for making leather is to go back. Now, here we have a contract, which I will not undertake to go into, if assisted by testimony as to what is available for making leather, can then determine whether, consistently with the terms of the contract, the custom can be made effective. In the case of a col-

lision between the contract and the custom, I suppose, the custom would yield. In the case of an interpretation of a contract which is consisetnt with the subsistence of the custom, they would then both be enforced together.

Mr. Skinner—At this point I would like to ask two or three further questions as to the extent of custom.

The Court—You may proceed.

*Q.* Mr. Lauster, referring to the custom that you have mentioned I want to ask you whether or not this custom is uniform in the leather trade? *A.* It is.

Mr. MacMahon—What custom?

Mr. Skinner—The custom he has testified to, the general custom.

The Court—He said yesterday, that it was uniform in the leather trade.

Mr. Riker—I understood he testified to that yesterday. If it is the custom, it has got to be uniform.

*Q.* Can you tell us anything about the length of time that the custom has existed—do you know?

Mr. Riker—One moment. He has testified to a custom. The elements of a custom are defined by law and not by the evidence of a witness, and it occurs to me that the question is immaterial and irrelevant.

The Court—The question might perhaps be this: Whether the usage he had in mind is sufficiently general to be considered a custom.

[Objection withdrawn.]

[Question read.]

*A.* Before my time.

*Q.* As long as you have known anything about the leather business? *A.* As long as I have known anything.

*Q.* If portions of hides are sent to a tanner to tan only a portion thereof, does this custom that you speak of have any application to the portions of the butt or

hide that the tanner is not to tan? What is he to do with those, retain them or return them?

Mr. Riker—I object on the same ground: that the hypothesis does not involve facts that have been evidenced by testimony produced in the case.

The Court—It is a pretty difficult thing to tell just what the testimony does amount to upon critical examination. I have not had an opportunity to examine it in that way. I will allow the question to be asked.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* What would he do with the parts that he was not to tan *A.* All parts would be returned, regardless of condition.

*Q.* If horse hide butts were sent to a tanner to tan in chrome the shanks of them, under this custom what would he do with the split taken by him from the shanks? Would he return them or retain them?

Mr. Riker—The question is objected to, in the first place, because it has been already put and answered; secondly, because the conditions in this particular case under the facts proved or testified to do not support the hypothesis.

The Court—The queston seems to me to be going too much into detail. I think the inquiry as to the existence of a general custom may be asked by somewhat general questions and answered in a somewhat general way. The custom is defined with fair accuracy. How that custom is to be affected, if at all, by the existence of particular contracts seems to me to lead up to the judge, whose duty it is to construe the contract in connection with the evidence as to the

existence of a custom. Of course, a great many questions might be asked developing each phase of this somewhat long contract, and the witness might be asked to express his opinion as to the application of the custom to that item in the contract. [After argument.] I am wondering whether you are not asking questions that I ought to answer rather than the witness. [After further argument.] I think you have gone as far as is useful with this line of inquiry.

Mr. Skinner—Your Honor knows I do not want to be persistent. I would like to put one question.

The Court—You may do so. I certainly do not want to shut out anything that ought to come in.

*Q.* Mr. Lauster, does this custom which imposes the duty on the tanner of returning to the owner who has sent the hides all that is suitable for leather apply regardless of the portion of the hide that is sent, or whether the whole hide is sent, or regardless of the kind of tanning that is to be done, or is it applicable only to some part of that field? *A.* General application.

*Q.* Now, Mr. Lauster, how were the butts that were sent there by the Corona Kid Company tanned, by bark-tanning or chrome process? *A.* In this period? Part were tanned in bark and part were in chrome.

Mr. Riker—That is, the butts?

*Q.* You mean the butts, do you not? *A.* That is the only thing in question in this period.

*Q.* How were the splits from the shanks, the grain side of the shank, whatever you call that, tanned? *A.* They were tanned in chrome.

*Q.* And the other portion of the shank, that, I think, you call the split—that is, the portion left after splitting off the grain—how was that tanned? *A.* It wasn't tanned.

*Q.* Pickled? *A.* Pickled.

*Q.* Now, then, did the tanning of the shells in bark and the tanning of the shanks in chrome require any splitting to be done before tanning?

Mr. Riker—I do not suppose it makes any difference what was required. The question is what was done.

*Q.* Well, what was done? When were they split? *A.* The shanks were split before tanning, and the butt proper, the shells, were tanned in bark and split after tanning.

*Q.* What was the cost of tanning the shanks—that is, the grain part—in chrome?

Mr. Riker—If your Honor please, that is not concerned in this case, and I therefore object to it—shank grains.

[After discussion the question is withdrawn.]

*Q.* Now, I will ask you about the tanning of the splits from the shells in chrome. What would be the cost of that?

Mr. Riker—One moment. If your Honor please, there is not any evidence that the splits from the shell ever were tanned in chrome. As a matter of fact, they not only were not, but they could not be, under the evidence that they have already introduced. Having been tanned in bark, they cannot then be tanned in chrome.

Mr. Skinner—I do not care whether there is testimony or not. Maybe Guigues found it would be more profitable to sell them in some other form to Lichtman, and I want to show that one reason he sold them to Lichtman was because he could get more for them than to keep his contract with Baker, not that he did keep his contract with Baker.

Mr. Riker—Before that can be made competent, it must appear that it was done or could be done or was agreed to be done.

Mr. Skinner—I will take the third proposition: that it was agreed to be done.

Mr. Riker—Then it must be shown that it was done.

The Court—Does the contract call for it?

Mr. Riker—No, sir.

Mr. Skinner—No, but Mr. Baker testified that he came to the factory, and Guigues told him that he had found a new way of handling the cordovan. [Counsel reads from the testimony of the witness Benjamin E. Baker.]

Mr. Riker—Well, it must appear, if your Honor please, that this is a process within the knowledge of this witness so that he can testify to the cost of it.

Mr. Skinner—Oh, yes.

The Court—Of course that must appear.

*Q.* Mr. Lauster, do you know about what the cost would be? Do not tell us what it would be, but do you know, have you had experience along that line? *A.* The chrome-tanning?

*Q.* The cost of tanning in chrome grain split from the shell. *A.* I do.

*Q.* Will you just tell us what experience you have had, so that we may see whether you do know? *A.* Experience in actually tanning them?

*Q.* Actually tanning of horse hide butts. *A.* Horse hide butts?

*Q.* Actual tanning of grains or splits from the shell —grain splits from the shell. *A.* No.

*Q.* Have you seen that done? *A.* I have.

*Q.* Where? *A.* At the Guigues factory.

*Q.* Did you see the processes? *A.* Yes.

*Q.* Did you see the materials that went into it? *A.* Yes.

*Q.* Did you see the labor that was used? *A.* Why, I didn't know the cost of the labor.

*Q.* No, but did you actually see the labor at work on it? *A.* Oh, yes.

*Q.* Did you see the length of time it took? *A.* Yes.

*Q.* From those observations of yours, plus your general experience in the tanning trade, can you tell us the cost? *A.* Yes, about.

*Q.* Give it to us.

Mr. Riker—That is objected to on the ground that that is not the condition in this case as shown so far. The testimony of Mr. Baker is that these splits from the cordovan which are referred to had been taken off of the cordovan tanned in bark. That is what he was dealing with, and if the question is not directed to the cost of tanning in chrome that kind of splits, it is immaterial and irrelevent and no part of this case. I also pray the attention of the Court to this testimony that the butt grains were bark-tanned and went out in that condition after being split. This is in Lauster's testimony of yesterday.

The Court [after argument]—You may ask your question.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

*A.* Three and a half to four cents a foot.

*Q.* Now, can you tell us—if you cannot say so—the market value at that time—that is, November and December, 1904, and January, 1905—of the grain splits from the butt that were sold to Lichtman.

Mr. Riker—Now, if your Honor please, I think this witness should qualify if he is going to testify along those lines. He has not qualified, as I remember, at all as to the value of the finished product as an expert.

The Court—He says that he has been in the

business twenty-three years. "What phases of the leather business have you had experience in? *Answer*—In all its branches. *Question*—Selling as well as manufacturing? *Answer*—Manufacturing and selling." It is a fair inference that the witness has knowledge of the value of the finished product.

Mr. Skinner—If he has not, I call upon him to say so, and if he has, to go ahead and tell us what the values were.

[Question read.]

The Court—That question may be answered yes or no. Can you tell us?

*A.* Yes.

Mr. Riker—Now, I would like to ask this witness some questions on his expert qualification in this regard.

The Court—You may cross-examine.

By Mr. Riker.

*Q.* To your knowledge and in your experience, do you know of this particular product ever having been produced before it was produced in Mr. Guigues's factory at that time? *A.* I do.

*Q.* You do? *A.* Yes.

*Q.* Where? *A.* At the Hamburg Cordovan Leather Works and by H. Hahn & Stumpf, of Harrison, New Jersey.

*Q.* Were you employed by Hahn & Stumpf? *A.* I was not.

*Q.* Did you ever sell that article? *A.* Not for them.

*Q.* Did you ever sell it for anybody? *A.* I did.

*Q.* For whom? *A.* Mr. Guigues

*Q.* For Mr. Guigues?

*Q.* Had you ever sold it for anybody else? *A.* I had not.

By Mr. Skinner.

*Q.* And had this product been made for any length of

time prior to 1904, that we are referring to? *A.* It has been made as long as I can remember that cordovan has been made.

*Q.* Now, I will put the question, What was the value?

Mr. Riker—I object on the ground that this witness has had no experience that would justify his testifying.

The Court—I overrule the objection.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* What was the value of the grain splits from the shell?

The Court—At that time.

*A.* At that time, twenty-six cents a pound.

*Q.* How about the grains, the shank splits—no, take the whole shank? *A.* I never sold them.

*Q.* [By the Court.] What? *A.* I never sold them.

*Q.* [By Mr. Skinner.] How about he buffings or pieces of buffing? *A.* The buffings I have sold.

*Q.* You have sold? *A.* I have.

*Q.* Can you tell us about the buffings? *A.* The ones I sold, I believe, were five cents a foot, sold at five cents a foot, a square foot.

*Q.* Well, have you any other knowledge than these sales of your own? *A.* Well, judging from the general price of buffings and hides.

Cross-examination, by Mr. Riker.

*Q.* Mr. Lauster, you say you have sold grain splits from cordovan at twenty-six cents per pound. To whom did you sell it? *A.* To Emanuel Eisinger, of Vienna, Austria.

*Q.* When did you make these sales? *A.* In the latter part of 1904, the fall of 1904.

*Q.* You were the shipping clerk during that time at Guigues's place? *A.* I was shipping clerk, among other duties.

*Q.* Well, I do not doubt that you earned your money in other capacities, but you were the shipping clerk? *A.* I was the shipping clerk.

*Q.* How were these goods shipped? *A.* In bundles.

*Q.* By what carrier? *A.* By boat, no doubt, to Europe.

*Q.* How were they shipped from the factory? *A.* By truck.

*Q.* Whose truck? *A.* Why, probably one of the local express companies.

*Q.* Do you not remember? *A.* Not the particular one. We had several of them.

*Q.* Well, name the ones that you had at that time. *A.* Well, I don't remember which ones.

*Q.* You were the shipping clerk, and you do not remember the truckmen who did your business? *A.* It was not my business to engage the truckmen.

*Q.* Did you know? I did not ask you that. I simply asked you whether you do not remember who served as truckmen at that time while you were shipping clerk in 1904? *A.* I do not.

*Q.* What month was it that this shipment was made? *A.* Made in 1904.

*Q.* What month in 1904? *A.* That is about eight years ago, and it is beyond my memory.

*Q.* Well, what season of the year 1904 was it? *A.* In the fall.

*Q.* The late or early fall? *A.* Late.

*Q.* What steamship company were they to be taken to? *A.* That I don't know.

*Q.* In what way did you negotiate this sale? With whom was it made? *A.* With Mr. Eisinger.

*Q.* And was he here in person? *A.* He was.

*Q.* Where did you see him? *A.* At the factory on Ferry street.

*Q.* Had you ever seen him before? *A.* I had.

*Q.* [Paper shown to witness.] I show you the *Exhibit P2,* and ask you whether you can identify this sale during the months that are shown by that exhibit? *A.* I do not see anything there of it.

*Q.* [By the Court.] What do you say? *A.* I do not see any record of it here.

*Q.* [By Mr. Riker.] Do you know how they were billed through to the steamship company that was to take them abroad? *A.* I do not.

*Q.* You do not know the routing at all? *A.* I do not.

*Q.* You do not remember? *A.* I had nothing whatever to do with that; that was done in the office.

*Q.* What officer in the office beside the shipping clerk had to do with the shipment of goods, who was it? *A.* That I don't know.

*Q.* You do not know that? *A.* No. The office had their duties in connection with the shipping that I don't know anything about.

*Q.* When you shipped the goods you did not have the routing, then? *A.* I did not.

*Q.* In any case? That is not part of what is furnished to the shipping clerk? *A.* You said "In any case." Please let me answer that. I had my own shipping department, and that consisted of shipping the bark-tanned butts, as I have explained before, and I know how they were routed; they were routed in the shipping department.

*Q.* How did you happen to ship those particular goods? Were they part of the cordovans, or butts? *A.* They were cordovans.

*Q.* Well, then, they were within your duty, were they not? *A.* I thought you were speaking of of the same thing I was. Are you speaking of the Eisinger shipment?

*Q.* Yes. *A.* They were grains from the cordovan.

*Q.* How did you happen to deal with them at all, then? *A.* Because I knew Mr. Eisinger when he came there and introduced him into the place, and I was told to show him the goods and sell him what I could.

*Q.* Then you had nothing to do with the shipping of anything but the cordovan? *A.* That is all.

*Q.* You did not have anything to do with the shipment of the shanks? *A.* I did not.

*Q.* Nothing to do with the shipment of the grain splits from the cordovans? *A.* I did.

*Q.* You did have to do with them? *A.* I did.

*Q.* Then this shipment of Eisinger was of that particular class of goods? *A.* They were.

*Q.* Why did you not have the routing for them, then? *A.* Because the routing—the goods were shipped to Europe, and those goods were shipped with a bill of lading attached, I believe, and those things were all taken care of in the office; they went through the office.

*Q.* When you shipped them, it being part of your duty to ship them, do you mean to say that you did not put on the way-bill? *A.* I did not.

*Q.* You did not mark on the packages that were to be shipped the routing? *A.* I did not; my duty ended with the packing and—

*Q.* In any case? *A.* Any case of butt grain splits.

*Q.* In any case of any shipment, did you? *A.* On the finished cordovan I did.

*Q.* What was the distinction in your duties between cordovans and the butt grains from the cordovans? *A.* The cordovans were the finished product.

*Q.* [Question read.] *A.* The duties of handling them?

*Q.* Yes. *A.* Why, the cordovans were measured and shipped to the Corona Kid Company, and the butt grains were put up in rough bundles of a hundred pounds each, and were sent out by truck.

*Q.* Was it not part of your duty, as shipping clerk, to see to the shipping of butt grains? *A.* As far as the shipping-room went.

*Q.* And was it not part of the duty of a shipping clerk to mark the routing on the parcels or packages of the butt grains? *A.* There were no marks necessary.

*Q.* When you sent the goods to Eisinger in Germany, there were no marks necessary? *A.* That was an exceptional shipment; it was done through the office.

*Q.* How much did it amount to? *A.* I think two tons.

*Q.* Two tons? *A.* Yes. I am not sure. One or two tons; a sample lot.

*Q.* You say there was a bill of lading attached with sight draft? *A.* I am not sure of that; that was taken care of by the office.

*Q.* And are you guessing about that? *A.* I said probably the shipment was made that way and taken care of through the office. My duties were ended with the packing—

*Q.* Why do you say that was probably so? *A.* Because as a usual thing European shipments of leather are made that way.

*Q.* Did you make any other European shipments from the Guigues place? *A.* I did not.

*Q.* Then you are testifying now to another custom? *A.* Yes.

*Q.* As you understand it? *A.* Yes, it is a custom in the trade.

*Q.* Did you seek out Mr. Eisinger or did he come to you? *A.* He came there.

*Q.* Did he come to see you specially? *A.* He did not.

*Q.* Had you known him? *A.* I had.

*Q.* Did he inquire for you, if you know? *A.* He did not.

*Q.* How did you happen to see him? *A.* He was brought into the office by a gentleman from New York.

*Q.* You were in the office? *A.* I was in the office.

*Q.* Who else was in the office? *A.* I suppose the usual office force.

*Q.* Well, do you remember? *A.* I don't.

*Q.* Well, we do not want your suppositions, only what you know. What is the name of the man that brought him in there? *A.* Mr. Waterman.

*Q.* What is his address? *A.* Well, New York City.

*Q.* No better address than that? *A.* I don't know his present address.

*Q.* The first name? *A.* M. W. Waterman, I believe. I don't know his first name.

*Q.* His business? *A.* Leather.

*Q.* Did he introduce him to you? *A.* He did not.

*Q.* You already knew him? *A.* I did.

*Q.* Was Mr. Guigues there? *A.* I believe he was.

*Q.* Why did you not say so when I asked you who was in the office? *A.* I didn't know.

*Q.* You did not remember it then? *A.* I don't say now that he was there; I say I believe he was.

*Q.* What makes you believe it? *A.* He was usually there.

*Q.* What did Eisinger say he came to buy? *A.* He came to buy anything that he could find that was merchantable for him, which he does in other factories.

*Q.* Was Mr. Eisinger turned over to you to deal with? *A.* I don't remember that.

*Q.* How did you come to deal with him, then? *A.* It happened to be my duty at the time; I don't know just why.

*Q.* It was your duty to sell goods in the factory, was it? *A.* It was my duty to show them.

*Q.* To show goods? *A.* Yes.

*Q.* Well, now, what was there in the factory—what was there being made there that was subject to be shown and sold? *A.* The goods that have been described before that had been sold there.

*Q.* How long had that continued? *Q.* Very shortly at that time.

*Q.* What were the goods that were to be sold and which it was your duty to show and sell? *A.* I had no authority or no duty to sell goods there.

*Q.* Well, what did you mean when you said it was part of your duty to show goods for sale? *A.* To show the goods.

*Q.* Well, for sale or for what purpose? Did you show them to sell them, or if not, for what purpose? *A.* For selling.

*Q.* Then it was part of your duty to show goods to sell? *A.* In this particular instance.

*Q.* Well, you say that Mr. Eisinger was turned over to you because that was part of your duty. It had been your duty theretofore, had it not *A.* It had.

*Q.* To show goods to sell. Now, what goods was it your duty in that factory to show and sell? *A.* Butt grain splits.

*Q.* Anything else? *A.* No.

*Q.* Only butt grain splits? *A.* And I will add the buffings to that.

*Q.* Buffings. What else? *A.* That is all.

*Q.* Also the shank splits? *A.* No.

*Q.* That was not any part of your duty, to show and sell them? *A.* No.

*Q.* How long had you had instructions to show the goods that you have testified to and to sell them? *A.* From the time that I asked Mr. Lichtman to come down and see them.

*Q.* When was that? *A.* Late in 1904.

*Q.* Late in 1904? *A.* Perhaps the summer.

*Q.* Well, there is some difference, Mr. Lauster. Can't you tell me when it was? *A.* Yes, I can tell you almost exactly.

*Q.* When was it, then? *A.* July, 1904.

*Q.* And from that time you had instructions from Mr. Guigues to show for sale these classes of goods? *A.* I did not.

*Q.* Well, then, when did you get authority to show them for sale? *A.* I took the authority when it presented itself.

*Q.* Why, Mr. Lauster, you said it was part of your duty. Now, was that duty indicated to you by Mr. Guigues, and if not, by whom? *A.* It was my duty in that particular instance of Mr. Eisienger's visit to the factory, because I knew the gentleman.

*Q.* Who delegated that duty to you, if it had not been your duty before? Did Mr. Guigues? *A.* I won't say that he did.

*Q.* Well, do you remember whether he did or not? *A.* I was usually at liberty to do almost as I liked in a case of that kind.

*Q.* You were at liberty to take prospective or possible customers out into the factory, and to show them these classes of goods for sale? *A.* We didn't have any prospective customers or purchases.

*Q.* How did you happen to go with Mr. Lichtman to get him to buy these goods in July? *A.* At the suggestion of Mr. Guigues.

*Q.* Did he suggest that you go to see Lichtman? *A.* He did.

*Q.* Why, Mr. Lauster, did you not testify yesterday that you suggested Lichtman yourself? *A.* After my suggestion to him he told me to see him.

*Q.* Well, did you go to see anybody else? *A.* I did.

*Q.* Whom? *A.* I sold a few buffings to a few local concerns here.

The Court—A little louder, please.

Witness—I sold a few of the buffing grains to a few local concerns.

*Q.* What were they? *A.* Well, if I remember rightly, John Neider was one, and Charles Neider. Just a few dozen as a sample.

*Q.* [By Mr. MacMahon.] John Neider and Charles Neider? *A.* I am not sure of John Neider, but I know Charles Neider had some; and I think, too, A. Lohenberg had some, on Liberty street.

*Q.* Newark? *A.* Newark.

*Q.* [By Mr. Riker.] Anybody else? *A.* None that I recollect.

*Q.* And this searching for purchases for this stock was begun as early as July, 1904? *A.* It was not.

*Q.* It was not? *A.* Only in the case of Mr. Lichtman.

*Q.* Did you show any of these goods to Friedman? *A.* Personally?

*Q.* Yes? *A.* I did not.

*Q.* Were you present when he was examining any of them? *A.* Friedman only had one shipment, that I recollect, and I had nothing to do with that.

*Q.* You did not see him when he was there and had nothing whatever to do with it? *A.* I saw him later.

*Q.* When did you see him later? *A.* He came in the factory at later intervals.

*Q.* Looking for goods? *A.* Looking for goods.

*Q.* Did he see any of them? *A.* I believe he did.

*Q.* Were you there? Did you show him any? *A.* I believe I did show him something.

*Q.* Was this after you went to see Lichtman, or before? *A.* After.

*Q.* Well, then, was Lichtman the first one that was solicited by you, or was solicited by anyone, so far as you know, to purchase this particular kind of stuff? *A.* He was.

*Q.* Was Lichtman the first purchaser of this class of goods, so far as you know? *A.* No, I think Friedman had one lot before that. I am not positive of that, because I had nothing to do with it. One or two lots, maybe.

*Q.* Do you remember anybody else that you showed these goods to during this period? *A.* I do not.

*Q.* Do you know Mr. Vogeler? *A.* Vogeler?

*Q.* Yes. *A.* O. T. Vogeler?

*Q.* Yes. *A.* Yes.

*Q.* Did he come to buy some of these goods, to your knowledge, in this period? *A.* I don't think he did.

*Q.* You do not remember having seen him? *A.* I don't remember ever having seen him there.

*Q.* Did you ever sell him any of these goods? *A.* No.

*Q.* Within your knowledge, were there any goods shipped to him out of that factory? *A.* Not to my knowledge.

Q. Did you ever sell Mr. Vogeler anything yourself in the way of leather? A. Yes.

Q. When? A. At different times.

Q. Well, within this period did you? A. Not within that period, because I was employed by Guigues then; nothing of his.

Q. You never sold anything of Guigues's to Mr. Vogeler? A. Not to my recollection.

Q. Well, when did you sell Vogeler goods? A. At different times, many different times.

Q. Whose goods? A. Sometimes my own, sometimes other people's.

Q. When did you sell your own goods? A. Well, I haven't any record of it.

Q. Can't you state from recollection? A. I never sold him any quantity; maybe some little samples, or something of that kind, I would sell him; nothing worth keeping record of.

Q. Did you ever sell him any colt fronts?

Objected to as irrelevant.

Question withdrawn.

Q. To whom did you report the sale to Eisinger after you had made it? A. To the office.

Q. To whom in the office, you remember? A. I don't remember.

Q. Have you any knowledge whether the charge for these goods was ever paid? A. I have not.

Q. You know nothing about it, except that you sold it at twenty-six cents per pound? A. That is all.

Q. Did you ever make any other sales at that rate? A. No.

Q. Who fixed the price? A. I did.

Q. Who fixed the price of the sale to Lichtman? A. Mr. Guigues.

Q. Do you know the price that had been fixed? A. I did.

Q. How much was it? A. He paid—oh, I don't know the low price he paid, but he paid all the way up to twenty cents.

Q. Do you know any other price than twenty cents? A. Yes.

Q. What? A. Fifteen.

Q. For what? A. Butt grain splits, or butt grains.

Q. Now, will you tell me why you charged Eisinger twenty-six cents when the price established by Mr. Guigues was twenty cents? A. The price hadn't been established; I tried to get all I could for them.

Q. Without any instructions from Mr. Guigues? A. Without any instructions.

Q. Was there a market price at this time for that particular quality of stock? A. If there was I didn't know of any.

Q. You did not know of any? A. No.

Q. Well, Mr. Lauster, have you not testified that the market price was twenty-six cents? A. I testified that I sold some at twenty-six cents.

Q. That was six cents in excess of any other sale that you knew of at that time, was it not? A. It was.

Q. Now, the sales of buffings. The price that you put on them, at five cents per foot, was that a sale? A. A sale?

Q. Yes, five cents a foot. A. Yes.

Q. To whom? A. Why, I think Charles Neider paid five or five and a half cents a foot for them.

Q. What? A. Mr. Charles Neider.

Q. Five or five and a half cents a foot for buffings? A. He only had a few, as a sample.

Q. When was that made? A. I don't recollect the date; some time in 1904.

Q. How many did you sell? A. Oh, I think he had about five dozen, five or ten dozen; not more than that.

Q. Why do you fix it at a dozen if you sold them by the foot? A. Well, put up in five dozen packages.

Q. And sold by the foot? A. Sold by the foot.

Q. You mean they were first measured and then put up in five dozen packages? A. Yes.

Q. How many dozen did he buy? A. I think five or ten.

Q. What number of square feet, if you remember? A. Why, they average about six feet.

Q. About how much? A. About six feet.

Q. They average six square feet? A. Yes, sir.

Q. What were these buffings that you sold Mr. Neider? A. They were the grain from a horse butt.

Q. How were they tanned? A. Bark.

Q. Can you fix the quantity any more accurately than you have? A. No, I can't. I don't believe he had more than five or ten dozen.

Q. Not more than ten, anyway? A. Not more than ten, to my recollection.

Q. And as many as five dozen? A. I said from five to ten dozens.

Q. Well, you are positive that it was somewhere between five and ten dozens? A. Five and ten dozens.

Q. Can you fix the date? A. I cannot.

Q. The month? A. No, sir.

Q. The season of the year? A. No.

Q. How did you happen to make the deal with Mr. Neider? A. Because I knew the gentleman.

Q. Were you in the office when he came in? A. He didn't come there.

Q. How did he make the purchase, then? A. I took a few specimens and showed them to him.

Q. By whose direction did you do that? A. By Mr. Guigues's direction.

Q. Did you take them to any other prospective purchasers? A. I believe I showed them to several.

Q. Who were they? A. A Loehnberg, as I said.

Q. Well, you have not said with regard to this particular item. A. Yes, I have.

Q. Whom else? A. John Neider.

Q. Who? A. Mr. John Neider.

Q. Anyone else? A. No, that is all.

Q. Is there any other sale that you made of buffings at five cents per foot, five or five and a half? A. That is about all that was sold.

Q. Is that the market price at that time? Do you

know the market price? *A.* There was no market price on them.

*Q.* There was no market price on them? *A.* Not on that particular buffing.

*Q.* Well, what was there particular about this buffing? *A.* It was a buffing from a horse butt.

*Q.* That was not an ordinary article of sale, then, so far as you knew? *A.* It was not.

*Q.* You were in the factory during this period and saw the processes of manufacture, did you not? *A.* I did.

*Q.* Now, these six foot buffings that you sold to Neider, from what kind of hides did they come? *A.* Horse butts.

*Q.* What kind of horse butts were they? *A.* What kind of horse butts?

*Q.* Yes. *A.* Regular horse butts.

*Q.* Well, there is such a thing as a regular horse butt, is there? *A.* There is only one kind of horse butt.

*Q.* From what kind of a horse did the horse come from which these butts were taken, if you know? *A.* What kind of a horse?

*Q.* Yes. *A.* I never knew there was any variety of horses.

*Q.* Where did the horse butts come from, from what market, if you know? *A.* From what market?

*Q.* Yes. *A.* Different markets.

*Q.* Well, I am now speaking of the butts from which these buffings were taken, if you know from what market the butts came from which they were taken? *A.* There was no particular market.

*Q.* Do you know of any distinction between the butts or skins that come from Russia and those that come from the local, or American, market? *A.* I do.

*Q.* Well, did these particular buffings come from hides that came from Russia or from the local market? *A.* Some of them.

*Q.* Some of them? *A.* Yes.

*Q.* Which? *A.* Some from the local market and some from the Russian market.

*Q.* What was the difference between the hides coming from the Russian market and the ones coming from the local market? *A.* The Russian are smaller.

*Q.* Now, when you say "smaller," do you mean that merely in area or in some other respects? *A.* In area.

*Q.* That is all the difference, is it? *A.* In this condition that you are speaking: the buffing.

*Q.* No, I am speaking of the hides, Mr. Lauster. *A.* You asked me these particular buffings—

*Q.* No, I did not; I asked you the difference between the hides coming from the Russian market and the local market? *A.* I answered that question.

*Q.* Well, in what other respect than the area of the hides do they differ, if any? *A.* In what condition?

*Q.* Any condition. I am speaking of the hides now. *A.* The Russian hides are drier.

*Q.* In what other respect do they differ? *A.* Not any particular difference.

*Q.* No difference in thickness, is there? *A.* I said the size. Naturally, a smaller butt would be lighter than a heavy one.

*Q.* I asked you whether there was any difference in size except as to area, and you said you did not know of any difference. *A.* Well, that is an inference that any man that knows anything about the business would know.

*Q.* Oh, you misunderstood. Now, as to thickness, Mr. Lauster. Are they thinner or thicker? *A.* What, the local hides?

*Q.* I am speaking now of the Russian hides. *A.* What is the question?

*Q.* [Question read.] *A.* The Russian hides are thinner.

*Q.* Can you give any indication or statement indicating the difference in thickness on the average? *A.* Very trifling.

*Q.* Is there any difference in regard to the size of the

shell between the two classes of hides? *A.* Very little difference.

*Q.* In your experience, have you ever seen a buffing of the dimensions named by you, six square feet, taken from a hide from the Russian market? *A.* I have.

*Q.* How many? *A.* Many of them.

*Q.* Have you ever measured them? *A.* Yes, sir.

*Q.* Now, Mr. Lauster, have you ever seen a buffing taken from a Russian cordovan butt containing six square feet of surface? *A.* I have never seen a Russian cordovan butt.

*Q.* Have you ever seen a cordovan butt taken from a Russian hide? Put it that way. *A.* I have.

*Q.* Have you ever seen a buffing taken from such a cordovan butt? *A.* I have seen buffings taken from a butt.

*Q.* You have never seen a buffing taken from a cordovan butt? *A.* There is no such thing as a cordovan butt.

*Q.* Have you ever seen a buffing taken from a butt of a Russian hide— *A.* I have.

*Q.* —which measured six feet square? *A.* I have.

Mr. Skinner—I suppose, Mr. Riker, you mean six square feet, do you not? That is not fair to the witness.

[Question read.]

Witness—That is an error.

*Q.* [By the Court.] You did not mean six feet square? *A.* I mean six square feet.

*Q.* [By Mr. Riker.] You mean six square feet? *A.* Six square feet.

*Q.* Now, Mr. Lauster, I want to ask you once more whether you mean to say that you have never seen a buffing taken from a cordovan butt? *A.* There is no such thing as a cordovan butt.

*Q.* There is not any such thing. You are sure of that? *A.* Yes.

*Q.* You are sure of it? *A.* I am sure of it.

*Q.* Now, is there any such thing as dry tacked-out

butt buffings from cordovan butts? *A.* Cordovan butts is a misnomer.

*Q.* Will you not answer the question yes or no? Is there any such thing, to your knowledge, as dry tacked-out butt buffings from cordovan butts? Yes or no. *A.* No.

*Q.* Now, Mr. Lauster, in testifying as to trade custom, you said it was the custom to return everything that was suitable for making leather. That is, as you understand it, the trade custom? *A.* Yes.

The Court—"Suitable for producing leather." That is the same thing, I suppose?

Mr. Riker—Suitable for producing leather.

*Q.* What is leather? *A.* Hide substance tanned.

*Q.* What part of the hide, under the custom that you testified to, is returned without being tanned and coming within your definition as suitable for producing leather? *A.* The different kinds of leather that are to be produced require different parts of the hide.

*Q.* I understand, but you say the custom requires the return of all parts of the hide suitable for producing leather. Now, I want to ask you what it is the custom of the trade to return which is not already leather? *A.* The fleshing, glue stock.

*Q.* Those are returned to the shipper of the hides, are they? *A.* No.

*Q.* Well, now, you say that it is the custom of the trade to return all parts of the hide suitable for producing leather? *A.* Yes.

*Q.* Now, I ask you what it is that it is the custom of the trade to return which is not leather? *A.* No part that is not leather.

*Q.* Then there is not anything returned, under that part of the custom as you have defined it, at all, is there? *A.* Not to my knowledge.

*Q.* The parts of the hide which are to be returned, under the custom, are already leather, are they not? *A.* Not necessarily.

*Q.* Well, what else is there to be returned which is not

leather? *A.* Any part of the hide, regardless of condition.

*Q.* Whether it has been tanned or not? *A.* Yes.

*Q.* It is customary to return it? *A.* Yes, sir.

*Q.* Now, what part have you ever seen, in your experience in the leather trade, of hides sent to be tanned which was returned other than as leather? *A.* You are speaking of horse hide or—

*Q.* I am speaking of the general custom now. *A.* In the regular line—perhaps you are more familiar with the patent leather line—the hides are sent out for tanning split; they are only partially tanned—struck, as they call it.

*Q.* Well, are they leather or are they not, do you know? *A.* They are hides.

*Q.* Are they leather or are they not? *A.* They are not leather.

*Q.* They are not leather? *A.* They are not.

*Q.* They are hides after they are split, are they? *A.* They are still in a raw state, partially tanned.

*Q.* A partially finished state, are they not? *A.* No, sir; a partially tanned state.

*Q.* Do you know such a thing as offal in the customs of the trade? *A.* Yes.

*Q.* Offal is that part of the hide which is not to be returned, under your custom, is it not? *A.* I should consider it as such, yes.

*Q.* What? *A.* Repeat the question, please.

Mr. Riker—Well, let us have the answer first.

[Answer read.]

*Q.* [Question read.] *A.* The answer is already given.

*Q.* Does the offal, or does it not, include glue stock? *A.* Glue stock is considered offal.

*Q.* It is considered offal. Then it does include glue stock? *A.* It does.

*Q.* Is that of value? *A.* It is.

*Q.* Under what description do you put pieces, scraps of leather, tanned? *A.* Scraps of leather tanned? Fertilizer.

Q. Is that offal or is it not? A. That is offal.

Q. In what category do you place the trimmings of a hide? A. In what condition?

Q. Well, we will take them first before being tanned. A. Glue stock.

Q. And after being tanned? A. Fertilizer.

Q. Both offal? A. Both of them.

Q. In what category do you place the skivings from a hide, if there is such a thing—or skifings? A. Skifings?

Q. Yes. A. They are leather.

Q. They are leather? A. Yes, after splitting and re-tanning they are leathered.

Q. The portions of the hide that are taken off in dressing the hide, what are they? A. Dressing for what purpose?

Q. Before being put into the tan? A. That is fleshing.

Q. That is fleshing? A. Yes.

Q. That is glue stock? A. That is glue stock.

Q. And that is offal? A. Yes.

Q. What would you call the same character of material after tanning? A. It is never tanned.

Q. Is it never taken off by the knife after they are tanned? A. Hides are always fleshed in the beamhouse while they are raw.

Q. Are they ever leveled? A. They are.

Q. By hand, after tanning? A. No.

Q. Well, with a leveling machine? A. With a splitting machine.

Q. Are they ever leveled with any other machine than a splitting machine? A. No.

Q. Now, are they ever shaved? A. They are.

Q. After tanning? A. They are.

Q. The material that comes off in the shaving process, what is that? A. Fertilizer.

Q. Offal? A. Offal.

Q. In the Guigues factory, while you were there, for the first period, is it not a fact that the shanks after

pickling or tanning were shaved? *A.* The shanks after pickling and tanning were not shaved.

*Q.* They never were? *A.* After splitting they were shaved.

*Q.* Now, is it not a fact that for part of the time while you were there in the Guigues factory the shanks were not, in fact, split at all? *A.* I don't recollect any shanks that were not split.

*Q.* Now, were the butts, the cordovans, while you were there, shaved at any time? *A.* At first.

*Q.* What was the material taken off of the cordovan by the shaving process? *A.* Shavings.

*Q.* Was it offal or was it not? *A.* It was offal.

*Q.* When did you begin to split the shanks in this fashion? *A.* The shanks?

*Q.* Yes. *A.* I don't know.

*Q.* You do not remember? *A.* I don't remember.

*Q.* Where was your place of doing business in that factory, Mr. Lauster? *A.* Why, my special place was in the Madison street building.

*Q.* On which floor? *A.* The second.

*Q.* Was there any communication between that floor and the second floor of the frame office building? *A.* Any communication?

*Q.* Direct communication? *A.* No.

*Q.* There was a partitioned office on the north end of that second floor, was there not? *A.* Which is the north end, the Ferry street end?

*Q.* Yes. *A.* Yes.

*Q.* That is where you are located? *A.* No.

*Q.* Where were you located? *A.* At the lower end of the first brick building.

*Q.* You were there by the elevator shaft? *A.* Just by the elevator shaft, before you get to that.

*Q.* Was there an office partitioned off there for you? *A.* Not especially for me.

*Q.* Well, was there an office partitioned off at that end? *A.* There was a room partitioned off. It was not used as an office; it was not an office.

*Q.* How large was that room? *A.* I should judge about half the size of this court-room.

*Q.* What was the character of the partition? *A.* Wood and glass.

*Q.* How high did the wood extend? *A.* About 4 or 5 feet.

*Q.* And above that what kind of glass? *A.* Ground glass.

*Q.* Was the glass opaque? *A.* No, plain glass, ground.

*Q.* Could you see through it? *A.* You could see shadows through it.

*Q.* Anything more than shadows? Could you distinguish objects? *A.* You couldn't distinguish objects.

*Q.* What? *A.* Perhaps moving objects; you could distinguish it was a person.

*Q.* Well, inanimate objects, not moving, could you distinguish them? *A.* No.

*Q.* Was that the partition on which you say was tacked up this black cloth? *A.* Yes.

*Q.* On which side was it tacked up? *A.* The inside.

*Q.* Did it show on the outside? *A.* It showed black.

*Q.* Showed black through the ground glass? *A.* It did.

*Q.* Well, did it show so as to attract attention? *A.* Well, black is usually a pretty prominent color.

*Q.* So that the result was that it drew attention to that partition, did it not? *A.* It might draw quite some attention.

*Q.* Now, that partition was set at about what distance from the Ferry street end of that floor of that building? What was the proportion; was it one-third of that floor, or more or less? *A.* The dimensions of this partition?

*Q.* Of the room that you were speaking of, that had the ground glass and the black cloth. *A.* Let me have the question repeated, please. I didn't get that.

[Question withdrawn.]

*Q.* What proportional part of that floor did this office, or room, occupy? *A.* I don't know exactly.

*Q.* Well, give an idea. *A.* Perhaps an eighth.

*Q.* How far did it go beyond the elevator shaft? *A.* It wasn't on that end of the building.

*Q.* There was no elevator shaft at that end of that building? *A.* There was an elevator shaft, but this room wasn't at that end of the building.

*Q.* Then it was at the other end of it. I thought you said Lafayette street. *A.* The Ferry street end, the Lafayette street side nearest to Ferry street. That building didn't go to Ferry street. You are getting mixed up on the streets. You said before where this room was, and you know it was in the end of the building nearest to Ferry street, and the elevator is at the other end.

*Q.* Then it is at the end of the building nearest Ferry street, where the staircase comes up? *A.* Yes, right next to the staircase.

*Q.* And it was a small office, or room, partitioned off with these glass partitions that you speak of, was it not? *A.* Yes.

*Q.* And it had in back of the staircase, well—it had a hand-basin or something of that sort? *A.* Yes, sir.

*Q.* Well, it was there when you first went there, was it not? *A.* Yes.

*Q.* It was not put in by Guigues; it was part of the premises that I leased to Guigues, was it not? *A.* Yes.

*Q.* There was no change in that? *A.* Not so far as I know; it was there when I went there.

*Q.* You went there when he went there, did you not? *A.* No, not when he started to equip the factory; I went there when he started to manufacture leather.

*Q.* That was the room you were in, in that room? *A.* No.

*Q.* You were outside? *A.* I was outside.

*Q.* It was in the inside of that room that this black cloth was hung? *A.* Yes, sir.

*Q.* And that room opened directly onto the staircase, the main staircase of the building; it opened right out onto the main staircase of the building, did it not? *A.* I don't believe it did.

Q. You do not believe it did? A. No.

By the Court.

Q. How do you understand the question, that the staircase came up into it? A. As the counsel says, that this staircase went into the room.

Q. I want to know how you understand the question. A. There was a landing at the door. I don't know whether it was at the side of the staircase or around the corner.

By Mr. Riker.

Q. The staircase of that building was toward the Ferry street end of the building, was it not? A. Yes.

Q. Right at the end? A. Yes, sir.

Q. And you came up that staircase to a landing at the second floor? A. Yes, sir.

Q. And off of that landing you went directly into this room that you speak of, this office room? A. No.

Q. Well, where did you go? A. You went directly into the finishing room.

Q. [By the Court.] That is the front hall of the floor? A. This is the front hall of the floor.

Q. [By Mr. Riker.] Then this room that was partitioned off in this way, how wide was it? A. Well, I don't know.

Q. [By the Court.] Well, give us an estimate. A. Oh, well, I should judge the room to be about 20 by 20.

Q. [By Mr. Riker.] The room was about 20 by 20? A. Yes.

Q. Feet, you mean? A. Feet, yes.

Q. And it ran back of the staircase, well, did it not? A. I never gave that any particular attention.

Q. How far around did the partition that was further concealed with black cloth go? Was it on only one side of this room, or did it go around the corner? Was it only on one side of the room or more? A. I

don't remember how the front of that room was. One side of it was the partition. What are the directions there?

*Q.* Ferry street, generally speaking, is to the north, and Lafayette street to the south, Madison street is on the west side, and Monroe street would be on the east side. *A.* On the south side.

*Q.* On the south side of the room was this partition. Now, as you come out of the door onto the landing, would any part of this office extend out into the main room? *A.* Yes.

*Q.* How far? *A.* I should judge about 20 feet from the outside wall.

*Q.* I do not believe I make myself clear. Coming up into this particular building, you went up in the northwest corner, did you not, by the staircase? That is where the staircase was? *A.* Yes.

*Q.* It did not occupy the full length of the building, did it—the staircase? *A.* No.

*Q.* There was a space in each floor back of the staircase? Well, was there not? *A.* Yes.

*Q.* As you came up the staircase on the landing you entered each floor looking toward the south, turning toward the south, toward Lafayette street, did you not? As you went off the landing going into each room, you went toward Lafayette street, did you not? *A.* I think not.

*Q.* Well, how do you think you went? *A.* I think you went toward Monroe street.

*Q.* You think you went up the staircase and came to the landing and went right through toward the back of the building to enter the room? *A.* I believe that is the way the staircase was situated.

*Q.* Well, where did the staircase to the next floor go? How did you get to the staircase to the next floor, if you went that way? *A.* By walking around it.

*Q.* Well— *A.* I don't know just how that thing was situated there.

*Q.* I understand you that this glass partition was looking down the length of the room toward Lafayette street? *A.* Yes.

*Q.* And on the side to the right of that, or to the left, as you look into that partition, you do not remember whether there was glass or not do you? *A.* I believe it was all the same.

*Q.* [By the Court.] Then two sides of the room were glass? *A.* Two sides were glass.

*Q.* [By Mr. Riker.] Now, if you entered that floor, as you describe it, when you entered did you go through this room? *A.* No.

*Q.* Well, to get into the main finishing room, was there also a partition for this particular room along the entrance into the main room? *A.* There were no partitions there.

*Q.* Then that partition that you have first described as being toward the south went all the way over to the east wall of the building, did it not? *A.* No.

*Q.* Well, how far did it go? *A.* About 20 feet.

*Q.* Did it go all the way over to the west wall of the building; that is, the Madison street end? *A.* I believe it did.

*Q.* And then parties coming into that floor would pass along the side of this room to enter this finishing room, would they not? *A.* Yes.

*Q.* And they would pass these ground glass windows? *A.* Yes.

*Q.* And if their attention happened to be thereto directed they would observe this black stuff against the ground glass windows? *A.* No doubt.

*Q.* Now, what was the purpose of putting this black stuff against those windows? *A.* The purpose?

*Q.* Yes, if you know? *A.* I don't know.

*Q.* You do not know? *A.* No.

*Q.* What was in that room? *A.* Tanned buffings.

*Q.* When did you begin putting them there? *A.* As they came through. I don't remember the exact dates.

*Q.* Can you not indicate in any way when they were

put there? *A.* About the middle of the year, when they came along.

*Q.* About the middle of July? *A.* Perhaps a little later. I don't remember just when he started to take them off that way.

*Q.* Who put them there? *A.* Some of the employees carried them there.

*Q.* Well, you had the key and kept the place locked, did you not? *A.* I did.

*Q.* So that every time that any buffings were put in there they were put there under your direct supervision, were they not? *A.* They were only put there one time.

*Q.* When was that? *A.* After they had accumulated in another building.

*Q.* When was that? *A.* I don't remember the date.

*Q.* Well, was it not the middle of the year 1904, about July? *A.* No, I think it was later than that. I don't believe he started taking them off that way at that time.

*Q.* Well, when was it? *A.* Later in the year.

*Q.* That same year? *A.* Yes.

*Q.* Where had they accumulated before that time? *A.* They had been taken in a room on the second floor of the office building.

*Q.* What do you mean by saying that he had not been taking them off that way before? *A.* The butts had been split in a different method before.

*Q.* Well, these were buffings that you have been speaking about? *A.* Those were buffings, yes.

*Q.* How had they taken the buffings off before? *A.* They never took any buffings off before.

*Q.* There never had, up to this particular time in this factory, been any buffings taken from butts, had there? *A.* Up to which particular time?

*Q.* When they changed the method. *A.* There hadn't.

*Q.* What became of the buffings? *A.* They were taken off in grain.

*Q.* There were no buffings? *A.* There were not.

*Q.* If you can fix it any more definitely, when was this

change made in the method of splitting? *A.* I can't fix it definitely; I don't remember the dates.

*Q.* Well, what were the circumstances of the change, do you remember? *A.* Yes.

*Q.* State them. *A.* The buffings were more valuable than the grain.

*Q.* That would have been true from the beginning, would it not? *A.* No doubt.

*Q.* Now, what were the circumstances, then, if you can state them, under which the change was made? *A.* The circumstances under which the change was made? I don't know them.

*Q.* [By the Court.] After this original deposit was made in this room, as you describe, were any additions made to it? *A.* From time to time.

*Q.* [By Mr. Riker.] Why, Mr. Lauster, did you not say they were all put there at once? *A.* The bulk of them were put there at once, and a few came along afterwards and were taken in there.

*Q.* How many were put there? Did you count them? *A.* Yes.

*Q.* Well, how many? *A.* Well, over 4,000 dozens; I don't remember the exact figures.

*Q.* Did you check them up as they were put in? *A.* I did; I checked them up before they were put in.

*Q.* Well, as they were put in, how did you check them up in the — *A.* They were checked as they were measured; they were put in five or ten dozen bundles.

*Q.* Now, this room that you were speaking about, you say it was on the second floor of the office building —that is, the building on the corner of Madison and Ferry streets? *A.* Yes, sir.

*Q.* You say it is a frame building? *A.* Yes, sir.

*Q.* And the second floor was an open loft, was it not? *A.* At this time.

*Q.* At this time? *A.* Yes.

*Q.* Were the windows screened in any way in that building? *A.* No, I don't believe they were.

*Q.* Do you remember whether they were or not? *A.* I am not sure.

*Q.* Were you ever in it? *A.* Many times.

*Q.* To the east of that office building there was a japan shop, was there not? *A.* Yes.

*Q.* With a blank brick wall? *A.* Yes, sir.

*Q.* Now, in what part of that second floor of that office building were these particular buffings placed before they were removed to the Madison street building? *A.* In no particular part.

*Q.* What are the dimensions of the second floor of that building? *A.* I don't know.

*Q.* More than 20 by 20? *A.* Yes, probably 20 by 40.

*Q.* What? *A.* I say probably 20 by 40.

*Q.* Probably 30 by 60, is it not? *A.* Possibly.

*Q.* And you say that these buffings were scattered pretty generally over that floor space, 30 by 60? *A.* Well, they were kept in good order, in piles; they weren't scattered about.

*Q.* Do you know any reason for removing them from that place to the place where they were put? *A.* Yes.

*Q.* What was the reason? *A.* To measure them.

*Q.* Is that the only reason? *A.* That was the reason they were taken from that room.

*Q.* [By the Court.] From the loft on the second floor? *A.* From the office building.

*Q.* [By Mr. Riker.] Where were they taken to be measured? *A.* To the shipping room, on the Madison street side.

*Q.* That is, the second floor? *A.* The second floor.

*Q.* Well, had they been sold? *A.* They had not.

*Q.* Had they been done up in bundles before that time? *A.* Tied up.

*Q.* The same as they were when they were put in the Madison street building? *A.* They hadn't been counted at that time; just tied up to keep them in order.

*Q.* Were they wrapped in anything? *A.* No.

*Q.* Tied up in bundles of how many? *A.* As many

as could be conveniently carried; I don't remember just how many.

*Q.* Who measured them? *A.* I measured some of them.

*Q.* Can you not fix the date when you measured them? *A.* No.

*Q.* Was it in 1904? *A.* Through the period of 1904 and early in 1905, I think.

*Q.* You fix it within those limits definitely? *A.* I wouldn't fix it definitely; I think it was about that time.

*Q.* Well, Mr. Lauster, why did the plant cease producing these buffings, how did it happen? *A.* Well, I don't know that.

*Q.* You said they were more valuable than the grains. *A.* They were.

*Q.* Well, now, is there any reason, within your knowledge, why the production of them ceased? *A.* I don't think there had been a market found for them at that time.

*Q.* There was no market found for them, although they were more valuable than the grains? *A.* Yes.

*Q.* Now, when did that production cease? The production of buffings, I refer to. *A.* don't remember that.

*Q.* Well, can you not fix that as definitely as you fixed the measuring of these buffings? Had it ceased, or not, at the time you measured them? *A.* Not altogether.

*Q.* Well, how long after was it before it ceased? *A.* I don't remember.

*Q.* A month? *A.* Possibly.

*Q.* Two months? *A.* I don't know.

*Q.* Six months? *A.* Less than that, I should judge.

By the Court.

*Q.* How long was this measuring process continued? *A.* I don't remember that, Judge. They were measured principally at one time; they were all accumulated in

this one building, and then taken off and measured and run through as fast as possible.

*Q.* How long did it take you to measure 4,000 dozen? *A.* Why, we can measure about 300 dozen a day.

By Mr. Riker.

*Q.* Now, Mr. Lauster, will you tell us the method of measuring these buffings? *A.* They were run through a measuring machine.

*Q.* How many measuring machines did you have? *A.* We had one in that factory.

*Q.* And was that used for measuring all the other product? *A.* All the bark product.

*Q.* All the butt product? *A.* No.

*Q.* All what product? *A.* All the bark.

*Q.* That is, the cordovans? *A.* Nothing but the cordovans, finished.

*Q.* Not the splits from the cordovan? *A.* They weren't measured.

*Q.* But the cordovans were measured? *A.* The cordovans were measured.

*Q.* Did you not measure the shanks? *A.* I did not.

*Q.* Well, were they not measured on that machine? *A.* They were not.

*Q.* Where were they measured? *A.* They were measured in the other factory.

*Q.* Then you had another machine in the other factory? *A.* Yes.

*Q.* Then there were two machines, instead of one? *A.* Not in this factory.

*Q.* You mean in this building, I suppose? *A.* This building.

*Q.* Not factory? *A.* They were designated there as two factories? One was the bark factory and the other the chrome factory.

*Q.* It was one business carried on in a number of buildings, was it not *A.* One was the bark factory and the other the chrome factory.

*Q.* Where was Mr. Conway stationed? Where were his duties? You knew him, did you not? *A.* I did.

*Q.* Where was he stationed? *A.* All over the factory.

*Q.* Now, you say you measured 300 dozen of these buffings a day, did you? *A.* Yes.

*Q.* Running them through this measuring machine? *A.* Yes.

*Q.* How was the record of the measurement taken? *A.* Of each particular piece?

*Q.* Yes. *A.* Taken down on a slip or taken down by the comptometer.

*Q.* The machine itself registers the measurement? *A.* No, the machine registers the measurement of each piece as it goes through.

*Q.* It registers the measurement of each piece as it goes through? *A.* Yes.

*Q.* And then when the piece is measured and is marked? *A.* Yes.

*Q.* By the machine? *A.* By hand.

*Q.* Who did that? *A.* The person back of the machine.

*Q.* Then there were measured and marked 3,600 pieces a day, were there? *A.* Not every day; that is an average.

*Q.* Some days more? *A.* Well, I wouldn't say more. The capacity of the machine is 300 dozen a day.

*Q.* And how many hides a day were passing through the factory during this period? *A.* Probably 200 dozen butts.

*Q.* 200 dozen butts? *A.* Yes.

*Q.* And out of all those butts was there or not produced substantially 200 cordovans a day? *A.* 200 dozen.

*Q.* 200 dozen cordovans a day? *A.* Yes, sir.

*Q.* Well, were they measured on this same measuring machine? *A.* They were.

*Q.* So that you measured on the average 200 cordovans a day, and 300 pieces of buffing? *A.* We measured more than that.

*Q.* I forget the word "dozen." You measured on this machine 200 dozen cordovans a day and 300 dozen buffings in a day, in a machine whose capacity was 300 dozen a day? *A.* Not on the same day.

*Q.* Well, now, Mr. Lauster, having those facts in mind, on the average, as you put the buffings through the measuring machine, how many did you average in an actual day, in actual work, of the buffings? *A.* I cannot answer that question.

*Q.* You cannot answer it. Why can you not? *A.* Because the time is too long gone.

*Q.* Well, do you think that on the average you put more through the measuring machine than a hundred dozen a day? *A.* I won't say the average. Some days we run that machine entirely on the buffings and other days entirely on the cordovans.

*Q.* But the capacity of the machine was 300 dozens of pieces a day, whatever they were? *A.* Yes.

*Q.* And you had 200 dozen of cordovan pieces a day out of the factory that you put through this measuring machine, did you not? *A.* We didn't put them through every day.

*Q.* Well, they went through eventually? *A.* Eventually, yes.

*Q.* You measured them all? *A.* Yes.

*Q.* And you were handling 200 dozen butts a day in the factory? *A.* Yes.

*Q.* And did not average a measurement of 200 cordovans a day? *A.* Yes.

*Q.* Well, at the period that you were measuring these buffings were you not producing any cordovans? *A.* We were.

*Q.* Well, considering it, do you remember that you did on the average more than a hundred dozen pieces of buffing a day? *A.* We didn't do buffings every day.

*Q.* Well, you did not do them every day. *A.* I meant by that, buffings were not manufactured every day. There was a lot of buffing, and they were put through

as fast as possible, and then there were no more of them. We didn't do buffings all the time.

*Q.* But you said you took these particular buffings from the second floor of the office building into this room in the brick building on the Madison street side for the purpose of measuring them in the shipping room? *A.* We did.

*Q.* And then you went on and measured them, and put them in this darkened room? *A.* We did.

*Q.* Now, I want to know covering what period, about what number of days, in a general way—I do not expect you to state it exactly, but, in a general way, how many days did this measuring process continue? *A.* I couldn't tell you that.

*Q.* Where else in the plant did your duties take you than in the finishing room? *A.* All over the plant, particularly this bark-tanning plant.

*Q.* Which side of the plant was that? *A.* Madison street.

*Q.* That was the Madison street building. What took you over to the Monroe street building, if anything; what duties? *A.* No particular duty; perhaps go and get Mr. Conway from his office, or something of that kind or to see him there.

*Q.* Mr. Conway's office was over there, was it? *A.* It was.

*Q.* Who was the superintendent of the bark leather department, Mr. Lauster? *A.* There was no superintendent of the bark leather department.

*Q.* Was Mr. Conway? *A.* Mr. Conway was superintendent of the whole plant.

*Q.* Do you know a man by the name of Cusack? *A.* I do .

*Q.* Who was he? *A.* Chrome-tanner.

*Q.* Anything else? *A.* No.

*Q.* Was he employed in the factory while you were there? *A.* He was.

*Q.* Where was he located in his duties? *A.* He was in the basement of the Monroe street building.

*Q.* You never saw him in the Madison street building? *A.* Oh, I probably have seen him there, yes.

*Q.* He did not have charge of the bark-tanning? *A.* No.

*Q.* Who had charge of the bark-tanning? *A.* A man by the name of Jacobiti had it first.

*Q.* How do you spell that? *A.* J-a-c-o-b-i-t-i, I believe it is. It is a French-Italian name.

*Q.* He was the man who had charge of the bark-tanning in this plant while you were there? *A.* In the beginning.

*Q.* In the beginning of what? *A.* In the beginning of the bark-tanning.

*Q.* That was early in 1904? *A.* That was early in 1904.

*Q.* How long did he continue there? *A.* I don't remember just how long he was there.

*Q.* Can you not indicate with some degree of definiteness how long? Can you not state? *A.* I am trying to think, if you will give me a little time.

*Q.* I beg your pardon. Well, think. *A.* Probably six months.

*Q.* Then what became of him? *A.* I don't know; I suppose he went to work somewhere else.

*Q.* Left the factory? *A.* He did.

*Q.* Now, when you say "six months," from what time do you begin those six months? *A.* From the time I went there.

*Q.* From the time you went there. And when was that, in May or June, 1904? *A.* I don't remember the date; about that time.

*Q.* And you are sure that he left during the next six months? *A.* I am not sure it was six months. I said about six months. It might have been five and a half months or—

*Q.* And after he left who had charge of it? *A.* Mr. McCletchey.

*Q.* How long did he continue there? *A.* He continued after I left there.

*Q.* So that those two men covered the entire period of your stay in the bark-tanning? *A.* They did.

*Q.* When you visited the Lichtmans in Market street, Mr. Lauster, where did you find them? *A.* I never visited the Lichtmans in Market street.

*Q.* You never went to see them on Market street? *A.* No, sir.

*Q.* Well, Mr. Lauster, do you know Julius and Abraham Lichtman? *A.* I do.

*Q.* Where did you meet them? *A.* Why, I don't remember particularly. I have seen them around the city for years. I have known them for a long time.

*Q.* Did you ever go to see them? *A.* I did.

*Q.* Where did you go to see them? *A.* To their Arch street factory.

*Q.* Then you never went to see them on Market street? *A.* I never did.

*Q.* Well, you testified yesterday that you did. *A.* I did not, to the best of my recollection; I said Arch street yesterday.

*Q.* I will read the transcript to you and see whether you want to correct it, then. "*Question*: Do you remember the first shipment or sale to Julius Lichtman? *Answer*: I do. *Question*: Did you have anything to do with that first sale? *Answer*: I did. *Question*: Did you meet either of the Lichtmans in connection with it? *Answer*: I did. *Question*: Which one? *Answer*: Both Julius and Abraham. *Question*: Where was that? *Answer*: At their factory, on Market street." *A.* If that is so, why, it was surely a mistake. It was at their factory on Arch street, as I have stated. I was never in their factory on Market street, to my recollection.

*Q.* How many times did you go to see them at their place of business? *A.* Once, possibly twice.

*Q.* And at that first visit did you see Julius Lichtman? *A.* I believe I did.

*Q.* Did you have any talk with him about the sale of these goods? *A.* I told him—yes.

*Q.* I want to direct your attention to a transcript of your testimony of yesterday. The question is, "How did you come to go there to see them? *Answer*: Mr. Guigues had sold some of the grains to this Friedman concern, of New York, and wanted to find others to buy them, and asked me if I knew of anybody else that would be interested, and I told him I thought Mr. Lichtman was, and he told me to go and see them and try to get them down, and I went to their factory, on Market street." Now, if you testified in that way yesterday, was that a mistake? *A.* It was surely a mistake.

*Q.* A mistake repeated twice? *A.* Was that to a question put, "Did you go to their Market street factory?" or something of that kind that confused the street?

*Q.* No, that was your own statement. Now, on that visit, you say, you saw Mr. Julius Lichtman? *A.* I did.

*Q.* Did you see Mr. Abraham Lichtman? *A.* I don't remember if I saw him the first time or not.

*Q.* You are sure that you saw Julius? *A.* I believe that was the reason I went there the second time; either one was away.

*Q.* And the second visit was how long after the first? *A.* That I don't remember.

*Q.* About how long? *A.* It couldn't have been very long, because I believe they moved away from Arch street about that time; they moved to Market street.

*Q.* And whom did you see on your second visit? *A.* Either the son or father.

*Q.* Well, do you not remember which it was? *A.* I don't.

*Q.* Well, when was it that one of them came down to the factory? *A.* I don't remember the date; shortly after I saw them.

*Q.* Did you have to make two visits to them to induce one of them to come to the factory? *A.* I don't remember what occasioned the two visits. There was some reason for it; either one of them was not there, or there was something about it.

*Q.* Were your visits a week apart? *A.* I don't remember.

*Q.* A month? *A.* I couldn't tell.

*Q.* You do not remember anything about it? *A.* Well, it was eight years ago. I didn't make any minutes or records of those things.

*Q.* Well, the first visit you made, when you saw one of them and not the other, can you recall any part of the conversation? *A.* I won't say that I saw one and not the other; possibly they were both there.

*Q.* Do you remember any of the conversations? *A.* The substance of my visit was to come to the factory and see these articles.

*Q.* Well, what did they say then? Did they say they would? *A.* They did.

*Q.* Was that the first visit? *A.* I don't remember whether that was the first or second; it was before he came there.

*Q.* Well, who came? *A.* Mr. Abraham Lichtman.

*Q.* Did Julius? *A.* I never saw Julius Lichtman in the factory.

*Q.* You never saw him in the factory at all? *A.* In the Guigues factory?

*Q.* In the Guigues factory, yes. How many times did you see Abe Lichtman in the Guigues factory? *A.* Oh, a great many times.

*Q.* Did you talk to him a great many times? *A.* I did.

*Q.* About what? *A.* About the articles in question.

*Q.* You discussed the articles in question with him a great many times? *A.* I did.

*Q.* What were the articles in question that you talked of? *A.* The butt grains, principally.

*Q.* What was the nature of your conversation with him in regard to the butt grains? *A.* Regarding the price.

*Q.* Did you fix the price? *A.* I did.

*Q.* And what induced him to discuss the price with

you? *A.* To get me to use my influence to get them as cheaply for him as possible.

*Q.* Did you use your influence to get the price reduced? *A.* I did not.

*Q.* Did you represent to him that you had any control over the price? *A.* I did not.

*Q.* Did he explain why he applied to you, a shipping clerk, to influence the price? *A.* Why, he knew that I introduced him there, and he probably thought that I had some influence.

*Q.* That is your explanation why he did it? There was not any other reason, that you know of? *A.* That is all I know of.

At one o'clock P. M. the court takes a recess of one hour.

After recess.

*Frederick C. Lauster* resumes the stand in behalf of plaintiff.

Cross-examination (continued), by Mr. Riker.

*Q.* Mr. Lauster, what size were the shank splits that were sent to Lichtman? *A.* They averaged 3 or 4 feet.

*Q.* Of uniform thickness? *A.* Fairly.

*Q.* You mean square feet, I suppose? *A.* Square feet.

*Q.* They were tanned in chrome? *A.* No, they were pickled.

*Q.* Were they not susceptible of tanning in chrome, if they were 3 or 4 square feet on the average? *A.* Yes, they were susceptible for any kind of tanning.

*Q.* And they would make shoe tippings of a kind, would they not? *A.* They would not make shoe tipping; they would make other leathers.

*Q.* Could you make patent leather of them? *A.* No.

*Q.* You have testified to the uses which you think those splits could be put to. Was there nothing larger or more important than a bag that they could be used for? *A.* Well, no particular size bag made of them.

They could cut them in any size they want. Most any purpose.

*Q.* You said one of the uses of these things was inner-soling. Inner-soling is made of scraps, is it not? *A.* No.

*Q.* What is the size of the inner sole? *A.* There are inner soles made of whole hides.

*Q.* Out of whole hides? *A.* Yes.

*Q.* What is the size of an inner sole? *A.* The size of an inner sole is the size of a shoe.

*Q.* "Bag linings"? *A.* Bag linings.

*Q.* And "handles"? *A.* Handles.

*Q.* "Trunk corners, straps and numerous things"? *A.* Straps, not scraps.

*Q.* Straps, yes. "Numerous things." What other things can they be used for? *A.* Well, you have "glove leather" there, haven't you?

*Q.* Chrome-tanned, yes. *A.* Well, you are not specifying any particular tan.

*Q.* Yes, you did. *A.* I say you are not specifying any particular tan.

*Q.* Well, I am confining myself to chrome tan. What can they be used for? *A.* For glove splits, as I said.

*Q.* What else, mittens for drivers? *A.* That is the glove leather.

*Q.* "And things of that kind." What things do you refer to? *A.* Well, there are many things that I can't just place now.

*Q.* Well, they can be made out of small pieces of leather, those other things that you refer to? *A.* The size of a shank.

*Q.* Why did you leave Mr. Guigues? *A.* To do business for myself.

*Q.* Did you resign or were you discharged? *A.* I was not discharged; I resigned.

*Q.* You resigned? *A.* I did.

*Q.* Did you have any trouble with Mr. Guigues? *A.* I did not.

*Q.* Have you ever been charged by Mr. Guigues with any offense? *A.* I have not.

Redirect examination, by Mr. Skinner.

*Q.* Mr. Lauster, you spoke of the trimming after tanning as being offal. To what extent was this trimming? What do you mean by trimming. *A.* Why, trimming the edges that had no value.

*Q.* Would the shanks be included in the trimming that you were speaking of? *A.* Well, the shanks had already been cut off.

*Q.* Were they part of this trimming after tanning, that you speak of? *A.* Why, no, trimming would be just a small edge, just a trifle off the edge, cutting off the tack holes, and things that had no value at all.

*Q.* What was the character of the shavings that came from the hide in the operation of the shaving machine? *A.* In tanned stock it would be dust, like sawdust, and in the pickled stock, or any wet leather, it would be more like hair, or fibre, like.

*Q.* Were those shavings of such a character that they could be used as leather? *A.* No.

*Q.* In the process of treatment that the butts of the Corona Kid Company were subjected to in that factory, was there any part of it where it was desirable that the hide, or the portion of it under treatment, should be kept from light? *A.* No.

*Q.* Did these black curtains that were up against the ground glass of the room that you have described have anything to do with the preservation of the goods in there or keeping them from light? *A.* No, the goods that were in there were thoroughly tanned.

*Q.* You said that there was not any such thing as a cordovan butt, did you not? *A.* I did.

*Q.* What do you understand by the word "cordovan"? *A.* Cordovan is the finished article made from a horse butt. We termed everything in the factory there that were butts—we termed cordovan butts, as a general term

in the factory, but technically there is no such thing as a cordovan butt; it is the finished product.

Re-cross-examination, by Mr. Riker.

*Q.* Did you know when you testified this morning that this particular article was called in your factory a cordovan butt? *A.* I did.

*Q.* Why did you not say then that there was such a thing? Why did you say there was not any such thing? *A.* I wasn't asked that question.

*Q.* You were asked whether there was any such thing, Mr. Lauster. *A.* And I said there was no such thing as a cordovan butt.

*Q.* You knew there was such a thing used in your factory? *A.* That was only a term there.

*Q.* Why did you not say it was used in your factory and that you knew it was used in your factory, then? *A.* Because it wouldn't be right.

*Q.* But it was used, was it not? *A.* It was used by those that weren't so familiar with the parts.

*Q.* You heard it used? *A.* I heard it used.

*Q.* And you knew what it designated in that use? *A.* I did.

*Q.* Why did you say there was not any such thing, then? *A.* It isn't necessary for me to say the same as others.

*Q.* Well, now, Mr. Lauster, is there any part of the product of a horse hide which can be better stored and preserved, covered over from the light? *A.* None that I know of.

*Q.* A dry buffing, is that better exposed to the light or covered? *A.* The light won't injure it any.

*Q.* The sunlight will not injure a buffing of the character of those which were in this room? *A.* Why, if they were exposed to the sun any length of time, perhaps it would discolor it a little.

*Q.* What color would it change it into? *A.* Why, a natural bark-tan color, light tan and perhaps darken it to a more brownish color.

*Q.* And affect the value of the buffing? *A.* Not necessarily.

*Q.* Do you think a buffing that is sunstruck and discolored by the sun is as valuable as one that is not? *A.* It all depends on what they want to use it for.

*Q.* If you want to sell it for general purposes, it is just as good if it is discolored? *A.* If the party buying them wants to make dark colors, such as dark blues and blacks, it would be just as good as if it was light.

*Q.* For the general purposes of a sale, do you think a discolored buffing is as valuable? *A.* I do.

*Q.* Do you not know that they are covered up so that they will not be discolored by the sun in practice by leather makers? *A.* I do not.

*Q.* Do you not know that in this room in which these buffings were stored, as you have described, there was a great deal of sunlight? *A.* I do not.

*Jacob L. Stumpf*, sworn in behalf of plaintiff.

Direct examination, by Mr. Howell.

*Q.* Mr. Stumpf, where do you live? *A.* In Harrison.

*Q.* Do you hold office in any banking institutions or insurance companies? *A.* Oh, yes.

*Q.* Name them. *A.* New Jersey Fire Insurance Company and the Hudson County Trust Company.

*Q.* Mr. Stumpf, what is your business? *A.* Tanner.

*Q.* How long have you been in the tanning business? *A.* Since 1870.

*Q.* Have you tanned any horse hides? *A.* Yes, I guess more than anybody.

*Q.* Particularly horse butts? *A.* Yes, sir.

*Q.* Did you ever take the grain off of a horse butt with a splitting machine? *A.* I guess I was the first man in America.

*Q.* Was that before or after tanning? *A.* Before tanning—well, after tanning.

*Q.* What kind of tanning would it go through? *A.* Bark-tanned.

*Q.* Now, Mr. Stumpf, you have heard it testified to

that certain of these grains were sold to Mr. Lichtman by Mr. Guigues; they have been described to have weighed a pound and a half and to have contained about five square feet on the average. How much would you say in the year 1904, say December of that year, and January, 1905, those grains would bring in the market, how much a pound? *A.* I got 35 cents a pound for them.

*Q.* For what? *A.* For those grains.

*Q.* How much would they weigh, those grains of yours? *A.* Mine may weigh about half a pound.

*Q.* And these weighed a pound and a half? *A.* Well, they are worth 50 and 60 cents, then.

*Q.* 50 or 60 cents a pound? *A.* Yes, sir.

*Q.* Now, you say that these of yours that brought 30 or 35 cents a pound were also grains. What do you call those when they weigh only half a pound? *A.* Well, they come from the butt, from the hair side.

*Q.* What are they used for? *A.* Well, they use them for pocket books, and such as that.

*Q.* Any of them used for buffings, book binding buffings? *A.* They may use them for that, too; they may use them for books, too.

*Q.* You heard certain of these buffings testified to by Mr. Elliott and others, I think, which he said varied in size from eight inches square to three square feet, these thin buffings? *A.* Yes.

*Q.* What was the market price of those per pound about December, 1904? *A.* Mine didn't measure no three feet.

*Q.* Well, smaller than that? *A.* I mean mine measures only from ten inches up to two feet. About 30 to 35 cents I got.

*Q.* And they did not, any of them, measure three feet? *A.* No.

*Q.* 35 cents a—what? *A.* A pound.

*Q.* Would they be worth any more for a pound because some of them ran larger than three feet? *A.* Oh, yes.

*Q.* Could you say anything about what you think these ought to have been worth a pound averaging all the way from eight inches square to three square feet? *A.* Well, I think they are worth 50 or 60 cents.

*Q.* No, I am talking about the buffings, the very thin buffings. *A.* Well, 50 or 60 cents a pound, if they run that large.

*Q.* Mr. Stumpf, do you know of any trade usage in your trade as to offal? *A.* Yes.

*Q.* What is offal? *A.* Offal is glue stock.

*Q.* Anything else besides glue stock? *A.* Well, what you trim off the hide, maybe an eighth of an inch wide.

*Q.* An eighth of an inch wide? *A.* Yes. Sometimes nothing.

*Q.* Is anything that is finishable into leather offal?

Objected to as leading.

*A.* No, that is no offal, if you can finish it.

The Court—The witness's answer was that offal was glue stock. He has not yet said what offal consisted of. I think he may be asked.

Mr. Riker—I was objecting to the form of the question only.

The Court—The question, I think, was incomplete. I think it was an unfinished question.

[Question withdrawn.]

*Q.* Mr. Stumpf, suppose a portion of the hide were finishable into leather, would it be offal or would it not be offal?

Mr. Riker—That is a hypothetical question which is not founded upon any facts. I object to it on that ground.

The Court—I overrule the objection.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*A.* That is no offal, sure.

*Q.* What do you say as to hair? *A.* We sell that, too.

*Q.* As what? *A.* Well, that is used for carpets and for different things; for hats.

Cross-examination, by Mr. Riker.

*Q.* How does the price of these grain splits at the present time compare with 1904, if you remember? *A.* The price is now 25 or 20 cents a pound, and at that time 35 cents a pound.

*Q.* A little higher now, is it? *A.* They were higher then.

*Q.* Oh, 25 now and 35 then. Have you been selling recently to Friedman? *A.* No, sir.

*Q.* When did you sell last to Friedman? *A.* Oh, I don't know; that is out of my memory.

*Q.* You have sold to Friedman, have you not? *A.* I don't know if I sold to Friedman or not.

*Q.* Well, if you do not know whether you sold to Friedman, you do not know how much you got from him, do you? *A.* I never told you I sold Friedman. Don't ask me such questions.

*Q.* Now, Mr. Stumpf, what class of stock do you handle in your factory? *A.* Cordovan, porpoise hides, patent leather.

*Q.* What kind of horse hides do you get for handling in your factory? *A.* We get Russian and we get domestics.

*Q.* And during all the time that you have been handling them have you gotten both kinds? *A.* No, first we had all domestics.

*Q.* Up to what time did you have all domestics? *A.* About eight years ago.

*Q.* Well, the domestic hides are finer than the Russian ones, are they not? *A.* Well, not all was. I may say colt skins are finer than domestics.

*Q.* Is the butt from the domestic horse hide larger and finer than the Russian butt? *A.* Well, I never had them big Russian hides; I had all them colt; I handled all the time them big American hides.

*Q.* [By the Court.] You say you never had any Russian hides? *A.* I had always colt skins.

*Q.* [By Mr. Riker.] You have always had big American horse hides that you have handled? *A.* Yes.

*Q.* Did you see the illustration hide that was brought here, a horse hide? *A.* You saw that, did you not? *A.* Yes.

*Q.* That is a big American horse hide, is it not? *A.* Well, no, not quite as big as that.

*Q.* What? *A.* I had some bigger ones.

*Q.* But you would call that a big American horse hide, would you not? *A.* No.

*Q.* Well, you would cal it an American horse hide, would you not? *A.* I don't know if it was American or not; I didn't tan it.

*Q.* You do not know what it is. What do you think it is? *A.* It is a horse hide; I don't know where it comes from.

*Q.* Well, where do you think it comes from? *A.* I don't know. If I don't know, I can't answer.

*Q.* You do not think about it one way or the other? *A.* No.

*Q.* You have had great experience in handling horse hides, you say? *A.* Yes, sir.

*Q.* And you cannot tell whether that is a foreign horse hide or American? *A.* Can you or anybody else tell that?

*Q.* Well, I do not know? *A.* Well, neither do I. It is tanned now. How can a man tell?

*Q.* What sized butts would you get from these fine, big American horse hides that you dealt in? *A.* Big ones.

*Q.* And after tanning those butts in bark—did you tan them in bark? *A.* All the time.

*Q.* Always in bark? *A.* Yes, sir.

*Q.* You were the first one to split the grain off with the splitting machine? *A.* Yes, sir; I was the first man in the world.

*Q.* And off of those what sized grain split did you get? *A.* I split at that time fronts first.

*Q.* I am asking you about the butts. *A.* Well, that was the first I split off.

*Q.* I am asking you about the butts. What sized grain split did you take off? *A.* Oh, that is another question. Well, there was about from one foot to two feet, sometimes three feet we would take off some. We only delivered them to make cordovan out of.

*Q.* And what weight were they? *A.* Well, they may weigh half a pound.

*Q.* They might weigh half a pound? *A.* Yes, more or less.

*Q.* And that is the weight of grain splits that you got off of those fine American horse butts, half a pound, was it? *A.* Yes, because we want to make cordovan leather out of it.

*Q.* Where you were getting a cordovan you only took off a very small grain split, did you not? *A.* Yes, sir.

*Q.* And that would only weigh one-half a pound, off of these big, very heavy American hides? *A.* Yes.

*Q.* Did you ever get any larger grain splits than these half pound ones that you spoke about? *A.* If I want to split them down to the shell I could get so that they would weigh two pounds.

*Q.* Then you would not have any cordovan, would you? *A.* No.

*Q.* You would destroy the cordovan in order to get your two pound grain split; that is the situation? *A.* Well, I will tell you. That all depends on the butt. If I have a thick butt I could leave in the cordovan what I want, and if I have a thin butt I will leave what I want, and if I have a big butt I can make cordovan out of it.

*Q.* If it was a thick butt you could take off a small split and save the cordovan; is that it? *A.* Yes, sir.

*Q.* And if you have a thin butt you would take off the split and destroy the cordovan? *A.* Yes.

*Samuel G. Maxwell,* sworn in behalf of plaintiff.

Direct examination, by Mr. Skinner.

*Q.* Mr. Maxwell, where do you live? *A.* Winchester, Massachusetts.

*Q.* And what business are you engaged in? *A.* Tanning.

*Q.* Have you any connection with the Corona Kid Company, of Massachusetts? *A.* Not any.

*Q.* Or any of the corporations that succeeded it? *A.* Not any.

*Q.* How long have you been in the tanning business? *A.* That is the only business I have been in; that is all I know.

*Q.* Well, we can infer a little bit from the color of your hair, but it might have been only since yesterday, or only since this suit has begun, Mr. Maxwell. *A.* Well, my father was a tanner.

*Q.* Give me an idea in years. *A.* My father was a tanner, and I was brought up from school days, probably since 1870.

*Q.* Do you know anything about the article known as a pickled shank split? *A.* Yes.

*Q.* Have you seen them before? *A.* Well, yes, surely.

*Q.* Many of them? *A.* Quantities, yes.

*Q.* Are you familiar with the value of these pickled shank splits now and in past years? *A.* Well, our business has been contract tanning. People furnishing us with the hides, and we furnished the tannery and equipment, labor and material, and tanned at so much a foot or so much a pound, so that the other people set the values and sold the goods; we were not interested.

*Q.* Well, you may not yourself have sold them, but still you may have gained some knowledge of the value, and I want to know if you have. Do you know anything about the value of pickled shank splits in 1904? *A.* No, at that time we wasn't making any pickled shank splits. We made them in 1908, 1909, 1910 and 1911.

*Q.* Well, do you know whether their value in 1908, 1909, 1910 and 1911 was greater or less than their value in previous years?

Mr. Riker—I object on the ground that he says he did not know anything about them before 1908.

The Court—The question for you to answer, Mr. Maxwell, is whether you have sufficient acquaintance with these articles in 1904 to say whether their price has risen since. Knowledge of their value in 1904 is the foundation of the calculation, of course.

*A.* Pickled stock, as a rule, has a market that varies from one season to the other and from one year to the other.

*Q.* And has it varied? *A.* At that time pickled stock was selling high. It is high to-day, but not as high as it was then.

*Q.* Not as high as it was when?

Mr. MacMahon—Then.

*Q.* Not as high as it was when? *A.* You asked 1904?

*Q.* Yes. *A.* That is what I meant.

*Q.* You mean, then, 1904? *A.* Yes.

*Q.* Not as high now as it was in 1904? *A.* That is right.

Mr. MacMahon—It was selling high then and is selling high now, but not as high now as it was in 1904.

*Q.* How high is it selling now? *A.* You mean pickled shank splits?

*Q.* Yes. *A.* They were not a commercial commodity.

*Q.* What do you mean by that? *A.* That is, very few of them made and not offered in quantities.

*Q.* Why is that, that there are few of them made? *A.* For the reason that the grains now are split off as a whole piece—

*Q.* Well, do you mean by that— *A.* —which takes both the split and the grain.

*Q.* You mean, in other words, that the shank is taken on the one piece, without splitting? *A.* The shank is a part of the whole split, connected, not broken off.

*Q.* Then do you mean that the whole butt, not the shank portion of the butt, is split as one? *A.* Yes, sir.

*Q.* The shank portion of the split goes with the rest of the split? *A.* Yes, sir.

*Q.* So that it is not now a shank split separated from the rest of the split? *A.* Well, I am only speaking from our method, which, I guess, is common.

*Q.* Well, even though it may not now be separated as the shank split alone from the rest of the split, can't you tell us something about its value by the pound or foot? *A.* From what we have made the last few years?

*Q.* Yes, tell us that. *A.* These shank splits that we had—

Mr. Riker—I object on the ground that the value of a commodity that is different in quality and size, that is a different commodity, has no probative value in determining the value in 1904 of a shank split, so called.

The Court—That, perhaps, is a suggestion that goes more to the value of the evidence than to its competency. To what extent you may reason from one to the other is a mere matter of opinion. I will receive the evidence.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

*Circuit Court Judge.*

*Q.* [Question read.] Or by the dozen, or in any other way? *A.* We have had occasion to have a great many of these shank splits, from the fact that we had orders for bends, which we take the shell, cut both shanks off; the bends would go into chrome sole leather, the whole piece, no splitting; the shanks, we would split the grain off and finish it into mat stock, and the split we would

finish into tongue stock or inner-soling. We got four cents a foot for those.

*Q.* But those were finished into tongues, were they not? *A.* Yes, sir; we pickled those.

*Q.* In the pickled stage they would be worth that? *A.* Yes, sir.

*Q.* Have you seen pickled shank splits that measured three or four square feet? *A.* We work both foreign and domestic butts. The foreign butt comes to us, French butts in three sizes; the whole butt averages about 17 feet. The domestic butt would average about 15 feet. We take 8 feet for bends, for sole leather, and out of the 16 or 17 feet, the rest of it was two shanks.

*Q.* That is, the other 8 or 10 feet would be divided into two shanks? *A.* Eight or ten feet, that is right, two pieces.

*Q.* Then how much would a pickled shank split that was four square feet be worth at the prices you have just given? It is a mere matter of computation. I think you said four cents a foot. Two feet would be worth eight cents? *A.* That is the way to get at it.

*Q.* And a dozen of those would be eight times twelve? *A.* That is the way to figure it, yes.

*Q.* It would not be any less per dozen than it was by the one? *A.* Our business was by the foot instead of the dozen.

*Q.* But if it was sold by the dozen, you would still get the same price per foot? *A.* I mean to say, if you sold in quantities of dozens, you would still get the same price per foot? *A.* It would work out that way.

Cross-examination, by Mr. Riker.

*Q.* Where did you carry on your business, Mr. Maxwell? *A.* When?

*Q.* At any time? *A.* I was in the tanning business at Winchester, Massachusetts, with my father.

*Q.* What did he tan? *A.* The first twelve years of my life was put in there.

*Q.* What did he tan, what kind of leather? *A.* Cow hide, upper leather.

*Q.* And after you left your father, or your father left you, where did you go? *A.* I went to Pennsylvania.

*Q.* Where? *A.* Titusville, Pennsylvania.

*Q.* With whom did you go there? *A.* I went there and borrowed $25,000 from the board of trade of the town and built a tannery myself.

*Q.* What did you tan there? *A.* We tanned horse butts.

*Q.* When was that? *A.* 1890, 1891 and 1892. And the panic came on in 1893, and we didn't tan any more.

*Q.* Did the horse butts give out or did the money give out? *A.* No, the money didn't give out. We provided for that.

*Q.* What kind of leather did you make out of the horse butts at Titusville? *A.* Cordovan.

*Q.* You did not make sole leather out of them? *A.* No, sir.

*Q.* Did you ever make sole leather out of horse hides? *A.* Chrome sole leather, yes.

*Q.* You made chrome sole leather out of horse hides? *A.* Yes.

*Q.* Did you make that at Titusville? *A.* No.

*Q.* Where did you make that? *A.* I made that in Lynn, Massachusetts.

*Q.* How long have you been making that product? *A.* Chrome sole leather?

*Q.* Out of horse hides? *A.* Oh, three years.

*Q.* Where do you find a market for it? *A.* I do it by piece work; I don't find any market.

Objected to as not cross-examination.

*Q.* You have testified that out of these horse butts you made sole leather, as I understand it? *A.* Yes.

*Q.* And I asked you where you made it? *A.* Lynn, Massachusetts.

*Q.* Lynn, Massachusetts, for the last three years? *A.* Yes, sir.

*Q.* Now, you say you did that under contract? *A.* Yes.

*Q.* For whom, with what concern? *A.* The Corona Kid Manufacturing Company sent us the hides, and the sole leather was delivered to Lucius Beebe & Sons.

*Q.* And Lucius Beebe is interested in the Corona Kid Company, is he not? *A.* I never inquired.

*Q.* You never inquired; you do not know. Who directed you to send the sole leather to Lucius Beebe? *A.* Well, we got our orders from the president of the Corona Kid Company, who was Mr. Baker.

*Q.* Now, while you were in Titusville did you make any pickled shank splits? *A.* No, sir.

*Q.* Well, have you ever yourself, under your observation, seen the process of making pickled shank splits of horse butts? *A.* Yes, sir.

*Q.* Where? *A.* Lynn, Massachusetts.

*Q.* Well, did I not understand you to say that the whole flesh substance of the horse butt was split off in one piece? *A.* Except where we make the bend.

*Q.* What character of horse butts do you devote to making bends? Is it bends, b-e-n-d-s? *A.* That is right.

*Q.* What character of horse butts? *A.* Just the rump.

*Q.* And those bends are used, as you have testified, for sole leather? *A.* Yes, sir.

*Q.* And nothing else? *A.* That is what we made them for, and we didn't care what they used them for.

*Q.* That is what you understood they were to be used for? *A.* Sure.

*Q.* And the shanks that were cut off from the bends, what was done with them? *A.* We split them to take the grain off.

*Q.* Had you not already split the bends? *A.* You don't split a bend.

*Q.* That is a solid piece? *A.* Yes.

*Q.* You do not take any flesh split off of them? *A.* No.

Q. And then when the shanks were cut off, you split those shanks? A. That is right.

Q. Well, when the shanks were cut off had the butt been tanned? A. In the pickle.

Q. That is in the pickle when you do that? A. Yes.

Q. Then when do you split the shanks that have been cut off? A. In the pickle.

Q. Out of the pickle? A. Yes.

Q. Is the flesh split from the shank of the same size as the grain split? A. No, there is a small percentage of difference; a split is never as big as a grain.

Q. The flesh split is never as big as the grain split? A. We call it a grain; we don't call it a grain split.

Q. Well, isn't the grain a split? A. No, I don't call it a split; the grain is the grain and the split is the split.

Q. Well, that is the technical term. A. And that is true, too.

Q. Well, we will call it by your name. Is the split, then, ever as large as the grain? A. No.

Q. You say that these shank splits finished are worth four cents a square foot? A. Yes, sir.

Q. Finished how? A. Into inner soling or tongue stock.

Q. By what process? A. Chrome.

Q. Do you in your practice estimate the cost of tanning by the chrome process at two cents a square foot for that particular quality of leather; is that what you estimate it at? A. It is very evident to me that you don't understand where that two cents comes from.

Q. I do not understand where what comes from? A. Where the two cents comes from.

Q. Probably I do not, but I am asking you now whether that particular kind of leather, the split from the shank, you estimate the cost of chrome tannage at two cents a square foot? A. No, I didn't estimate it.

Q. How much do you estimate it at? A. One cent a foot.

Q. One cent a foot? A. Yes.

Q. The cost of finishing this— A. The other cent

is made up in trade discounts, if you want to know where that comes from.

Mr. Skinner—I object to this as not cross-examination.

*Q.* How much did you estimate to be the cost of the chrome tannage of these shank splits from the pickled to the finished state? *A.* One cent a foot.

*Q.* Not four cents a foot? *A.* The selling price was four, the pickled value it two, the cost of that kind of manufacturing is one, and the trade discount is one more; that makes four cents.

*Q.* But the cost of finishing in chrome from the pickle, in your experience, never reached four cents a square foot? *A.* That is the selling price.

*Q.* I am asking you the cost of finishing? Have you ever found that it costs four cents a square foot to finish in chrome tan these shank splits from the pickle? *A.* One cent.

Redirect examination, by Mr. Skinner.

*Q.* Now, Mr. Maxwell, by finishing in chrome tanning, what part of the process do you mean? *A.* Just in the chrome.

*Q.* Well, after what has been done to it? *A.* Pickled.

*Q.* Is the pickling part of the process of chrome tanning? *A.* It is by our method.

*Q.* And then in the course of chrome tanning you would include the cost of pickling, would you not? *A.* Yes, that is as much chrome to us, yes.

*Q.* And when you say the cost that you speak of, then, of one cent a foot, is that the only cost of chrome tanning? *A.* That is one-half of the cost.

*Q.* One-half of the cost? *A.* Yes.

*Q.* Then the whole cost of the chrome tanning is two cents? *A.* That is what we base it on.

*Q.* And does that include the pickling? *A.* Yes, sir.

*Q.* And then the whole cost of chrome tannage, from the commencement to the end, the pickling and all, is two cents a foot? *A.* On the split.

*Q.* Well, what else has been done on the split besides this two cents' worth that you speak of? *A.* Well, the split part of the hide went through the beam-house on the hide.

*Q.* Then before it was split off in the method that you are describing it had gone through processes in the beam-house? *A.* The hide carried it up to a certain stage.

*Q.* And on the hide, while it remained a part of it, its cost per foot would be how much? *A.* Up to the pickle, you mean?

*Q.* Yes, up to and including the pickle, or up to the pickle, if that is easier. *A.* Well, our price is four cents on grains and two cents on splits; pickling is one-half.

*Benjamin E. Baker,* resumes the stand in behalf of plaintiff.

Direct examination (continued), by Mr. Skinner.

*Q.* Mr. Baker, you were testifying at a former session about complaints made to Mr. Guigues as to shortages. Did Mr. Guigues give any excuse for these shortages?

Mr. Riker—I want to object to that question on the ground already suggested: That this is conversation not in the presence of the defendant.

The Court—I will overrule the objection.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*A.* Mr. Guigues explained that pieces were lost in process, and made other laudable excuses.

*Q.* Can you give us some of the others? *A.* Well, mainly that they were lost in process.

*Q.* Can you tell us something about the volume of business that you were doing in 1904 and 1905, or, rather, the volume of business as it relates to the shipments of hides to Guigues's tannery? *A.* In the beginning we had an accumulation of butts, and a great many were shipped to him; he started in at the rate of 200 dozen a day as soon as he could get his tannery equipped for that capacity.

*Q.* Well, I do not want you to give us the exact count, but tell us whether there were a small number or larger number of hides shipped to Guigues? *A.* I think the first shipments were three or four carloads at one time.

*Q.* And after that? *A.* They would go in one or two carloads, never less than a carload at a time.

*Q.* And at about what intervals? *A.* Well, I should say one or two carloads a week.

*Q.* Did the finished product—that is, finished so far as Guigues's work was concerned, accumulate in his factory, if you know? *A.* Certain parts of it did.

*Q.* What parts? *A.* The shanks and the shank splits.

*Q.* [By the Court.] What? *A.* The shanks.

*Q.* [By Mr. Skinner.] Did you ever come to Newark? *A.* Yes.

*Q.* About how often? *A.* Oh, two or three times a month.

*Q.* Did you ever have any business with Mr. Julius Lichtman, or his son, Abraham Lichtman. *A.* I had some business with Mr. Abraham Lichtman.

*Q.* Did you ever write to Mr. Lichtman? *A.* Yes, to J. Lichtman.

*Q.* Well, did you ever send any word to Mr. Lichtman that you were coming to Newark?

Mr. Riker—I object, if your Honor please. Perhaps it is premature at this stage, but I will urge the objection to the question asked in connection with the letter, if the contents or substance of the letter is to be testified to. The letter itself is the best evidence.

The Court—That is undoubtedly true.

[Question read.]

The Court—Well, that, to some extent, involves the contents of a letter.

Mr. Riker—If it does not, the form of the question is objectionable as leading. The question, as I take it, in order to be within what I supposed to be the proper rule, would be, "Did you ever send any message, and in what form?"

The Court—The question does not speak of a written message.

Mr. Riker—No, but the question immediately before did.

[The stenographer reads from the record.]

The Court—Well, if the contents of a letter becomes important, the letter will have to be called for and produced.

Mr. Skinner—We have given notice to produce, and I now call for the production of any letters from Mr. Baker to Mr. Lichtman, or from the Corona Kid Company to Mr. Lichtman, either of them.

Mr. Riker—Within the period that you call for?

Mr. Skinner—Well, without regard to the period I will call for them—any letters from Mr. Baker to Lichtman or from the Corona Kid Company to Lichtman at any time during the years 1904, 1905 and 1906.

Mr. MacMahon—There is no evidence in this case involving 1906.

The Court [after argument]—I had supposed, perhaps not correctly, that testimony as to communications from Lichtman to the Guigues factory were confined to the period covered by this suit. I cannot say how that was exactly, but that was my impression about it.

Mr. Riker—That is the fact.

The Court—I think, Judge Skinner, that you have to confine yourself to those three months.

Mr. MacMahon—I will say that we have no letters from Mr. Baker or the Corona Kid Company within that time.

Mr. Skinner—I call for any letters from the Corona Kid Company or Mr. Baker to Mr. Lichtman or his son at any time prior to September 8, 1905, which is the last date of this suit.

Mr. MacMahon—We have no such letter nor have we received any.

*Q.* Now, Mr. Baker, can you tell whether or not any of your business dealings with the Lichtmans were prior to September 8, 1905? *A.* I think—I am pretty sure —that there was quite a few before that time.

*Q.* And where were your business dealings with them? *A.* The first time I met Mr. Lichtman was in Guigues's factory; I think it was perhaps—

*Q.* [By the Court.] Which Mr. Lichtman was it? *A.* In Guigues's factory, Abe Lichtman. —perhaps August or September, or perhaps as late as October, 1904. Mr. Guigues told me that he had a man who wanted to buy some dry colt butts. I am pretty sure it was along in the latter part of the summer.

*Q.* [By Mr. Skinner.] Did you sell any butts to Mr. Lichtman? *A.* I did sell him some butts.

*Q.* At that time? *A.* I think along in that time; I am not absolutely sure, but I think it was along in the latter part of the summer or early fall of 1904.

*Q.* Did you ever sell anything else to Mr. Lichtman? *A.* Later I sold him some pickled horse butts and horse butt splits.

*Q.* How much later? *A.* I think the first pickled butts I sold him was in the summer of 1905. I am not absolutely sure about the date; it might have been—

*Q.* What were those that you sold him? *A.* The first I sold him—

*Q.* No, later. *A.* Later I sold him pickled horse butt splits.

The Court—Let me see if I understand this date of September. You have been talking about the months of November, December and January, and then there is a date the September following. What is that?

Mr. Skinner—The declaration alleges the conversion between certain dates, the latter of which is September 8, 1905, so that that is the period covered by the declaration. The items that we have proved by these yellow sheets, the latest of those is January 21, 1905.

*Q.* Well, did pickled shank splits come back to you from Guigues's factory? *A.* They should.

Mr. Riker—No.

*Q.* Did they? *A.* I got some.

*Q.* Did they? *A.* I got a few.

*Q.* I think you said that you were president of the Corona Kid Company in 1905. Who has been president of that company since that time? *A.* Well, I am still president of it.

*Q.* Are you still treasurer? *A.* Yes.

*Q.* And have you been such since that date? *A.* Continuously.

*Q.* I show you a paper purporting to be an assignment from the Corona Kid Company to the Corona Kid Manufacturing Company, dated June 20, 1910, and ask you whose signature that is attached to that [paper shown to witness]? *A.* That is mine.

*Q.* And this seal that is there attached is what? *A.* That is the Corona Kid Company's seal.

*Q.* And was this assignment delivered? *A.* Yes.

*Q.* To whom? *A.* I think it was delivered to Mr. Inston.

*Q.* For the corona— *A.* For the Corona Kid Manufacturing Company.

Mr. Skinner—I offer this in evidence.

Mr. MacMahon—Now, if your Honor pleases, we object to the admission of this assignment on several grounds.

First, I ought to state that by stipulation entered into in this case it is an agreed fact in the case that the Corona Kid Company was dissolved by the statutes of Massachusetts in the month of May, 1909, and it is also an agreed fact in this case that, under the statutes of Massachusetts, a corporation so dissolved is continued for the term of three years for the purpose of winding up its business.

The grounds of objection to this assignment are, first, that it appears to be signed only by Benjamin E. Baker, treasurer, and there is no proof of authority of Mr. Baker to sign for the Corona Kid Company.

On the further ground that under the laws of Massachusetts—I will refer your Honor to the case in a minute—a corporation that is dissolved, although it is continued for three years, must act in every way as a corporation; it can do nothing except by authority of the board of directors at a meeting properly convened.

On the further ground that this action sets forth an assignment of a chose in action arising out of a contract dealing with three specified classes of goods alleged to belong to the Corona Kid Company, of Massachusetts. The assignment does not assign any such chose in action. It purports to assign "a certain claim against Julius Lichtman, Abe Lichtman and Julius Lichtman & Son, all of Newark, in the county of Essex and State of New Jersey, arising out of certain irregular transactions between the foregoing parties with Albert A. Guigues and Albert A. Guigues Leather Company."

On the further ground that no consideration is shown to have been paid for this assignment, the seal of a corporation for such an instrument being merely the seal of the corporation, and not such a seal as imports consideration.

On the further ground that there is no proof of delivery of the assignment, the only proof being that it was delivered to a Mr. Inston. Who he is or what he is we do not know.

Mr. Skinner—May I first, before answering Mr. MacMahon's objection, ask the witness another question?

*Q.* What office did Mr. Inston hold in the Corona Kid Manuafcturing Company, of Maine? *A.* He was the auditor and secretary.

*Q.* And was he that at the time of this assignment? *A.* Yes, sir.

Mr. Skinner—Now, I think I ought to read into the record some of the stipulation, both that which has been referred to by Mr. MacMahon and possibly something more.

Mr. Riker—I suppose the whole stipulation is in the case.

Mr. Skinner—I will read into the record this stipulation, which is one entered into between the parties to the suit:

"It is stipulated and agreed by and between the parties to this suit that the Corona Kid Company of Massachusetts was duly incorporated in accordance with the statutes of the Commonwealth of Massachusetts on December 22, 1899, and was dissolved by Chapter 347 of the statutes of said State of the year 1909 on the 3d day of May, 1909.

"Further, that at the time of the dissolution of said corporation, and up to the present time, the laws of the State of Massachusetts provide that 'Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the

time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established;' that under the laws of said State of Massachusetts the corporate existence of a corporation dissolved under the circumstances under which the Corona Kid Company of Massachusetts was dissolved is continued for three years, as above set forth, without any action whatsoever on its part or the part of its officers to accomplish that end; that neither the appointment of a receiver, nor any other action whatever, is essential to continue the corporate existence, as aforesaid, for the said period of three years; that the officers of the corporation, at the time of its dissolution, would, in the absence of a new election of officers by the stockholders, be the proper persons to close up its business and would continue during said three years period as the officers of the corporation, and would continue to exercise all the powers of their offices pertaining to the business which by the statute above quoted the corporation is authorized to transact after its dissolution."

[Counsel argue.]

Mr. Skinner—I want to have my objection entered on the record to any use of a Massachusetts decision for any other purpose than that that I have indicated; that is, of enabling this Court to determine the law of this State; but if it be for the purpose of providing to this Court what the law of Massachusetts is governing a contract made in Massachusetts, then I say such offer is informal and irregular and inadmissible.

The Court—Your objection is on the record.

[Counsel argue further.]

Adjourned until Monday, January 29th, 1912, at ten o'clock A. M.

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FIFTH DAY.

MONDAY, January 29, 1912.

Met pursuant to adjournment.

Present, counsel as before stated.

Mr. Riker—I urge upon your Honor the fact that the claim described in the assignment is not the claim described in this suit, and therefore a judgment in this suit would not be *res adjudicata* as against this defendant.

[Counsel argue further.]

The Court—I will rule on this question later.

*Benjamin E. Baker,* resumes the stand in behalf of plaintiff.

Direct examination (continued), by Mr. Skinner.

*Q.* Mr. Baker, what did you do as president of the Corona Kid Company? *A.* I was general manager; I bought goods and sold them and collected accounts.

*Q.* General manager, you say? *A.* Yes.

*Q.* Will you tell us whether there was any difference in the kinds of horse hides that were in the market in 1904 and 1905? *A.* Yes, there was a great variety.

*Q.* Just give us roughly an idea of the variety. *A.* We used more Russian horse hides and colt skins than any other section of the world.

*Q.* By "we" whom do you mean? *A.* The Corona Kid Company.

*Q.* Then you mean that you used more from that section? *A.* More from that section. And next we used from France, largely from Paris, city slaughter horse hides, Normandy horse hides, Belgian horse hides, Ger-

man horse hides, and some—well, at that period only those—and South Americans.

*Q.* At that period? *A.* At that period.

*Q.* And would there be any difference in size between the different varieties of hides that you have mentioned? *A.* Yes, the Paris cities and Normandies and Belgians and some sections of Germany were larger than the average Russian horse hide.

*Q.* And how about the American hides? *A.* South American?

*Q.* American. *A.* Oh, the American. At that period we weren't using any domestics.

*Q.* What is the difference between a horse hide, a colt skin and pony skin? *A.* The pony skin is from an animal perhaps from two to four months old. They are very small.

*Q.* Then it is really a colt skin? *A.* Well, they distinguish between the pony and the colt because the pony is the smaller, and the colt skins are from animals from six to eight months up to two years old.

*Q.* Then the pony skin is taken from a younger colt than a colt skin? *A.* A younger animal than the so-called colt skin.

*Q.* [By the Court.] And when that animal grows up, would it be what we call a pony or a horse? *A.* It would be a horse.

*Q.* [By Mr. Skinner.] You said you had no domestic hides at that period? *A.* Not at that period; no, sir.

*Q.* Well, how do the domestic hides compare in size with these others? *A.* Well, the majority of them are large.

*Q.* As compared with what? *A.* They are about as large as the Belgians and the Normandies, and the Paris cities.

*Q.* Mr. Baker, I think you have given us the date, or the approximate date, of some dealings that you had with Mr. Lichtman. When was that? *A.* The first transaction was in December, 1905.

*Q.* I do not recall with certainty whether you testified to an earlier date in your former testimony. If you did testify to any earlier date than that, do you wish to correct it? *A.* I do.

*Q.* [By the Court.] You now fix the earlier date as — *A.* December, 1905.

*Q.* [By Mr. Skinner.] Do you know whether there were any marks at all upon the hides of the Corona Kid Company at the time they came into the possession of Guigues or later? *A.* When the hides were shipped to Guigues every lot had an invoice number; that number was supposed to be stamped in perforated figures on every hide, or skin, at a point where at any time you could pick out by the mark designating it what invoice or lot number that was.

*Q.* When you say that was supposed to be done, I suppose you mean that was the course of business. *A.* Yes, sir.

*Q.* When was that supposed to be done, before they got into Guigues's possession or afterwards? *A.* Directly they got into Guigues's possession, after they had been soaked, or perhaps after they had been pickled, but before they went into the tannery; that is, into the process of tanning; so that if they were mixed, if the lots were mixed in the process, when they were finally finished each hide, or skin, could be picked out by the number and applied to the lot to which it belonged.

*Q.* Was this marking that you have spoken of done to each hide in a bundle or lot, or only to the lot?

Mr. Riker—Do you mean of his own knowledge?

Mr. Skinner—Certainly, of your own knowledge.

*A.* His instructions were to mark every individual hide, or skin, and I think it was done.

*Q.* Well, did you supply anything for that marking? *A.* That was a part of his machinery; it was done by a machine.

Q. Was there any other marking in the course of the handling of the hides by Guigues, that you know of? A. After Guigues commenced to tan the grains from the butt in chrome every individual piece was stamped with indelible ink by a rubber stamp—

Q. You say it was stamped; how do you know it was done? A. We had them; we saw it.

Q. Those that you saw were stamped? A. Those that I saw were stamped, giving the lot number and with the Corona Kid trademark.

Q. Stamped how? A. On the flesh side.

Q. With what? A. With a rubber stamp.

Q. A stencil, would you call it? A. Well, it is an ordinary rubber stamp, with indelible ink.

Q. Do you know anything about the furnishing of that stamp? A. That was our trademark and we furnished them.

Q. That was put on every— A. Every piece.

Q. Every piece? A. Every piece.

Q. And at what point in the process that he had to do with it was that stamp to be put on? A. That was put on, I think, in the shipping-room.

Q. After or before tanning? A. After it had been tanned and about ready to be shipped.

Cross-examination, by Mr. Riker.

Q. Mr. Baker, how long have you known Mr. Guigues? A. I think perhaps twenty years.

Q. You knew him prior to 1904, then, did you? A. Yes, sir.

Q. Where was he doing business prior to 1904? A. In Newark, I think.

Q. With whom? A. The Eclipse Tanning Company.

Q. What did you have to do with him setting up business for himself at the Ferry street plant? A. He wrote to me to know if he couldn't make a deal or a contract to tan horse butts. I had a number of interviews with him, and finally we made a contract.

Q. When were those interviews held prior to the making of the contract? A. I think perhaps early in 1904.

Q. Where did you hold the interviews? A. The first interview was held at the Hotel Netherland. I was on my way from Philadelphia to Boston, stopping over in New York. He met me at the Newark station, got on the train, and we went to the Hotel Netherland, went to my room and had a conference.

Q. Were any of the subsequent interviews held in Newark? A. I don't remember.

Q. The contract which you have produced here is June 30th, 1904. Did you send him any leather, any butts, prior to that time? A. Yes.

Q. Many? A. I can't remember; I think quite a few.

Q. When did he begin to operate on your material at the Ferry street plant? A. I can't give the exact date.

Q. About when? A. I should think perhaps in May or June, perhaps earlier.

Q. 1904? A. 1904.

Q. Did you come out to the plant? A. Sometimes.

Q. Can you give the Court and jury any indication of how often you came during the period prior to June 30th, 1904? A. Nothing definite.

Q. Well, as definite as you can give it? A. Perhaps twice a month, I think.

Q. After the contract was made, how frequently did you come? A. About the same.

Q. Did you go over the plant in your visits? A. Sometimes.

Q. How many times? A. I can't tell.

Q. More than once? A. Yes.

Q. Go all through it? A. All over the part where the leather was being worked, or the skins were being worked.

Q. Mr. Baker, how long have you been in the leather business? A. Between thirty-five and forty years, I think about thirty-seven.

Q. Have you had any practical experience in tanning horse butts? A. Yes.

Q. Did you see any splitting machines at Guigues's plant? A. I did.

Q. Do you know what they were used for? A. Splitting hides.

Q. Did you know at that time what they were used for? A. Yes.

Q. Did you see them in operation? A. I did not.

Q. You never saw them in operation? A. During the period later I did, but not in the very beginning I didn't.

Q. There were not any there in the very beginning, were there? A. Yes, there was one, I remember.

Q. One big splitting machine? A. Yes.

Q. That had belonged to the Dawson Company? A. I don't know who it belonged to.

Q. When were the first machines, with the exception of that one at the Newark plant, so far as your observation is concerned? A. I don't know.

Q. How long after the first of May, 1904? A. I couldn't tell you. I was away for three or four months during the summer.

Q. Covering what months were you away? A. July, August and September.

Q. And October? A. Part of October.

Q. So that you did not visit the plant during those months at all, did you? A. I did not.

Q. Where were you? A. In Europe, Russia most of the time.

Q. After your return did you go to the Guigues plant? A. I can't say how soon; I went directly to Boston.

Q. Did you go within a month? A. I think so.

Q. Did you see the splitting machines at that time? A. I can't recall.

Q. Well, did you see any splitting machines there in 1904? A. I think the very latter part of it I did.

*Q.* What did you see those splitting machines doing, if anything? *A.* Splitting the shanks.

*Q.* So that you knew that Mr. Guigues as early as the fall of 1904 was splitting the shanks on splitting machines, did you? *A.* Well, I won't be quite positive about the date, but I did see some a little while after he commenced. He had a splitting machine, a small one, and he said it was to be used to split the shanks. I can't fix the date.

*Q.* Then when you said in your testimony early in this case, in answer to the question, "Did you see that done—splitting shanks?" your answer was, "I have, frequently"; and the question was, "I mean at Guigues's factory?" and the answer, "Yes, sir"; and the question, "Back in 1904?" and the answer, "Yes, sir"; you will have to add now that you do not know now whether it was in 1904? *A.* I think the chances are that it was.

*Q.* In what state were the shanks being split in 1904? *A.* Pickled.

*Q.* Where was the process being carried on at that time; what part of the factory? *A.* I think it was back of the beam-house, towards the boiler-house, in that direction, that part of the factory.

*Q.* How many machines were in operation at that time? *A.* I only recall one.

*Q.* What became of the flesh splits, as you observed the process being carried on there, the splitting of the shanks? *A.* I got some of them.

*Q.* At that time? *A.* A little later.

*Q.* In the pickled state? *A.* Yes.

*Q.* You knew that he was splitting all the shanks, did you not? *A.* No, he said he was only splitting a very small percentage of them, because it was only the large ones that he claimed that he split.

*Q.* Do you know whether that was true or not? *A.* I did at that time; I supposed that he was telling the truth.

*Q.* Do you know now whether it was true or not?

Mr. Skinner—I object. That calls for later information as hearsay, and all sorts of information.

Mr. Riker—No, I am asking for this witness's own knowledge.

The Court—The question is whether now, on reviewing the matter, you have actual, original knowledge of this fact. If it is merely derivative from what others told you, that is another matter. You may answer the question on the lines I have indicated.

[Question read.]

*A.* From what I have heard subsequently.

*Q.* You do not know of your own knowledge whether it was true or not? *A.* No.

*Q.* When did you receive the shanks that you said you got from him, the shank splits? *A.* I should say early in 1906, perhaps some of them in 1905. They were received some time in 1905.

*Q.* And you saw him splitting them in 1904, did you? *A.* Yes.

*Q.* And you did not get any until 1905? *A.* Yes.

*Q.* How many did you get? *A.* I can't recall.

*Q.* Have you got any record of them? *A.* I haven't with me.

*Q.* I did not ask you that. I asked you whether you have any record of the shank splits in the pickle that you've received from Guigues out of your butts? *A.* I think so.

*Q.* Where is it? *A.* In Boston.

*Q.* Now, what record is it? *A.* Most likely in the books of the Corona Kid Manufacturing Company.

Mr. Riker—I call on the plaintiff to produce those books.

*Q.* What kind of raw material were you shipping to Mr. Guigues in 1904? *A.* Butts, horse butts.

*Q.* Where were those horse butts purchased by you? *A.* The whole hides were purchased.

*Q.* Well, if you distinguish in words, where were the hides purchased? *A.* Various places.

*Q.* Where? *A.* Some from Russia, some from France, from Germany and South America.

*Q.* Any from any other source or market? *A.* There may have been. We had samples at various times, I don't know just what time, from Switzerland and from Sweden.

*Q.* And what was the character, what kind of skins were they that you purchased from these different markets? *A.* The German and French were green salted; the Russians were mostly dry.

*Q.* What kind of skins? *A.* Colt skins and horse hides.

*Q.* How much of this stock did you buy in Russia? *A.* Oh, perhaps half to two-thirds.

*Q.* When you testified that you bought the raw stock largely in Russia, that was what you meant, was it? *A.* More than half is larger.

*Q.* I did not ask you whether it was or not; I asked you whether that was what you meant? *A.* I meant the larger part of it came from Russia.

*Q.* [By the Court.] And the larger proportion that you had in mind was this half or two-thirds? *A.* Yes, sir.

*Q.* [By Mr. Riker.] Have you or your company a plant known as the Keystone Company? *A.* We never owned it.

*Q.* Did you do business with it in 1904? *A.* Yes, sir.

*Q.* Where did they go through the process of separating the fronts from the butts?

Mr. Skinner—I object to that as not involved in this suit in any way whatever.

Mr. Riker—I want to trace this raw material and show what it was. In order to do that, I have to go through the processes that the hides went through. The butts are only a portion of

the hides. He bought the hides in Russia. I want to trace them, as far as I can, for the purpose of determining what the hides or butts were, and this inquiry is to that end.

The Court [after argument]—Mr. Riker, suggests that this line of inquiry is designed for the purpose of following up the history of the hides from which the butts were taken. I will not interfere with this course.

*A.* They were cut at Camden.

*Q.* Is that where the Keystone plant is? *A.* Yes, sir.

*Q.* Have you got a record of these hides, so far as relates to the place where they were procured from? *A.* We have invoices always.

*Q.* You have them still? *A.* Yes.

Mr. Riker—I ask you to produce them.

*Q.* [By Mr. Skinner.] Have you got them, Mr. Baker? *A.* Not here; they are at Boston.

Mr. Riker—I ask you to produce them at the next hearing.

The Court—Let it be clear just what you call for.

Mr. Riker—I call for the invoices of the purchase of the hides; that is, the colt and horse hides; from which the butts were taken that were sent to Guigues's factory during the period of this suit, 1904, and January, 1905.

*Q.* When you saw the process of splitting the shanks in the pickle at the Guigues factory in 1904, how many did you see go through the splitting machine? *A.* The first time, perhaps half a dozen.

*Q.* Well, was that done at your request? *A.* Yes.

*Q.* Why did you request it? *A.* I found a bark-tanned grain and asked Guigues about it; he said it had been split from the grain, and that he could split—split from the butt after tanning—and I asked him if it could be done before, and he said, "Yes, we can get two pieces instead of one; we can split it instead of shaving it."

Q. He was talking about the shanks then? A. The butts, the grains.

Q. When you saw the process of splitting the shanks in the Guigues factory, 1904, how long did you observe the operation in progress? A. I didn't pay any special attention to that, because I expected it to be done.

Q. You expected it to be done? A. Yes, sir.

Q. Had you ever seen it done before? A. I had not.

Q. You had never seen a shank split before that time? A. No.

Q. And you did not stop to see it done— A. Pardon me! It was done; we tried it at Camden, the Keystone Leather Company, but it wasn't a success.

Q. You did not stop to see it done at Guigues's factory then? A. I don't remember that I did.

Q. You simply observed it being done casually? A. Yes.

Q. You do not know how long the process continued while you were there? A. I suppose they did the splitting as they came around, I suppose the butts were split, the large ones.

The Court—We are talking about the shanks.

Witness—I beg your pardon! I mean shanks.

Q. You supposed they were? A. Yes.

Q. Did you see where the flesh split was taken after the splitting was done? A. I didn't pay any special attention to them.

Q. Did you inquire? A. No. I supposed they would take care of it.

Q. You did not take very much interest in this process of splitting the shanks? A. It didn't make any difference to me what part of the factory they put it after it had been split.

Q. But you did not stop to look at the process? A. I knew it had been done.

Q. Where did you see it done? A. At Camden.

Q. The splitting of shanks had been done at Camden? A. No.

*Q.* And you did not have enough interest in the Guigues process to see whether they were doing it successfully or not? *A.* I saw that they were doing it, and making a fairly good split.

*Q.* You say you saw some of those splits. Can you now say more definitely when you received the first lot? *A.* I cannot.

*Q.* When was it that you came across a piece of leather in the shape of a cordovan that caused your inquiry as to that piece of leather? *A.* I think that was the latter part of 1904, as I remember, or early in 1905, perhaps.

*Q.* Where did you find that piece of leather? *A.* In the factory.

*Q.* Whereabouts in the factory? *A.* It was in a room, I think, nearly over Mr. Conway's office; that is, the Monroe street side, as I remember it.

*Q.* What floor? *A.* I am not sure whether the second or third.

*Q.* How many pieces did you find? *A.* One.

*Q.* One? *A.* Yes.

*Q.* You are sure of that, are you? *A.* Yes, I think so.

*Q.* That is all you found? *A.* I don't remember distinctly. I found one and asked what it was.

*Q.* Well, Mr. Baker, you are now only willing to say that you found one piece? *A.* No, I am quite positive; I think I remember having one in my hand.

*Q.* Do you remember saying heretofore that you found pieces of leather the shape of a cordovan? *A.* I may have made it plural, perhaps.

*Q.* Did you find pieces or not? *A.* I may have. I remember one piece distinctly that I took in my hand and asked Guigues what it was.

*Q.* Did you not know what it was? *A.* I guessed what it was. It looked like a grain. It was the shape of the shell, or of the cordovan, with the grain on it; I saw that it had been split.

*Q.* Well, that was no novelty, was it? *A.* To me, yes.

*Q.* You had never seen a grain taken off a butt before that time? *A.* No.

*Q.* You had never seen the grain of the butt of a horse hide cut off for japanning before you saw that piece? *A.* I had not.

*Q.* Did you not know that it was the regular thing to do— *A.* No.

*Q.* One moment. —with thin butts, to cut off the grain, to the destruction of the cordovan? *A.* I did not.

*Q.* You never knew that? *A.* No, I wasn't familiar with the tanning of the cordovan.

*Q.* How long had you been in the cordovan business? *A.* That was my first experience with tanning butts, except perhaps a dozen at Camden; always sold them either in the hair or in the salt, green salted, whatever they were, sold them without tanning them.

*Q.* You had handled horse fronts, then? *A.* Yes.

*Q.* And your business was the business of selling and japanning leather made out of horse fronts? *A.* Yes.

*Q.* And this was an experiment that you were carrying on through Mr. Guigues, was it not? *A.* Yes.

*Q.* And up to that time in your Keystone connection you had not been able to do these things? *A.* No, we hadn't tried it, because they had all they could do with the fronts.

*Q.* Now, will you tell me where you found the pieces of leather more definitely, if you can, that you recognized as like the cordovan? *A.* I stated it was in the building, I think, on the Monroe street side; it was the lower side of the factory, either the second or third floor.

*Q.* And where was it in the second or third floor? They were the same size and general arrangement, were they not? *A.* Yes. I wasn't very familiar with the building, and I didn't pay much attention to that.

*Q.* Where were they, on the floor or in a case? *A.* In a trunk.

*Q.* Where? *A.* On a floor, with some rubbish; I don't know what it was over them. I saw a piece sticking out, as I remember, and picked it up.

*Q.* That was as early as late in the fall of 1904 or early in the winter of January, 1905? *A.* I think so.

*Q.* After you picked it up what did you do with it? *A.* Looked at it.

*Q.* Then what did you do with it? *A.* I asked Guigues about it.

*Q.* Was he with you? *A.* I am not quite positive. I found him pretty soon, if he wasn't.

*Q.* What did you ask about it? *A.* What it was, where he got it.

*Q.* Did you not know? *A.* I supposed so; I supposed it was from a butt.

*Q.* You mean that you were not familiar enough with this product to do any more than guess what it was? *A.* Well, I made a pretty good guess.

*Q.* Now, what did you ask Mr. Guigues in reference to it? *A.* Where it came from.

*Q.* And what did he say, if you remember? *A.* From a butt that had been split.

*Q.* What else did he say? *A.* I asked him if he could tan the grains in chrome; he said he thought so.

*Q.* Tan the grains in chrome? *A.* Yes.

*Q.* Are you a judge of tannage? *A.* I think so.

*Q.* Was the piece that you saw tanned or was it not? *A.* Tanned.

*Q.* In what? *A.* Bark, or gambier, perhaps a combination of gambier and sumach.

*Q.* Vegetable tannage? *A.* Vegetable tannage.

*Q.* Can you tan a piece of leather in chrome which has been started in vegetable tannage? *A* It wouldn't make a pure chrome.

*Q.* Well, is it a process that you have ever heard of; finishing the chrome-tannage leather that has been started in vegetable? *A.* No.

*Q.* The piece of leather that you had was a piece of bark-tanned leather, was it not? *A.* Yes.

*Q.* What did he say about finishing that in chrome? *A.* He said he could split them before they were tanned and tan the grain in chrome and the shell in bark, and make a good cordovan.

*Q.* Now, Mr. Baker, Mr. Guigues went on with the demonstration then and there, did he not? *A.* Yes.

*Q.* What did he split? *A.* Butts, shells.

*Q.* In what condition? *A.* As I remember, that was before it had been pickled. He just had a few that he only demonstrated the fact that it could be done, as he said it was out of the line.

*Q.* How many did he put through the splitting machine at that time? *A.* Perhaps half a dozen.

*Q.* Where was the splitting machine located that he took you to to show you this process? *A.* Towards the part of the factory near the boiler-house.

*Q.* When was this? *A.* I can't remember the date absolutely.

*Q.* But the piece that you had picked up and which you showed to him had been tanned in bark, had it not? *A.* Vegetable tannage.

*Q.* In vegetable tannage? *A.* Yes.

*Q.* And the process which he sought to demonstrate to you in bark was one which involved only chrome tannage, was it not? *A.* For the grain.

*Q.* But the thing you had seen was the grain in the bark, was it not? *A.* In vegetable.

*Q.* What is chrome-tannage, vegetable or mineral? *A.* Mineral.

*Q.* Now, the hides, or the butts, rather, that were put through the splitting machine in your presence at that time, in what condition were they? *A.* Out of the lime.

*Q.* That is all? *A.* Yes.

*Q.* The shanks on them? *A.* No.

*Q.* Then they were only the cordovans? *A.* Just the shell.

*Q.* The shell? *A.* Yes.

*Q.* Were they pickled? *A.* No.

*Q.* And he was successful in that condition in getting off a grain split, was he? *A.* Fairly so.

*Q.* Leaving the cordovan uninjured? *A.* Practically.

*Q.* It was in consequence of that demonstration that you made a contract to pay him five cents a foot for this particular product, was it not? *A.* The grains in chrome.

*Q.* What about the grains in bark, or vegetable? *A.* I didn't know anything about them.

*Q.* But you had several pieces in your hand, Mr. Baker. Why do you say you didn't know anything about them? *A.* I didn't know he had been doing it.

*Q.* You found them in the factory, did you not? *A.* One or two pieces, perhaps.

*Q.* Several pieces? *A.* Perhaps, but less than half a dozen.

*Q.* And you found they were done in bark, and you showed them to him, did you not? *A.* Yes.

*Q.* And you asked him about it, did you not? *A.* Yes.

*Q.* And he told you what? *A.* He tanned just a few; he tried to see if he could split them.

*Q.* He told you, did he not, "I have discovered a new way of handling the cordovan; I can run it through the splitting machine and split off the grain and save the grain, and then make good cordovan out of the shell. Now, instead of shaving it, and getting waste, I split it and get the grain"? *A.* Yes, sir.

*Q.* And that is what he told you when you showed him this bark-taned, or vegetable-tanned, grain of a of a cordovan? *A.* Exactly.

*Q.* So that you knew he was taking off grains, bark-tanned, or vegetable-tanned, from the cordovans? *A.* He told me he had only done a few; I had no idea that he was doing quantities.

*Q.* Well, that was the first illustration that you had had of taking off the buffing from the cordovan by the splitting machine, was it not? *A.* Yes.

*Q.* Prior to that time it had always been shaved off with a knife, had it not? *A.* As I understood it.

*Q.* And lost? *A.* And lost.

*Q.* It went into fertilizer, did it not? *A.* I don't know what it went into.

*Q.* Became part of the offal? *A.* Perhaps so.

*Q.* Well, surely? *A.* Well, that is not considered offal.

*Q.* [By Mr. MacMahon.] Or glue stock? *A.* No, not glue stock; it is shavings.

*Q.* [By Mr. Riker.] It goes for fertilizer, does it not? *A.* No; I don't know what it goes for.

*Q.* Is it good for glue stock as offal? *A.* No.

*Q.* Of any value at all? *A.* I wouldn't think so.

*Q.* Did you inquire from him what he was doing with the grain that he cut off with the splitting machines, bark or vegetable-tanned? *A.* I didn't know he was doing it.

*Q.* What, Mr. Baker, you found he had been doing it? *A.* Yes, but only a few; he told me that he had been just experimenting.

*Q.* Did he not say he had discovered a new way of handling the cordovan when you showed him this particular split that you had in your hand? *A.* He did.

*Q.* And did he not say that "I can run it through the splitting machine and save the grain"? *A.* Exactly.

*Q.* And the thing you were showing him was a bark-tanned split, was it not? *A.* Yes.

*Q.* When was that? *A.* I can't fix the date positively; I should be glad to, but I can't.

*Q.* Why did you not ask him what he did with the bark-tanned or vegetable-tanned splits of the grain that he got in that process? *A.* He said he was simply experimenting and had only done a few.

*Q.* Well, now, Mr. Baker, you paid him five cents a foot for these same grain splits tanned in chrome, did you not? *A.* Yes.

*Q.* Do your books show those payments? *A.* I beg your pardon.

Q. Do the books of the Corona Kid Company show those payments? A. Yes.

Q. Have you any memorandum with you taken from the books to show when you began paying him those things?

Mr. Skinner—I object. Counsel is asking whether the witness has in his possession papers that he knows perfectly well we would not be permitted to use if we had them.

Mr. Riker—These are the plaintiff's own books, and, as I understand it, they are always admissible as admissions against the plaintiff, or against the party. That is the fundamental principle upon which the admission of these copies of these private books has been made by your Honor, in connection with the charge of collusion.

Mr. Skinner—I have no objection, if your Honor please, to this call for memoranda or copies that we have, but I want it to be done by Mr. Riker making the witness that he calls for it from his witness. I do not think he has any right to make his cross-examination take that form.

Q. Have you got your memorandum with you? A. Not with me.

The Court—The question that was objected to has been asked again and asked by the witness. I will let it stand.

Q. How long did you continue to receive chrome-tanned splits from the butt, or cordovan, from Mr. Guigues? A. From the time he started tanning them in chrome, he was supposed to have split all the butts from that time on.

The Court—No. The question was as to the time. How long did you continue to receive them from the time when you began to receive them?

Witness—Until the business ceased with Guigues.

*Q.* Where were they sent, if you know? *A.* To Bristol; the grains were sent to Bristol.

The Court—This is the shanks, is it not?

Witness—No, this is the butt.

Mr. Riker—No, this is the grain from the butt, the cordovan, the shell.

*Q.* Then you did not discontinue the taking of these particular articles at five cents a square foot because they were unsatisfactory? *A.* No.

*Q.* You are sure of that? *A.* He tried to make them satisfactory by being more careful in splitting.

*Q.* Well, when did you complain of them to Mr. Guigues? *A.* When we found he was cutting them too deep and making them too thin.

*Q.* He was making the splits too thin? *A.* The cordovan.

*Q.* The cordovan was being injured. You found that? *A.* Yes.

*Q.* So that when he made a satisfactory shell split for you, he was turning in an unsatisfactory cordovan; was that it? *A.* When he made a shell split? I don't understand the question.

*Q.* When he made a shell split that was satisfactory in size and character, he was turning in a cordovan that was unsatisfactory? *A.* Sometimes.

*Q.* Well, you complained of that being the case, did you not? *A.* I did.

*Q.* Did you not discontinue taking these shell splits at five cents a square foot because they were not satisfactory? *A.* We started then to split the whole butt, and not split off the shank; we started making cordovan, and split the whole butt, and then the shell was tanned in bark, the whole thing, shell and shanks, and we discontinued making cordovan.

*Q.* When was that done? *A.* Perhaps in 1905.

*Q.* The splitting of the whole butts, Mr. Baker, were splitting off the flesh split, was it not? *A.* We were

after the grain and a good shell split at the same time.

*Q.* I asked you, when you split the whole of the butt without separating the shanks, whether that split that was taken off was not the flesh split? *A.* No.

*Q.* Do you say now, or is it a fact, that there was a grain split taken off at the same time? *A.* The grain was split from the shell. As far as I knew, there were no flesh splits; that is, another split taken off after it had been split the first time. I knew of no other split.

*Q.* Well, was there any other split? *A.* I have heard so since.

*Q.* You have heard so? *A.* Yes.

*Q.* But do you know whether there was? *A.* No.

*Q.* So that when the butt was split entire you got a grain split and a flesh split, and that was all, was it not? *A.* Well, we called it a shell split.

*Q.* The shell split is which side? There was only one cutting, was there not? *A.* To be sure. The one was the grain and the other the shell, or flesh, whatever you choose to call it.

*Q.* It is only a difference in name. Did the shell split exclude the shank splits? *A.* I didn't understand that.

*Q.* Did the shell split include or exclude a shank split? *A.* We supposed we were getting everything in two pieces, the grain and the split, which included the shank and the shell.

*Q.* Well, from that time on, when you changed the method of splitting, there was only a shell split and a grain split? *A.* Yes.

*Q.* And you got it all, did you not? *A.* We were supposed to.

*Q.* Well, you did get it all, did you not? *A.* We didn't, no.

*Q.* When was that done? *A.* What done?

*Q.* That change made? *A.* Well, we were supposed to be getting it; the contract was that we should have it all.

*Q.* Well, you are referring to the contract that is in evidence? *A.* The contract after we commenced split-

ting them for chrome-tannage. We were supposed to have all the grains shipped to Bristol, and the splits were split to our order; we shipped it East and japanned it a different way.

*Q.* Was that another contract that you are speaking of? *A.* We did that under another contract, but some of it was—

*Q.* When was that other contract? *A.* In 1905, the latter part.

*Q.* The latter part of 1905? *A.* Yes.

*Q.* Not involved in this suit at all? *A.* No.

*Q.* And you abandoned your verbal contract with Mr. Guigues made with reference to the shell split, the grain split, after you had experimented with it a very short time, did you not? *A.* I can't say how long.

*Q.* You found the product unsatisfactory, and you could not use it? *A.* We found it more satisfactory the other way.

*Q.* You found, did you not, that when you got a good shell grain split you got a spoiled cordovan, did you not? *A.* A poor cordovan.

*Q.* And that is why you discontinued it, is it not? *A.* Yes.

*Q.* And that was the time when you began your grain tanning in chrome, was it not? *A.* Yes.

*Q.* And that was the latter part of 1905? *A.* I think so.

*Q.* Now, Mr. Baker, the shipments of butts that were made to the Guigues factory up to February 1st, 1905, what record did you have of them? *A.* Of the number of butts?

*Q.* Yes. Did you keep a record of them? *A.* Yes.

*Q.* Where was that kept? *A.* In Boston.

*Q.* Well, were these butts not shipped from Camden? *A.* Yes.

*Q.* Well, where was the record of the shipment kept? *A.* A memorandum was sent from Camden to Boston, and we, in turn, sent a memorandum to Guigues.

*Q.* And was there a record kept at Camden, too? *A.* I suppose they kept a record of what they shipped us; we got a memorandum of it. Whether they kept any further record of it, I don't know.

*Q.* Do you mean by that that they shipped the butts to you in Boston and you transhipped to Guigues? *A.* No, they were supposed to ship them to Guigues, in Newark, and they sent us the number. We gave them a lot number and sent Guigues a memorandum of them.

*Q.* You gave them a lot number? *A.* We gave Guigues the lot number.

*Q.* And who fixed the lot number? *A.* That was arranged in Boston, in our office.

By the Court.

*Q.* What do you mean by giving him a lot number? *A.* I had a memorandum book that I always carried with me, similar to this [producing book], with a record of every lot, and they were supposed to be kept intact, so that we could tell what each lot produced.

*Q.* What was it you gave to Guigues in giving him a lot number? *A.* For instance, the first shipment was lot No. 1.

*Q.* You designated by lot number each shipment to him? *A.* Each shipment, or perhaps there might have been half a dozen lot numbers in one shipment, because we usually shipped in carload lots. If we bought a thousand hides—

The Court—That answers my question.

By Mr. Riker.

*Q.* You kept a little book of these shipments, you say? *A.* Yes.

*Q.* For what purpose? *A.* For my own reference.

*Q.* To determine what? *A.* When I went to Guigues's factory I spent most of my time in the shipping room; when I would find out what lots were coming through, and from my memorandum book I could tell

from what lot they came, to get some idea of what they were producing, whether they were good or poor.

*Q.* And whether they were producing the quantity that they ought to? *A.* No, I kept no record of the numbers there; I couldn't; we took that from our invoices later.

*Q.* [By the Court.] When you say you kept no record of the numbers, you mean you kept no record of the amount? *A.* Of the amount at the time I looked at it. You got that from our invoices—from his invoices when he shipped them.

*Q.* [By Mr. Riker.] When you got these invoices from him had you anything to compare them with? *A.* Our original entries.

*Q.* Did you make the comparison? *A.* Naturally.

*Q.* To see whether you were getting your material returned? *A.* We couldn't tell that he had them splitting off the grain and selling them. We supposed they had been shaved in the way it had always been done up to that time.

*Q.* When did you suppose that? *A.* During the early part of the transaction.

*Q.* Just define that early part that you refer to. *A.* 1904, the early part, during the summer and fall of 1904.

*Q.* And it was some time in 1904 or early in 1905 that you found that he had been splitting them? *A.* Yes.

*Q.* Did you inquire from him what he had done with the things that he had split prior to that time? *A.* I think I have answered that several times.

*Q.* Well, answer it again. *A.* He simply told me that he was experimenting and found that he could split the grain from the shell without injury to the cordovan.

*Q.* He was then talking about splitting these shells or butts, before they were tanned, was he not? *A.* He said it could be done.

*Q.* Well, he showed it to you, did he not? *A.* Yes.

*Q.* That was the thing he showed you? *A.* Well, we immediately went to a splitting machine and he showed it; tried it.

*Q.* What had that to do with the taking off of the bark or vegetable-tanned split from the cordovan? *A.* If he split it off and tanned it in chrome, we got the grain which we were entitled to. He had evidently been splitting in the bark and taking it, and we didn't get it and didn't know of it.

*Q.* But you knew he was able to do it? *A.* I did not until that day when I discovered it.

*Q.* What did you say to him about the things that he split off in the bark-tannage? *A.* He explained that he had only done a few as an experiment.

*Q.* Why, was not the experiment that he referred to, and which he demonstrated to you, the experiment of splitting off the grain before it was tanned in any way? *A.* Yes.

*Q.* Do you mean to say that he also told you that he had experimented and found that he could split off the bark-tanned grain? *A.* Yes.

*Q.* Well, did you make no inquiry as to this bark-tanned grain? *A.* He explained at the time that he had only done a few as an experiment, to see what the grain would be like.

*Q.* [By the Court.] Well, did you make any further inquiry on that subject? *A.* No, sir.

*Q.* [By Mr. Riker.] Well, the pieces or the piece that you picked up was a smooth, nice piece of leather, was it not? *A.* Fair.

*Q.* Fair? *A.* Yes.

*Q.* Well, you testified that it was a smooth and nice piece of leather? *A.* Yes.

*Q.* And now you say it was only fair? *A.* It was smooth.

*Q.* And a nice piece of leather? *A.* Perhaps.

*Q.* Well, was it or was it not? *A.* For that kind, I guess it was.

*Q.* You were not interested in it? *A.* Not in that shape.

*Q.* Why not? *A.* Because I wanted leather that we could finish for patent leather, bark-tanned or vegetable-tanned, I mean.

*Q.* And you had no use for that kind of leather? *A.* No.

*Q.* You could not japan that particular kind of leather, could you? *A.* No.

*Q.* It was of no use to you? *A.* No.

*Q.* Now, Mr. Baker, did you not have an expert accountant go down to the Guigues factory at periodical times? *A.* Not until much later.

*Q.* Right at this time you did not have anyone go down? *A.* No.

*Q.* You were the only one, so far as you know, visiting the Guigues factory as representing the Corona Kid Company? *A.* Yes.

*Q.* Were reports made to you from your factories or your places as to the quality of the goods turned out by Guigues? *A.* Yes.

*Q.* Did you get a report from Bristol? *A.* Sometimes.

*Q.* As to these grains? *A.* That came later. The grains, when that first was done we experimented with them in finishing then, and, naturally, we had reports, I don't remember whether verbal. I was at Bristol at least every two weeks and could see them.

*Q.* Was the japanning of these butt grain splits satisfactory and successful at Bristol? *A.* Yes.

*Q.* It was? *A.* Yes.

*Q.* Why did you not continue them? *A.* We did.

*Q.* How long? *A.* Until we ceased business with Guigues.

*Q.* I am speaking now, Mr. Baker— *A.* During all this period.

*Q.* I am speaking of the splits taken off of the shell. *A.* Yes.

Q. Not the whole split taken off of the whole butt, but the split taken off of the shell. How long did you japan those? A. Not very long, because we started taking the whole split, shank and all; we had a whole grain and a whole split.

Q. But I think you have said that did not occur until late in the year 1905? A. I can't fix the date positively.

Q. Well, late in the year 1905; can't you fix it as positively as that? A. Probably, probably late in 1905, yes.

Q. Yes, late in 1905. A. Yes.

Q. And you made the change because the other arrangement was not satisfactory? A. This was better; we thought it was more profitable.

Q. You say you continued doing business with Guigues until he went out of business. When was that? A. 1907 or 1908, the latter part of 1907, or early in 1908.

Q. Well, what you were seeking after for your concern was leather that you could japan, was it not? A. Yes.

Q. And under this new arrangement that you have testified to you got more leather than you could japan, did you not? A. Yes.

Q. You did not get as good a cordovan, did you? A. Later we stopped making the cordovan.

Q. You stopped making the cordovan altogether? A. Yes.

Q. Now, Mr. Baker, is it not a fact that a considerable number of the horse butts that you shipped to Guigues were in such poor condition that they were put into glue stock, with your knowledge and order? A. Absolutely not.

Q. Absolutely not? A. No.

Q. There were not any so poor that they were put into glue stock? A. You said a large quantity.

Q. Were there any, then? A. There may perhaps have been a very small percentage.

*Q.* Was that done after the examination of the stock by men representing your company? *A.* No.

*Q.* By whose authority was it done? *A.* When the butts are received they are supposed and look to be in good condition. When they go into the lime, if they have been damaged previous to being cured, they sometimes, as we say, go to pieces, when they come out of the lime. It is determined at that point whether they are worth tanning or not.

*Q.* And who determined that? *A.* That was always supposed to be done by the tanner.

*Q.* Did he report on them? *A.* Supposed to.

*Q.* I asked you whether Mr. Guigues reported on them? *A.* I think so; I am not positive; I think he did.

*Q.* Well, all these butts that you sent then were dry butts, were they not? *A.* Not all of them.

*Q.* Can't you determine whether a hide is good or not in the green salted stage? *A.* As a rule the green salted don't go to pieces; they are all supposed to be good, and they generally are.

*Q.* Then the ones that did go to pieces, you conclude, were the dry— *A.* Yes.

*Q.* What do you call them, dry-salted? *A.* Just dry hides; sometimes they are salted and sometimes they are not.

*Q.* How long have you known Mr. Julius Lichtman? *A.* I think since the latter part of 1905.

*Q.* How long have you known Mr. Abraham Lichtman? *A.* I beg your pardon. I was thinking of this gentleman, since 1905. I never—

*Q.* Can you fix the date? *A.* No, not absolutely; probably in the fall of 1905.

*Q.* Did you have any communication of any kind with Mr. Abe or Mr. Julius Lichtman prior to that date? *A.* I don't remember that I did.

*Q.* Well, did you ever meet Mr. Julius Lichtman? *A.* Once.

*Q.* When? *A.* In Newark, at Guigues's factory.

Q. When? A. Perhaps in 1906, or it might have been 1907.

Q. You did not meet him in 1905? A. I don't think I did.

Q. You do not mean to be understood to say that? A. No.

Q. Why did you agree to pay Mr. Guigues five cents a square foot for these grains tanned in chrome? A. It was the market price.

Q. It was the market price of the grains tanned in chrome? A. The market price for chrome leather.

Q. Finished chrome leather? A. Ready for japanning.

Q. For the leather? A. Yes.

Q. Chrome-tanned? A. Yes.

Q. Including the material? A. Yes.

Q. Well, if you owned the material, why did you pay him for it? A. Owned what material?

Q. If you owned the splits, why did you pay him for them? A. I understood "the material" to mean the tanning material. When we speak of material in tanning, we always call the material that makes the tan; we never call the leather material.

Q. Well, you just said that was the market price for the leather. A. Well, for the tanning.

Q. Do you wish to change it? A. I say not for the leather; we owned the leather.

Q. Well, was it not the market price for the leather tanned in chrome? A. Certainly not.

Q. You did not mean that, then? A. Certainly not. I misunderstood your question.

Q. Do you know what the cost of chrome tannage at that time was? A. Well, approximately.

Q. How much? A. Perhaps four, four and a half cents.

Q. You heard the testimony of this gentleman who is doing your work for you now, that the cost of it was two cents? A. That was a different matter; that was the shank split, and there is practically no work on them.

*Q.* There is no work on them? *A.* Practically not.

*Q.* What is the difference in the work of tannage on the shank split and the grain split from a shell? *A.* There is a great deal more labor put on it; there is a great deal more oil used; it has got to be staked, and a great deal more labor, because it is better leather.

*Q.* Well, can you finish the grain split without doing all these things that you speak about? *A.* You can, but you want to make good leather. To make good leather you have got to put in the labor.

*Q.* In order to make the shank split or the grain split, either one, you have got to put labor into it, have you not? *A.* The grain split makes cheap leather, and it doesn't pay to put a great deal of labor in it. The grain goes for an entirely different purpose, and to get results you have got to put the labor into it.

[By direction of the Court, the stenographer reads from the answer as follows: "The grain split makes cheap leather."]

*Q.* [By the Court.] Do you mean the grain split? *A.* I mean the shank split.

*Q.* [By Mr. Riker.] Do you know what these shank splits are used for? *A.* Various purposes; for inner-soling perhaps, maybe for tongues. You are talking now of the shank splits?

*Q.* Yes. *A.* Well, it is frequently tanned in bark and used for inner-solings, or they may be tanned in chrome and used for tongues.

*Q.* I should have limited it, probably, to tanned in chrome. What is it used for? *A.* It may be used for tongues largely, or some very cheap purpose, in the trimming of cheap shoes.

*Q.* [By the Court.] What do you mean by "tongues"? *A.* The tongues of cheap shoes.

*Q.* [By Mr. Riker.] Glove leather? *A.* Yes.

*Q.* Trunk corners? *A.* I don't know.

*Q.* Bag linings? *A.* I could not tell you; I am not familiar with any except the shoe leather.

*Q.* You do not know much about those classes of leather? *A.* Not trunk leather.

*Q.* You do not know how careful the process is for making that kind of leather for those uses? *A.* Bags and trunks? No.

*Q.* You do not know anything about that at all? *A.* Only the shoe leather.

*Q.* Well, Mr. Baker, the splits from the shell when tanned in bark, I understand you to say, were of no use to you at all? *A.* The splits, the shell splits?

*Q.* Tanned in bark, or vegetable tan, were of no use to you? *A.* We sold them.

*Q.* You sold them? *A.* To be sure.

*Q.* Well, where did you get them to sell? *A.* Well, we owned them.

*Q.* But where did you get them? *A.* When the grain was split from the butt, the grain went to Bristol. Now, later than this period we have been speaking of the shells, the splits, were sent to Massachusetts, and we had them tanned in bark, and then they were sold for shoe leather; the splits were tanned in bark and sold for various kinds of shoe leather.

*Q.* But I am asking you now about the shell splits of the character of the one that you picked up in Guigues's factory late in 1904, tanned in bark, or vegetable-tannage. *A.* That was the grain I picked up, tanned in vegetable.

*Q.* Well, in that case the products were a cordovan and the split, were they not? *A.* I knew nothing of the split up to that time.

*Q.* Well, that particular grain split that you saw—perhaps the word "grain" is confusing, but that particular part that you saw tanned in bark or vegetable-tanning was of no use to you? *A.* No.

*Q.* Well, did Mr. Guigues explain to you why he happened to be experimenting in taking off that particular kind of a grain split, or grain, with a splitting machine? *A.* He did not.

*Q.* Did you ask him? *A.* I don't think that I did.

*Q.* You had no curiosity to know why he had been taking off that particular grain in that particular way off of a vegetable-tanned butt? *A.* I supposed he was telling me the truth, that he had been experimenting to find how we could get better results than we had been getting.

*Q.* But those particular results were upon hides that had not been tanned at all, were they not? *A.* That came when we commenced to experiment, to see if he could get the grain and tan it in chrome.

*Q.* Why was it, if you can remember, if there is any reason that you can think of now—why did you not inquire as to the purpose that he had in splitting off a vegetable-tanned butt a grain split? *A.* I had no suspicion whatever that he was doing it or why he should do it.

*Q.* But he told you he was experimenting with it? *A.* Yes, and I believed just exactly what he told me, that it was an experiment and had gone no further, and we tried it before it was tanned to see if we could get a grain that was good enough to go into chrome.

*Q.* But he told you that he had done it before tanning, did he not? *A.* I had it there, to be sure.

*Q.* And he demonstrated that he not only had, but could? *A.* Yes, sir.

*Q.* And did do it then and there? *A.* Yes.

*Q.* And that was on untanned leather? *A.* On tanned leather.

*Q.* On tanned leather he showed you—you had picked up a piece of the grain? *A.* Yes.

*Q.* And, upon inquiry, he told you that he had been experimenting, and that he could split off the grain on leather that had not been tanned? *A.* He thought he could, and we immediately took some butts and tried it. The first weren't entirely satisfactory, because they weren't split uniform in thickness; he said he would adjust his machine and thought he could do better, which he did.

*Q.* He said to you at that time words which con-

veyed to your mind the impression that he had not up to that time split leather that had not been tanned? *A.* Yes.

*Q.* Then, when in reply to your inquiry, he said, "I have discovered a new way of handling the cordovan; I can run it through the splitting machine and split off the grain and save the grain and make a good cordovan out of the shell," he was referring then to leather that had been tanned, was he not? *A.* Yes.

*Q.* And it was not until he made this experiment in your presence, then, that he ever succeeded in making a split of leather that was not tanned? *A.* That was my first knowledge of it.

*Q.* Well, did he say that had ever done it before? *A.* He said, "We will try it and see," and we immediately went to the splitting machine and tried it.

*Q.* Then why did he experiment on that thing instead of continuing the experiment that he had already made on bark-tanned leather? *A.* He knew that the bark-tanned leather would be no good for us to japan, to finish into patent leather.

*Q.* Well, he was working your stuff, was he not? *A.* Yes.

*Q.* And his experiments were conducted on a line of work that was of no possible advantage to you? *A.* I guess the trouble was he lied.

*Q.* Well, that is an easy way out of it. *A.* Well, I think that is the correct way.

*Q.* Well, other people can do the same thing. Then your only explanation is that he was lying? *A.* It is certainly a good explanation, that he lied at the time about what he had been doing.

*Q.* He had not been experimenting then? *A.* He had been doing it right along and selling the grains and finishing the splits in the cordovan.

*Q.* And selling something that was of no value to you? *A.* For our purpose, in that condition.

*Q.* And, so far as you knew, prior to that time that particular buffing—we will call it hand buffing—had

been wasted, gone into the refuse box? *A.* We supposed that he had them shaving that grain, as was the general custom in making cordovan, and making better leather. If we had known that he was splitting those off we certainly would have stopped it.

*Q.* When you found that by reason of his experiment he had succeeded in taking a grain split, or a grain—would not that properly be called a buffing, a machine buffing? *A.* You mean if it had been one?

*Q.* Yes, after bark-tanning. Isn't that properly called a hand buffing? *A.* Well, perhaps it is. I didn't understand that term.

*Q.* Now, at that time, whenever that was, Mr. Baker, you had demonstrated before your own eyes the fact that he had been taking off of the vegetable-tanned, at least, a buffing, a machine buffing? *A.* Yes.

*Q.* And he demonstrated then and there that off of the hides before they were tanned he could also take off a machine buffing? *A.* No, sir; I never saw him split one of the tanned skins, taking off one of these splits.

*Q.* But you had a buffing in your hand? *A.* I had a grain in my hand.

*Q.* Well, that was as good as a demonstration, was it not? *A.* Yes, and I supposed that he had only done a dozen or so.

*Q.* From that time on you had proved and demonstrated in your sight that there had been a machine buffing taken off of the bark-tanned shell? *A.* Yes.

*Q.* And that he did in your presence take off a hand buffing from the untanned? *A.* No.

Mr. Skinner—I object. That is assuming a fact not proved. The term "buffing" tends to confuse the witness, and it is contradictory of the evidence.

The Court—I will let the answer stand. If the witness is embarrassed by the form of the question, he can say so.

[Question read.]

*Q.* When you say "No" to the last part of that question, Mr. Baker, do you mean to say that there was not a splitting of the butt not tanned done in your presence? *A.* Repeat that question.

[Question read.] *A.* I have testified that he split about half a dozen.

*Q.* So that from that time you had demonstrated by Mr. Guigues himself by the production, or the discovery, of the bark-tanned leather, and by the process itself, that he could and did split from the butts of the hides that you sent there to be tanned a grain split? *A.* Just read that question, please.

*Q.* [Question read.] *A.* Well, he had been splitting the grain after it had been tanned.

*Q.* You knew that? *A.* At that time I did not.

*Q.* Well, you saw it then, at any rate? *A.* I saw two or three pieces perhaps.

*Q.* And he told you he had been doing them, in answer to your inquiry? *A.* In a very small way; I got it from him that he hadn't done over half a dozen or so; I understood it so.

*Q.* And you saw him doing the other thing there? *A.* Yes, splitting before tanning.

*Q.* And the piece of bark-tanned or vegetable-tanned leather that you had in your hand was a nice piece of leather, was it not? *A.* For that kind.

*Q.* Did you inquire how many of those things he had made? *A.* I understood from him only a very few, perhaps less than a dozen.

*Q.* I asked you whether you inquired of him how many he had made?

The Court—I asked the witness some time ago whether he made any further inquiry or any inquiry after this statement, and he said no. I suggest that we have gone over this a good many times.

*Q.* Now, in your visit to the Guigues factory in the latter part of the year 1904, I understood you to say that you went wherever they were handling the leather? *A.* Yes.

*Q.* Did you go on the top floors of the Monroe street and Madison street buildings? *A.* I don't know about that; I am not so familiar with the building; I couldn't tell you what floors where the various processes were carried on.

*Q.* Well, did you go to the parts of the factory where the drying processes were carried on? *A.* Perhaps, but very seldom. It was generally very hot there.

*Q.* Did you go into the finishing and shipping room? *A.* That is where I spent most of my time.

*Q.* Did you notice this partitioned-off place that has been testified to? *A.* I paid no special attention to the buildings or the various rooms.

*Q.* [By the Court.] Did you notice it? *A.* I can't recall any such room.

*Q.* [By Mr. Riker.] You do not remember any such room? *A.* I don't remember.

*Q.* When I recall to you the evidence that it was immediately adjoining the door to the finishing room, does that recall it to you? *A.* Well, I paid no special attention; I don't recall that.

*Q.* You do not recall it? *A.* No, sir.

*Q.* You did not notice any windows with black muslin tacked up against them? *A.* I don't remember anything of the kind.

*Q.* How often were you in that finishing room during 1904 and 1905? *A.* I couldn't tell you.

*Q.* Once every two or three weeks? *A.* I think so.

*Q.* Except the time you were in Europe? *A.* I think likely.

*Q.* You were in Europe at the Russian fair, were you not, buying colt hides and horse hides? *A.* Part of the time I was there.

*Q.* Were those part of the material that you sent to the Guigues factory to be tanned? *A.* Yes.

*Q.* Do you know, Mr. Baker, how the goods were shipped out of the Guigues factory to you, by what agency? *A.* By rail.

*Q.* From the factory itself? *A.* No.

*Q.* The factory hasn't any rail? *A.* No. I suppose, naturally, they had to haul them to the station.

*Q.* Well, you do not know who did that? *A.* No, I knew nothing about that.

*Q.* What was your first transaction with Lichtman? Did you have any? *A.* Yes.

*Q.* When? *A.* In the latter part of 1905.

*Q.* What was that? *A.* I sold him some butt shell splits.

*Q.* Where did you sell them to him? *A.* He met me at the Guigues factory.

*Q.* [By the Court.] Which was this, Julius or the son? *A.* Abe.

*Q.* [By Mr. Riker.] Well, did you not sell him some dry butts? *A.* A little later.

*Q.* How much later? *A.* I think perhaps the same months, in the latter part of 1905, and then 1906.

*Q.* And you sold him stock of one sort and another through 1906? *A.* Yes.

*Q.* In large amounts? *A.* One quite large bill.

*Q.* Did you not sell him some cow splits in December, 1905? *A.* I think likely.

*Q.* Was not that the first transaction you had with him? *A.* It may have been.

*Q.* Did you ever see him at the factory before that date—Abe Lichtman? *A.* I can't recall.

*Q.* I am speaking of December, now. *A.* Yes. I can't recall the dates.

The Court—At what factory, Mr. Guigues's?

Mr. Riker—Guigues's.

Redirect examination, by Mr. Skinner.

*Q.* Mr. Baker, when was the first chrome-tanning of the grains split from the butt done for you by Mr. Guigues? *A.* I think the latter part of 1904 or early in 1905.

*Q.* You have testified in cross-examination that there was a time in the latter part of 1905 when you discon-

tinued the method of splitting the butt and having it split separate from the shanks; that thereafter the whole butt, including the shanks, was split; and Mr. Riker asked you whether that was the time when the chrome-tanning began, and you said yes. That was December, 1905; you testified that that was in the latter part of 1905. Now you say that the chrome-tanning began in 1904, and so you testified on cross-examination. I call your attention to this apparent discrepancy and ask you to explain it? *A.* Well, I would like to correct that. The first chrome-tanning of the grain was from grain split from the butt after the shanks had been cut.

*Q.* And that was when? *A.* That was in 1904. And he still continued to make cordovan from the shell, and sent us to Bristol the grains to be finished into patent leather. Later we stopped cutting the shanks from the butts, split the grain from the whole butt; we had the grain the full size of the butt and a split the full size of the butt.

*Q.* And from that time on how was that whole grain split tanned? *A.* In chrome.

*Q.* But before that for a year there had been chrome-tanning? *A.* Well, for some time there had been chrome-tanning in the grains after they had been split from the shell, after the shanks were cut from them.

*Q.* Where were the shanks sent by Guigues shipped to, what point? *A.* To Bristol.

*Q.* The shank splits. *A.* To Massachusetts. They were tanned at various tanneries, part of them in Woburn.

*Q.* You are referring now to the pickled shanks? *A.* Pickled shanks, splits.

*Q.* You said that some of the whole hides were discarded because of defects in the hides, they were found to be rotten after some stage, and that they went into glue stock. Was there any regular allowance to Guigues for that reason? *A.* The average percentage that we say go to pieces should not be over one per cent.

*Q.* And what would you say was the percentage of the number of pieces shown in the sale to Lichtman to the number of butts sent to Guigues for treatment?

Mr. Riker—Objected to as irrelevant and immaterial. I say it is immaterial for the reason that it has not been shown yet that there were any sales to Lichtman.

The Court—Yes, there is evidence of sales to Lichtman. The witness just testified to some in 1905, the latter part of 1905. "The first transaction with Abraham Lichtman was in the latter part of 1905. I sold him some stock of one sort and another in 1906." That was on the cross-examination.

[Question withdrawn.]

*Q.* You said that the market price for tanning—that is, the chrome-tanning—what you agreed to pay five cents a foot for—that is, the shanks, the splits, the grains split from the butt—was five cents including material, and then explained that you were referring to process of tanning, and that by "material" you meant tanning material. Now, I ask you, Mr. Baker, what was the market price of the finished product—that is, the chrome-tanned leather—that came to you from Guigues that he had tanned for five cents a foot? *A.* When finished we sold it for fifteen and twenty and twenty-five cents per foot, averaging at least twenty cents per foot.

Mr. Riker—Now, perhaps I ought to wait to cross-examine, but that is evidently not a responsive answer to the question. Otherwise I should have objected to the question. They sold it after they japanned it.

Mr. Skinner—I meant it to be finished so far as finished in Guigues's treatment.

The Court—As they received it?

Mr. Skinner—Yes.

Witness—I meant after it had been japanned.

The Court—That appears not to be the question.

Witness—Well, then, shall I answer?

Mr. Skinner—Yes.

Witness—Fifteen cents a foot.

*Q.* That is, before japanning? *A.* Yes. This refers to the shanks?

*Q.* No. I understood you to say that you made a contract to pay Guigues five cents a foot for tanning the grains split from the shell? *A.* Yes, sir.

*Q.* Now, I ask you what was the value of those grains split from the shell and tanned by Guigues as they came to you, or before japanning, or whatever you do with them? *A.* They were worth from eighteen to twenty cents a foot.

*Q.* Now, you said that the bark-tanned grain split from the shell was of no use to you. Was it of no value? *A.* Oh, it had value, to be sure.

*Q.* What did you mean by saying it was of no use to you? *A.* I explained that by saying that we couldn't japan it.

*Q.* Can you tell us, Mr. Baker, how your shipments of hides to Guigues for tanning during the period that we have been mentioning as covered by this suit compared with the shipments of the tanned product from Guigues to the Corona people? *A.* The cordovan; he didn't begin to ship it for perhaps six weeks or two months from the time he received his first shipments. The cordovan was shipped first. The shanks were held at the factory for some time, until we were ready for them at Bristol, and then he tanned the shanks in chrome.

*Q.* Did you ship to Guigues only so much as the factory in Bristol was calling for or more than the factory was calling for or less? *A.* More.

*Q.* More, you say? *A.* More than they needed at that time, and they accumulated at Guigues's.

Recross-examination, by Mr. Riker.

*Q.* Now, Mr. Baker, this material that you say was turned in by Guigues to you after tanning, that was worth eighteen cents a square foot, what do you refer to? *A.* Grains from the butts.

*Q.* Grains from the butts? *A.* Yes, sir.

*Q.* What about the shank splits, were they worth eighteen cents a foot? *A.* No, the shank splits were not worth eighteen cents a foot.

*Q.* They were the splits tanned in chrome that were worth eighteen cents a square foot? *A.* The grains.

*Q.* The grains tanned in chrome that were worth eighteen cents a square foot? *A.* Yes, sir.

*Q.* They were the grains from the whole butt that were worth eighteen cents a square foot, were they not? *A.* In the beginning they were just the size of the cordovan.

*Q.* I asked you whether the eighteen cents a foot was for the grains split from the whole butt? *A.* Later they came from the whole butt, and we considered them worth as much.

*Q.* The shank grains tanned in chrome were always worth eighteen cents a foot, were they not? *A.* I think I testified that they were worth fifteen cents.

*Q.* And the whole grain split from the entire butt, you say, was worth eighteen cents a square foot? *A.* Yes.

*Q.* Including the shanks? *A.* Including the shanks.

*Q.* So that the inclusion of the grain from the shell made the shanks worth eighteen cents, when they were theretofore only worth fifteen cents? *A.* Yes.

*Q.* Was that the reason why you changed your method of treating the grains? *A.* One of them. It gave us a larger spread, a larger surface.

*Q.* It gave you a larger spread and a larger surface? *A.* Yes.

*Q.* It is the size of the hide, or the grain, rather, that adds to the value of it, does it not? *A.* Size and quality.

Q. The quality being the same— A. They are worth more in larger than in smaller pieces.

Q. It is easier to handle them in the japan shop, is it not? A. Yes.

Q. Cheaper to work through the japan shop? A. Yes, sir.

Q. It makes a better quality of leather with less waste, does it not? A. Yes, sir.

Q. What was the size of the grains split off of the shell alone that were sent to Bristol? A. They would probably average five feet, four and a half to five feet, I should say.

Q. Did you see them? A. Yes.

Q. When you got that average did did you get any cordovan at all? A. Yes.

Q. What kind of cordovan? A. What do you mean by "what kind"?

Q. Well, what quality of cordovan? A. A fair quality; sometimes they ran light. They were thinner, naturally, than when they had been shaved; it wasn't as good quality as if they had been shaved.

Q. Is it not a fact that when you cut into the shell you destroyed the value of the cordovan? A. Not entirely.

Q. Well, you materially injure it, do you not? A. It is as good as when it is shaved.

Q. [By the Court.] The cordovan is not as good? A. No.

Q. [By Mr. Riker.] Now, you say that these pieces that were sent to Bristol under your first arrangement would average how many square feet. A. Are you speaking of the grains from the butt?

Q. Yes. A. Two to five feet.

Q. And were they of uniform thickness? A. No, not always.

Q. Well, does that have any effect on the value of them? A. Sometimes, if they were irregular they were not as good as they were when they were uniform.

Q. Is it not a fact that they are never of as much value when they are not uniform in thickness. A. That is so.

Q. What proportion of them were irregular in thickness? A. I couldn't tell you.

Q. What valuation do you place on these pieces in the shop that you have described there, these five square feet pieces of butt grains? A. Eighteen to twenty cents a foot, I believe I stated; that is the smaller ones, off of the cordovan shell.

Q. Those are the small ones? A. Yes.

Q. What was the size of the shank grains? A. They would average three or four feet.

Q. Apiece? A. Yes, frequently.

Q. And they were worth how much? A. About fifteen cents.

Q. They were of uniform thickness, were they not? A. Generally.

Q. And the quality, how did it differ from the other grain, in what respect was it inferior? A. From the grain off of the shell.

Q. Yes. A. Well, it didn't lay out quite as flat and the quality of the grain wasn't quite so fine, drawn down around the edges.

Q. You say the shank is three or four square feet in area? A. According to the size of the butt.

Q. And the butt is about five feet in area? A. The whole grain?

Q. Yes. A. Yes.

Q. Well, is not the ordinary proportion of a shank to a butt grain about one to two? A. In what way.

Q. In size, area, spread. A. The butt is twice as large as the two shanks?

Q. No, as one shank. A. The butt is twice as large as one shank?

Q. Yes. A. It would be just about—sometimes the shanks are larger; sometimes the shanks—for instance, if we take a five-foot butt, we would probably get four feet, three and a half to four feet shanks.

*Q.* One shank? *A.* One shank.

*Q.* The grain of one shank would be three to four feet when the grain from the butt would be five feet; is that true? *A.* The shanks would measure more than the shell.

*Q.* The two shanks? *A.* The two shanks would measure together more than the shell.

*Q.* You are familiar with these particular pieces of hides or leather. How much more would the two shank grains together measure than the grains from the shell, from the butt? *A.* If we should take a 10-foot butt, I should say the shell would measure about four feet and the two shanks six feet.

*Q.* Is that a large butt—10 feet? *A.* No, we have had them as large as 20.

*Q.* What effect or influence on the comparative value of the grain from the shell and the grain from the shanks did the irregularity in thickness of the grain from the shell have? *A.* Why, it would make a difference in the grade that you could put it in when they were being assorted; if it was very irregular it wasn't worth as much as if it was regular.

*Q.* If it was very irregular it was not worth japanning at all, was it? *A.* Oh, yes, it could all be japanned.

*Q.* What kind of japanned goods did you make there? *A.* Goods for shoes.

*Q.* Tipping? *A.* Cheap shoes; some of it went into cheap shoes and some into tipping.

At one o'clock P. M. the Court takes a recess of one hour.

After recess.

*Benjamin E. Baker* resumes the stand in behalf of plaintiff.

Further direct-examination, by Mr. Skinner.

*Q.* Mr. Baker, just one question. I think you said that sometimes Mr. Guigues reported a loss of the stuff sent to him in the process of liming, or in some other

part of it; I think you said that allowance was made to him for that. Without recalling anything further, that is enough to recall the subject-matter on which I want to question you now. On what basis was the allowance made? *A.* By the number of pieces actually reported as lost.

*Q.* According to the number of pieces in each report? *A.* Yes.

*Q.* And did you attempt to give some idea of the amount of those allowances? *A.* The average over a period of time of various lots shouldn't exceed one per cent.

Mr. Skinner—Now, your Honor understands that the offer of assignment is still before the Court, and with that exception we rest our case, and that, I suppose, the Court can dispose of later.

The Court—It is for the other side to say whether they want the case to be closed with that reservation or whether they want me to decide the question now. Of course, I have had no time to examine the matter.

Mr. Riker—I have this to say about it: that one of the grounds of application for a nonsuit will be based upon the question of the admissibility of the assignment.

The Court—Then I suppose I had better rule on it now. The assignment is offered and I will admit it.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Plaintiff rests.

[The paper referred to is marked *Ex. P7.*]

Mr. Riker—Now, if your Honor please, I desire to move for a nonsuit on several grounds.

As I have already intimated, one ground, and I will state it as the first ground, is that the alleged cause of action has not been shown to be in the plaintiff in this case; and the reasons for this position are those which have already been urged and upon which your Honor has ruled to the extent of admitting this assignment.

My second ground in support for the motion to nonsuit is that there has been no proof in this cause showing that these goods came into the possession of the defendant, Julius Lichtman, in any way; and in support of that position I draw your Honor's attention to the fact that the only evidence in the case of any detailed character which can be supposed to bear upon this case is to be found in those yellow sheets, which were admitted in evidence under objection, and are headed "3" and "4" in pencil, and that those things are only a copy, or an alleged copy, of books stated to have been kept by Mr. Guigues for his own private information, and that if admissible, as they have been admitted by your Honor, they do not go to the extent of showing delivery. * * *

The next ground for the motion is this: that there is no conversation shown. * * *

My next ground is that under the contract of June 30, 1904, which is the substantive contract under which the plaintiff in this case lays his claim, the articles which are claimed for in this suit were the property of Mr. Guigues. * * * So that I say that, by the practical interpretation of this contract, these very articles which are sought to be recovered for in this suit were by the contract itself, by the contract as interpreted and applied to the state of the art, by the con-

tract as applied by the course of dealings between the parties, the property of Mr. A. A. Guigues, and therefore, if they came to the defendant, they came to him by the act of A. A. Guigues, and if it appears that they came to his possession by the act of A. A. Guigues, they came rightfully into the possession of this defendant.

I now advance this further ground for nonsuit: That there is no evidence in this cause to be submitted to the jury as the case stands now. In order to establish, or to meet, the burden of proof and to establish the cause of action in trover, it is necessary for the plaintiff to show that the goods claimed as they are claimed and described—not some goods, not some similar goods, but the articles as described in the declaration, came into the hands of the defendant and were converted by the defendant to his own use. * * * I submit that there is no evidence to go to the jury tending to show that this defendant got the articles that are claimed in the declaration.

I also urge and submit that there is no measure of damages that is shown under the evidence that can be applied to this cause, if all other questions were settled in favor of the plaintiff.

[Counsel argue.]

Adjourned until to-morrow, Tuesday, January 30, 1912, at ten o'clock A. M.

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SIXTH DAY.

TUESDAY, January 30, 1912.

Met pursuant to adjournment.

Present, counsel as before stated.

The Court—The motion pending is a motion to nonsuit.

I am not prepared to nonsuit in this case; I do not see my way clear to do it, and therefore deny the motion.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

*Circuit Court Judge.*

Mr. MacMahon opens for defendant.

*William H. Stengel* sworn in behalf of defendant.

Direct examination, by Mr. MacMahon.

*Q.* Mr. Stengel, what is your business? *A.* Patent leather of all descriptions.

*Q.* How long have you been in business? *A.* Twenty-eight years.

*Q.* Where is your place of business? *A.* Waverly, New Jersey.

*Q.* Have you ever had any experience in tanning? *A.* Yes, sir; twenty-eight years.

*Q.* Where have you conducted your business? *A.* Well, mostly all parts of Newark.

*Q.* And during the twenty-eight years in Newark? *A.* Yes, sir.

*Q.* Are you acquainted with the customs of the tanning trade? *A.* Yes, sir.

*Q.* Is there any custom in the tanning trade, where an owner of hides sends hides to be tanned, as to what shall be returned to the owner of the hides and what is retained by the tanner? *A.* Yes, sir.

*Q.* What is that custom? *A.* Well, we have had tanning done in all its branches—that is, by commission work, and one thing and another—where we generally expect the whole parts of the hide back; for instance, when they are given out for splitting, or anything of that kind, such as in the case of the shanks, roundings, and those things, we never expect back, unless it is stipulated, but as a usual custom we don't get them back.

*Q.* That is, if there is a contract between the owner of the hides and the tanner which mentions certain things that the owner is to get back, does he get back anything but what is mentioned in the contract? *A.* I believe not; we never have.

*Q.* And that has been the custom of the trade, has it? *A.* Yes, sir.

*Q.* As long as you have been in it? *A.* Yes, sir

Cross-examination, by Mr. Skinner.

*Q.* You say, Mr. Stengel, that if the contract mentions certain things which the owner is to get back by trade custom, the owner cannot expect anything but the things mentioned? *A.* Yes, sir.

*Q.* So that if a butt was sent to a tanner to cut off the shell and tan the shanks, all you would expect back would be the shanks? *A.* Why, yes, sir. Well, ask that again.

*Q.* If you sent a whole horse hide butt to a tanner with instructions, or under a contract by which he agreed to tan the shanks, you would not expect anything back but the tanned shanks? He would keep all the rest of the butt, would he? *A.* We have had very little to do with butts, very little. Usually our horse hides are fronts. They cut them off and sell them to the razor people. The butts from the colt skins are of so little value and so small that it didn't pay us to tan them for patent leather purposes. We sold them to somebody for razor strops. But horse—

*Q.* You say the butts were not use to you for tanning? *A.* That is, off the colt skins, they were so small.

*Q.* [By Mr. Riker.] For japanning? *A.* For japanning, they were so small.

*Q.* [By Mr. Skinner.] Did you send the butt end to the tanner, or did you cut it off before the hide went to him? *A.* We cut it off before the hide went to them.

*Q.* But if you had not cut it off, and then sent it to

him with instructions to tan the rest, you would not expect it back? *A.* What?

*Q.* If you did not cut it off, and sent it on to him with the other part that he was to tan, you would not expect to get that butt back, would you? *A.* Well, that depends upon the agreement we made with him.

*Q.* Well, in the absence of any agreement, would you not expect to get that back? *A.* Why, I guess so; yes, sir.

*Q.* It would be of value as leather, but of no use to you? *A.* Yes, sir.

*Q.* It would be of value as leather? *A.* Well, yes, but it would be a very small trifle; that is, on the colt skin.

*Q.* But small as it might be, if it were of value as leather you would use it, would you not? *A.* Yes.

*Q.* And that is why you would expect it back, is it not? *A.* Yes.

*Q.* If you sent the whole hide to a tanner with instructions to cut off the butt and tan the fronts, the fronts being all that you needed in your patent leather business, you would expect the whole thing back, would you not, that he cut off? *A.* Usually we got them back.

*Q.* Well, I mean in the absence of any contract covering that point, that is what you would expect under the trade usage? *A.* Well, we usually cut the butts off before we sent them to the tanner.

*Q.* But if you did not, if your contract was silent on that point, under this trade custom you would not expect him to keep— *A.* Well, that is something I don't know anything about, because we usually cut our butts off first.

The Court—The witness' knowledge of a custom must be derived either from his own experience or from knowledge of the experience of others, or both.

*Q.* Have you any knowledge of the trade custom other than that derived from your own experience? *A.* My own experience only.

*Q.* And in your own experience you have sent the

butts to the tanner to be tanned as to the butt or any part of it separate from the rest of the hide? *A.* No, sir.

*Q.* Your experience does not cover that? *A.* No, sir.

Redirect examination, by Mr. MacMahon.

*Q.* Mr. Stengel, you were asked the question that, if a butt was sent by you to have the shanks alone tanned whether you would expect the shell back—

Mr. Skinner—I object to any further questioning of the witness, in view of the fact that the last question shows that his qualification to testify as to trade custom is limited to his own experience, and he says, according to his own experience, he has never had any dealings of this kind: sending the horse butt to the tanner to be tanned. If that does not completely disqualify him to testify as to that particular case, I cannot see how he could be more disqualified.

The Court—I will not interfere with the examination.

Plaintiff's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

*Circuit Court Judge.*

*Q.* You were asked if a butt was sent by you to be tanned only as to the shanks, whether you will expect the shells back and whether those shells have any value. Now, the shell is what part of the butt? *A.* The shell? Why, it is sort of a round piece on the colt skin perhaps about as big as your hand, on a horse hide perhaps about a foot square—the shell.

*Q.* And is it the skin side or the flesh side? *A.* Why, that usually comes under the grain.

*Q.* [By the Court.] You mean beneath the skin? *A.* Yes, sir.

*Q.* [By Mr. MacMahon.] And to procure that article when the butt is tanned in bark, how do you get the

shell? *A.* Why, usually—well, my experience is very limited on that. I can only say from what I have seen of it done.

*Q.* Yes. *A.* Usually shaved off or split off.

*Q.* What is shaved off the shell? *A.* The grain.

*Q.* And as it comes off, what is it, the part that is shaved off? *A.* Offal.

*Q.* Now, if the tanner is able to take that off in one piece, is it still offal? *A.* I should imagine so. We have the same experience in our line of regular patent leather.

*Q.* And if the tanner is able to save this refuse, or offal, in another form, is it still his? *A.* I should imagine so.

Mr. Skinner—I do not want to keep repeating my objections. My objection would go to this entire line of examination, my objection being that I thought he had shown his lack of qualification in this particular case. I want to be understood as to be objecting to the entire line of testimony, and I want my exception noted.

The Court—I so understand it.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

*Q.* Although you have not had, perhaps, very much experience with horse butts alone, your experience has covered the leather trade generally, has it? *A.* Yes, sir; in all its lines.

*Q.* And in speaking of this custom you are basing your knowledge on the experience gained on the leather trade generally? *A.* Yes, sir.

Mr. Skinner—You are leading the witness very much.

The Court—The question is a leading one. You may ask the witness what he bases his knowledge of the custom upon, putting it in a

form that is not leading. If it is objected to as leading, I sustain the objection.

*Q.* Upon what do you base your knowledge of the customs of the tanning trade, if not upon the butts alone? *A.* We send considerable work out for contract work, such as splitting leather, buffing leather, splitting horse fronts, all that sort of thing. We have had several horse fronts split by Quigley & Company here some years ago, and the fleshings were so small off of them that we never expected—

Mr. Skinner—I object to specific instances.

The Court—The question is a general question and may be answered in a general way.

By the Court.

*Q.* What are the general sources from which you get your knowledge of the custom? *A.* Why, by tanning leather in all its—

*Q.* That is, by your own experience? *A.* Yes.

*Q.* Anything else? *A.* No.

By Mr. MacMahon.

*Q.* And have you or have you not dealt with other tanners? *A.* Have we dealt with other tanners?

*Q.* Yes. *A.* Yes, we have had—

*Q.* You spoke of commission work. What do you mean by "commission work"? *A.* Well, in our general line; that is, in our—we haven't tanned any colt skins or horse fronts in some two or three years; I mean in our regular patent leather, such as bark leather.

*Q.* Do you or do you not mean that you sent it out to be tanned for you? *A.* Yes, sir; considerable work.

*Q.* Now, this fall-off and things of that kind, is that confined to butts alone, or does it extend to the general hide? *A.* Why, it extends to all grades of goods.

*Q.* All grades of goods? *A.* Yes.

Recross-examination, by Mr. Skinner.

*Q.* Mr. Stengel, you would not call the buffings from the shell of the horse hide offal, would you? *A.* Well,

as I say, my experience in horse butts has been very limited.

*Q.* Well, if it is good enough for buffing it is not offal, is it? *A.* Well, good enough for buffing—

*Q.* Buffings. You know what buffings are, do you not? *A.* Yes, sir.

*Q.* Well, now, if they are good enough for buffings, it is not offal, is it?

Mr. MacMahon—I object to the question as not being specific enough. If the question is as to a buffing from a cow hide being valuable, or a buffing from a colt or horse skin, it ought to be so asked of the witness.

*Q.* Do you know any difference between the value of buffings from a cow hide and buffings from a horse hide? *A.* I ought to know, yes.

*Q.* You know about the cow hides, do you? *A.* Yes, sir.

*Q.* Are they valuable? *A.* They are worth about five cents a foot.

*Q.* Are they offal? *A.* Why, they are taken off in one large—

*Q.* Answer my question, please. Are they offal? *A.* No, sir.

*Q.* Do you know whether the buffings from horse hides are offal? *A.* They are taken off in so small a piece, they are generally quoted as offal.

*Q.* So small apiece as what? *A.* Well, perhaps about 4 feet, 3 feet.

*Q.* Do you take off a piece 3 or 4 feet? *A.* Yes, sir; from a horse butt it would go about 3 or 4 feet.

*Q.* Never sent any of those to any tanner to be tanned, those pieces of horse butt, did you? *A.* No, sir. I have seen lots of them.

*Q.* And do you say that a piece split from a horse butt the size of the butt for buffing, containing, say, 5 square feet, is of no value and is treated as offal? *A.* Of very little value.

*Q.* Is it treated as offal? *A.* Usually. We send splitting out identically on cow hides.

*Q.* You are talking about cow hides, are you? I understood you to say that your experience in the tanning of horse butt was practically nil? *A.* Yes.

*Q.* I want to ask you, then, please to confine yourself to your experience, and if you are speaking of cow hides and cow hide butts, to indicate that to us. *A.* You asked me to compare the difference between cow buffings and the buffings off the horse butt.

*Q.* Yes. *A.* I have never had any experience in splittiny them, but I have seen tons of them.

*Q.* Tons of what? *A.* Of buffings.

*Q.* Split from horse butts? No, split from hides. I say that I have seen lots of horse butt buffings.

*Q.* Split from horse butts? *A.* Yes, sir.

*Q.* Were they not colt skins? *A.* Well, I will tell you. A colt skin is so small—

*Q.* Were not these colt skins? *A.* No, these measured from 4 to 5 feet.

*Q.* Square feet, you mean? *A.* Yes, sir.

*Q.* And you have seen those? *A.* Yes, sir.

*Q.* You had no personal dealings with reference to them? *A.* No, sir.

*Q.* And you do not know anything at all of the contract terms under which those buffings had been split off? *A.* No, sir.

*Q.* Or tanned? *A.* No, sir.

*Q.* They were of value, were they not? *A.* Of small value, because they were very uneven, those that I saw.

*Q.* Then they were not split off for uniformity at all? *A.* Not what I saw.

*Q.* And in some places so thin as to very much reduce the value of the whole piece? *A.* Yes.

*Q.* They were something more than glue stock, were they not, even then? *A.* Yes, sir; these were tanned that I saw.

*Q.* You do not tan anything that goes into glue stock,

do you? If a thing can be tanned you do not put it into glue stock, do you? *A.* No, sir; generally pates, shanks, horns, heads, all that sort of thing goes into glue stock.

*Q.* But I say if it can be tanned you do not put it into glue stock—if it is capable of being tanned and used as leather? *A.* If it is tanned it would not be any use as glue stock.

The Court—If it is tannable?

*Q.* Capable of being tanned and used as leather commercially, you would not put it into glue stock? *A.* No, sir.

*Q.* Or fertilizer? *A.* No, sir.

*Q.* Or offal? *A.* No, sir.

Further direct examination, by Mr. MacMahon.

*Q.* Mr. Stengel, if an owner of hides made a contract with a tanner to send a certain number of horse hide butts for tanning, and agreed to pay ten cents a square foot for shell and five cents a square foot for shanks, and the tanner agreed to tan the shells of all horse hide butts with bark tan and finish them in a cordovan, and to tan in chrome the shanks of all horse hide butts which he received from the owner of the hides with a smooth finish so that they can be japanned, all of said shanks which are suitable for japanning, and to finish all of said shanks that are unsuitable for japanning with a dull finish suitable for topping stock, would the owner of the hides be entitled to receive anything but those manufactured articles mentioned in the contract from the tanner? *A.* I shouldn't imagine so.

*Q.* And upon such a contract, where the owner sends butts for tanning and as part of the product is to receive shanks tanned in chrome, what does the term "shanks" there mean, is it the grain or the fleshing, or both? *A.* Did you say "split" there?

*Q.* No, to tan in chrome the shanks and finish with a smooth finish so that they can be japanned. *A.* I guess that is the grain, because the split is of very little value.

*Q.* Can the split be finished for japanning, or is it commercially finished? *A.* No, usually used for pasted insole stock.

Further cross-examination, by Mr. Skinner.

*Q.* Well, Mr. Stengel, it would make a difference, though, in this same question that Mr. MacMahon has just put to you, if the contract also provided that the tanner was to make from all horse hide butts received within the period of the contract merchantable leather of as good quality as can be produced from the raw stock received? Would not that make a difference in your answer? *A.* Yes, sir.

*Q.* Now, as a matter of fact, Mr. Stengel, your own leather that you send to the tanner to be tanned is cow hide leather, is it not? *A.* Cow hide. We have done almost every kind, calf skins, colt skins and horse fronts.

*Q.* Principally cow hide leather? *A.* Cow, steer and bull.

*Q.* Well, Mr. Stengel, if you send a cow hide to the tanner to be tanned, would you permit him to cut off a shank measuring three or four square feet and keep it? They don't run that large.

*Q.* Well, would you permit it if they did? *A.* Yes, sir; we wouldn't have any use for them on a shank.

*Q.* On a shank? *A.* Yes, sir.

*Q.* They would not be of any value? *A.* No, sir.

*Q.* Could you not sell them? *A.* No, sir; the glue stock man keeps that; that is, the man that does the tanning. Then we have the same rule in splitting. We send out stock to be split, the man cuts off perhaps two or three inches off each of the shanks, what we call the knuckle, or, in other words, the breast of the cow; usually keep that and keep the trimmings.

*Q.* That is, two or three inches? *A.* Well, this would perhaps be on each side about 5 inches square; in other words, a foot—

*Q.* But you let him cut it off, a piece of leather meas-

uring perhaps 2 feet each way? *A.* No, sir; not on a cow hide, because a cow hide is too valuable.

*Q.* Well, a piece that was 3 feet one way by 1 foot another? *A.* No.

*Q.* Well, is it not only the small trimmings that you are speaking of that you let him cut off and keep? *A.* Yes, sir.

*Q.* Such as is necessary for the trimming process as part of the tanning? *A.* Yes, sir.

*Q.* And that is all, you say? *A.* Yes, sir.

*Q.* Everything that he need not cut off in the trimming process you would expect back, would you not? *A.* Yes, sir.

*Q.* And if he did cut off more in the trimming than was necessary to the proper tanning of the hide, it would be dishonest trimming, would it not, at your expense? *A.* I imagine so; yes.

Further direct examination, by Mr. MacMahon.

*Q.* Does a cow hide differ from a horse hide? *A.* Yes, sir; a cow hide is very regular shape—that is, they generally measure very near square—a cow or steer hide —whereas a horse or colt is very irregular.

*Q.* And how about the thickness of the hide? *A.* A cow hide perhaps after it is in its tanned state would be quarter of an inch thick.

*Q.* Would it be uniform or not? *A.* Uniform almost to the edges.

*Q.* How is a horse hide, is it uniform? *A.* No, sir.

*Q.* And can you get the split off a horse hide that you can get off a cow hide? *A.* No, sir; nothing but flesh.

*Q.* What is nothing but flesh? *A.* Well, they are generally split in the pickle or in the lime.

*Q.* You are speaking of horse hides? *A.* Yes, sir. We have in several instances tanned them in furniture leather in bark, whereas it swells almost twice its normal size, in bark leather.

*Q.* Well, when you said that you could not get a split

off that would be anything but flesh, you were referring to the fronts, were you not? *A.* Yes, sir; the fronts.

*Q.* That would not apply to the butts, would it? *A.* No, sir.

*Q.* Is the flesh in the butt as good as the flesh in the front? *A.* About the same thing.

*Q.* The same size? *A.* Usually thrown into glue stock, yes. It is very ragged stuff.

*Q.* Is it regular? *A.* No.

*Q.* What is the object of taking the fleshing off the shanks of horse butts? *A.* I don't know much about that.

Further cross-examination, by Mr. Skinner.

*Q.* The butt is the thick part of the hide, is it not? *A.* Yes, sir.

*Q.* Twice as big as the front, roughly speaking? *A.* A hard substance; yes, sir.

*Q.* Then the splitting proposition is very different when applied to the butt than when applied to the front, is it not? *A.* Yes, sir.

*Joseph F. Roller,* sworn in behalf of defendant.

Direct examination, by Mr. MacMahon.

*Q.* Mr. Roller, what is your business? *A.* Tanner.

*Q.* What concern are you with? *A.* H. F. Sommer & Company, 229 Hamburg place.

*Q.* How long have you been with him? *A.* Seven years.

*Q.* And before that what was your business? *A.* Tanner.

*Q.* How long have you been in the tanning business? *A.* I guess about twenty years.

*Q.* And where have you conducted that business? *A.* What is that?

*Q.* Where have you been tanning in the last twenty years? *A.* Well, I was on here seven years, and I was superintendent in Lauder's for five years and a half.

*Q.* Where is that, in Newark? *A.* No, that was in Philadelphia. And I was in my brother's place for, I guess, a year, and I was in Schoenberg's, I guess, for three years—superintendent.

*Q.* What kind of hides did you tan? *A.* Where, here?

*Q.* Anywhere. *A.* Well, I tanned all kinds of hides, horse hides, calf skins, goat skins, sheep skins.

*Q.* Have you ever tanned horse hides? *A.* Yes, sir.

*Q.* What parts of horse hides? *A.* Well, I have tanned the fronts, and I have tanned a few butts, very few, though; I tanned a few in Newark here with the concern I am with now.

*Q.* Have you tanned hides for other people? *A.* Well, we did in my brother's place.

*Q.* Is there any general custom in the tanning trade—

Mr. Skinner—I would like to ask him a question as to his qualification before you ask that.

Mr. MacMahon—All right.

By Mr. Skinner.

*Q.* Then the only experience you have had in tanning for other people has been in your brother's place? *A.* In my brother's place, yes.

*Q.* And you were there a short time? *A.* About a year.

*Q.* And I suppose that there you actually conducted the process of tannnig, did you not? *A.* I run the whole place yes, sir.

*Q.* How long ago was that? *A.* That was in the early part of 1904, in January, about January, 1904.

By Mr. MacMahon.

*Q.* Have you tanned the horse butts? *A.* Well, I say only a few of them, in the place where I am now, just for an experiment, that is all.

*Q.* Did you ever produce cordovan? *A.* No, sir. I have tried to make patent leather out of it.

*Q.* What did you use, what part of the butt, when

you tried to make patent leather out of it? *A.* The grain side.

*Q.* What did you do, split the whole butt? *A.* No, I just took the flesh part off; I wanted it real heavy.

*Q.* How did you take it off? *A.* Split it off.

*Q.* And what is that product, is it offal or glue stock, or what? *A.* Well, we throwed it into glue stock.

*Q.* Can you tell me whether that was in accordance with any custom of the leather trade?

The Court—Let us be sure that Mr. Roller understands just what we mean by custom, as distinguished from a man's individual experience.

*Q.* Is that flesh part that you trimmed off of any value? *A.* No, sir; not to us.

*Q.* What? *A.* No, sir.

*Q.* How would you class it, in classifying it as a product of the hide, is it leather, offal, glue stock, or what? *A.* I will tell you. I split them off in the raw state, and, of course, the flesh part was too light; you never could make anything out of it. That is the reason I threw it in glue stock.

*Q.* Have you had experience in tanning leather for other people? *A.* Yes, sir.

*Q.* And tanning leather under contract? *A.* Yes, sir.

*Q.* Well, now, as a tanner, if you had a contract with the owner of hides whereby the owner of the hides agreed to ship to you so many dozen butts a day for tanning, and agreed to pay ten cents a square foot for shells and five cents a square foot for shanks, and you, on your part, agreed to tan the shells of all horse hide butts received from the owner in bark-tanning and finish into cordovan, and also agree to tan in chrome the shanks of all horse hide butts with a smooth finish, so that they could be japanned, and to finish all of the shanks that were unsuitable for japanning with a dull finish suitable for topping stock, and you also agreed to do all the work done under this contract in a first-class manner and to

make from all horse hide butts received merchantable leather of as good quality as could be produced from the raw stock, what would the owner be entitled to receive back?

The Court—Your question, taking the situation as it stands on the examination of this witness, seems to ask for his individual opinion as to what would be done in a given case. There is no reference to any custom in the question or explanation to the witness as to what a custom is or what lawyers and courts mean by a custom. It seems to me your question is somewhat in advance of your foundation.

*Q.* I will ask you this question, Mr. Roller: When hides are tanned by a tanner for the owner of the hides, is there any custom as to disposition of the glue stock and offal? *A.* Well, it was in our place.

*Q.* What was that custom?

Mr. Skinner—I object to that. That is limited, as your Honor suggests.

[The stenographer reads the preceding question and answer.]

The Court—That is no evidence of a custom, of course; that does not of itself prove any custom.

*Q.* Was the custom in your place the same as the custom in other tanners' places? *A.* Well, I couldn't say that.

*Q.* Don't you know anything about that? *A.* We have turned out horse hides for different people, and the glue stock all went together; we never kept it separate for anybody.

*Q.* By "glue stock" what do you mean? *A.* That is the fleshing and the trimming, the shanks, and one thing and another—the tits.

*Q.* When the shank is spoken of to be tanned, coming from a horse butt, what does "shank" mean; does it mean the grain side or the flesh side, or both? *A.* That means the grain side, you want the grain side finished up.

*Q.* And it does not call for the finishing of the flesh side at all, does it? *A.* No, sir.

*Q.* When shells are to be tanned into cordovan in bark, what part is to be tanned? *A.* The grain side, I think. I don't know much about the butts.

*Q.* You do not know much about that? *A.* No, sir; that is, in the cordovan leather; I know in patent leather.

Cross-examination, by Mr. Skinner.

*Q.* Mr. Roller, you never tanned the shells of horse hide butts, did you, for cordovan? *A.* The shells of the—the butts?

*Q.* The shells of the butts for cordovan leather? *A.* Tanned the whole butt.

*Q.* For cordovan? *A.* No, for patent leather.

*Q.* But you never tanned the shells, that special tanning that is preparatory to the use of them as cordovan? *A.* No, sir.

*Q.* You do not know anything about that, do you? *A.* Only I know I tanned them for patent leather, split them and everything else.

*Q.* But not for cordovan? *A.* No, sir; not for cordovan.

*Q.* And you said the flesh part of the butt goes into the glue stock? *A.* It did with us; yes, sir.

*Q.* And, at any rate, you were testifying—when you said that you were saying what happened to you, in your place of business? *A.* Yes, sir.

*Q.* Not any general custom? *A.* Well, I don't know anything about anybody else's business.

*Q.* And you do not know anything at all about the terms of the contract under which the work was being done in the place of business that you refer to, do you? *A.* The contract with my brother, you mean?

*Q.* Yes. *A.* I didn't know anything about the contract, but I had the—

*Q.* And the reason the flesh part went into the glue stock was because it was not worth anything as leather, was it? *A.* No, sir; it wasn't worth nothing.

Q. It was not worth anything as leather? A. No, sir.

Q. That is why it went into the glue stock? A. That is why it went into the glue stock.

Q. If it had been worth anything as leather it would not have gone into glue stock, would it? A. What, the fleshing?

Q. Yes. A. It is never worth anything.

Q. But if anything is of value as leather you would not put it into glue stock, would you? A. No, if you could get the grain off the flesh you would do something with it; but you can't do nothing with flesh, it is impossible.

Q. You would not put into glue stock any part of the hide that could go into leather, would you? A. No, I wouldn't.

Q. And you would not put that into offal, would you? A. Are you talking about the grain side or the flesh side?

Q. I say any part of the hide that can be tanned into leather and sold as leather you would not put into glue stock or offal, would you? A. No, I guess not.

Q. And the trimming of the shank that you speak of was just a little trimming around the edge, was it not, an inch or so? A. No, more than that.

Q. Well, two or three inches? A. Four or five sometimes, just according to the condition of the hide.

Q. If it were ragged on the edge you would cut off more than if it were sound, would you not? A. Yes, sir.

Q. But you would not cut off any more than had to be? A. No, it ain't policy.

Q. And you would not cut off parts that were good for leather and for tanning, would you? A. No, sir.

Redirect examination, by Mr. Riker.

Q. Mr. Roller, do you know of the character of the product of hides that is called buffing? A. Buffing.

Q. Yes. A. No, sir; I never worked on that kind of work.

*Q.* You do not know what buffings are? *A.* I know what a buffing is, but I never manufactured any of them. I know what they are; it is the grain.

*Q.* You never made machine-buffed hides, then? *A.* No, sir.

*Q.* You have had no experience with that branch of the business? *A.* No, sir.

*Q.* Now, Mr. Roller, you have dealt with grains, have you not? *A.* How is that?

*Q.* You have dealt with the grains? *A.* Grains; yes, sir.

*Q.* After the grains are tanned and are to be kept in storage, under what condition do you keep them? *A.* Well, you mean after they are tanned?

*Q.* Yes. Under what conditions? Do you cover them up or do you leave them exposed? Do you expose them to daylight? *A.* Cover them up.

*Q.* Why? *A.* To keep the air away from them.

*Q.* And why is that done? *A.* Well, there is different reasons. Of course, in our shop we use color, and by the air getting on them, if they lay there any length of time, it discolors them, and it keeps the dust and dirt away.

*Q.* Well, what else? *A.* It keeps the moisture away from them, too.

*Q.* What is the effect of sunlight on this product? *A.* We wouldn't care much for it; it would discolor it.

*Q.* Would it increase or decrease the value of this product to subject it to daylight of that character? *A.* It would not increase the value at all.

*Q.* Well, would it decrease the value? *A.* Yes, sir.

Recross-examination, by Mr. Skinner.

*Q.* What effect would it have, Mr. Roller? *A.* What?

*Q.* The light. *A.* It would discolor the hides. We have hides down there that we get back from the degreasing; if we let them lay in the sun, when you come to look at them, it takes the color right out of them in spots.

*Q.* You mean lying right out in the strong sunlight, do you not? *A.* Well, if we get them in the windows we cover them up.

*Q.* You do not put black cloth on the windows, do you? *A.* No, we have shades.

*Q.* Do you put special colors on these hides? *A.* Yes, sir.

*Q.* In the tanning? *A.* Yes, sir.

*Q.* Is it not because of that special coloring that you put in that you protect it from the light? *A.* Yes, sir.

Further direct examination, by Mr. Riker.

*Q.* Well, before the coloring is put on, and while the hide is simply in its colored tan state, do you or do you not protect it from the light? *A.* Well, I will tell you. In our business after we tan them, before they are degreased we do not bother with it, but after they are degreased we try to keep them covered up to keep the dirt and one thing and another away from them.

*James Smith,* sworn in behalf of defendant.

Direct examination, by Mr. MacMahon.

*Q.* Mr. Smith, what is your business? *A.* Tanner.

*Q.* Where? *A.* Newark, New Jersey.

*Q.* What is the name of your concern? *A.* J. H. Halsey & Smith.

*Q.* How long have you been with that concern? *A.* I have been with them about fifteen years.

*Q.* And how long have you been in the tanning business? *A.* Forty years—the concern.

*Q.* Well, how long have you been attached to it? *A.* Fifteen years.

*Q.* And what kind of hides have you tanned? *A.* All kinds.

*Q.* Is there any custom in the leather trade where hides are sent by the owner to the tanner to be tanned as to the disposition of the glue stock and offal? *A.* The glue stock and offal belongs all to the person that does the tanning.

*Q.* What does "offal" mean? *A.* It means really what comes off the hide other than what is returned to the person that sends it there to be put into leather—everything that comes off the hide.

*Q.* Have you had any experience with horse hides? *A.* Yes.

*Q.* How does a horse hide differ from a cow hide? *A.* Well, in size, shape.

*Q.* Any difference in thickness? *A.* Yes, it is a lighter hide.

*Q.* How many splits can be made of a cow hide? *A.* Average about one.

*Q.* And is that split of value—a cow hide split? *A.* Yes, it is of value.

*Q.* And can it be tanned into leather? *A.* The split can, yes.

*Q.* Now, in a horse hide. Is the flesh part split from the horse hide of value? *A.* I should say no.

*Q.* What would you class it as? *A.* Why, everything except the grain of the hide thrown into glue stock.

*Q.* Would you class these flesh splits as tannable leather or not? *A.* Well, I should say they are tanned.

*Q.* [By Mr. Skinner.] You say they are tanned? *A.* I should think they were tanned at times.

*Q.* [By Mr. MacMahon.] What flesh splits from the horse hide are tanned? *A.* Well, there is only one split gotten off.

*Q.* What is the product of a horse hide for tanning? *A.* Grain.

*Q.* What is the rest of it? *A.* Offal.

*Q.* So that you were mistaken just now when you said that the flesh splits could be made into leather, were you?

Objected to as leading.

*A.* I would call it offal.

*Q.* Have you tanned horse butts? *A.* Yes, sir; tanned horse butts.

*Q.* And have you made cordovan leather? *A.* No.

*Q.* Do you know what a buffing from a horse hide is? *A.* Buffing.

*Q.* Now, when that buffing is produced, is there any particular way of caring for it after it is produced? *A.* After it is taken off it must be kept covered up.

*Q.* Why? *A.* To keep the light and sun from striking it.

*Q.* What would be the effect of the light or sun striking it? *A.* Why, the sun striking it would deteriorate it in value.

*Q.* Because of what? *A.* The damage it would do to it.

*Q.* And that applies to the grain buffings, does it? *A.* All buffings.

*Q.* Have you tanned hides for other people? *A.* No.

*Q.* Do you know whether there is any custom in the tanning trade as to what is to be returned to the owner of hides, the consignor of the hides, who sends them to a tanner to be tanned under a contract specifying certain articles to be produced by the tanner?

The Court—You may answer that question yes or no, Mr. Smith, whether you know whether there is custom on that subject.

*A.* Yes.

*Q.* What is that custom, Mr. Smith? *A.* Why, all glue stock from all those hides would belong to the tanner that does the work.

*Q.* I will read you this contract and ask you to try to follow me: "This indenture made this 30th day of June, A. D. 1904, between the Corona Kid Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts, having its usual place of business at Boston, in said Commonwealth, party of the first part"—

Mr. Skinner—I am going to object to the form of the question by the reading of the entire contract as an unnecessary protraction of this already lengthy case.

The Court [after argument]—I think the practical question is whether so long a question is unnecessary to apprise the witness of what we want to know. By the time you get to the end of the contract he may have forgotten the beginning. We have already spent some time on this case, and we will probably spend some more. Proceed. You may read it. I do not object to it. You might omit the formal parts.

Q. This is a contract between the Corona Kid Company, the consignor of the hides, and Albert A. Guigues, of Newark, the tanner. The party of the first part, the consignor, agrees to ship to the party of the second part for tanning a certain number of horse hide butts a day for one year, the butts to be delivered free on board of cars at New York City, Philadelphia, or Camden. Then the consignor agrees to pay to Guigues for all leather delivered by him in accordance with this contract ten cents a square foot for shells and five cents a square foot for shanks, and to pay all freight charges, and agrees not to employ anybody else but Guigues to do this work; and Guigues agrees to tan the shells of all horse hide butts received from the party of the first part during this year with bark-tanning and to finish them into cordovan; Guigues further agrees to tan in chrome the shanks of all horse hide butts received from the Corona Kid Company during the year and to finish with a smooth finish so that they can be japanned, all of said shanks which are suitable for japanning, and to finish all of said shanks that are unsuitable for japanning with a dull finish suitable for topping stock; Guigues further agrees to do all work under this contract in a first-class manner and to make from all horse hide butts received from the Corona Kid Company within said year merchantable leather of as good quality as can be produced from the raw stock received from the Corona Kid Company. Now, under that contract, is the consignor entitled to receive back from the tanner anything but the manufac-

tured articles designated in the contract? *A.* I should say no.

*Q.* And to whom does the rest of the hide or butt belong? *A.* To the tanner.

*Q.* Now, Mr. Smith, how were the fleshings taken off shank splits and horse butts in 1904, if you know, with knife or machine? *A.* They were taken off with a machine.

*Q.* And prior to that time how were they taken off? *A.* With a knife.

*Q.* And when they were taken off with a knife how did they come off? *A.* Strips.

*Q.* Were they of any value? *A.* They had a value, a small value.

*Q.* As what? *A.* Oh, thrown into the cheap glue stock.

*Q.* And they belonged to the tanner? *A.* The tanner.

*Q.* Now, after that were the tanners able to take them off with their machine? *A.* Take them off by machine, yes.

*Q.* In one piece? *A.* Large pieces.

*Q.* Did it make any difference in their ownership? *A.* No.

*Q.* To whom did those pieces belong? *A.* To the tanner.

*Q.* Have you had any experience with buffings from hides?

Mr. Skinner—You have already asked him that.

*Q.* Did I ask you about buffings before? *A.* Yes.

Cross-examination, by Mr. Skinner.

*Q.* Mr. Smith, the shaving of the hide—that is, the shaving of the flesh side of the hide—was formerly done by knife, by hand, was it not? *A.* Oh, years ago, yes.

*Q.* Well, prior to 1904? *A.* I should say many years prior to that, yes.

*Q.* I think you spoke of a machine that did the work.

Was not that also a shaving machine? *A.* A splitting machine.

*Q.* Now, the contract was read to you, as you remember, and you gave an answer based upon that contract. You were giving there your opinion of that contract, were you not, as it struck you? *A.* It positively struck me as being that way, yes.

*Q.* That is what I say, you were giving the Court and jury your opinion as to the effect of the contract? *A.* Yes.

*Q.* And stating what you thought the contract meant, were you not? *A.* I should say that I knew what it meant.

*Q.* Now, then, you do your own tanning, do you not? *A.* And have outside tanning done, too.

*Q.* And you also make patent leather? *A.* Yes, sir.

*Q.* Well, you have had principally to do with cow hides, have you not, in that work? *A.* Cow hides, steer hides, all kinds of hides.

*Q.* You have not made cordovan, have you? *A.* Haven't made cordovan, no, tanned horse hides.

*Q.* Butts and all? *A.* No.

*Q.* Not at all with the butts? *A.* No.

*Q.* You have not had any experience with them? *A.* Well, we have tanned—no, we did not.

*Q.* And, as a matter of fact, the butt is the thickest part of the horse hide, is it not? *A.* I should say so.

*Q.* And what would apply to the front part of the horse hide might not apply to the butt? *A.* I should say yes.

*Q.* You mean that it might not apply to the butt because of the increased thickness? *A.* It would apply.

*Q.* You mean that it would apply? *A.* It would apply.

*Q.* Well, you could take off a thicker split from the thicker portion of the hide? *A.* Yes.

*Q.* And the thicker you could get it the more valuable it would be, would it not? *A.* It might be.

*Q.* Now, the grain part split off—I perhaps do not use

the words right—but when you split the horse hide you get two pieces, do you not, and one is the grain? *A.* Yes.

*Q.* The hair side? *A.* Yes.

*Q.* That is very valuable, is it not? *A.* Well—

*Q.* Well, it is good leather, I mean? *A.* Well, it is good leather, yes.

*Q.* Is not the rest, other than the grain, of any value? *A.* As glue stock.

*Q.* Well, what would the shell in the butt? *A.* It has more value perhaps than the rest of the hide.

*Q.* That is one of the points wherein the butt differs from the front, is it not? *A.* Yes.

*Q.* So that as to the butt you would not say that the fleshy split after taking off the grain, the fleshy side, was of no value, would you? *A.* Of course it has a value, yes; it is worth something.

*Q.* Well, is not that part that is left after you take off the grain the part that is used for cordovan? *A.* It is.

*Q.* Well, it is of value and has value as leather, then, has it not? *A.* It has value.

*Q.* For leather? *A.* I should say yes.

*Q.* As distinguished from glue stock, has it not? *A.* Distinguished from glue stock after it is made into leather, yes.

*Q.* Well, of course, you can put into glue stock anything you like, whether it is good leather or bad, but you do not put good leather into glue stock, do you? *A.* At times.

*Q.* Well, when it is the little waste pieces, the trimmings that you get? *A.* Large pieces.

*Q.* Large pieces? *A.* Yes, at times.

*Q.* When it is good leather? *A.* Yes, sir.

*Q.* And can be used for leather? *A.* No, sir.

*Q.* Name an instance. *A.* Well, the heads and shoulders of the bull hides, split off in the beam-house and thrown into glue stock.

*Q.* It is no use then, as leather? *A.* It is, yes.

*Q.* Why is it not used for leather, then? *A.* Well,

it brings pretty near as much in glue stock as it would to put it in the process to bring it into leather.

*Q.* Then it is mighty poor leather, is it not? *A.* No.

*Q.* Do you mean to say that glue stock and leather are approximately of the same value? *A.* No, I don't mean that at all.

*Q.* Well, glue stock is the use made of the waste from the hide or leather in the tanning process, is it not? *A.* Before it is tanned.

*Q.* Well, it is still the waste from the hide? *A.* The waste from the hide, yes.

*Q.* And you would not put anything in the glue stock that was not waste from the hide? *A.* Oh, yes.

*Q.* What? *A.* Stock goes in as glue stock from the hide, but you may not call it waste.

*Q.* What would it be? *A.* It is glue stock at the time, but could be made into leather; it is glue stock, that is what it is.

*Q.* And it is put into glue stock, although it could be made into leather, because you can get about as much for it as glue stock as you could by making it into leather; is that it? *A.* Yes.

*Q.* Well, generally speaking, is not this true, though: that the offal in the tanning process includes the hair and finishings and little trimmings and the knuckles and the waste part of the hides? *A.* And splits.

*Q.* Well, splits are tanned, are they not? *A.* No.

*Q.* Well, then, when you speak of the splits that go into offal you are not speaking of splits that are tanned, are you? *A.* No.

*Q.* And if it could be tanned, you would not put it into the glue stock, would you? *A.* Yes.

*Q.* What do you mean by the split that you would put into glue stock? *A.* Flesh splits.

*Q.* Not the grain? *A.* Not the grain, no; the grain not into glue stock.

*Q.* Did you ever take off a flesh split from the butt of a horse hide? *A.* Yes.

*Q.* And put it into glue stock? *A.* It went into glue stock.

*Q.* Were you making cordovan when you did that? *A.* No, I should say not; we wouldn't put it in.

*Q.* The cow hides—you spoke of keeping the buffings from the light, or keeping the light from the buffings? *A.* Yes.

*Q.* Those were cow hides that you were speaking of, were they not? *A.* Any kind of hide.

*Q.* Does it not make a difference? *A.* Whether the light strikes it or not?

*Q.* Does it not make a difference what kind of hide it is? *A.* No.

*Q.* Does it not make any difference what condition the hide is in? *A.* No.

*Q.* Whether it is tanned or not? *A.* No.

*Q.* Whether it has got grease in it or not? *A.* No.

*Q.* Do you not know one reason why a hide is taken away from the light is because if it is full of grease the sun has a tendency to bring the grease out? *A.* No.

*Q.* Well, certainly if hides are wrapped up in bundles, all that are in the bundles would be protected from the light, would they not, except the outside one? *A.* The outside would be, yes; the inside, no.

*Q.* If you made a contract with a tanner to do tanning for you and to make from the hides or butts that you sent to that tanner merchantable leather of as good quality as can be produced from the raw stock, you would expect back all that would be made into merchantable leather, would you not? *A.* I would expect all but the glue stock.

*Q.* All that could be made into merchantable leather, would you not? *A.* Well, everything that could be made into merchantable leather would be but the glue stock.

*Q.* That is, the glue stock would not include anything that could be made into merchantable leather, would it? *A.* I should say not.

*Q.* And that would be so under this trade usage that

you have spoken of, would it not? *A.* All the glue stock goes to the tanner, whatever it may be.

*Q.* Well, this answer that you have just given was in contemplation of the trade custom, was it not? *A.* Yes.

Re-direct examination, by Mr. Riker.

*Q.* Now, Mr. Smith, when a contract provides specifically that the tanner is to tan the shells of the horse hide, and is to receive ten cents a square foot for that; that he is to tan in chrome the shanks, and is to receive five cents a square foot for that, and then provides "To do all work done under this contract in a first-class manner, and to make from all horse hide butts received from the party of the first part within said year merchantable leather of as good quality as can be produced from the raw stock received from the party of the first part," and there is no provision for any further payment, what does the tanner keep under those conditions?

Objected to.

*A.* All the offal.

Mr. Skinner—It seems to me that we are getting very close to asking this witness to construe the contract.

The Court—That is why I stopped you on your own case on that. I thought you were getting into a dangerous field. I thought that on your examination, having stated the general custom, you were going too much into specifications, and were really substantially asking the witness to construe contracts, which are for the Court to construe; and this testimony has, without objection drifted around into very much that same line. I have not objected and Mr. Skinner has not objected, but I have that feeling about the examination. [After argument.] You may go on, Mr. Riker.

[Question read.]

*Q.* What does the tanner keep? *A.* All stock other than specified there to be returned.

Recross-examination, by Mr. Skinner.

*Q.* You answered before, Mr. Smith, that he kept the offal. Which do you mean? *A.* He would keep it, there, too.

*Q.* And that is what you mean, he would keep the offal, do you not? *A.* No, I mean he would keep all that was not specified to be returned to him.

*Q.* So that if you send a hide to a man under a letter— *A.* Under the contract.

*Q.* Under a letter. You will let me frame my own questions, will you? If you send a hide to a man under a letter saying, "My dear Jones, will you be good enough to tan the butt of this hide and return to me," you would expect him to keep all but the butt, would you? *A.* Yes.

*Q.* And you would not object if he kept the whole hide? *A.* Not when I told him not to.

*Q.* But you have not in the letter I am framing; you have not told him what not to do, but you simply tell him what to do; you tell him to tan the butt. Now, having told him just to tan the butt, without saying anything about what he should not do, you still expect to get back the rest of the hide, do you not? *A.* The butt.

Objected to as not supported by the evidence.

Objection overruled.

By the Court.

*Q.* Suppose a horse hide were sent with instructions to tan the shanks, how much would the owner get back? *A.* Get the shanks.

*Q.* Nothing else? *A.* I should say not.

Further direct examination, by Mr. Riker.

*Q.* Well, do you happen ever to have heard of any such contract as to send the butts to tan the shanks alone? *A.* No, sir.

*Q.* Did you ever hear of a contract such as to send the butt for tanning and return the cordovan alone? *A.* No.

Further cross-examination, by Mr. Skinner.

*Q.* Well, Mr. Smith, when you say that if a hide is sent to the tanner with directions to tan the shanks, and nothing said about the rest of it, he would keep all the rest of the hide, are you stating anything there that is based upon any trade custom? *A.* I don't think anybody would send the hide and ask him just to tan the shanks.

*Q.* Well, there certainly is not any trade custom that would apply to that extent, is there? *A.* I should say yes.

*Q.* And the trade custom is that, having only spoken of the shanks to be tanned, the tanner would keep all the rest? *A.* I should say yes.

*Lewis Strauss,* sworn in behalf of defendant.

Direct examination, by Mr. Riker.

*Q.* Where do you live, Mr. Strauss? *A.* Newark, New Jersey.

*Q.* What is your business? *A.* Tanner, leather manufacturer.

*Q.* You are a son of Moses Strauss, are you not? *A.* Yes, sir.

*Q.* And he was engaged in the tanning business in Newark for a great many years, was he not? *A.* Pretty nearly fifty.

*Q.* Did you have your experience and apprenticeship with him? *A.* Yes, sir.

*Q.* How long have you been engaged in the business? *A.* Since September, 1886.

*Q.* From that time up till now? *A.* Right up to date, yes, sir.

*Q.* Continuously? *A.* Yes, sir.

*Q.* You have not been engaged in any other business? *A.* No, sir.

*Q.* Where has the business of M. Strauss & Sons been located and conducted all these years? *A.* Up until five years ago it was at Vesey street, Newark, and since that time Frelinghuysen avenue, Newark.

*Q.* During your connection with the business of M. Strauss what kind of hides have been tanned and finished in your place? *A.* Cow hides, steer hides and bull hides.

*Q.* Are you familiar with the general conduct of the leather trade? *A.* Yes, sir.

*Q.* How have you got that experience or knowledge? *A.* Why in a practical way. I never worked over the beam, but I have worked in through the tan yard and right up through the business.

*Q.* Have you had any experience with the tanning of hides by contract? *A.* Yes, sir.

*Q.* As consignor or consignee, or both? *A.* Why, as consignee and consignor, both; we have sent hides out and received hides for tanning.

*Q.* So far as you know, are there any customs applicable to the tanning of hides on the contract? *A.* As far as I know, since I have been in business there is a custom that we have always established and lived up to.

*Q.* Well, do you know whether that custom applies to other places? *A.* That I don't know, sir.

*Q.* [By the Court.] Whom do you mean by "we"? *A.* Our custom—M. Strauss & Sons.

*Q.* [By Mr. Riker.] When you have sent out as consignor to other concerns? *A.* Well, they have always used the same custom that we have.

*Q.* How many such consignments have you made? *A.* Since I know, three.

*Q.* Three different consignments? *A.* Three different consignments, yes.

*Q.* Three different concerns? *A.* Three different concerns, yes.

*Q.* And for how many consignors have you acted in your concern? *A.* Only one.

*Q.* Well, do you know of your own knowledge of the practice in that regard by other tanners? *A.* Well, no, I do not.

*Q.* Do you know what offal is? *A.* Yes, sir; well, offal in different kinds of stock, means different things. I know what offal in our stock means.

*Q.* Well, in your stock, I am speaking now. *A.* Yes, sir.

*Q.* What does that consist of? *A.* Offal in our stock means everything that can't be tanned.

*Q.* And when you say "can't be tanned," what do you mean? *A.* Can't be tanned profitably.

*Q.* Cannot be tanned profitably? *A.* Yes.

*Q.* Just state what your understanding is of the things in your trade that are included in the term "offal." *A.* Yes.

*Q.* Will you state them? *A.* Why, hair and fleshing, pates and fat.

*Q.* What about the trimmings? *A.* Well, that is the pates; we put them in the pates.

*Q.* [By the Court.] What is that? *A.* Pates; that is, the necks and shoulders and trimmings, called the pates.

*Q.* What about knuckles? *A.* Well, that is put in the same, put in with the trimmings, the pates.

*Q.* Now, in your experience in consignment tanning, if the contract specifies the things which are to be returned, and provides a price for those things, and does not specify the return of anything else, and does not provide for a payment except for the specific thing, is there any custom, in your experience, applicable to what the tanner keeps and what the consignor receives back? *A.* The tanner will keep everything what he is going to return at the price.

*Q.* What are buffings, Mr. Strauss, if you know? *A.* A buffing is a light grain taken off a hide, split off a piece.

*Q.* Well, do you know the process of hand buffing? *A.* Yes, sir.

*Q.* Is there any piece the result of the process of hand buffing, or is it in powder or scraps? *A.* It is in scraps.

*Q.* The buffing, then, as a substantial piece of leather, is a piece taken off by the splitting machine? *A.* Yes, sir.

*Q.* And is the top of the grain, is it not? *A.* Yes, sir.

*Q.* Now, you do not take them off until they are tanned, do you—a buffing? *A.* A buffing is taken off a hide when it is pretty nearly tanned.

*Q.* Pretty nearly tanned? *A.* Yes, sir.

*Q.* Do you ever take them off in the raw state? *A.* No, sir; you can't.

*Q.* Would you take them off after the soaks? *A.* No, sir.

*Q.* Would you take them off after the liming process? *A.* No, sir.

*Q.* Would you take them off after a pickling process? *A.* No, sir.

*Q.* The hide, then, as I understand you, is partially tanned— *A.* Yes, sir.

*Q.* —when the buffing is taken off? *A.* Yes, sir.

*Q.* Now, in keeping, in storing, that buffing what would you do with it? *A.* Well, I would put it in as far away from obstruction as possible, keep it in as good a place as I can and free from sunlight if possible.

*Q.* What would be the effect of sunlight on them? What is the effect of sunlight on tanned buffings? *A.* It stains them.

*Q.* Does it affect their value as a commodity? *A.* It depends on what the buffing is used for; it does in some cases.

*Q.* As a matter of fact, have you in your practice, or in the practice of your factory, left the buffings exposed to strong light? *A.* Oh, yes, I have seen it.

*Q.* You have seen it? *A.* I have seen them stained. We call it a sun stain.

*Q.* But as to the general practice in your place, did you subject them to sunlight or did you not? *A.* Well, we try not to; we do not put them there purposely.

Cross-examination, by Mr. Skinner.

*Q.* You mean, Mr. Strauss, that you do not put them right out in the strong sunlight? *A.* No, sir.

*Q.* But you do not take any special pains to keep the windows shaded and darkened and all that, do you? *A.* Well, we always kept them as far away from the sunlight windows as possible.

*Q.* And that depends a good deal on the coloring of the buffing, does it not? *A.* What do you mean by that?

*Q.* Whether it is dark or light-colored? *A.* You mean the tannage?

*Q.* I mean the completed buffing. *A.* I don't know what you mean by "colored." The natural tan color, do you mean?

*Q.* Yes. *A.* Well, I don't think that has much to do with it.

*Q.* Well, is not this, Mr. Strauss, the fact: that the exposure to the sunlight might injure the piece of buffing for some particular use to be made afterwards? *A.* Yes, it really depends what it is used for.

*Q.* That is what I mean. *A.* Yes.

*Q.* It depends on what it is used for. For some uses it would not injure it at all? *A.* Practically not.

*Q.* And sometimes the exposure to the sun is one of the methods that you use? *A.* No, I never heard of that.

*Q.* Well, you said in answer to a hypothetical question that Mr. Riker put to you, as to what you expect to be kept by the tanner under a certain contract, that he would keep everything except what he was to tan for the price named. *A.* Yes.

*Q.* Well, now, you based that answer, did you not, upon your conclusion that his question, or the contract that he had named to you, covered everything that was to be done? *A.* Well, I based it on the fact that you are simply returned what you agree to return.

*Q.* Well, you would not say that the tanner was limited to return only the part that he had been called upon to return, would you? *A.* Well, it all depends on what the tanner thinks. I think I would keep everything except what was going to be returned. I would

base my price, probably, on that. I don't know what other tanners would do.

*Q.* If the man that sent it to you sent the whole hide and asked you to tan nothing but the shanks, you would not expect to keep the rest of the hide, would you? *A.* Well, that is really a foolish question, about keeping the whole hide and returning the shanks, because that is the worst part of the hide.

*Q.* Well, it would also be a foolish thing to keep the whole hide because you had only mentioned the shanks, wouldn't it? *A.* Well, it is such a foolish thing to return shanks and keep the hide, because the shank is the worst part of the hide.

*Q.* Well, you certainly would not expect him to keep the whole hide in that case, would you? *A.* I would talk to him before I entered into the contract. I would think that was a little bit foolish.

*Q.* I would like you to answer my question. *A.* Well, I can't answer it.

*Q.* It is an absurdity, is it not? *A.* Why, certainly, it is, to keep the whole hide and return the shanks.

*Q.* If a man sends a hide to be tanned, telling what shall be done with one part of it, and is silent as to what shall be done with the other part, you would expect the other part, if it was good leather, to be returned, would you not? *A.* I would only expect to return what I agreed to return for the price.

*Q.* But suppose there had been nothing said about the returning of these other parts? *A.* Well, then I would keep them.

*Q.* Then you would keep the whole hide if you had only been called upon to return the shanks? *A.* I certainly would.

*Q.* You mean by that that you would keep the whole hide if the contract was one under which it was specified that you were only to return the shanks? *A.* Well, I don't say that.

*Q.* What do you say? *A.* I say I would return the part that is specified to be returned, at the price.

Q. And keep all the rest? A. Keep all the rest; yes, sir.

Q. As what? A. As my property.

Q. As your property? A. Yes, sir.

Q. As offal? A. Well, it depends whether it was offal or not.

Q. Well, would you keep the offal or not? A. Well, it depends. Not if it was offal, no.

Q. It would not be offal, because it was something that you could keep, would it? A. No.

Q. The offal is only the part that can be tanned profitably? A. That is all.

Q. That goes into glue stock and fertilizer, does it not? A. Well, glue stock and fat and other purposes.

Q. There is a trade custom about the tanners retaining offal, is there not? A. As far as I know, yes.

Q. And do you know any custom as to the retention of parts other than the custom, of retaining offal? A. No, sir.

*James T. Smith,* sworn in behalf of defendant.

Direct examination, by Mr. Riker.

Q. Where do you live, Mr. Smith? A. 762 High street, Newark.

Q. And what is your business? A. Leather manufacturer.

Q. How long have you been engaged in that business? A. Twenty-six years.

Q. With whom? A. With the established firm of my father, the Hugh Smith Company.

Q. And where did that concern conduct its business during the twenty-six years? A. At one place, 210 Central avenue.

Q. Newark, New Jersey? A. Newark, New Jersey.

Q. What is the character of the business conducted there, Mr. Smith? A. Tanners and finishers of patent and enameled leather.

Q. And in the conduct of that business what kind of

hides have you handled? *A.* Various cattle hides, cows, bulls and steers.

*Q.* Do you handle any colt or horse hides? *A.* No, sir.

*Q.* You have never handled those? *A.* No.

*Q.* Have you handled hides as consignee under a contract? *A.* Yes, sir.

*Q.* Have you ever sent any out as consignor to others to be tanned? *A.* Yes, sir.

*Q.* Do you know whether there is a custom of the trade applicable to the tanning of hides under contract? *A.* There is an established custom with all kinds of hides that when sending hides out in the hair and the raw state, when a tanner got them to tan he would make a price for doing the work, and it was generally conceded that he was to have what was commonly termed offal, or glue stock. No mention of it was ever made, for the reason that it was the custom for him to figure that in his price for tanning, and we never expected anything back but the tanned hide.

*Q.* But the tanned hide? *A.* Yes.

*Q.* Now, assuming that the contract of consignment for tanning specified certain parts of the hide to be finished as the contract specifies, and to be paid for to the tanner at a specified price, is there any custom of the trade, so far as you know, applicable to such a contract, as to what the tanner should keep and what the consignor should receive back? *A.* Not unless it is an individual contract specifying that particular thing.

*Q.* See if you can clarify that and make it more clear. *A.* If a man were to send me goods to tan for him and he said nothing about the offal or the glue stock, I should certainly keep it; but if he should make a special contract with me for returning certain portions of the hide, I would be bound to return them with the hide.

*Q.* And if the contract called for the return of certain specified products, for which you were to receive pay, what, then, would you return and what you keep? *A.* I would return as specified.

*Q.* And what would you keep? *A.* Keep anything else that came from the hide.

*Q.* Do you know what buffings are, Mr. Smith? *A.* I do.

*Q.* What are they? *A.* Buffings are the grain portions of the hide split off.

*Q.* By what kind of process are they split off? *A.* Machine.

*Q.* That is, the buffing comes from a machine-buffed hide, does it not? *A.* Yes, sir.

*Q.* At what stage of the process of tanning is that splitting process applied? *A.* Half tanned.

*Q.* Well, in the process of half tanning, would or would not the tannage have struck through the buffing? *A.* It would have struck in sufficient to tan it in an ordinary way.

*Q.* Have you had experience with those buffings in your place of business? *A.* Yes, sir.

*Q.* You have made such a product? *A.* Yes, sir.

*Q.* Have you kept them in storage, or in your storeroom? *A.* These buffings are usually folded down with the grain out and kept in piles, one on top of the other.

*Q.* Would exposure to strong light have any effect upon these buffings? *A.* The sun would burn the grain and discolor it.

*Q.* And would that have any effect upon the value of the buffing? *A.* Not intrinsically, except for certain light colors.

*Q.* If you were keeping buffings generally for sale, keeping buffings as a commodity, would you or would you not protect them from the strong light? *A.* We would try to protect them from the light as much as possible, or we might turn them inside out to protect the grain.

Cross-examination, by Mr. Skinner.

*Q.* Mr. Smith, has your experience been more with horse hides, or have you had it with horse hides as

well as— *A.* I never have done anything but horse hides.

*Q.* Then, as a matter of fact, you not only have not done anything with it, but you do not claim to have any expert knowledge about that method of tanning, do you? *A.* I do not.

*Q.* Now, you were asked by Mr. Riker, if goods were sent to a tanner under a contract to tan certain specified parts, what you would expect to be returned to you, and you said, "Only the specified parts." *A.* Yes, sir.

*Q.* Now, suppose that the parts specified included all of the hide or piece of hide sent to the tanner, would you not expect to get all back? *A.* I would.

*Q.* If, for instance, the contract called for the tanning of the shanks, would you not expect to get back the shanks? *A.* If it is specified as shanks.

*Q.* If the contract said "Tan the shanks," you would certainly expect to get back the shanks, would you not? *A.* Why, yes.

*Q.* And the custom in the absence of contract is to return everything but the offal, is it not—in the absence of contract? *A.* In the absence of contract the custom would be to return the hide proper.

*Q.* Well, as a matter of fact, the offal is the part that cannot be tanned into leather, is it not? *A.* No, the offal can be tanned into leather, but not profitably.

*Q.* Well, we will qualify it, then. It is of too little value as leather to be worth the trouble and expense of tanning? *A.* We assume so.

*Q.* Well, that is the fact, is it not? *A.* We consider it so.

*Q.* And everything that is worth tanning as leather would be outside of the offal, not included in it? *A.* Yes. sir.

*Q.* And in the absence of something of contract between the parties, a man who has hides of another party to tan, under this trade custom, would be expected to return all but the offal, would he not? *A.* Well—

*Q.* In the absence of a contract, I say. *A.* He would be expected to return what he contracts to do.

*Q.* I am asking you this—(Please get my question.): If there is nothing said in the contract as to what he is to return, if hides are simply sent to a man to tan for another, that the other would think to get back all of the hide that could be made into leather profitably, would he not? *A.* Well, he would be expected to return the offal, and it is customary to keep everything but the contracted parts.

The Court—I do not get your answer.

[Question read and withdrawn.]

*Q.* Do you have hides tanned by other people in your business? *A.* No, sir.

*Q.* You tan hides for other people, do you not? *A.* We have on two occasions.

*Q.* [By the Court.] You said you had been both consignor and consignee? *A.* Yes. I thought you meant just at present. We did years ago.

*Q.* [By Mr. Skinner.] In your experience, at any rate? *A.* Yes, sir.

*Q.* If you sent hides to a tanner to be tanned, without any specification of the part to be returned, simply calling on him or bargaining with him to tan those hides at so much a foot, would you not expect to get back all of the hide that could be tanned into leather profitably? *A.* Well, in speaking of our transactions, we would expect to get the full hide less the offal.

*Q.* And the offal would include only the parts that could not be tanned into leather? *A.* Well, in our case the offal in that particular instance would be parts that could not be tanned into leather profitably.

*Q.* Well, is it not true, not only in your case, but is it not true generally, is not that your understanding of the general custom? *A.* I couldn't answer the question as applied particularly to any other class of hides.

*Abraham Lichtman,* recalled in behalf of defendant. Direct examination, by Mr. Riker.

*Q.* How old are you, Mr. Lichtman? *A.* Not quite twenty-nine years old.

*Q.* Do you know Mr. Theodore E. Conway? *A.* Well, I don't know his first name, but I know a man by the name of Conway; yes, sir.

*Q.* Where did you meet Mr. Conway, that you speak of? *A.* At the factory of Albert A. Guigues.

*Q.* Are you referring to the man who was on the stand here? *A.* Yes, sir.

*Q.* How many times did you see Mr. Conway at the factory of Mr. Guigues? *A.* Well, to be exact, I couldn't say, but I guess I would say about a dozen times.

*Q.* What was he doing at the factory when you saw him there? *A.* Well, walking around; nothing specially when I seen him.

*Q.* Do you know what his position was in the factory, of your own knowledge? *A.* Well, I understood, and it was a fact in some cases, that he was the foreman of the chrome leather department.

*Q.* Of the Guigues factory? *A.* Of the Guigues factory; yes, sir.

*Q.* Did you ever have any conversations with Mr. Conway? *A.* Yes, sir.

*Q.* Did you ever have any conversation with Mr. Conway with reference to Mr. Conway's instructions from Guigues as to concealing any part of the product in that factory? *A.* No, sir.

*Q.* When you were in the factory of Mr. Guigues did you ever see Mr. Conway cover up or conceal parts of the leather that was there? *A.* No, sir.

*Q.* Did Mr. Conway ever tell you that he had any instructions in that regard from Mr. Guigues? *A.* No, sir.

*Q.* Do you know a man by the name of Lauster, who was connected with the Guigues concern? *A.* Connected with them?

*Q.* Yes. *A.* No, sir.

*Q.* Who was connected with them? *A.* No, sir.

*Q.* Do you know a man by the name of Lauster who was ever in the employ of Guigues? *A.* I never knew him to be in the employ of Guigues.

*Q.* Do you know him? *A.* I know him from seeing him, yes, sir.

*Q.* Where have you seen him? *A.* Just up here and occasionally on the street; I had him pointed out to me, who he was.

*Q.* Did you ever have any personal acquaintance with Mr. Lauster? *A.* Absolutely not.

*Q.* Did you ever have any conversations with Mr. Lauster? *A.* Absolutely not.

*Q.* Did you ever see him in your place of business in Market street? *A.* We wouldn't allow him in the place. No, sir.

*Q.* You never saw him there? *A.* No, siree.

*Q.* Did you ever see him in your place of business at Arch street? *A.* Never. He was a character that we wouldn't have around the place or be near us.

Mr. Skinner—I do not know that I am under any obligation to protect Mr. Lauster, but it seems to me that I ought to ask that that be struck out—that volunteered statement.

Mr. Riker—Let it be stricken out.

The Court—It is not called for by the question. It will be stricken out.

Mr. Skinner—And I would ask the witness to confine himself to an answer to the question.

*Q.* Did you or your father have a place of business on Market street? *A.* Yes, sir.

*Q.* When did you move into it? *A.* Well, I couldn't say the exact year that we moved into it, but we bought the place after being in it for some time, and then we demolished the buildings thereon, and, naturally, had to move to do that, and erected a new building. That was in 1904, in May, 1904, we moved from that Market street factory to our Arch street factory.

*Q.* And how long were you in the Arch street factory after that? *A.* Oh, a number of years. But we got back to the Market street factory when it was erected, along about January, 1905—not January; about the beginning of February.

*Q.* [By the Court.] I am getting a little confused. You are talking somewhat rapidly. When did you build the new building? *A.* We started operations in May, 1904.

*Q.* [By Mr. Riker.] And completed them when? *A.* About the beginning of February, 1905.

By the Court.

*Q.* In the meantime where were you? *A.* At the Arch street factory.

*Q.* And then did you move back to the new building? *A.* Yes, sir.

*Q.* And when was that? *A.* About the beginning of February, 1905.

By Mr. Riker.

*Q.* Then in 1904, or up until the time when you moved back, or moved into your new Market street building, from the 1st of May until the 1st of February, 1905, did you ever see Mr. Lauster in your Market street place? *A.* No, sir.

*Q.* Did you ever see Mr. Elliott in that place? *A.* No, sir.

*Q.* Do you know Mr. Elliott? *A.* Yes, sir.

*Q.* When have you known Mr. Elliott? *A.* Well, I got to know him by going to the Guigues factory.

*Q.* When did your acquaintance with him begin? *A.* Well, not acquaintance, but knowing him.

*Q.* Well, I am speaking of your acquaintance. How long back does that extend? *A.* About June, 1904.

*Q.* And where did you see him in June, 1904? *A.* At the Guigues factory.

*Q.* From June, 1904, to February, 1905, did you see Mr. Elliott at the Guigues factory? *A.* Yes, sir.

*Q.* From time to time? *A.* Yes, sir.

*Q.* How frequently? *A.* Oh, maybe once a week; maybe some weeks not at all and other weeks every day.

*Q.* Did you ever talk with Mr. Elliott on the telephone? *A.* I should think so; yes, sir.

*Q.* During the period that I refer to? *A.* When was that?

*Q.* From May, 1904, to February, 1905. *A.* Yes, sir.

*Q.* Did you in those telephone talks with Mr. Elliott give him any instructions with reference to material in the Guigues factory? *A.* Possibly, yes.

*Q.* Did you ever instruct him to get any of that stock out before Mr. Baker got there? *A.* Absolutely not.

*Q.* Did you ever instruct him to conceal any of the material in the Guigues factory from Mr. Baker? *A.* Certainly not.

*Q.* Did you ever talk to him on the telephone in any way with respect to concealing the stock? *A.* Absolutely not.

*Q.* From Mr. Baker or from anyone else? *A.* It wasn't my business to tell him anything.

*Q.* Did you tell him? *A.* No, sir.

*Q.* Did you ever see Mr. Elliott at your factory—at your place of business? I say "yours"; I mean your fathers. *A.* When?

*Q.* During this particular period? *A.* No, sir.

The Court—That was during the period of the Arch street occupancy.

Mr. Riker—Well, perhaps I am confused in my mind.

*Q.* From June, 1904, to February, 1905, did you ever see Mr. Elliott at your factory? *A.* No, sir.

*Q.* Your place of business? *A.* No, sir.

*Q.* At your father's place of business? *A.* No, sir.

*Q.* Did you ever hand Mr. Elliott any check signed by yourself as attorney for your father? *A.* Yes, sir.

*Q.* Where? *A.* At the office of Albert A. Guigues.

*Q.* Did you ever hand it to him at your father's place of business? *A.* No, sir.

*Q.* To be a little more particular, during the period named, from June, 1904, to February, 1905, did Mr. Elliott ever bring to your father's place of business and present to you a statement of any kind? *A.* No, sir.

*Q.* Now, Mr. Lichtman, Mr. Elliott said in his examination, "Abe Lichtman said he was down to Boston the other day. I said, 'Were you? Did you see Mr. Baker?' He said, 'Yes. I was talking to him about buying some stuff over there, the "splits," or "butts," one or the other; I wouldn't specify exactly, but it was merchandise under that head, what he was getting.' And he said, 'I came very near saying, "I am getting them in Newark from Guigues for less than half what I am paying you for it," and I shut up my mouth.' " Now— *A.* Well, he lied; that is what he done.

*Q.* Well, do not characterize it. I asked you— *A.* No, sir; I did not.

*Q.* Do you remember any such conversation with Mr. Elliott? *A.* Absolutely not.

*Q.* Did you buy for your father any goods from the Corona Kid Company at any time? *A.* Yes, sir.

*Q.* When did you buy them? *A.* Well, I can't say the exact dates. The invoices are there.

*Q.* Well, such purchases as you made from the Corona Kid Company, where were they negotiated? *A.* Mostly at the factory of Albert A. Guigues.

*Q.* With whom? *A.* Mr. Baker.

*Q.* What were those things that you bought? *A.* Green salted and dry horse butts principally, and some shell splits, some cow splits; I think that takes about all; a variety of stuff.

*Q.* How long did those purchases continue? *A.* Oh, until the Guigues factory was given up.

*Q.* You bought that class of material or others, which? *A.* That class of material.

*Q.* That class of stock? *A.* Yes.

*Q.* Did you keep the receipted invoices for the sales made to you by the Corona Kid Company in the way

that you have spoken of? *A.* We tried to keep them all; yes, sir.

*Q.* [Paper shown to witness.] I show you an invoice dated December 1, 1905, and ask you whether that serves to refresh your memory at all as to the time when you began your dealings with the Corona Kid Company? *A.* Yes, sir; I should think this was about the beginning.

[Marked D1 for identification.]

*Q.* [Paper shown to witness.] I show you an invoice of the Corona Kid Manufacturing Company dated December 20, 1905, to J. Lichtman, and ask you whether that is an invoice, receipted, for one of these purchases? *A.* Yes, sir.

[Marked D2 for identification.]

*Q.* [Paper shown to witness.] I show you a similar invoice dated February 3, 1906. Is that one of the transactions? *A.* Yes, sir.

[Marked D3 for identification.]

*Q.* [Paper shown to witness.] I show you an invoice dated July 25, 1906, to which there is—there is one dated June 30, 1906, which I show you, and ask you whether that is one of the transactions? *A.* Yes.

[Marked D4 for identification.]

*Q.* [Paper shown to witness.] And July 25, 1906, another one which I show you; is that one of these transactions? *A.* Yes, sir.

[Marked D5 for identification.]

*Q.* [Paper shown to witness.] I show you another invoice of July 26, 1906; is that another transaction with the Corona Kid Company at the Guigues place of business? *A.* Yes, sir.

[Marked D6 for identification.]

*Q.* [Paper shown to witness.] I show you another such invoice, dated January 8, 1906; does that represent another of the transactions? *A.* Yes, sir.

*Q.* At the Guigues factory, with Baker? *A.* Yes, sir.

[Marked D7 for identification.]

Q. [Paper shown to witness.] I show you another one, dated January 13, 1906. A. Yes, sir.

Q. Is that another transaction with the Corona Kid Company at the Guigues factory through Baker? A. Yes, sir.

[Marked D8 for identification.]

Q. I show you another one, of March 10, 1906 [paper shown to witness]; is that another of the transactions in question? A. Yes, sir.

[Marked D9 for identification.]

Q. [Paper shown to witness.] I show you another, dated March 24, 1906; does that represent another transaction of the same character with the Corona Kid Company? A. Yes, sir.

[Marked D10 for identification.]

Q. [Paper shown to witness.] I show you an invoice of June 29, 1906, Corona Kid Manufacturing Company to J. Lichtman; does that refer to another transaction of the same character? A. Yes, sir.

[Marked D11 for identification.]

Q. [Paper shown to witness.] I show you another one, dated September 20, 1906, Corona Kid Company to J. Lichtman; is that another transaction of the kind you have spoken of? A. Well, this was a discount.

Q. That is a discount only? A. Yes, sir.

Mr. Riker—I will not ask to have that marked.

Q. How long have you been engaged in the leather business? A. Fifteen years.

Q. In what business connection? A. Well, I was brought up in the tannery. What I mean by that, as soon as I graduated from school I was taken into my father's factory, and there learned the different kinds of leather, what they were called, and so forth, and then I went to the tannery, where I learned the tanning trade as far as I could possibly learn it, so as to know what I was talking about, the different kinds of leather in stock that I was going to buy and sell. That was the object: to give me experience.

Q. Where did you get your practical experience in the tanning of leather? A. In my father's factory.

*Q.* And in that factory what kinds of leather were tanned? *A.* We tanned principally split leather.

*Q.* What else did you tan? *A.* We also for some time at our Market street place tanned a lot of goat skins.

*Q.* Anything else? *A.* Tanned cow hides, some horse leather, practically every known sort of leather there is.

*Q.* Did you ever tan horse butts? *A.* Yes, sir.

*Q.* Now, have you had under observation the processes of tanning horse leather at other factories? *A.* Under observation?

*Q.* Have you seen them? *A.* Yes, sir.

*Q.* What other factories? *A.* I have seen a good deal of leather tanned at the Guigues factory from time to time; I have also seen a lot of leather tanned at the Hamburg Cordovan Leather Works.

*Q.* That is up on— *A.* On Sussex avenue.

*Q.* That was Mr. Salmon's place? *A.* Yes, sir.

*Q.* From your experience in your father's tanning place, and in the observations that you made in these other factories, are you acquainted with the processes of tanning horse leather? *A.* Yes, sir.

*Q.* Including the tanning of horse butts? *A.* Yes, sir; we principally tanned butts of horse leather.

*Q.* Now, what products can be made practically from horse butts? *A.* What products can be made?

*Q.* Yes, what are the different products? *A.* Well, make chrome-tanned leather suitable for shoe stock; you can make cordovan leather suitable for shoe stock; you can make inner-soling stock out of butts. There is no end to the things you could make out of the stuff.

*Q.* Now, when the butt is prepared and finished for shoe stock, what part is so finished? *A.* Well, that would depend on what kind of leather—what kind of shoe stock it would go into.

*Q.* Well, I am speaking now of upper leather. *A.* You mean for japanning or—

*Q.* Yes. *A.* Or for cordovan?

*Q.* First for japanning. *A.* You would naturally tan the hide for the grain.

*Q.* And when it was split, how would it be split? *A.* It would be split even in the pickled state or it would be split in the partly tanned chrome state; it would be split in the bark state—that is, half tanned bark state, or it could be split dry, but it wasn't a very practical way of doing it.

*Q.* Now, when it was split for that purpose, of a grain split for japanned leather, did you produce cordovan? *A.* No, sir.

*Q.* Why not? *A.* It couldn't be done.

*Q.* What happened to the cordovan? *A.* Well, by working that butt for a grain, you, naturally, had to take the evenness of your grain, get it to a certain point where it would have strength and enough fibre to stand japanning, and then to have lasting in a shoe, and for that reason it had to be taken off in a fairly good substance, and that substance, you couldn't help going through the shell, or the cordovan, with the splitting knife, which would, naturally, make that no more shell, or cordovan.

*Q.* What is the shell, what do you understand to be the shell? *A.* The shell is a certain tight substance that exists on the hip bones of the horse, on the butt part of a horse, and in order to get in into leather—it lays between the skin and the flesh the side of the butt; that is what we call the shell in the leather trade.

*Q.* Now, when you split off a grain from the butt of sufficient substance to make a japan stock, you say you cut into the cordovan, or the shell, so as to destroy the cordovan? *A.* Absolutely.

*Q.* And with reference to the shell, what is the cordovan? *A.* With reference to the shell?

*Q.* Yes. *A.* Well, the shell is the cordovan, only in an unfinished state.

*Q.* Then cordovan is the finished shell? *A.* Cordovan is the name given for the product made from the finished shell.

*Q.* And what is the use, if you know, that the cordovan, the finished shell, is put to? *A.* Mostly for shoe leather, men's shoes principally.

*Q.* How is the finished cordovan produced? *A.* How is it produced?

*Q.* Yes, by what process? *A.* Well, you would, naturally, have to take some certain tannage into consideration first. What tannage do you mean?

*Q.* What tannage is applied to it? *A.* Principally the bark tan.

*Q.* And after it has been subjected to that process, what further treatment is given to it? *A.* The butt would, naturally, go in its natural course to the tan yard, and then be tanned; the entire substance of the butt would go through the tan yard and be tanned, and be levelled on the flesh side, take the fleshings off, and then the process of commencing to snuff the grain in order to get the shell, or the cordovan, would be done.

*Q.* How is that process conducted? *A.* Well, years ago most of the time it was always conducted by shaving it off by hand, not shaved by machine, by hand, with a round knife.

*Q.* A draw-knife? *A.* A round knife put over a horse, like, as we call it, a round, oval-shaped horse, the butt put down there, and then shaved off, stroke by stroke, until, naturaly, the shell, or cordovan, part was reached.

By the Court.

*Q.* This is shaving done from the grain side? *A.* This is shaving done from the grain side; yes, sir.

*Q.* For the cordovan? *A.* Yes, sir; because the cordovan was between the flesh and the grain; it was in the center of the thickness of the hide, of the butt.

By Mr. Riker.

*Q.* Well, does this shell lie at a uniform depth below the cuticle, or the outside skin? *A.* No, sir.

*Q.* The process of shaving, then, was to take off bit by bit the overlying matter, or substance, to get down to the shell? *A.* Well, it wasn't bit by bit—it couldn't be taken off any other way but bit by bit with a hand shaving knife.

*Q.* And for the purpose of exposing the cordovan, the shell? *A.* And for the purpose of getting to the cordovan.

*Q.* And when that was done, what became of the shell, what did you do with it? *A.* The shell was then taken to the finishing room, or the cordovan leather, partly cordovan, then.

*Q.* And put through the finishing process? *A.* It was either put into russet cordovan or black or red, or any color you might want it; and when it is finished up, or glossed up, gummed, to make it smooth—that was the principal thing, to get it smooth, or glossed.

*Q.* Well, the substance that you say was snuffed off, or skiffed off, has that any value? *A.* No, sir.

*Q.* No value at all? *A.* No.

*Q.* Have you ever seen the buffing material taken off by a splitting knife? *A.* By splitting machine?

*Q.* Yes. *A.* Yes, sir.

*Q.* Where? *A.* At the Guigues factory.

*Q.* How often did you see that process carried on? *A.* Well, that was about the first place I had ever seen it done by a machine.

*Q.* Did you ever watch the process? *A.* Oh, yes, I did.

*Q.* How many machines did Guigues have at work at that process while you were there at any time? *A.* Well, I would generally go to one machine; I never counted those machines.

*Q.* You do not know how many he had? *A.* No, I don't.

*Q.* Did he have more than one? *A.* I should judge he did.

*Q.* Well, do you know whether he did? *A.* I am quite sure he had more than one; yes, sir.

*Q.* Did you see this process of splitting on the splitting machines at the Guigues factory carried on where cordovan was part of the product? *A.* Yes, sir.

*Q.* Now, in those cases where you saw that process being carried on what was the substance that was taken off by the splitting knife above the shell, or cordovan? *A.* Just that substance that had to come off in order to get to the cordovan, or the shell.

*Q.* Well, describe what that was that came off. *A.* Well, we all understand the back of the horse is the thickest part of the hide, and going down towards the flanks, or the shanks, the thickness of the hide runs materially lighter. The piece that would come off on that machine would be rather thick in the center and nothing more than a shaving, like leaf tobacco, or a fringe around its edges. I have several pieces here that I could show, if the Court will allow.

*Q.* Were they taken off at the Guigues factory? *A.* No, sir; they were taken off by hand-knife.

Mr. Riker—I would ask that the witness be allowed to use them for illustrative purposes.

Mr. Skinner—I have no objection to their being used for illustrative purposes if it is clearly understood what they are illustrative of.

Mr. Riker—They are illustrative of this particular substance that is taken off in getting down to the cordovan.

Mr. Skinner—I object to their being used as illustrative of taking off by machine. These were said to be taken off by the hand. If they are so used, I do not object.

Mr. Riker—Very well, then we would use them for the purpose of showing what was taken off by hand.

Witness [Producing several small pieces of leather]—Those are pieces of shavings that have been taken off by that hand shaving, that oval horse that I was talking about.

*Q.* Where did you get those from? *A.* I got those this morning at a factory.

*Q.* Where? *A.* The factory of a man by the name of Bitterman, who had horse butts.

*Q.* Were these things taken off in the course of the regular processes there, or for your special benefit? *A.* In the course of the regular process.

*Q.* Then those are illustrative of the pieces that come off by the hand process of taking off the substance above the shell? *A.* Yes, sir.

*Q.* And have you ever seen the process of taking off the grain for japanning, horse hide butts? *A.* Yes.

Mr. MacMahon—Shanks?

Witness—I have seen shanks and butts.

[The four pieces of leather produced by witness are placed in an envelope and marked *D12* for identification.]

*Q.* In your experience, Mr. Lichtman, in the treatment of the butt, particularly the cordovan part of the butt, have you ever seen the grain part taken off to expose the cordovan, and then tanned further in chrome? *A.* For what purpose?

*Q.* For any purpose? *A.* Have I ever seen—

*Q.* Where the grain has been taken off with the splitting machine in the process of making the cordovan, getting the cordovan, have you ever seen the part taken off as grain then tanned by the chrome purpose for japanned leather? *A.* What part?

*Q.* The grain that was taken off. *A.* Yes, sir.

*Q.* You have seen it taken off when the cordovan is preserved? *A.* In the raw state.

*Q.* [Former question read as follows: "In your experience, Mr. Lichtman, in the treatment of the butt, particularly the cordovan part of the butt, have you ever seen the grain part taken off to expose the cordovan, and then tanned further in chrome?"] *A.* Well, in order to tan the butt into cordovan, the grain was to be taken off, not to preserve the grain, but the cordovan.

Q. Well, answer the question. A. No, sir; I have never seen it done.

Q. And when the grain is taken off in the process of making cordovan from the shell, have you ever seen the splitting done from the pickle? A. For cordovan purposes?

Q. Yes. A. No, sir.

Q. After what process of tanning has been applied is the process of getting out the cordovan reached? A. Well, you mean the process of taking off the grain for the cordovan?

Q. [Question read.] A. Principally in the bark tannage.

Q. Well, is it not altogether in the bark tannage? A. Yes, sir; if it is worked for the cordovan.

Q. And the process which you have described as hand buffing—what is the process of buffing, Mr. Lichtman? A. Buffing is to snuff the grain off, to get that part on which the hair of the animal was, or that part next to the hair.

Q. What do you mean by snuffing? A. Well, by that I mean just shave it off.

Q. Snuffing or sniffing? A. Well, we call it snuffing. It is a little blade that is used by hand; that would be snuffing; and then we have a big, oval, round-shaped thing over a horse; that is called shaving by hand; and then again we have another shaving that is done by a shaving machine.

Q. Are those processes consecutive, one, two, three, or do you use one at one time and another one at another? A. You might use one one time and one another, or possibly you might use it for certain purposes of the stuff.

Q. When you use the knife in the hand, that is snuffing? A. Hand shaving.

Q. What is the snuffing off by hand? A. That is with a little, thin blade, a slicker, we call it.

Q. That is hand-buffing, is it not? A. Yes, sir.

Mr. Skinner—Do not lead.

*Q.* Now, when you take a split off and take off substantially the same substance, what is the product then? *A.* We call that a buffing, or a grain split.

*Q.* Well, is there not a difference between a grain split and a buffing? *A.* Well, there is only one difference, and that is that a grain split is possibly a little thicker substance than a buffing.

*Q.* Now, in the manufacture of horse leather from the butts, when you want to get off the grain split what is the process that you apply? *A.* You mean to get the grain split off?

*Q.* Grain split for leather for japanning or topping? *A.* I didn't get that question.

*Q.* [Question read as follows: "Now, in the manufacture of horse leather from the butts, when you want to get off the grain split what is the process that you apply?"] *A.* In the manufacture of horse leather?

*Q.* Yes, leather from horse hides? *A.* For what?

*Q.* When you want to get off a grain split for japanning or for topping leather, what processes do you apply? *A.* Well, the most advisable process, and possibly the only process, is the process of splitting them in the pickled state or the raw state, but it is most preferably in the pickle, on account of its being more practicable, and you are only able to get a suitable pieces of leather for chrome-tanning by splitting it in the pickle.

*Q.* Well, is the hide out of the pickle as plump and full and easily split as it is after it has been bark-tanned? *A.* No, sir.

*Q.* Now, in splitting out of the pickle for the purpose of getting a grain for the japanning or topping leather, what happens to the cordovan? *A.* You run right through the cordovan with your splitting knife, you bust it.

*Q.* What happens then? *A.* You bust it.

*Q.* You bust the cordovan? *A.* Yes, sir.

*Q.* What is the character of the shell? *A.* It is very

horny, and when the knife goes over it it generally leaves a little ridge every time.

*Q.* Now, in this process of making the split for japanned leather out of the pickle, you "bust" the shell? That is the way you describe it. *A.* You say split for japanning purposes?

*Q.* Yes. *A.* You mean the grain side split?

*Q.* Yes. *A.* Yes, sir.

*Q.* You "bust" the shell, as you express it? *A.* Yes, sir.

*Q.* What is there in that process in the way of product except the grain split? *A.* Well, there is nothing but a flesh split.

By the Court.

*Q.* You say there is in this process no product but a grain split? *A.* No, after this grain split has been taken off for japanning purposes there is nothing left but a flesh split.

*Q.* A flesh split? *A.* A flesh split; yes, sir.

By Mr. Riker.

*Q.* Well, are or are not these flesh splits the things that you purchased, in the most part, from Baker at the Guigues factory? *A.* For the most part?

*Q.* Yes. *A.* The flesh splits?

*Q.* Yes. *A.* No, sir.

*Q.* Well, what were they? *A.* We bought from the Corona Kid Company shell splits.

*Q.* What were they? *A.* They were splits taken off in such a way as to preserve the shell.

*Q.* And were they or were they not the flesh side of the hide? *A.* On with it; yes, sir.

*Q.* Well, how don't they differ from cordovan? *A.* Well, they are not finished; they are not tanned; they are in the raw state; they are in the pickled state.

*Q.* Was the shell injured in those cases? *A.* No, sir.

At one o'clock P. M. the court takes a recess of one hour.

After recess.

*Abraham Lichtman* resumes the stand in behalf of defendant.

Direct examination (continued)) by Mr. Riker.

*Q.* Mr. Lichtman, we were talking about the dry butts that you bought from the Corona Kid Company out of the Guigues factory, and the last question was about the state of the shell, or cordovan. If you know, what piece had been taken off of those butts that you bought in the dry state—what kind of piece? *A.* Nothing; it was the entire butt. From the Corona Kid Company, you say?

*Q.* Yes. *A.* Yes, sir.

*Q.* It was the entire butt? *A.* Yes, sir.

*Q.* Now, in your experience with the treatment of horse butts, are they cut up at any stage into pieces? *A.* It depends for what purpose you wanted them. Yes.

*Q.* Then the pieces cut up become what, what is the designation of them, the names of them? I refer now to the shanks of the butts, or cordovans, or whatever they are. *A.* I didn't just get that.

*Q.* I refer to the cutting up of the butt into pieces. What are the different pieces after they are cut up, what are they called? *A.* It would be the butt, it would be the shank.

*Q.* Is there any trimming done to the butts at any stage of the process of finishing into leather? *A.* Yes, sir.

*Q.* At what stage? *A.* After they come out of the soaks or before they go into the soaks.

*Q.* What then is done in the way of trimming? *A.* Those parts are trimmed off that can't be very well worked or may not be beneficial to tan.

*Q.* When you say "beneficial," what do you mean? *A.* It might be that some hides are hair-slipped and all scarred off, and it can be seen right away before it goes into the soaks; it is, naturally, cut out; or it might be

rotted, and it is cut out; or there are different parts of the animal that have a tendency to be of such shape that they can't be worked out into leather, and for that reason are trimmed off.

*Q.* I have heard the word "profitably" in connection with the tanning. When you say "beneficial," do you mean to the pocketbook? *A.* Yes, sir; the same thing absolutely.

*Q.* Have you ever seen the process of finishing shanks after they were cut off from what you now term the butt proper? *A.* Yes, sir.

*Q.* What is that process; how is it done? *A.* Well, it depends on what tannage it is to go into.

*Q.* Suppose it is to go into chrome-tannage, what is done? *A.* After the pickle, they are then chromed. That depends on the process of the tannery, whether they are a one-bath chrome or a two-bath chrome. They are then chromed. After they are fully tanned and chromed, they are stuffed, or, as we call it, fat liquored; after they are fat liquored, they are slickered out by machine or by hand, and then, if they are worked so as to get the most measurement out of them, they are tacked.

*Q.* Is that a process of stretching or drying, or both, or what? *A.* It is a process of drying and stretching at the same time.

*Q.* Are the shanks split or buffed, or anything of that sort done with them, in this process? *A.* Depends entirely whether they are wanted and what they are wanted for; that is, the substance of the leather, and, furthermore, to make a uniform piece of leather, they are either shaved or split off; that is, the flesh.

*Q.* The flesh side is either— *A.* Shaved or split.

*Q.* Do you mean the flesh or the flesh side? *A.* The flesh side.

*Q.* And when you speak of flesh in that connection in leather, you do not mean the actual flesh, do you— *A.* I mean the flesh and that part that could possibly go with it to make a uniform grain.

*Q.* At what stage of the finishing of the shanks is that splitting or shaving done? *A.* For the chrome-tanning, as a rule, in the pickle.

*Q.* What is the character as to size and quality of the piece of the flesh side either cut off or split off in that process? *A.* They couldn't be made any size at all, because that would depend entirely on both the quality and the nature of the raw material. If they came off a dry hide there would practically be no substance to it, and for that reason there would be nothing more than a webbing or shaving of fleshing come off. If they came off a green salted hide there would be probably a little more substance to it, and they would be very ununiform, for the reason that a horse, as a rule, runs heavy in knuckles, and where the leg comes there would be a very thick piece, and then a piece not more than tissue paper, and then a piece in that same shank with a hole, nothing in it, nothing at all would come from it.

*Q.* If they were split out of the pickle what kind of split would you get? *A.* That is what I say, if they were split in the pickle.

*Q.* Of the two kinds, the dry and the green salted, you have described the results in the way of a flesh split in your evidence that you have just given? *A.* Yes, sir.

*Q.* To what use or purpose is the fleshing, or flesh split, taken off the shank applied? *A.* You couldn't put it to any practical use at all. If you were going to put a practical use to it, you would have nothing more than glue, and it wouldn't even make glue stock, for the simple reason that the nature of a horse is of such a character that it won't even make glue.

*Q.* The flesh splits of a horse hide will not make glue? *A.* Any part of the horse hide, any part of the flesh of a horse, because the horse contains such a nature that it isn't even fit for glue.

*Q.* In 1904 and the early part of 1905 what was the

business that Mr. Julius Lichtman, your father, was conducting? *A.* What was the nature?

*Q.* What was the character of it? *A.* Buying and selling all kinds of leather, principally offal and splits.

*Q.* Was it a considerable business or an inconsiderable business? *A.* Yes, sir; very considerable, to my knowledge, or in my estimation of dollars and cents.

*Q.* You were engaged in a subordinate capacity for your father at that time, were you not? *A.* Yes, sir.

*Q.* And had knowledge of the business? *A.* Yes, sir.

*Q.* Well, can you state about what the volume of the business was for a year, for the year 1904? *A.* In 1904, I should judge, we done a business of $600,000.

*Q.* Do you know Mr. Albert A. Guigues? *A.* Do I know him?

*Q.* Yes. *A.* Yes, sir.

*Q.* How long have you known him? *A.* Only since he commenced operations at this tannery.

*Q.* How did you come to make his acquaintance, if you remember? *A.* The Albert A. Guigues Company, or Albert A. Guigues factory, telephoned us they wanted to see us.

*Q.* Were you in the office at the time, or is that the information that you received? *A.* No, sir.

*Q.* That is the information you received? *A.* Yes, sir.

*Q.* Then in response to the telephone message, as you were informed, what did you do, if anything? *A.* I went to the Albert A. Guigues factory.

*Q.* And whom did you see? *A.* Mr. Guigues.

*Q.* Was that the first time you had ever seen him? *A.* The first time in my life.

*Q.* Where were you doing business at that time, at what plant? *A.* Arch street.

*Q.* Can you fix the month? First, can you fix the year when that occurred? *A.* 1904.

*Q.* Can you fix the month? *A.* I think June; I am not real positive on that; June or July.

Q. June or July? A. I am not real positive on that.

[The witness is directed to stand aside for the present.]

*William J. Sutherland, Jr.*, sworn in behalf of defendant.

Direct examination by Mr. MacMahon.

Q. Mr. Sutherland, what is your business? A. Clerk to the referee in bankruptcy.

Q. In this city? A. In this city.

Q. And how long have you been such clerk? A. Four years.

Q. Were you the clerk for the referee in the year 1908? A. I was, sir.

Q. Have you in your custody the depositions taken in the examinations before the referee in the matter of the bankruptcy of Albert A. Guigues Leather Company? A. I have, sir.

Q. Have you them with you? A. Yes, sir.

Q. Will you produce them? A. They are here, sir [producing paper].

Mr. Skinner—As long as Mr. Sutherland says that these are the depositions, and that is all you want, Mr. Sutherland can go.

Cross-examination waived.

*Edith A. Crosson*, sworn in behalf of defendant.

Direct examination by Mr. MacMahon.

Q. Mrs. Crosson, in 1908, what was your business? A. I was a stenographer of the bankruptcy court.

It is agreed by counsel that the depositions produced by the witness, William J. Sutherland, Jr., need not be further proved, and that counsel on either side my read therefrom for the purposes of contradiction.

Mr. Riker—I am reading from page 7 of the testimony of Joshua L. Elliott, on August 17, 1908, in the bankruptcy court. The question was asked, speaking of checks:

"*Q.* Some checks came from J. Lichtman & Son payable to Mr. Guigues? *A.* Yes.

"*Q.* What did you do with the checks? *A.* Handled them through the office; didn't come into my possession."

On page 8, of the same testimony:

"*Q.* Do you know how the sales to J. Lichtman & Son were billed, billed by A. A. Guigues or Guigues Leather Company? *A.* I cannot exactly.

"*Q.* Was there a record kept of the sales? *A.* Yes.

"*Q.* Where was it kept? *A.* In a private set of books.

"*Q.* Did it appear in the general books of the Company? *A.* No, sir.

"*Q.* Was that private set of books in the possession of the company when you resigned? *A.* Yes, sir."

Then on page 9, referring to the books:

"*Q.* What was contained in the books? *A.* Nothing but the sales of this offal, as you call it; that was all that was contained in them.

"*Q.* Did it contain a record of the sales to others than J. Lichtman & Son? *A.* Yes.

"*Q.* To whom? *A.* Taylor-Page, in Cincinnati—that was previous to being incorporated—and a fellow in New York, E. Spiegel; one of the Neiders, here in the city, I don't know whether John or Charles; it was John Neider; and several other small ones that I can't recall; I think L. Agoose, in Boston, and sales made to Valentine & Minkus."

*Abraham Lichtman* resumes the stand in behalf of defendant.

Direct examination (continued) by Mr. Riker.

*Q.* On that occasion of your visit to the Guigues factory in June or July, 1904, did you see Mr. Guigues? *A.* Yes, sir.

Q. Where did you meet him, what part of the buildings? A. Well, I came in the office.

Q. Where was that? A. Right as you come from Ferry street, corner of Ferry and Madison, I believe.

Q. Was it a brick building or— A. A frame building.

Q. You met Mr. Guigues there? A. I was told to sit down and wait for him, they would look for him.

Q. Did you meet him? A. I waited a considerable time, and he finally came and I met him.

Q. Did you have any talk with him about his product, the product of the factory at that time, or any part of it? A. Yes, sir.

Q. Well, state that conversation, as far as you remember. A. He said, "I have got something here that I have got to offer; I want you to look at it."

Q. Well, did he show it to you? A. Yes, sir.

Q. What was it? A. These butt grain splits.

Q. Butt grain splits? A. From cordovan leather.

Q. You say he showed them to you. Where did he show you those things? A. Well, he was making them, splitting them.

Q. Then you went out from the office building somewhere? A. Yes, sir.

Q. Whereabouts? A. To the splitting machine.

Q. And he showed you these butt grain splits, as you have termed them? A. Yes, sir.

Q. Now, won't you describe what you saw? A. It was the grain split, or the buffing, that was taken off of a butt prior to its being finished into cordovan leather.

Q. Was it tanned or untanned? A. Tanned in the bark.

Q. Tanned in the bark? A. Yes.

Q. Well, when you say "bark," is that generic, or do you mean strictly bark, or do you mean vegetable tan? A. Yes, sir; vegetable. We call them all bark tan. Roughly speaking, bark tan. Vegetable tan, then.

Q. Were they dry or wet, or in what condition were they? A. Well, they were dry, as far as water was concerned, and rather damp and wet, as far as oil and grease was concerned.

Q. Had they been subjected to treatment with oil or grease? A. Yes, sir.

Q. Was the process going on at that time of taking them off of the shells? A. Was that going on?

Q. Were they splitting? A. Yes, sir.

Q. Did you see the process? A. Yes, sir.

Q. Which side of the butt was uppermost as it was put into the splitting machine? A. The flesh side; the butt was turned upside down.

Q. The grain was on the under side? A. The grain was on the bottom; yes, sir.

Q. [By the Court.] The flesh side on the top and the grain underneath? A. Yes, sir.

Q. [By Mr. Riker.] Did you take any of these grain splits, as you have called them, into your hands at that time and examine them? A. Yes, sir; I examined them; that is what I was there for.

Q. What were their dimensions? They varied, did they, or did they not? A. Very uniform.

Q. As to the size? A. Size, thickness, strength, moisture.

By the Court.

Q. What are you now speaking of? A. The butt grain split; the piece that came off after the leather was turned upside down and put through the splitting machine.

Q. The result of the splitting? A. That is the idea; yes, sir.

By Mr. Riker.

Q. That is one piece that came out— A. Yes.

Q. —as the result of the splitting? A. No, it was the one piece that came off during this operation.

Q. Well, there was the other piece, the cordovan, was there not? A. Yes, sir.

Q. [By the Court.] The result of the splitting was two pieces? A. The result of the splitting? I only washed the splitting of the grain split.

Q. [By Mr. Riker.] Well, when you split that off you had a piece left, did you not? A. Yes, sir.

Q. So far as you observed, then, there was this grain split and the— A. And the cordovan.

Q. —and the cordovan? There were two pieces? A. Two pieces made of one. The effect of the splitting was that there got to be two pieces instead of one piece.

Q. [By the Court.] One you call a grain split and the other a cordovan? A. Yes, sir.

Q. [By Mr. Riker.] And the whole of the hide, or butt, when it was put into the splitting machine, had been vegetable tanned? A. Yes, sir.

Q. Complete or incomplete? A. Complete.

Q. Can you state from your observations then and your memory now the limits in size that these pieces would be included within? A. Of what?

Q. Of these grain splits. A. They were pieces averaging—if you are going to figure on all fringes and hang-ons and whatever there was to that piece, they would average from two, three inches—

Q. What do you mean by that, square, or what? A. Square.

Q. Or square inches? A. Square. We will say two or three inches to one inch, up to possibly 3½ feet.

Q. Three and one-half feet square or square feet? A. Square feet, all together, taking the width by the length.

By the Court.

Q. Three and one-half square feet? A. Yes, sir.

Q. This is the grain split? A. This is the grain split.

By Mr. Riker.

Q. Are you familiar with the operation of the splitting machine on which this work was going on? A. Yes, sir.

*Q.* What is that splitting machine known as? *A.* Belt-knife splitting machine.

*Q.* And in splitting in the way you have described, with the flesh side up, was it or was it not the result that the upper piece of the two pieces into which it was being split was split of uniform size? *A.* Yes, sir; that was the object of doing it.

*Q.* Now, Mr. Lichtman, have you ever been present at the operation of splitting horse butts out of the pickle? *A.* Yes, sir.

*Q.* Where the grain side is to be used for grain leather? *A.* Yes, sir.

*Q.* How is the hide put into the splitting machine then? *A.* Whatever piece is desired, or for the purpose of the splitting, is put in towards the top of the machine, and then all the surplus, whether it was too thick or too thin, whatever it might be, fall through on the bottom, and the main body comes up on the top.

*Q.* In this case which was on the top? *A.* Where the grain was split for japanning?

*Q.* Yes. *A.* The grain was up on the top.

*Q.* Then in this last process which you have described was or was not the grain the uniform product? *A.* Yes, sir.

*Q.* Before you saw the process in Guigues' factory on this visit that you made, of taking off what you have called a grain split, had you ever seen the splitting machine used for that purpose? *A.* Taking the grain split off of what class of leather?

*Q.* Off of the cordovan. *A.* No, sir.

*Q.* What had been the practice, so far as you had observed it, therefore? *A.* Shaving it off.

*Q.* And the cordovans were what? *A.* They weren't anything; they weren't even fertilizer; we couldn't burn them in the boiler; they would stuff the boiler.

*Q.* So far as your observations were concerned, then, as I understand you, of this process of splitting off the grain split, it was a new process? *A.* Absolutely.

*Q.* After that visit in the month of June or July, 1904, did you visit the Guigues factory frequently? *A.* Yes, sir.

*Q.* How often, if you can give the jury an idea? *A.* Well, I would maybe go there once a week, maybe not at all, and sometimes every day; it would depend entirely on what business was going on or what I was supposed to get, or to look at the stuff sometimes before we got it.

*Q.* Did you see the horse butts as they came in dry? *A.* In a casual way, yes.

*Q.* Did you see the butts in their processes through the factory from time to time? *A.* Yes, sir.

*Q.* During the period from June or July, 1904, to the 1st of February, 1905, you were there frequently and saw them frequently? *A.* Yes, sir.

*Q.* What was the character of the horse butts that were going through the factory, as you observed them, during that period? *A.* They were dry butts off of dry hides, principally off of Russian or colt skin hides.

*Q.* Were they large or small? *A.* Small stock.

*Q.* Heavy or light? *A.* Light stock.

*Q.* Thin or thick? *A.* Thin.

*Q.* Now, Mr. Lichtman, did you ever see this process of splitting dry hides out of the pickle in the Guigues factory? *A.* Yes, sir.

*Q.* For the purpose of getting a uniform grain split—did you see that process in the Guigues factory? *A.* On what material?

*Q.* On the horse butts. *A.* On the entire butt?

*Q.* Yes. *A.* No, sir.

*Q.* Well, on the butt, in which the cordovan is included, did you see the process of splitting them? *A.* No, sir.

*Q.* When did you see, if you ever did see, this process conducted in the Guigues factory? *A.* I seen it conducted on the shanks.

*Q.* When? *A.* At that time.

*Q.* [By the Court.] Is that what you have been telling us about? *A.* No, we have been talking about grain splits up to now, in the bark tan. Mr. Riker asked about stuff in the pickle, and I said I have seen the shanks being split in the pickle.

*Q.* [By Mr. Riker.] Well, before we go into the question of the splitting of the shanks in the pickle, did you ever see in the Guigues factory the butt, as distinguished from the shanks, split out of the pickle so as to get a japanning grain? *A.* Well, I won't say whether I seen it in that period, because I have seen it often at the Guigues factory.

*Q.* Can you fix any period at which you have seen it done? *A.* Well, possibly in this period up to January, 1905, or if it wasn't, it was very close after that, and, in fact, I am fairly sure it was in this period, but the very latest part of the period.

*Q.* The very latest part of the period?

The Court—You mean taken out of the pickle and then split?

Witness—It was pickled and then split.

Mr. Riker—Perhaps it would clarify it to describe what the pickle is.

The Court—It is a preservative process, I understand.

Witness—Pickling is a solution mostly composed of sulphuric acid and salt, made principally for the purpose of tightening the leather, and in the bark tan really useless, in the chrome tan really a foundation for the commencing of the chrome tan.

*Q.* And it is a preservative? *A.* Also used as a preservative in shipping stock in its condition after the hair has been taken from it and it has been washed out, but still raw.

*Q.* Not tanned, you mean? *A.* No, sir.

*Q.* [By the Court.] Splitting out of the pickle means splitting after pickling? *A.* Splitting after pickling;

yes, sir; after the stock has been pickled and slightly drained, because you can't split it dripping wet; it has got to be a little absorbed from its water.

*Q.* [By Mr. Riker.] It is taken right out of the pickle solution? *A.* No, it is laid out smooth and straight so that it will go through the splitting.

*Q.* During the first part of the period in 1904, after you paid your first visit to the Guigues factory, did you see that process conducted there at all? *A.* Yes, sir.

*Q.* When? *A.* Well, during the latest part of this period, as I say, or, if not—I won't say definitely then—it was right shortly after that. I can't fix the exact time. It is eight years ago, and it is pretty hard.

*Q.* I think you have said what the character of the flesh split off of the shank was. *A.* Yes, sir.

*Q.* Now, what was the character and what is the proper designation, in your judgment, from your experience, of the grain split from the bark-tanned butt? *A.* What is the definition?

*Q.* How do you designate, what is it? *A.* Offal.

*Q.* Had the corresponding material theretofore, in your experience, ever had any market or merchantable value?

Mr. Skinner—I object. There is too much conclusion and inference in the question.

Witness—We have had the experience more than anyone.

The Court—I think the question may be answered.

*A.* No, sir.

*Q.* Now, Mr. Lichtman, do you know whether your father made any contract with Guigues for any part of the material that was produced in the Guigues factory? *A.* My father?

*Q.* Yes. *A.* You mean him personally?

*Q.* I do not mean him personally. *A.* The firm?

*Q.* Whether there was a contract made? *A.* Yes, sir.

*Q.* By or on behalf of your father? *A.* Yes, sir.

*Q.* To purchase any part of the material produced in the Guigues factory? *A.* Yes, sir.

*Q.* What was that contract?

Mr. Skinner—Oh, let us have a little more detail as to when and where and by whom, and all those things.

Mr. Riker—I think I am entitled to ask what it was in my own order.

Mr. Skinner—My objection is that it calls for conclusion, and I think the witness should be asked the time and place and the words used—the ordinary method of proving a contract—but to say, "Was there a contract, and what was it?" leaves him free to say what he understands it was and to construe it.

The Court—In the first place, was it written, was it a written contract?

[Question read.]

The Court—You may answer that question first by saying whether it was a written or an unwritten contract.

Witness—It was a written, signed contract.

*Q.* Have you got it? *A.* Yes, sir.

*Q.* With you? *A.* Mr. MacMahon, I think, has it.

*Q.* When was that contract made? *A.* Right after my visit at the first time at the Guigues factory.

*Q.* How soon after that visit? *A.* I should say about—a few days or a week.

*Q.* In order to expedite this—the original of that first contract we cannot put our hands on just this minute—was there more than one contract made? *A.* Two contracts.

*Q.* Was the second contract in writing? *A.* Yes, sir. The second contract was really a correction of the first and in more explicit and detailed form, but it was practically the same contract; it was the same goods.

*Q.* I show you a paper on the letterhead of Albert A. Guigues, Leather Manufacturer, dated "Newark, N. J., August 24, 1904," purporting to be signed by

"Albert A. Guigues" and "J. Lichtman, by A. Lichtman, Attorney" [shown to witness]. Do you recognize the signature "J. Lichtman, by A. Lichtman, Attorney"—*A.* My signature.

*Q.* —as your signature? *A.* Yes, sir.

*Q.* Did you see Mr. A. A. Guigues—see him sign his name to that contract? *A.* Yes, sir; both signed at the same time; first he and then I signed.

[The paper referred to is shown to plaintiff's counsel.]

Mr. Skinner—No objection at all.

*Q.* Before I offer that, I want to show you a paper which is headed "Albert A. Guigues, Leather Manufacturer, Ferry, Madison and Monroe streets, Newark, N. J., July 26, 1904," and which purports to have been signed "Albert A. Guigues" and "Julius Lichtman, A. Lichtman, Attorney," and ask you whether that is a copy of the first contract [paper shown to witness]?

Mr. Riker—I can pick out the original, and will sooner or later, but I cannot get it just now.

*A.* Yes, sir.

Mr. Skinner—I was waiting for Mr. Riker's explanation, and expected to object before the answer. I would like to have the answer withheld for a moment.

Mr. Riker—Yes. Do not answer.

Mr. Skinner—I understand that this is only a copy and that the original is for the moment mislaid?

Mr. Riker—Yes.

Mr. Skinner—Under those circumstances, I make no objection to the use of the copy; but I should think it would be with leave to correct, if there is anything to correct.

Mr. Riker—I will make the offer of the original when I find it, and will ask to read the copy into the record.

Mr. Skinner—Offer the original.

Mr. Riker—I will offer the exhibit as an original in this case, explaining that I will produce it in substance later, and now use the copy to read into the record, subject to correction from the original.

"Albert A. Guigues, Leather Manufacturer, Ferry, Madison and Monroe streets, Newark, N. J., July 26, 1904. Julius Lichtman: I take your order for 1,500 doz. shank splits, at 35 cents a dozen, and 200 tons butt splits, at 15 cents per pound, spot cash, less two per cent.; you to take them as fast as I make them, and I to furnish until order is filled. Albert A. Guigues. Julius Lichtman, A. Lichtman, Atty."

[The original of the above contract is to be marked *Exhibit D13* when produced.]

Contract between the same parties, dated August 24, 1904, is offered in evidence and marked *Exhibit D14*.

*Q.* Showing you *Exhibit D14*, the contract of August 24, 1904, I ask you how that contract came to be made [paper shown to witness]? *A.* Well, after we had commenced our receiving of some stock on this first contract, and being that we have made a sale—part sale—of it, we found out that Mr. Guigues had commenced to sell the same material that he made to us, this offal, to a party in New York, and this, naturally, affected our business to such an extent that it would entail a heavy loss to us, for the simple reason that the market was of such a limited capacity on this stock that if we had any other competitor in the line it would be impossible for us move the stuff; so that we seen the foolishness of what we had entered into with Mr. Guigues, and in order to get him to make such a contract in such a form that it would bind him not to sell to anybody else this material of offal during the life of our contract, we then made this.

Mr. Riker—That is, *D14*, the contract of August 24th. I would like to read the jury this contract [reading].

*Q.* Now, under these two contracts what did you actually get? *A.* We got the shank splits, as per the order, and we got a portion of our contract on the horse butt grains from the cordovan tanned in bark.

*Q.* They were tanned in bark? *A.* Yes, sir.

*Q.* Did you get any tanned in chrome? *A.* No, sir.

Juror No. 3—Your Honor, whose property was Guigues selling? Was it the Corona Kid Company's?

*Q.* Was any representation made by Mr. Guigues as to whose property he was selling? *A.* Absolutely not —his own.

*Q.* [By Mr. Skinner.] Which, then? *A.* What is that?

Mr. Skinner—All right. The answer stands.

*Q.* [By Mr. Riker.] Was there anything said at that time or either of the times when these contracts were signed by you and Mr. Guigues with reference to the Corona Kid Company? *A.* No, sir.

*Q.* Was anything said at either of those conversations by you or Mr. Guigues with reference to Mr. Baker or any rights that he might have in this material? *A.* No, sir; I didn't know Mr. Baker at all at that time.

*Q.* Well, did you know the Corona Kid Company in this connection at that time? *A.* No, sir.

*Q.* Did Mr. Guigues at that time make any representations as to whether or not he was selling these goods for himself or someone else? *A.* Nothing, sir.

*Q.* Was anything said by Mr. Guigues to you or by you to Mr. Guigues at the first interview that you have testified to, or any subsequent interview, or upon the telephone, with reference to concealing your transactions with him— *A.* No, sir.

*Q.* —from the Corona Kid Company? *A.* No, sir.

*Q.* Or from Mr. Baker? *A.* No, sir; and from nobody else.

*Q.* Do you know of your own knowledge whether Mr. Baker knew of the existence of this contract at any time? *A.* Yes, sir.

*Q.* These contracts between your father and Guigues? *A.* I don't know whether he knew about the contract; but he knew we were getting the stuff.

*Q.* Well, how do you know that? *A.* Because we got into difficulties with Guigues after this.

*Q.* When? *A.* Because he wouldn't deliver—

*Q.* When? *A.* A few months after we commenced dealings with him, and he refused to deliver that stuff, then we had already sold it and we were obligated to deliver it, so I went to Mr. Guigues and said, "We must have delivery of that stuff"—

Mr Skinner—This question that was asked was whether Mr. Baker knew. He is telling a whole lot that has nothing to do with it.

The Court—Get the point as quickly as you can.

*Q.* Cut out the immaterial things. What I want to know is how you know that Mr. Baker, of the Corona Kid Company, knew about this dealing for this stuff with Guigues by your father? *A.* We commenced suit against Guigues for the delivery of this stuff.

*Q.* And did Mr. Baker, so far as you can testify to it, know of the fact that you had commenced suit? *A.* Yes, sir.

*Q.* How did he know? *A.* I told him.

*Q.* Where? *A.* In Boston.

*Q.* What did you tell him? *A.* I told him to use his good offices to try to do what he could to get this man to deliver or to show good faith.

*Q.* When was this interview with Mr. Baker in Boston? *A.* In the summer of 1905.

*Q.* Where was your suit against Guigues brought? *A.* In Newark.

*Q.* Who were your attorneys? *A.* Lindabury, Depue & Faulks.

Mr. Riker—I have here, if your Honor please, a certified copy out of the Supreme Court of proceedings in that court in the suit of Julius Lichtman against Albert A. Guigues, on contract. [Shown to plaintiff's counsel.] I desire to offer this.

The Court—Is there anything but the fact that a suit was brought?

Mr. Riker—And the subject-matter of the suit.

The Court—Any objection?

Mr. Skinner—None.

[The paper referred to is marked *Ex. D15.*]

Mr. Riker—The summons in this case was tested at Trenton on the 9th day of March, 1905.

*Q.* Mr. Lichtman, this material that you got from Guigues, had you sold some of it at the time this suit began? *A.* Sold it all.

*Q.* To whom? *A.* To a concern in New York.

*Q.* What is the name of that concern? *A.* Nicklesburg Brothers & Company.

*Q.* Did they know the beginning of this suit? *A.* Yes, sir.

*Q.* Did they contribute to the expense of bringing this suit? *A.* Yes, sir.

*Q.* What proportion did they contribute? *A.* Half.

*Q.* Well, that is the suit, is it, or is it not, that you brought to the attention of Mr. Baker in Boston? *A.* Yes, sir.

*Q.* Having the date of the issuance of the summons before you as the 9th of March, 1905, can you tell how long after that date it was that you saw Mr. Baker in this regard in Boston? *A.* No, I can't say exactly.

*Q.* Well, I do not want you to say exactly. *A.* It was in the summer.

*Q.* In the summer of 1905? *A.* Yes, sir.

*Q.* Can you remember and state to the jury what Mr. Baker said with reference to this matter? *A.* He didn't seem to pay very much attention to it.

*Q.* What did you ask him to do? *A.* To use his good offices and see what could be done with Guigues.

*Q.* For what, to do what? *A.* To get Guigues to deliver what he sold.

*Q.* Did you tell Baker what he had sold you? *A.* I don't think I specified to him exactly the deal; no, sir; we didn't get in that far. I wasn't confidential and I wasn't friendly enough with Mr. Baker.

*Q.* How did you come to come across Baker and Boston? *A.* We were dealing with Mr. Baker on some lots of butts.

*Q.* What butts were they, butts in Newark or butts in Boston? *A.* Butts in Newark.

*Q.* Mr. Lichtman, Mr. Baker has testified that he was in Europe for some months during the summer of 1904. After his return in the autumn did you see him at the Guigues factory at any time? *A.* I don't know where he was and when he came back, but I seen him towards the beginning of 1905, a little before the beginning of 1905.

*Q.* How often did you see him? *A.* Well, I possibly seen him the entire time—eight or ten times.

*Q.* What do you mean by "the entire time"? During all the dealings we ever had, during all the time that I ever knew him.

*Q.* When you saw him at the Guigues factory where was he? *A.* Well, I generally came in the office, and I asked to see Mr. Baker, and I would have to wait until he came to the office. Where he was I don't know.

*Q.* You saw him in the office, did you? *A.* Yes, sir.

*Q.* On those occasions did you see Mr. Baker by appointment or did you not? *A.* Yes, sir.

*Q.* And when were those appointments made? *A.* Well, Mr. Baker either when he got to the Guigues factory telephoned me to come over, or later on, I think, at one time there he wrote a letter to us stating that he would come to Newark on a certain day and I should try, if possible, to see him at the Guigues factory on that day.

*Q.* Well, did you telephone the Guigues factory with reference to Mr. Baker's coming there at all? *A.* Yes, sir; I wanted to find out whether he had got there; I didn't want to go on a fool's errand; I telephoned, Had Mr. Baker arrived or had he got there?

*Q.* And how did you happen to telephone those inquiries? *A.* Because he made an appointment with me at that factory through the mill on a certain day, and before going there—naturally, it was a trip—I telephoned and found out whether Mr. Baker had got there, and then when I found out he was there I went there immediately.

*Q.* Now, Mr. Lichtman, I show you a letter, or a paper, rather, dated January 11, 1906, purporting to be signed "Corona Kid Manufacturing Company, B. E. Baker, President," and ask you whether you have seen that paper before [shown to witness]? *A.* Yes, sir.

[Marked *D16* for identification.]

*Q.* I show you a second letter, addressed "Mr. Julius Litchman"—it seems to be L-i-t-c-h-m-a-n—dated January 13, 1906, purporting to be signed "Corona Kid Manufacturing Company, B. E. Baker, President" [shown to witness]. Have you seen that before? *A.* Yes, sir.

[Marked *D17* for identification.]

*Q.* I show you another letter, addressed in the same way, "Julius Litchman," dated January 30, 1906, purporting to be signed "B. E. Baker, President of the Corona Kid Manufacturing Company" [shown to witness]. Have you seen that before? *A.* Yes, sir.

[Marked *D18* for identification.]

*Q.* I now ask you, Mr. Lichtman, whether you can fix the time of your telephonic communication with Guigues's office? *A.* On what occasion?

*Q.* For the keeping of these appointments with Mr. Baker. *A.* Well, the exact date that the letter stated that Mr. Baker would be in Newark.

*Q.* Can you say from memory whether any of those

appointments were earlier than January, 1906? *A.* If I refer to the letters, yes.

*Q.* What can you say, then, with reference to the letters? *A.* That they will be with the tan of the leather, referring to the letter.

*Q.* Did you ever meet Mr. Baker there at the Guigues factory except upon appointment? *A.* No, sir.

*Q.* What was your business with Mr. Baker at these interviews? *A.* Well, to examine some stuff that he had at the Albert A. Guigues factory, and, if possible, to make an arrangement whereby we could buy some of it from him.

*Q.* Well, did you buy some of it? *A.* Yes, sir; large quantities of it.

*Q.* Was it or was it not the same character of stock that you had been buying from Guigues under the contracts that you produced here? *A.* It was an entirely different character of stock.

*Q.* Well, what was it that you were buying then? *A.* It was the entire butt, the whole raw product, nothing done to it at all, as to any process of finishing or tanning or commencing to work at all.

*Q.* It had not even been soaked? *A.* No, sir; with one exception there, I think you will find, Mr. Riker—sold pickled splits, and also some—

*Q.* Well, I show you *D1* for identification.

Mr. Riker—I am now going to offer this in evidence.

Mr. Skinner—I would like to cross-examine a little about these bills.

Mr. Riker—All right.

By Mr. Skinner.

*Q.* Where do you get those bills, Mr. Lichtman? *A.* Where do we get them?

*Q.* Where did you get them from to bring them here? *A.* When this case was brought we went over and over all our papers that we could possibly find to get every bit of data that we could possibly lay our hands on, and there found those bills among our papers.

*Q.* I am referring to the Exhibit *D1* for identification and the following similar papers that purport to be bills from the Corona Kid Company to you or to your father. When was it that you made that search? *A.* When this suit was commenced.

*Q.* Well, that was about how long ago, roughly? *A.* I think two years ago in December.

*Q.* Did you make it yourself? *A.* I made some of it myself; yes, sir.

*Q.* Where did you make it? *A.* Amongst all the papers that we possessed.

*Q.* Well, did you have any files of your bills? *A.* No, sir.

*Q.* You did not keep files of bills, eh? *A.* No, sir.

*Q.* These were just scattered bills? *A.* Yes, sir.

*Q.* Incomplete filing? *A.* No, sir.

*Q.* You do not mean to say, then, that these are all the bills, do you? *A.* What?

*Q.* These bills that you produced are not all the bills, then, are they? *A.* I think they are.

*Q.* Well, how do you know? *A.* Well, as near as my memory will go, and the stuff that I bought from the Corona Kid, and I can trace it, they are.

*Q.* And you have to depend on your memory of the finding of the bills, do you? *A.* For what purpose?

*Q.* That purpose, of determining whether they are all. *A.* Yes, sir.

*Q.* Haven't you any books? *A.* No, sir.

*Q.* Any record of your purchases from the Corona Kid Company? *A.* In what respect?

*Q.* In any respect? *A.* Any more than we have the paid vouchers for the money paid to them. We do keep them.

*Q.* Do you not keep any books in your place of business? *A.* If you allow me to explain the system—

*Q.* I do not want it; I want my question answered. Do you not keep any books in your place of business? *A.* Yes, sir; some.

*Q.* In those books do you not make any entries at all of purchases? *A.* No, sir.

*Q.* Well, of course, you could find the checks by which you paid for these, could you not? *A.* Yes, sir.

*Q.* Did you look for them? *A.* Yes, sir.

*Q.* Did you find any other checks than those for these bills? *A.* Did we?

*Q.* Did you find any other checks to the Corona Kid Company than those for the items that are shown in the bills that you produced? *A.* I can't say; I haven't commenced to compare them.

Mr. Riker—Well, is there any objection to the offer?

Mr. Skinner—Not at all.

Mr. Riker—I would like now to offer this series from *D1* for identification up to and including *D11* for identification.

[Marked respectively *Ex. D1,* to *Ex. D11,* inclusive.]

Mr. Riker—I also wish to offer in the same series now a similar invoice, of November 24, 1906.

[Paper shown to witness.] That is not receipted, I notice.

Witness—Well, it was possibly paid with another invoice.

Mr. Riker—It represents one of these transactions at the Guigues Company for material?

Witness—Yes, sir; from the Corona Kid Company.

[Marked *Ex. D19.*]

By Mr. Riker.

*Q.* Showing you *D2,* Mr. Lichtman, what was that for [paper shown to witness]? *A.* Cow splits, splits from cow hide.

*Q.* And where did you get them? *A.* At the factory of Albert A. Guigues.

Q. In Newark? A. Yes, sir.

Q. December 19, 1905, invoice. I see on that invoice the word "Corona"; it appears to be printed there. Does that describe the article that you purchased there at all? A. No, sir.

Q. It has nothing to do with it—just a printed form? A. Well, it can be seen from the bill that it is printed.

Q. I will show you *D1* also [paper shown to witness]. What was that for? A. Cow splits.

Q. From where? A. From the Albert A. Guigues factory.

Q. Then you got some cow splits from the Albert A. Guigues factory belonging to the Corona Kid Company, did you? A. Yes, sir.

Q. Who sold them to you? A. Mr. Baker.

Q. Personally? A. I think, yes.

Q. I show you *D3*, and ask you what those were [paper shown to witness]? A. Those were splits, cordovan splits from butts.

Q. Where were they procured by you? A. They were delivered to us from the Albert A. Guigues factory.

Q. The amount of that invoice is $5,558.94. A. Yes, sir; after deducting the discount.

Q. That is net. That is dated February 3, 1906. Now, Mr. Lichtman, in *D7*, invoice dated January 8th, I observe there were cow splits in that invoice. Did you get those at that time from the Guigues factory? A. Not the date of the invoice.

Q. You got those that you purchased under the date of that invoice? A. Yes, sir.

Q. From the Guigues factory? A. Yes, sir.

Q. And you also got horse butts? A. Yes, sir.

Q. On June 30, 1906, the invoice marked *D4* speaks of cow splits and kip splits. Did you get those from the Guigues factory [shown to witness]? A. Yes, sir.

Q. And *D5*, dated July 25, 1906, calls for dry butts. Those you got from the Guigues leather factory [paper shown to witness]? A. I think so, yes.

*Q.* Those were the butts before they were treated at all, were they not? *A.* Yes, sir.

*Q.* As you have testified? *A.* Yes, sir.

*Q.* I show you *D10*, dated March 24, 1906—"splits." Were they cow splits or horse splits, or what were they, if you remember [paper shown to witness]? *A.* Cow splits.

*Q.* Gotten from the Guigues leather plant? *A.* Yes.

*Q.* And sold by the Corona Kid Company? *A.* Yes, sir.

*Q.* Then, referring to these exhibits again in general, can you say whether, outside of the splits which you say are cow splits, splits from cow hides, and the butts, which were the dry horse butts, did you buy anything from Mr. Baker? *A.* We bought some cordovans in the pickle.

*Q.* When did you buy them? *A.* I can't say exactly. The bill is there for it.

*Q.* I wish you would take those bills and see about those [papers shown to witness]. *A.* February 3, 1906, was one.

By the Court.

*Q.* What do you say you bought, cordovan? *A.* Cordovan; yes, sir; or shell splits. That would be the proper classing.

*Q.* The shell split is a split that goes through the— *A.* No, sir; it is a split with the shell.

*Q.* Including the whole of the shell? *A.* Yes, sir. Then there was July 26, 1906, and November 24, 1906.

By Mr. Riker.

*Q.* Cordovans? *A.* Yes, sir; shell splits.

*Q.* Now, all those things that are mentioned in those invoices that you have in your hand, I understand, were purchased by you from Mr. Baker for the account of the Corona Kid Company and delivered from the A. A. Guigues factory. Is that the correct understanding? *A.* Yes, sir.

*Q.* And the transaction was conducted by you personally with Mr. Baker personally? *A.* Yes, sir.

*Q.* Did you ever buy any cordovan from Mr. Baker delivered from Boston or from any other place? *A.* Yes, sir.

*Q.* Where were they bought? *A.* They were bought at the Manhattan Hotel, in New York.

*Q.* By you? *A.* By me personally.

*Q.* From whom? *A.* Mr. Baker.

*Q.* And where were those cordovans delivered from? *A.* From Woburn, Massachusetts.

*Q.* Were they the same quality of cordovans that you bought out of the Guigues factory? *A.* They were larger size.

*Q.* Can you say when that purchase was made, or those purchases, if there were more than one? *A.* I can't state. I think the letter there will show that. I can't state the date exactly.

*Q.* You think you have a letter here that will give you that date? *A.* Yes, sir. [Papers handed to witness.] It was a little before October 1, 1906. Here it is, the exact date. The exact date was October 19, 1906.

*Q.* What have you in your hand that refreshes your memory? *A.* A letter from the Corona Kid Company.

*Q.* Signed by whom? *A.* Mr. Baker personally; that is his handwriting.

Mr. Riker—I purpose offering that. [Shown to plaintiff's counsel.] I offer that letter.

[Marked *Ex. D20.*]

*Q.* In the period between your first visit to the Guigues factory, in June, 1904, and the 1st of February, 1905—I will move that date on—the 1st of July, 1905, did you buy any offal from Guigues? *A.* Everything we bought from him was offal.

*Q.* Well, returning to the interview with Mr. Baker with reference to the suit by your father against Guigues, did he at that time make any claim to any part of the material that you were buying from Guigues?

*A.* Not to me.

*Q.* Did he say anything about it? *A.* No, sir.

*Q.* Did he ever say anything to you about it? *A.* No, sir.

*Q.* Now, Mr. Lichtman, you have said on your direct examination on one of these offers that you kept, or your father kept, books of account. Will you explain your system of account books? *A.* Yes, sir. It being that the stuff that we buy is of a nature of shrinkage, being that we buy most of it, most of our stuff, ninety-five per cent. of all our leather, in a wet condition, and then it is subject, about the greatest percentage, to a retanning process that we put it through, it is absolutely useless to keep any stock account of any character whatsoever, because in leather, for instance, that will weigh a thousand pounds when we get it, after being put through our factory, it will come out and possibly weigh 500 pounds, maybe 600, maybe 700, maybe 800; it is so irregular that a stock account is useless. Furthermore, that we have never transacted our business on a credit basis; that is, by giving notes for our merchandise or asking any credit; and being that offal is always bought for spot cash, those bills that we get for the stock would be checked immediately when the stuff came in; and that is all we wanted to know, whether the number of pounds or pieces would tally with what these people billed to us. That being the case, we had no further use for those invoices that we received whatsoever, and the bill was, naturally, immediately paid. Never—I will say never —never, unless we had contracts of such a nature that would entail an enormous stock, five or six or ten loads —we would sometimes, with some people, very limited, have a monthly account and pay those people monthly.

*Q.* What books do you keep? *A.* We keep no other books than a book for the sales that we make—a sales-book.

*Q.* You keep a sales-book of your own sales? *A.* Yes, sir; that is all.

Q. Do you keep a cash-book? A. No, sir.

Q. Do you keep a check-book? A. Yes, sir.

Q. And do you keep the returned checks? A. Yes, sir.

Q. The paid checks? A. Yes, sir.

Q. Do you keep a ledger? A. No, sir.

Q. So that your books are your check-book and your sales-book? A. That is the point.

Q. Now, you have said that Mr. Baker never made any claim to you for any part of the merchandise purchased by you from Guigues. Did any other person in connection with the Corona Kid Company ever make a claim or demand— A. No, sir.

Q. —for any part of the material that you purchased from Guigues? A. No, sir.

Q. What was your first intimation of any such claim? A. When my father was subpœnæd with the papers in this suit.

Q. Served with papers in this suit? A. Yes, sir.

Q. When you say "subpœnæd," do you mean— A. Well, I mean served with the papers in this suit.

Q. The summons? A. Yes, sir.

Q. The first paper? A. Yes, sir.

Q. Had you had any demand made on you? A. No, sir.

Q. Or had your father had any demand made on him, so far as you know, before the starting of this suit? A. No, sir.

Q. By any person, professional or otherwise? A. No, sir.

Q. Do you know a man by the name of Inston? A. Well, I know him from seeing him; yes, sir.

Q. Where did you see him? A. He once came down to our factory.

Q. Did he say on whose account he came? A. Yes, sir.

Q. What did he say at that time? A. He says, "Mr. Baker sent me down here on account of a conversation he had with you, and we would ask"—

Mr. Skinner—I object to this. I object to anything that is outside of the proper proof, and I say this is not proper. Conversation with a Mr. Inston cannot possibly be evidential.

*Q.* Well, I will put it in this form. Did he say from whom he came? *A.* Yes, sir.

*Q.* From whom?

Objected to.

The Court—An agent cannot prove his own agency.

Mr. Riker—That is quite right. You put the objection on that ground, that you object to this conversation on the ground that the agent cannot establish his own agency?

Mr. Skinner—I am perfectly willing to put it on that ground.

Mr. Riker—Then I will not ask the question. That is a perfectly valid objection.

I will then ask him to say whether Mr. Inston said from whom he came.

Mr. Skinner—That is the same question.

Mr. Riker—I do not know whether it is or not. That is the fact, without any legal conclusion to agency or otherwise.

The Court—Well, Mr. Inston being an outsider, nothing that he said binds the plaintiff unless he was authorized to say it.

*Q.* Mr. Litchman, turning now to these grain splits that you bought, or your father bought, during this period from Guigues, do you know how much they weighed on the average? *A.* Apiece?

*Q.* Yes. *A.* Well, you couldn't even put it that way. There was some only little bits of pieces. Well, they weighed from a sixteenth of a pound up to five-eighths of a pound, possibly three-quarters; that was the heaviest piece.

By Mr. Skinner.

*Q.* That is, the grain split? *A.* Yes, sir.

Q. From the butt? A. Yes, sir; from the cordovan butt.

By Mr. Riker.

Q. I think you have said that you sold them? A. We sold them; yes, sir.

Q. And how did you sell them, by the pound or— A. By the pound; yes, sir.

Mr. Riker—There has been so much of this that this may be a repetition. If it is, I hope my attention will be called to it.

Q. You have testified what the dimensions of those splits were? A. Yes, sir.

Q. In area? A. Yes, sir.

Q. Mr. Lichtman, I show you a paper dated "New York, January 12, 1905," addressed "Mr. Julius Licht man, 413 Market street, Newark, New Jersey," purporting to be signed "Nickelsburg Brothers & Company, F. M. Nickelsburg, Treasurer," and ask you whether you have ever seen that paper before [paper shown to witness]? A. Yes, sir.

Q. Where did you get it from—where did you see it, rather, in the first place? A. It came to us through the mail.

Q. Where is it produced from now? A. Where?

Q. How did it come into your attorneys' hands? A. Well, we looked over our papers, and looking over our papers, we found it.

Q. And you delivered that to our office? A. To Mr. MacMahon; yes, sir.

[Marked *D21* for identification.]

Cross-examination by Mr. Skinner.

Q. Mr. Lichtman, you said you are twenty-nine years old? A. Not quite twenty-nine years old.

Q. And your experience in the tanning business has been for fifteen years? A. Yes, sir.

Q. Then it began when you were fourteen years of age? A. Not quite fourteen.

*Q.* And I suppose that that portion of your fifteen years' experience when you were back in the teens you do not count as very much yourself, do you? *A.* What is that?

*Q.* You do not count as very much yourself that portion of your experience that was had when you were back in your teens? *A.* I consider that the greatest part of my experience.

*Q.* That is when you learned the most, is it? *A.* Yes, sir.

*Q.* Well, you learned then around your father's factory? *A.* And other factories.

*Q.* Not employed anywhere, were you? *A.* No, sir.

*Q.* When did you go into the business as conducted by your father in any capacity? I mean as an employe? *A.* When I was eighteen years old.

*Q.* Have you continued with him since that time? *A.* Yes, sir.

*Q.* And your father has been engaged in the same business from that time to the present, has he not? *A.* The same, and we have added more branches all the time in the leather business.

*Q.* What do you mean by adding more branches? *A.* Well, we have taken a larger scope. The leather business is of such a wide character that you can add a new line to your business every day, and in the course of a year you still haven't them all, or twenty years.

*Q.* Do you mean, then, that you have added to your business by buying or selling some added kind of leather? *A.* In the first place that.

*Q.* And in the second place what? *A.* We have done it in a larger scope, done it more practically.

*Q.* Well, throughout there the business has been that of buying and selling leather? *A.* Yes, sir; and tanning leather.

*Q.* And tanning? *A.* Yes, sir.

*Q.* Why, have you done anything in the way of tanning other than retanning? *A.* Yes, sir.

*Q.* Have you any beam-house? *A.* Yes, sir.

*Q.* Have you the same tanning outfit at your place as Guigues had at his? *A.* We didn't tan that class of leather on the scope and in the capacity that Mr. Guigues tanned, and for that reason couldn't have such a tannery.

*Q.* Well, I did not ask you whether you had as big a one. *A.* You asked me whether we had such a tannery.

*Q.* The same time? Now that you understand the question, I do not mean as big a tannery, but the same kind of tannery. *A.* What do you mean by "kind"?

*Q.* The same kind of plant, not the same size. *A.* What do you mean by "plant"?

*Q.* Well, you have a plant, have you not? *A.* Yes, sir.

*Q.* What do you mean by it? *A.* By a plant, I consider that the machinery, the way we work on the machines, whether it is electric power or steam power, whether it is chrome-tanning, whether it is bark-tanning, whether we do it by sulphite or whether we do it by the old-fashioned way of liming, or split our own leather, or whether we have our leather split outside, or the like of such.

*Q.* Well, taking your definition, do you split your own leather? *A.* Some of it.

*Q.* Not much? *A.* Quite a lot.

*Q.* Since when? *A.* Since—for the last two years.

*Q.* Do you do any chrome-tanning? *A.* Not just at present.

*Q.* Have you at any time? *A.* Yes, sir.

*Q.* When? *A.* We have experimented for the last four or five years, off and on.

*Q.* That is all you have done, chrome-tanning? *A.* Yes, sir.

*Q.* Have you done bark-tanning? *A.* Yes, sir; that is our principal business. Well, by "bark" I mean vegetable tanning.

*Q.* Do you not buy leather in a partially tanned state? *A.* Some.

*Q.* A good deal, do you not? *A.* Yes, sir.

*Q.* But you do buy some that has not been tanned at all? *A.* Yes, sir.

*Q.* Raw hides? *A.* Raw hides and leather in the pickle.

*Q.* Mostly in the pickle? *A.* Mostly in the pickle.

*Q.* Very little raw? *A.* Very little all raw.

*Q.* You mean a very little entirely raw? *A.* Yes, sir.

*Q.* Well, your knowledge of the tanning business has been gained in your father's place of business, and at Guigues's, has it not? *A.* What is that?

*Q.* Your knowledge of the tanning business has been gained at your father's place of business, and as Guigues's place of business, has it not? *A.* And at other places of business.

*Q.* Watching it done, you mean? *A.* Watching it done, and watching it done and demanding it to be done and supervising it.

*Q.* I think you said you had a business amounting in volume to $600,000 a year? *A.* At that time.

*Q.* In 1904 and 1905? *A.* I approximated that amount for 1904 and 1905.

*Q.* And you had no cash-book? *A.* No, sir.

*Q.* If a man came in and showed you a bill, you paid it and made no record in any book of the payment against the possibility of his coming in and trying to collect the bill again? *A.* There was no people came in in that manner.

*Q.* You trusted human nature, then? *A.* We knew what we were doing.

*Q.* And you were dealing with Albert Guigues? *A.* Yes, sir.

*Q.* And you knew whom you were dealing with? *A.* We certainly did.

*Q.* And you trusted Guigues? *A.* We trusted him as far as the payment was concerned.

*Q.* But no farther? *A.* In that capacity, that when he rendered a bill we knew before we paid it whether we got what we paid for.

*Q.* And you took pains to inquire very carefully before you paid it, did you not? *A.* In what capacity?

*Q.* Any capacity that you choose to think of. *A.* What was necessary.

*Q.* You inquired pretty carefully before you paid the bill to Guigues whether you had the goods? *A.* Well, I think so.

*Q.* Well, don't you know? *A.* I am not absolutely positive.

*Q.* Didn't you check up his statements? *A.* Very rarely we got a statement.

*Q.* Well, when you did, did you check it up? *A.* Yes.

*Q.* What would you get? *A.* Weigh slips.

*Q.* What would you check it up with? *A.* Weigh slips and the check-books. If the bill wasn't paid the weigh slips would be kept.

*Q.* And if it was paid, what then? *A.* We had no further use for the weigh slip.

*Q.* Well, what then became of the slip? *A.* We either destroyed it or threw it away without destroying it.

*Q.* Did you buy any scraps of leather like these strips that you produced here, these shavings? *A.* Did we buy any?

*Q.* Yes. *A.* No, sir.

*Q.* Ever, I mean? *A.* No, sir.

*Q.* Did you buy any stuff for glue stock? *A.* Did we buy any glue stock?

*Q.* Did you buy stuff for glue stock in the course of your business? *A.* Yes, sir.

*Q.* Many times? *A.* Very many.

*Q.* Did you buy stuff for fertilizer? *A.* No, sir.

*Q.* Well, I suppose that the stuff that you bought for glue stock you sold, did you not? *A.* I think so.

*Q.* That was part of your business? *A.* We didn't eat it.

*Q.* That was part of your business? *A.* Yes, sir.

*Q.* So that you were really a dealer in offal? *A.* Absolutely.

Q. By "offal" do you mean something more than that which is suitable for glue stock? A. Offal takes in glue stock and various pieces of leather after tanning.

Q. After tanning? A. Yes, sir.

Q. And the piece of leather that it takes in after tanning or the pieces that in some uses of the leather have been cut off and cannot be used, can they? A. They can be used, yes; they can be used for the main product of that hide that has been put into operation.

Q. Well, for instance, a man who is in the business of making patent leather buys leather already tanned, does he not? A. In the patent leather, buys leather tanned?

Q. Already tanned? A. Very rarely.

Q. Well, then, he sends the hides off and has them tanned, does he not? A. No, he buys the raw hides and tans them.

Q. Does he not sometimes send them off and have them tanned? A. Yes, very often.

Q. And when he buys the leather that has been tanned, or sends it off to be tanned, and it comes back to him to be made by him into patent leather, he then does some trimming, does he not?

Mr. Riker—He has not said that they bought it already tanned.

Q. Did you ever know any man who was in the patent leather business to buy leather already tanned? A. For japanning?

Q. Yes. A. Oh, yes.

Q. When a man buys that, he proceeds then to trim the leather that he has got? A. That depends on the condition the hide is in.

Q. Well, sometimes he does, then? A. Sometimes he does.

Q. And when he does, he trims off just the little pieces around the edge? A. That depends entirely on the nature of the leather.

Q. Well, sometimes he does? A. That depends entirely on the nature of the leather.

*Q.* And with some kinds of leather that is what he does? *A.* He trims off a whole lot.

*Q.* And sometimes a little? *A.* And sometimes very little.

*Q.* And that little that he trims off is waste in his business, is it not? *A.* It is offal.

*Q.* Well, it cannot be used, can it? *A.* Sure, it can be, yes.

*Q.* For what? *A.* For various purposes.

*Q.* Well, for what? *A.* Inner-soling, patching up; it can be used for—well, there is so many purposes you can't commence to figure them out.

*Q.* Well, at any rate, you sell offal? *A.* Yes, sir.

*Q.* And, practically, you do not sell anything but offal, do you? *A.* We sell other things.

*Q.* What do you sell? *A.* We now have a lot of hides tanned ourselves.

*Q.* And sell them? *A.* Yes, sir.

*Q.* The whole hide? *A.* No, sir.

*Q.* What do you sell? *A.* Different parts of the "hides" after they are split.

*Q.* And do the splitting yourself? *A.* Yes, sir.

*Q.* When did you begin doing that? *A.* Oh, we have been doing that for the last—off and on, for the last four or five years.

*Q.* Well, that is leather; that is not offal? *A.* What is that?

*Q.* Didn't you hear it? Didn't you hear my question? *A.* No, I didn't.

*Q.* I say that is leather; that is not offal? *A.* What is leather?

*Q.* This that you have just spoken of. *A.* It depends on what part of that leather you mean.

*Q.* Oh, then, it depends on the part, does it? *A.* Yes, it depends on what part of that leather.

*Q.* Oh, then, you sell leather that is offal? *A.* We sell offal and we sell leather.

*Q.* You make a distinction, do you? *A.* What is that?

*Q.* Tell us the distinction. *A.* Offal is leather—pieces of leather or parts of a main part of the hide. Hides are their entire form of hide.

*Q.* You say that "We sell offal and we sell leather"? *A.* Yes, sir.

*Q.* I want you to give us the distinction. *A.* If we should take a cow hide and send it to the tanner and have it fully tanned, and bring it back, and then split it, we would have some offal and we would have some stuff that we would call leather.

*Q.* Well, I want you to tell me, if you will, what is the difference between offal and leather. *A.* The split part, as a rule, is called the offal, and the main part of the hide for which we tan it, which is the grain of the hide on a cow, is considered leather.

*Q.* Then the offal is not considered leather? *A.* Certainly it is; it is leather, but in a different form and size and character.

*Q.* You would not say that of glue stock, would you? *A.* Glue stock is glue stock.

*Q.* You would not say what you have just said of glue stock, would you? *A.* What do you mean, what I have just said?

*Q.* Well, you would not say that glue stock was leather, would you? *A.* Certainly not. Glue stock is raw product, and for that reason can't be leather. Leather is only that part which has been tanned either in mineral or vegetable tan. Then it couldn't be first-class leather.

*Q.* Is this buying and selling of offal any larger part of your business? *A.* It certainly is.

*Q.* As large as the other? *A.* Larger.

*Q.* It has been the largest part of your business for many years, and up to a few years ago, practically all your business, was it not? *A.* The largest part of our business at the present day.

*Q.* You advertise your business, do you not? *A.* We certainly do.

*Q.* I will show you an advertisement appearing in

the Shoe and Leather Reporter, and ask you if that is yours [shown to witness]? *A.* Yes, sir; that is our advertisement.

*Q.* Put there with your authority, I suppose? *A.* Yes, sir.

*Q.* I call your attention to the fact that there is advertised "J. Lichtman & Son, Rough Leather." *A.* Yes, sir.

*Q.* You do not see anything in that advertisement about offal at all, do you? *A.* We simply don't want it to appear there.

*Q.* Why not? *A.* For the simple reason that we don't, or we haven't that line of product for sale. On this page is what we have to sell in abundance, that we can place it in the market, and for that reason advertise it. We don't have to advertise stuff that we have a fairly ready sale for; we advertise the things that we haven't a very ready sale for and which we would like to sell.

*Q.* Well, this at least, then, is an incomplete advertisement of your business? *A.* Yes, sir; of the kind of goods that we handle.

*Q.* And it is an advertisement of the kind of goods that you find it the hardest to sell? *A.* Yes, sir. I wouldn't say the hardest, but the stuff that we have the most to sell of that we can't find a ready market for.

*Q.* I suppose, of course, that you put on your letterheads the statement that you deal in offal, did you not? *A.* Not necessarily.

*Q.* Well, though not necessarily, do you? *A.* There are reasons why we do not.

*Q.* Do you or do you not? I didn't ask you the reason. *A.* We did sometimes, and I think sometimes we didn't. We have different stationery.

*Q.* Have you any that tells of the fact that you are a dealer in offal? *A.* Yes, sir; in fact, the one at the time that we were having this offal contains nothing else but offal.

*Q.* That is, back in 1904 and 1905? *A.* Yes, sir; and 1906 and 1907, I think as far as 1908 and 1909.

*Q.* Well, I will show you a letter of the date of July 24, 1906 [paper shown to witness]. That is your handwriting, is it? *A.* That is my handwriting; yes, sir.

*Q.* Well, that is on your letterhead? *A.* Yes, sir.

*Q.* Is there anything about offal there? *A.* No, sir.

*Q.* And that is the letterhead that you had in use at that time, is it not? *A.* Well, if you will just be able to judge as a leather man what the different writing on that means, you won't have to ask me whether it means offal or not.

*Q.* Mr. MacMahon thinks that possibly you did not understand that I was asking whether there was anything printed there saying that you were a dealer in offal. *A.* Yes, sir.

*Q.* You understood that, did you not? *A.* What?

*Q.* That I was calling on you to see whether there was anything on there declaring that you were a dealer in offal? *A.* Not to you.

*Q.* Well, you understood that that was what I meant, did you not? *A.* I did not.

*Q.* So that now you say that you understood that I was asking whether there was anything there that could be interpreted as meaning offal? *A.* By you.

*Q.* By me? *A.* Or a man that hasn't any knowledge of the leather business.

*Q.* That is what you understood me to mean? *A.* Yes, sir.

*Q.* Well, I suppose, then, the same thing applies to this advertisement? *A.* Yes, sir.

*Q.* Then that does really, in the same sense, say something about offal, does it not? *A.* To a practical leather man, yes.

*Q.* Well, you did not have that thought in mind, then, when I was asking about that, did you? *A.* There was no necessity for me to tell you that.

*Q.* Your advertisement in the Shoe and Leather Reporter for January 12th says, does it not, "J. Lichtman & Son, Rough Leather"? *A.* Yes, sir.

*Q.* A picture of the factory? *A.* Yes, sir.

*Q.* And then under that, "Rough half-tanned pickled splits"? *A.* Yes, sir.

*Q.* Then "Russet Grain Buffings and Splits"? *A.* Yes, sir.

*Q.* "Without unlimited facilities for the prompt shipment of both foreign and domestic orders"? *A.* Yes, sir.

*Q.* "Main office and factory, Newark, New Jersey, U. S. A."? *A.* Yes, sir.

*Q.* "Cable address, 'Lichtman'"; is that right? *A.* Yes, sir.

*Q.* And then your letterheads simply state— *A.* It says nothing; it says we are in the leather business.

*Q.* It says you are in the leather business? *A.* Nothing more. What does "jobbers" mean?

*Q.* Well, pardon me! *A.* Pardon me!

Mr. Riker—I ask that that advertisement go in.

Mr. Skinner—Do you offer it?

Mr. Riker—No.

The Court—I think it is in.

*Q.* You say this letterhead, or stationery, of the letter of July 24, 1906, just shows that you are dealers in leather. You do not mean that that is what the words are on that? *A.* That is what it says.

*Q.* Do you not mean that that is what the words there mean? *A.* That is what they mean, that we are in the leather business.

*Q.* Not in the offal business? *A.* Offal includes leather.

*Q.* Well, does it? *A.* In that sense. We have leather, and if we have leather we have offal.

*Q.* Let me see. Then not only does offal include leather, but leather includes offal? *A.* Leather offal.

*Q.* Leather includes offal. *A.* Leather offal. We didn't deal in rags.

*Q.* Well, at any rate, you say now that a man in the

leather business is in the offal business. *A.* After the reading of that letter, yes.

*Q.* You would not have said it before, would you? *A.* A man in the leather business needn't necessarily be in the offal business, no.

Adjourned until to-morrow, Wednesday, January 31, 1912, at ten o'clock A. M.

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SEVENTH DAY.

WEDNESDAY, January 31, 1912.

Met pursuant to adjournment.

Present, counsel as before stated.

[The witness, Abraham Litchman, is directed to stand aside for the present.]

*James J. O'Neil,* sworn in behalf of defendant.

Direct examination, by Mr. Riker.

*Q.* Mr. O'Neil, where do you live? *A.* Wilmington, Delaware.

*Q.* What is your business? *A.* President of the Wilmington Leather Company, tanners of all kinds of leather.

*Q.* Have you been engaged in the leather business for any length of time? *A.* All my life.

*Q.* Would you mind indicating generally how many years your experience covers? *A.* I left school when I was fifteen years old and entered a leather factory, and I am now forty-three years of age; I have never been in any other business.

*Q.* Where have you been engaged in the leather business? *A.* You mean for myself?

*Q.* Well, just roughly and quickly run over the experience you have had. *A.* I served my apprenticeship in Wilmington, Delaware; afterwards I was with Robert Foederer, Philadelphia.

*Q.* He is the maker of vici kid, is he not? *A.* Yes, sir.

Q. The largest maker in the world, is he not? A. Yes.

Q. What other experience have you had? A. I was superintendent there for eight years; I was with Foederer close to fifteen years.

Q. After that what did you do? A. I started in business for myself in Wilmington, Delaware.

Q. Under what style or title did you conduct that business? A. Wilmington Leather Company.

Q. Was it a corporation? A. Yes.

Q. Have you continued from that time on in that corporation? A. Still there.

Q. What is your position with the company? A. President and general manager.

Q. Have you had practical experience in the matter of tanning hides? A. Yes, sir.

Q. What kind of hides? A. Cow hides, horse hides, goat skins, sheep skins, calf skins, all kinds.

Q. Goat skins? A. Yes.

Q. Horse butts? A. Yes.

Q. Where have you had your experience in tanning horse hides and horse butts? A. Wilmington, Delaware.

Q. And how long a time does that experience cover, Mr. O'Neil? A. Two years and a half or three years; I don't exactly remember the dates.

Q. Have you had any experience in the matter of tanning hides upon contract for consignors, or bailors, we had better call them, of hides? A. The greatest part of our business.

Q. Have you conducted that method of doing business with reference to horse butts? A. Yes, sir.

Q. And horse hides? A. Yes, sir.

Q. Will you state briefly the characteristics of the horse butt, or the horse hide—I will take the whole hide—as compared with cow hides? A. In what way?

Q. As to quality and general conditions, so far as it involves the tanning business? A. We tan only in

chrome. The horse hides we tanned were tanned for enamel purposes; cow hides practically the same, but there are three finishes for cow hides; one is bright, or velour; another a dull, or gun metal, and the third finish is suitable for enamel purposes. From the cow hide—Do you want me to go through the process?

*Q.* Tell me the differences, if there are any, between a horse hide and cow hide, so far as the product is concerned. *A.* It is entirely different grain, and the split of the cow hide is valuable and the split from—or, rather, the offal, or split, from the horse hide is invaluable.

*Q.* Well, do you mean by "invaluable" in the sense of being beyond value? *A.* Oh, no, not valuable.

*Q.* Of no value *A.* No value.

*Q.* Now, at your place of business how many hides do you handle per day? *Q.* Between eight hundred and a thousand dozen per day.

*Q.* You do not mean that that is the number of horse hides? *A.* Well, no, we tan all kinds of leathers.

*Q.* Are you familiar with the general practice in the trade with reference to the tanning of hides under contract? *A.* Sure, I am.

*Q.* Is there a general custom applicable to the tanning of hides under contract with reference to what the tanner is to keep and what the bailor is to receive back? *A.* Yes.

*Q.* What is that custom? *A.* In making contracts for tanning on commission, the offal, unless specifically stipulated, always belongs to the tanner.

*Q.* And what is included in the offal? *A.* Everything except that the stuff that is stipulated to be finished is to be returned to the man who owns the skins.

*Q.* Everything except those things which were stipulated in the contract to be returned to the man who sent the skins—owns the skins? *A.* Yes.

*Q.* Is that so? *A.* That is so.

*Q.* Is that custom limited to any particular kind of hides or skins? *A.* None that we ever handled.

*Q.* Well, do you know whether it is, as a matter of fact, a general custom? *A.* The general custom throughout the trade is that all offal belongs to the tanner, and it is considered so and is so, unless otherwise specifically stipulated in the contract.

*Q.* What is offal, Mr. O'Neil? *A.* Anything that falls off from the hide from the time it enters the works until it is finished.

*Q.* Anything that falls off the hide during the process of handling the skins until they are returned to the bailor? *A.* Yes, sir.

*Q.* Do you know what the word "by-product" means? *A.* I think I do.

*Q.* Well, is or is not the offal another name for by-product of hides? *A.* Practically the same thing.

*Q.* Is this offal of value in dollars and cents? *A.* Oh, yes.

*Q.* Does it vary in value? *A.* Oh, yes.

*Q.* And does it vary in accordance with the kind of hides that are being handled? *A.* Positively so.

*Q.* Now, in handling horse butts, Mr. O'Neil, in the process of tanning that you have applied to it in your works, how many pieces do you get? *A.* We got one piece. You mean originally?

*Q.* One piece. What do you mean by that. *A.* We got the whole horse.

*Q.* Is any part taken off? A. Oh, yes.

*Q.* What? *A.* We take off—cut off the shell, which does not make good leather, does not make any leather of any kind.

*Q.* What is that shell that you refer to? *A.* The shell is a part of the hide close to the butt, or part of the butt practically, that is hard and scabby; it is undesirable as a piece of hide to make leather.

*Q.* [By the Court.] Where does it lie on a horse? *A.* It lies about the hips.

*Q.* [By Mr. Riker.] That is the shell, is it, so-called? *A.* What we call the shell.

*Q.* Do you make cordovan leather in your place? *A.* No, sir.

*Q.* Do you know whether that goes into the cordovan, so-called? *A.* I understand it does.

*Q.* You do chrome tanning? *A.* Chrome tanning.

*Q.* Now, that shell that is taken off, is there in addition to that a substance between that and the flesh that is also taken off? *A.* Between the shell and the flesh.

*Q.* Yes. You leave the grain for your purposes? *A.* Yes, sir.

*Q.* And you take off the whole of that shell? *A.* Cut it out entirely.

*Q.* Including the grain above the shell? *A.* Yes.

*Q.* You cut that all out? *A.* Yes.

*Q.* What do you do with it? *A.* That is glue stock; we throw that into the glue stock.

*Q.* Why? *A.* Doesn't pay to tan it.

*Q.* In your practice of doing work by contract do you return that to the consignor, or bailor? *A.* No, nothing.

By the Court.

*Q.* What is you retain? I do not quite understand. *A.* We retain as glue stock all the trimmings from the hide in the beam-house.

*Q.* That is not what I meant. What is it that you return? *A.* Oh, we return the grain of the hide. You are speaking now of horse butts?

Mr. Riker—Yes.

Witness—We return the brain only, manufactured either in leather suitable for enamel or a mat, what we call a mat.

*Q.* Did I understand you to say that you cut off the whole of the shell, including the grain? *A.* The shelly part of the hide.

*Q.* Then you throw away some of the grain? *A.* Oh, yes, the grain attached to that part of the hide, and return the balance of the hide.

Q. The balance of the grain? A. The balance of the hide.

By Mr. Riker.

Q. With respect to the balance of the hide, do you shave or split away the fleshy side? A. Oh, yes, we level the hide, of course.

Q. How do you do that? A. By shaving.

Q. Shaving machine. A. Machine.

Q. You shave off the fleshy side of the balance of of the hide after cutting out the shell? A. Yes.

Q. What becomes of that stuff that you shave off? A. If it is shaved in pickle it goes to the glue stock; if it is shaved after tanning it is offal, which we use for fertilizing purposes.

Q. If it goes into the glue stock, is it offal or not? A. Offal.

Q. And the shell that you cut off, is that offal or not? A. That is offal.

Q. That is, under the process that you are describing? A. Yes.

Q. Now, Mr. O'Neil, assuming a contract which provides for the tanning of horse hide butts, under which the bailor, the consignor, of the hide is to pay the tanner ten cents a square foot for shells and five cents a square foot for shanks, under which the tanner agrees to tan the shells of all horse hide butts received during the period with bark tanning and finish them into cordovan, to tan in chrome the shanks of all horse hide butts received from the party of the first part—that is, the bailor, and finish with a smooth finish so that they can be japanned all of said shanks which are suitable for japanning, and to finish all of said shanks that are unsuitable for japanning with a dull finish suitable for topping stock, and to do all work done under this contract in a first-class manner, and to make from all horse hide butts received from the bailor merchantable leather of as good quality as can be produced from the raw stock received; what would the tanner keep?

The Court—That question asks the witness to interpret the contract.

Mr. Riker—Well, I do not ask him to interpret it in connection with this custom that he is testifying to.

The Court—That makes a different question of it.

Mr. Riker—Taking this contract in connection with the custom which you have testified to what does the tanner keep, under that contract?

Mr. Skinner—I want my objection noted, the same objection as before, that it calls practically for an interpretation of the contract.

The Court—There has been quite a good deal of this sort of testimony. It is possible for a custom and a contract to coexist. The questions assume that this contract and this custom do coexist. I think that for the purpose of asking the question you may make that assumption, and that makes the question prominently a question as to the application of the custom to a given state of facts, although it does incidentally involve an opinion as to the contract. I do not think that we can disentangle these two lines of thought. I think you may ask the question.

Plaintiff's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

[Question read.]

*Q.* I have read you this contract. Having in mind the custom that you have testified to, what does the tanner keep under that contract? *A.* The tanner would deliver all articles stipulated in the contract; the rest he would keep.

*Q.* And the custom that you speak of, does it or does it not involve the doing of this work under a contract specifically?

[Question withdrawn.]

*Q.* Is it or is not the custom to do this class of work under a specific contract? *A.* Sure.

*Q.* And that contract may be verbal or written, may it not? *A.* Either.

Cross-examination by Mr. Skinner.

*Q.* Mr. O'Neil, you say it is the custom to do that sort of work under a contract? *A.* Yes.

*Q.* Do you mean the tanning of horse hide butts specially? *A.* Not specially.

*Q.* Do you not mean that when you are doing work for other people you do it under contract? *A.* Yes.

*Q.* Well, of course, that contract can be either written or verbal, as you said? *A.* Yes.

*Q.* It would also be, except as it was covered by the contract, subject to trade usage, to trade custom, would it not? *A.* I judge so, yes.

*Q.* Except as specified in the contracts? *A.* Except as specially stipulated in the contract.

*Q.* And these contracts, verbal or written, may vary as much as there are the number of contracts? *A.* Yes, sir.

*Q.* Now, if there was a contract by which the horse hide butts, as distinguished from the rest of the hide—that is, the butt including the shanks, all in one piece—was to be shipped to the tanner for tanning, and he was to tan both the shell and the shank, would not the whole hide, the whole piece, that was sent to the tanner be returned so far as it was merchantable leather? *A.* So far as it was merchantable leather?

*Q.* Yes. *A.* What do you mean by "merchantable leather?"

*Q.* Well, not glue stock or fertilizer. *A.* No, I shouldn't think so.

*Q.* Or mere waste, valueless waste, valueless for all purposes? *A.* I wouldn't say that, because offal that comes off a hide has some value.

*Q.* I mean valueless as leather, for the uses to which leather is put? *A.* Yes. Well. You had better put your question in another way. We would return to the tanner, under a contract such as you said there—we would return to the tanner the shanks finished where he stipulated the cordovan. Outside of that we would return nothing.

*Q.* When you say "return to the tanner" you mean the shipper? *A.* Yes.

*Q.* And you would retain under such a contract what was within your definition of offal, would you not? *A.* Yes.

*Q.* And only what was in that definition? *A.* We would return to him what he stipulated in his contract. Everything else belongs to us.

*Q.* I am asking about a particular contract; that is, a contract by which the whole butt, including the shanks, is sent to japan, under a contract for the tanning of the shell and the shank, the shell in chrome and the shank otherwise. In that case the contract would cover the entire piece that was sent to the tanner, would it not? *A.* Outside of your levelling, whether you split it or shaved it.

*Q.* And you would return, then, all of the piece sent to you for tanning outside of what was taken off in the levelling? *A.* Outside of what was taken off in the levelling or shaving or trimming.

*Q.* Now, the parts that are taken off in shaving or levelling or trimming would be offal, would they not? *A.* We would consider them so.

*Q.* And they would go into glue stock or fertilizer? *A.* Glue stock or fertilizer, or any other thing that you thought you wanted to make out of them.

*Q.* What would you make out of them? *A.* You could sell a small split; it would be worth more as a small split, a small piece, than it would as glue stock.

*Q.* Have you done that? *A.* In our case, no.

*Q.* And when you said you shaved off the shell sometimes before tanning and sometimes after tanning—*A.* I didn't say that.

*Q.* Did you not say that? *A.* No.

*Q.* Well, now, let me see. Did you not say that "if we shaved off the shell before tanning it goes into glue stock?" *A.* No, sir; I didn't say that.

*Q.* Do you not shave off the shell? *A.* No, sir.

*Q.* You would not shave that off? *A.* No.

*Q.* Then you would return the whole shell, would you not, if it was sent to you to tan? *A.* No.

*Q.* You are speaking about your own experience, are you, where you keep the shell? *A.* Yes.

*Q.* But I am speaking of a contract that calls for the tanning of a shell with bark tanning and finishing it into cordovan. In such a case you would return the entire shell, would you not? *A.* No.

*Q.* Would you shave it? *A.* I don't know whether I would shave it or split it; it would depend on whether I could get the most money for the shavings or the splittings.

*Q.* Did you not say that you were under this custom entitled to keep or retain the offal? *A.* Yes.

*Q.* And did you not say that offal included everything that fell off the hide in the process of handling the skin until returned? *A.* Yes.

*Q.* And by "fall off" you mean legitimately taken off in the process of tanning, do you not? *A.* Exactly.

*Q.* And did you not say that everything that fell off the hide—did you not say also that you retained what you took off the shell which did not make good leather? *A.* Yes.

*Q.* If it made good leather, you would not retain it? *A.* If it made good leather? What do you mean by that?

*Q.* Do you not understand that?

Mr. Riker—He did not say that.

Mr. MacMahon—What he said was that he cut the shell out because it does not make good leather.

*Q.* Is that what you understand, that you cut off the shell because it does not make good leather? *A.* Yes.

*Q.* But you know that leather was made of it, do you not? *A.* I wouldn't consider it leather.

*Q.* Well, is not a cordovan a process of finishing leather? *A.* I believe it is, yes.

*Q.* Well, is not cordovan leather, then? *A.* Cordovan is leather, yes.

*Q.* Is it not good leather? *A.* Yes.

*Q.* Well, cordovan is made from the shell, is it not? *A.* I believe it is.

*Q.* Now, the grain from the shell is valuable, is it not? *A.* We never considered it so, no; it is coarse, lumpy, scabby, scratched, and it isn't fit for enameling purposes or anything else that I could ever find out.

*Q.* Then you are simply speaking from your own limit of knowledge, that you have not known it to be used as leather of value? *A.* Exactly.

*Q.* And what you say would be subject, of course, then, to modification if you found out that it was used as leather of value? *A.* Up to the present I have given you all that I know; I couldn't go further.

*Q.* But if you learned that it was used as leather of value, then you would change your statement? *A.* If I learned that it wasn't used, I would also stick to my statement.

*Q.* If you got a horse hide butt under contract to make from it merchantable leather of as good quality as could be produced from the raw stock until received, would you not feel under obligation then to return all of that horse hide butt that was merchantable leather? *A.* Merchantable—depends upon what light you consider the word "merchantable" there.

*Q.* Well, as you would look upon it, at any rate, you would return everything that was merchantable leather?

*A.* Return everything except what we regard as offal, everything as stipulated in the contract.

*Q.* I want you to use the word "merchantable." If you got a horse hide butt under contract to tan it and to make from it merchantable leather of as good quality as can be produced from the raw stock, would you not return all that was merchantable leather?

Objected to as not founded on the facts.

The Court—Nevertheless, I think the question may be asked. It is practically this: Assuming that this be the contract, how would you interpret it, or how, interpreting such a contract and the custom together, would you act?

[Question read.]

*A.* In every contract we make the word "merchantable" appears in practically the same identical relation. We regard that as merchantable leather, as meaning leather that can be merchanted leather, that is fit to sell, you understand?

*Q.* Yes. *A.* We return him only what he has stipulated we should finish and in the different finishes which he stipulated it should be finished.

*Q.* Then if the contract called for the delivery of the tanner to the horse hide butt and the tanning of the shell into cordovan and the shanks in chrome, those that were suitable for japanning, to be smooth finished, and those that were suitable for japanning to be dull finished for topping stock, and to make from all the horse hide butts received under the contract merchantable leather of as good quality as can be produced from the raw stock, would you not return all the merchantable leather, as you have defined merchantable leather? *A.* Yes, I would return it all to him.

*Q.* Do you tan on a commission basis? *A.* Yes, we tan by contract so much per foot for doing it.

*Q.* Is that the same as doing is on a commission basis? *A.* It is supposed to be the same, yes.

*Q.* Do you not know that there is a practice of tanning on commission by which a price per foot is charged

for tanning, and then the tanner gets a share of the profits that are obtained by the consignor? *A.* We would call that tanning on joint account.

*Q.* You do not call that on commission? *A.* No, sir.

*Q.* Do you do business that way? *A.* Yes, sir.

*Q.* Altogether? *A.* No, sir.

*Q.* Partly? *A.* Partly.

*Q.* Under that method, or that practice, the owner —that is, the bailor, the shipper of the hides—also gets a part of the profits of the tanner from the offal, as you call it? *A.* Yes.

*Q.* Do you not tan goat skins more than anything else? *A.* No.

*Q.* Well, have you tanned many horse hide butts? *A.* Yes.

*Q.* Have you ever tanned the shells themselves? *A.* Never.

*Q.* And it is news to you that the shell is of value, is it? *A.* In our business the shell would not be worth anything.

*Q.* But you can conceive of it being worth a good deal in somebody else's business, can you not? *A.* I know nothing about it.

*Q.* That you do not know? *A.* No.

By the Court.

*Q.* Do you throw away the cordovan in your business? *A.* We cut off the shell and throw it away into glue stock; we do not finish any cordovan leather. The balance of the hide, including shanks, we manufacture into leather suitable for enamelling purposes or topping stock.

*Q.* I do not yet quite understand whether you have answered my question or not. I daresay you have. Do you throw away the cordovan? *A.* Yes.

By Mr. Skinner.

*Q.* And you throw it all away, the grain as well as the shell proper? *A.* We take it out in the raw state.

Q. And throw it away into glue stock? A. Yes.

Q. And regard it as of no value except as glue stock? A. Except as glue stock.

*Abraham Lichtman* resumes the stand in behalf of defendant.

Cross-examination (continued) by Mr. Skinner.

Q. Mr. Lichtman, you said yesterday that you never met Elliott at the factory between June, 1904, and February, 1905. Do you remember that? A. Yes, sir.

Q. Which factory did you mean? A. Either factory.

Q. Either of which? A. Either of our factories.

Q. You did see him in that period at the Guigues factory, did you not? A. Yes, sir.

Q. Repeatedly? A. Several times, I think.

Q. But not at either of your factories? A. No, sir.

Q. And you saw him at your factory after February, 1905? A. On possibly one or two occasions during the entire life of our business with Albert A. Guigues or the Guigues Leather Company.

Q. And can you tell the time? A. It was during the latter part of our business transaction with that concern. If you allow me to state the business—

By the Court.

Q. Do you remember at which of your factories you then saw him? A. At the Market street factory.

Q. Well, you were at the Market street factory while the Arch street factory was being built, or was it just the opposite? A. We were at the Arch street factory while the Market street factory was being built and after the Market street factory was being built and before the Market street factory was built.

By Mr. Skinner.

Q. Well, your factory first was located at Arch street? A. No, we had the Market street factory and the Arch street factory at the same time

Q. And for how long a time? A. Oh, I couldn't exactly say that.

The Court—How long both together, you mean?

Mr. Skinner—No.

Q. How long a time did you have an Arch street factory? A. How long all together?

Q. Yes. A. Well, I couldn't exactly state.

Q. From when to when? A. Well, it wasn't very long before we started the erection of this Market street factory.

Q. Well, say in June, 1904, did you have a factory at Arch street? A. Yes, sir.

Q. And from that time on until when? A. Oh, I think for one or two years.

Q. And when did you first have a factory at Market street? A. Well, that would go back—

Q. Back of 1904? A. Yes, sir.

Q. Well, from 1904 on how long? A. From 1904 on?

Q. Yes. A. We still own the place to-day.

Q. Ever since you have had it? A. Yes, and before 1904.

Q. So that there was a period of about two years from 1904 on when you had two factories? A. From 1904 on?

Q. Yes. A. No.

Q. Did you not say that you had the Arch street factory first in 1904? A. I said we had the Arch street factory while we had the Market street factory.

Q. Did you have it prior to 1904? A. I think yes.

Q. At any rate, for two years after 1904? A. I said from one to two years.

Q. Well, you paid the bills, did you not, for the goods purchased by your father from Mr. Guigues? A. What do you mean, I paid them?

Q. Well, drew the check? A. Do you mean wrote the whole check out or—

Q. Well, signed the check. A. Some of them, yes.

*Q.* What? *A.* Some of the checks.

*Q.* Not all of them? *A.* I don't think so.

*Q.* You mean that he signed some of them? *A.* I think he did some, because I was away for a period there in Europe.

*Q.* Well, the dealings that your father had with Mr. Guigues were dealings under arrangements made by you, were they not? *A.* I made the arrangement; yes, sir.

*Q.* And did you not look after the receipt of the goods and getting the shipments to you? *A.* Getting them to us?

*Q.* Yes. *A.* No, that wasn't my business.

*Q.* Whose was it? *A.* That was the business of Mr. Guigues, to deliver what he sold.

*Q.* But he was not to deliver any fixed amount at a fixed time, was he? *A.* Well, whenever the stuff was ready he would either telephone, "Send your wagon," and if we couldn't send the wagon, we would send a truck or he would send his truck.

*Q.* At times you sent your wagon, and sometimes you sent a truck? *A.* We ordered an expressman to go there.

*Q.* And sometimes sent your own wagon? *A.* Yes.

*Q.* And the goods were put right on your wagon, in those instances, at the Guigues factory? *A.* On our factory in some instances, yes, sir.

*Q.* That is what I said. And you would sometimes telephone to Guigues's factory to get a shipment, would you not? *A.* I think I did telephone on several occasions whether there was anything ready for us; yes, sir.

*Q.* Now, in the instances where you paid the bills—that is, signed the checks—did you do that without any statement of account from Mr. Guigues? *A.* Yes, sir.

*Q.* No bill at all? *A.* What do you say?

*Q.* Didn't you understand what I said? *A.* You said in many instances we paid our bills without a statement of account

*Q.* No, I did not. *A.* I understood you to say that.

Mr. Skinner—No, you did not.

*Q.* [Question read as follows: "Now, in the instances where you paid the bills—that is, signed the checks—did you do that without any statement of account from Mr. Guigues?"]

Mr. Skinner—You understand, I am confining your attention to the instances where you signed the checks.

*A.* We had a bill and we paid it; he didn't have to sand us any statements.

*Q.* And the bill was itemized? *A.* The bill specified what we received; yes, sir.

*Q.* And you did not sign the check until you had verified the bill, did you? *A.* That was my business; yes, sir.

*Q.* And then you did it, did you not? *A.* I generally wanted to know whether we got the stuff before we paid for it.

*Q.* Well, did you or did you not? *A.* I certainly tried to do it; yes, sir.

*Q.* And the only way you could do it was by comparing the bill with the invoices? *A.* Comparing the bill with the invoices? *A.* What is an invoice?

*Q.* Did you get an invoice with each shipment? *A.* Not necessarily.

*Q.* Well, if not necessarily, did you? *A.* Well, we didn't in every instance.

*Q.* Did you in many instances? *A.* Yes.

*Q.* Then afterwards, having received several shipments with individual invoices, you get a bill covering several shipments, would you not? *A.* Yes, sir.

*Q.* Did you not then compare the bill with the invoices that had come with the several shipments? *A.* We got no invoices or we got no bill. An invoice and a bill to me is the same thing.

*Q.* Did you ever get any bill that covered prior shipments for which individual bills had been rendered—separate bills? *A.* One bill taking in other bills?

*Q.* Yes. *A.* No, sir.

*Q.* Well, then, how did you know how much Mr. Guigues wanted, if you did not get any bill that covered prior bills? Did you pay for every shipment? *A.* In most instances, yes.

*Q.* But in many instances, no? *A.* Very few.

*Q.* How soon after receiving a shipment did you pay? *A.* Possibly the same day.

*Q.* And possibly what? *A.* Maybe two or three days later.

*Q.* And possibly ten or twenty days later? *A.* Never, to my knowledge.

*Q.* Do you say that Elliott never presented to you a statement showing various shipments that had been delivered prior to that date and not yet paid for, and delivered at different dates? *A.* Where?

*Q.* Anywhere. *A.* During what time?

*Q.* During any time. *A.* Yes, sir.

*Q.* Why did you ask me, then, to specify the time and the place? *A.* Well, because I think you are confining yourself to 1904 and part of 1905, and I want to be very explicit with you.

*Q.* You said that you did not keep any cash-book, do you remember? *A.* No, sir.

*Q.* Well, that is the fact: you did not keep any cash-book? *A.* No, sir.

*Q.* Is that the fact? Did you keep it? *A.* We never kept a cash-book.

*Q.* Did you sell your goods for cash? *A.* Yes, sir.

*Q.* Did you get paid for the goods the hour or coincident with the delivery of them, C. O. D.? *A.* Never later than ten days.

*Q.* But many times as late as ten days? *A.* Yes, sir.

*Q.* Now, during those ten days did you keep no record of the sales? *A.* Yes, sir; we have a sales-book.

*Q.* When the money came in for the sale did you make no entry of the receipt of the money? *A.* Yes, sir.

*Q.* Well, in a cash-book? *A.* We didn't keep it in a cash-book.

*Q.* Well, where? *A.* When we got a check we kept it on a stub, or a deposit slip; there were two deposit slips; one we send to the bank and one would be retained, and that would be put in the sales-book to the customer, to balance his invoice. If you would like to see those books we can show them to you; I have no objection to that.

*Q.* Of course, if you would expect me, if I wanted to see them, to know my own wants, would you not? *A.* Well, I say if you want to see them.

*Q.* You said that you tried to keep the invoices did you not? *A.* We didn't make any special effort.

*Q.* Did you not say that? *A.* Yes.

*Q.* And you did try to keep them? *A.* Not necessarily, no.

*Q.* What did you mean when you said that, then? *A.* By that I meant that at different times we wanted to see an invoice, to go back possibly to where we had some arrangement with some people; possibly sometimes we bought goods on joint account with someone else, and it was our business to show these people the bills for the stuff that we got.

*Q.* Then do you mean that you mean that you did not try generally or all the time to keep the invoices, but only on special occasions or for special customers? *A.* That is exactly what I mean.

*Q.* You did not try to keep them as to the shipments from Guigues, did you? *A.* No, sir.

*Q.* Why not? *A.* We had no use for them in any special case.

*Q.* You got grains split from the shell from Guigues, did you not? *A.* Grain splits from the cordovan, or the shell, yes.

*Q.* And you also got them from Baker, did you not? *A.* No, sir.

*Q.* You did not? *A.* Never.

Mr. Skinner—I call for invoice from the Corona Kid Company of October 27, 1906.

Mr. Riker—Is that one of the exhibits?

Mr. Skinner—No.

Mr. MacMahon—We have not got it.

*Q.* Well, you produced here yesterday, Mr. Lichtman, an invoice of the date of November 24, 1906, from the Corona Kid Company; it was marked *D19*, I think. That is one of the invoices of the Corona Kid Company, is it not? *A.* I would like to see it. [Paper shown to witness.] Yes, sir. We got that stuff—

*Q.* And you brought here to the courtroom, did you not? *A.* I think Mr. MacMahon did.

*Q.* Well, at your direction it was brought, was it not? *A.* Yes.

Mr. MacMahon—Yes, I brought it up.

*Q.* And you made the search to find these invoices, did you not? *A.* We searched everything that we could possibly find when this case came up.

*Q.* Did you not find any others than the ones that were produced here in evidence yesterday? *A.* No, sir.

*Q.* Then you did not find one of October 27, 1906, so far as you can recollect? *A.* Well, if it isn't there, we didn't find it.

*Q.* Well, this one here that was produced by you yesterday calls for 85 dozen shell splits? *A.* Yes, sir.

*Q.* Is not that an instance where you bought splits from the shell from Mr. Baker, or the Corona Kid Company? *A.* No, sir.

*Q.* What are they? *A.* These are original cordovan shell splits.

*Q.* What had been split from the piece that you got? *A.* From that part there there has been a light, thin grain taken off, possibly, for topping stock; I doubt whether it would go into japanning.

*Q.* Then this was the piece that was left after taking off the grain? *A.* This was the main cordovan shell.

*Q.* Was it not all the shell left after taking off the grain? *A.* Not a grain; no, sir; a very light grain, and nothing more than practically than a light buffing

*Q.* I did not ask you anything about the thickness or weight of it. *A.* You asked me what was taken off, didn't you?

*Q.* No, I asked you whether this that you got was not all the shell after taking off a grain, or the grain.

*Q.* I suggest to the witness that he pay close attention to the questions and not argue so much. Was not this that you got in this invoice the shell after taking off the grain? *A.* What kind of a grain?

*Q.* Any kind of a grain. *A.* Yes.

*Q.* Now, did you not get some of those grains, too, the grains taken off of the shell? *A.* From whom?

*Q.* From Baker. *A.* The grains? No, sir.

*Q.* Whom did you get it from? *A.* We didn't get any taken off of that.

*Q.* Taken off of what? *A.* Of that class of stuff.

*Q.* I didn't say this class; I say didn't you get any grains taken off of the shell of a horse hide? *A.* A cordovan shell; yes, sir.

*Q.* From whom? *A.* From Albert A. Guigues and the Albert A. Guigues Leather Company.

*Q.* And none from Mr. Baker? *A.* No, sir.

*Q.* You got from Mr. Baker, though, entire butts, did you not, or entire shells, including both grain and the shell itself? *A.* The entire raw butt; yes, sir.

*Q.* Without anything taken off? *A.* Without anything being done to them whatever.

*Q.* What could you do with the shell splits mentioned in *D19*, which you have described as being the shell itself after the taking off of a thin grain?

Mr. Riker—I object on the ground that it is not cross-examination and it is this witness's private business with stock that is not concerned in this suit.

[Question withdrawn.]

*Q.* Did you not buy these shell splits named in *D19* for the purpose of selling them again? *A.* Yes, sir.

*Q.* For what did you sell them?

Objected to as not cross-examination and as immaterial.

*Q.* Did you sell them for glue stock? *A.* Certainly not.

*Q.* Why certainly not? *A.* Because they were better than glue stock.

*Q.* Well, then, they had not been so damaged by taking off the grain that they were worthless, had they? *A.* Not these, no.

*Q.* Then taking off the grain did not necessarily make the shell split thus resulting good for nothing but glue stock, did it? *A.* That would depend entirely how they were split.

*Q.* It would depend on how much was taken off in the splitting, would it not? *A.* That would depend entirely on how they were split.

*Q.* And it could be split without injuring the shell, could it not? *A.* Yes, sir.

*Q.* And the more you took off in the grain, the more likely you would be to injure the shell? *A.* Yes, sir.

*Q.* Now, the grains that were split off from the shell that you bought from Guigues, were they very thin grain? *A.* Yes.

*Q.* And about how large were they? *A.* Oh, they would run from pieces of an eighth of a foot square, some an inch and a half square, to three feet, some possibly three and a half.

*Q.* An inch and a half square would be a pretty small piece, would it not? *A.* Yes, sir.

*Q.* And they were very thin? *A.* Yes, sir.

*Q.* And you also said they varied from a sixteenth of a pound in weight to five-eighths of a pound in weight? *A.* Yes, sir.

*Q.* Did those smallest pieces in size, an inch and a half square, very thin, weigh a sixteenth of a pound? *A.* No, sir.

*Q.* It would take a good many to weigh an ounce, would it not? *A.* We didn't count them.

*Q.* But— *A.* It would, yes.

*Q.* Then were you not wrong in saying that they varied from a sixteenth of a pound in weight to five-eighths? *A.* I was speaking in general, and I didn't mean entirely sweepings, which we also received.

*Q.* But you did mean the pieces when you were describing the size of the pieces, did you? *A.* No, sir.

*Q.* You were describing the same kind of pieces both times, not sweepings, and you described them in measurement as being as small as an inch and a half square and as weighing at least a sixteenth of a pound. Now, I have called your attention to the fact, and you have stated that a piece an inch and a half square would not weigh a sixteenth of a pound. Then I ask you, had you not understated the minimum size of these pieces? *A.* No, sir. Sweepings are not pieces.

The Court—You mean understated or overstated.

Mr. Skinner—I asked if he had not understated the minimum of size. That is what I meant. He stated the minimum of size as being as small as an inch and a half, and I asked him if he has not put that too small.

Witness—The minimum size of the pieces.

Mr. Skinner—Yes.

Witness—You did not ask me about sweepings.

*Q.* You have said that you were not talking about sweepings when yesterday you gave us measurements that ran from an inch and a half square to three or four square feet. *A.* That is right. You asked what were the size of the pieces.

*Q.* Well, your first contract was to take 200 tons of butt splits from Guigues, was it not? *A.* I think so.

*Q.* Well, would you say now, Mr. Lichtman, that the grains split from the shell that you got from Guigues, that you have been describing by their size and weight, would average in weight quarter of a pound? *A* Average in weight?

*Q.* Yes. *A.* No, sir.

*Q.* Less than that? *A.* Some lots less and some lots more.

*Q.* But averaging?

The Court—Averaging all the lots.

*A.* Half a pound, you say?

*Q.* Quarter of a pound. *A.* I think they would average more than a quarter of a pound; yes, sir.

*Q.* As much as half of a pound? *A.* Not quite.

*Q.* Why did those pieces vary in size, do you know? *A.* Because they were taken off to level, or to reach the cordovan; they weren't taken off for the grain.

*Q.* What would make them vary in size, though? *A.* That would depend entirely on the thickness of the butt.

*Q.* That is, if the butt was thick, the piece taken off on the grain side would be larger in area? *A.* If the butt was thick and came from a green salted hide, which had a nature to have a thicker grain side to it, that grain split would be heavier. If the butt came from a Russian dry hide there would be not very much grain to be taken off to reach the cordovan, and for that reason would be lighter.

*Q.* It would be smaller, would it not? *A.* Smaller, flimsier.

*Q.* And lighter. Were each of these pieces that we call the grain split from the cordovan, that you got, were each of them the piece that was taken off from one particular hide? *A.* What do you mean?

*Q.* Or would there be more than one piece taken from the same shell? *A.* I don't just get that.

*Q.* Would there be, in the process that you saw these butts subjected to in Guigues's factory, more than one piece taken off of the single shell? *A.* In order to reach the cordovan?

*Q.* In this process that you have described of taking off the grain— *A.* Yes.

*Q.* —would more than one grain piece be taken off of each shell? *A.* No, sir.

*Q.* Then the number of the pieces must have been the same as the number of shells, or, at least, no greater? *A.* The number of the pieces would have to be the same—

*Q.* Could not be greater than the number of shells? *A.* Well, sometimes the grain off of that butt would come off in two pieces.

*Q.* Well, you just said it would only be one piece.

Mr. Riker—That is not what he said; he said off of that one hide, or one butt.

*Q.* Do you say now that two pieces come off of the same butt? *A.* Sometimes there would be a grain taken off of that butt that would fall apart, and there would be two or three or six or ten different pieces, and yet it came off one grain off of that same one butt.

*Q.* So that it became more than piece by falling apart after it was taken off? *A.* Yes, sir.

*Q.* Yesterday you produced some pieces, that, I think, you called shavings. *A.* Yes, sir.

*Q.* Those were not what we have just been speaking of, the taking of the grains from the butt, were they? *A.* They were here to give you an example of shavings.

*Q.* Were they here as an example of the pieces of grain side taken from the butt? *A.* These are no grain shavings, no; these are shavings; that would be the manner of a hand shaving, that would come off in hand shaving.

*Q.* From which side of the butt were those taken, do you think? *A.* I haven't any idea. They were shavings, merely to give you an example or to show you what a shaving is.

*Q.* I do not suppose you have any idea as to how the size of the shavings compared with the size of the pieces of grain taken from the butt, have you? *A.* The comparison of the size?

*Q.* Yes. *A.* Well, the grain, naturally, coming through the machine, if it had any at all, would have a tendency to keep in one piece, and taking them off by hand would be just as big as the man cut them.

Q. Then the shavings would be smaller than the pieces of grain taken from the butt? A. In most instances, yes.

Q. Then, in most instances, the grain pieces that you got, taken from the butt, were larger than these shavings? A. Oh, yes.

Q. Then your minimum of an inch and a half square was altogether too small, was it not? A. No, sir.

Q. Why not? Do you want to explain that? A. Do you want to know why not?

Q. Yes. A. Because they were pieces that were not any larger than the sizes I explained to you.

Q. Now, you spoke of the process of shaving as taking off the pieces bit by bit to get to the shell. Do you remember that? A. And for that reason I gave you those shavings.

Q. That was something obtained, I think you said, by sniffing? A. Snuffing.

Q. Snuffing, is it? A. Yes, sir. It is about the same.

Q. Well, you did do it, then, by snuffing, did you not? A. It can be done by snuffing.

Q. Well, I think you said, "We had the three different methods." A. Yes, sir.

Q. Snuffing, shaving by hand— A. Shaving by machine.

Q. —and shaving by machine? A. Yes, sir.

Q. Three different ways— A. Yes, sir.

Q. —of doing the same thing? A. Of having a tendency to do the same thing; it is derived for the same purpose.

Q. It was not the purpose by any of these processes, whether snuffing, shaving by hand or by machine, to rob the cordovan was it? A. It could be just as well robbed that way as it could be if a man had any other intention.

Q. It was a pretty easy way to rob it, was it not? A. There was not a man who understood his business

in shaving, he would quicker spoil it than running through a splitting machine.

*Q.* Then doing it by machine was less likely to injure the cordovan? *A.* Certainly, it was surer by people that didn't understand what shaving meant by hand, unless he was a very practical hand shaver, was eighty per cent. safer to have the machine do that work than to have a man do it by hand.

*Q.* That much less likely to injure the cordovan? *A.* Yes, sir.

*Q.* Are you referring now to its being done by the shaving machine or by splitting? *A.* The splitting machine.

*Q.* Well, these pieces that you got of the grain split from the cordovan, were they grain splits or were they buffings? *A.* Well, that would take in a very wide scope. What I mean is this: that the grain split, as it was generally called, wasn't a grain split in the full sense; it had substance there that wasn't any more than —not as thick as a piece of leaf tobacco; in other places it was possibly a sixteenth of an inch thick; it was entirely ununiform, as I explained before. The horse runs very heavy down the back between both parts of the shell, and for that reason more would come out there than would come out on the part towards the shell and going further down on the shank.

*Q.* [Question read.] *A.* One grain—one split could be part of it a buffing and part of it a grain.

*Q.* What was the kind that you got from Guigues? *A.* I explained to you, one split, the same identical piece, a portion of that piece was a buffing and another portion was nearly as thick as a piece of a grain.

*Q.* Then it could be used for both purposes? *A.* Absolutely not.

*Q.* Then what you got was both buffing and grain split, was it not? *A.* Well, no doubt, you know what a buffing is. I will explain it to you.

*Q.* I assume that you know, and ask you whether

what you got was both buffing and grain split? *A.* Different parts of the same split, some were grain and some were buffing.

*Q.* Then you got some of each? *A.* Some of each in that same identical piece.

*Q.* Then those pieces that you got were pieces that had variation in thickness? *A.* Yes, sir; very irregular.

*Q.* And if they were the thinnest part, you would call them buffing, and the thicker parts you would call grain splits; is that right? *A.* That is right.

*Q.* And they were all taken off by the same machine? *A.* By a belt-knife machine.

*Q.* By the same machine? *A.* I didn't superintend the splitting of them.

*Q.* Well, I mean— *A.* I don't know; I can't answer.

*Q.* Don't you know that the pieces that you got were taken off by the same—each piece taken off by the same kind of a machine, producing this— *A.* Yes, sir; the same kind of a machine.

*Q.* Then they must have been taken off at the same stage of the tanning? *A.* These were; yes, sir.

*Q.* And were they all taken off from the hide or butt in a pickled state? *A.* They were all taken from the hide or butt in the bark-tanned state.

*Q.* Now, dry hides when soaked are plumped up, are they not? *A.* Soaked?

*Q.* Yes. *A.* No, sir.

*Q.* What is it that plumps the hide? *A.* It is the lime.

*Q.* Well, when so treated it becomes plump, does it not? *A.* Thicker; yes, sir.

*Q.* To its natural thickness? *A.* More than its natural thickness.

*Q.* You said that the flesh splits would not make glue, do you remember? *A.* Yes, sir.

*Q.* You were referring to what? *A.* Flesh splits in the raw or pickled state.

*Q.* Well, do you mean the shell left after taking off

the grain? *A.* Well, that would depend on how they were split, whether they were split in the bark, whether they were split in the pickle or whether they were split in the lime.

*Q.* Well, when you said that they wouldn't make glue, which state did you have in mind? *A.* In either lime or pickle.

*Q.* They would not make glue? *A.* No, sir.

*Q.* Because of the liming or pickling? *A.* Because of the nature of the material from which they were taken.

*Q.* Without regard to the process? *A.* Irrespective of the process of liming or pickling.

*Q.* Why do you mention those processes, then? *A.* Because if they were not in that state they couldn't go into glue at all; they couldn't be classed under that heading.

*Q.* Mr. Lichtman, you both buy and sell, do you not? *A.* And tan.

*Q.* Well, and tan. But leave out the other things that you do; you at least buy and sell, both, do you not? *A.* What?

*Q.* Well, leather. *A.* Yes, sir.

*Q.* Offal, too? *A.* Everything in the line of leather.

*Q.* Including the offal? *A.* Be it offal, some finished leather, raw, rough, pickled, limed, or any other state.

*Q.* Where do you buy, what market, generally? *A.* In the entire United States and Europe.

*Q.* Where do you sell? *A.* Well, I don't think I—

*Q.* Just the market, the general market. Europe or America or— *A.* All over the world.

*Q.* Mostly Europe? *A.* No, sir; Europe and the Continent.

*Q.* Well, mostly, then, in Europe and the Continent? *A.* A good portion; yes, sir.

*Q.* Comparatively little of your selling is done in this country? *A.* Practically; yes, sir.

*Q.* This advertisement in the Shoe and Leather Re-

porter was an advertisement in a paper that circulates among the leather manufacturers of this country, does it not? *A.* Oh, no.

*Q.* It does not, you say? *A.* Amongst the tanners here? Yes, sir.

*Q.* Why do you say that? *A.* You said amongst the tanners in the United States only.

*Q.* I did not say "only." *A.* It circulates amongst the tanners in the United States; yes, sir.

*Q.* Those are the people from whom you buy? *A.* A good many of them, yes.

*Q.* Is there anything in that advertisement that tells to the people from whom you buy that you are in the business of buying and want to buy from them? *A.* No, sir.

*Q.* What you buy is offal, is it not? *A.* We buy all kinds of leather in any state whatsoever.

*Q.* And when I called your attention yesterday to the fact that this advertisement did not mention offal or glue stock or fertilizer, you said that you were only advertising to move— *A.* A certain class of goods.

*Q.* A certain class of goods? *A.* Yes, sir.

*Q.* And you meant by that to sell, did you not? *A.* Yes, to sell.

*Q.* And yet this is an advertisement circulating among the people from whom you buy, is it not? *A.* It is an advertisement put in at a certain time for a certain purpose.

*Q.* Well, you spoke of making some arrangement or bargain with Guigues in his office, if you remember? *A.* Yes, sir.

*Q.* I do not recall whether you fixed the date of that. *A.* What bargain do you refer to? *A.* Well, was there more than one? *A.* Yes, sir.

*Q.* Many? *A.* Several.

*Q.* More than two? *A.* Yes, sir.

*Q.* More than the two that are mentioned in these two contracts that you produced? *A.* Yes, sir.

*Q.* I think you said that you made the bargain that resulted in both of these two contracts that you produced, did you not? *A.* For that class of stuff, yes.

*Q.* I mean you personally made it? *A.* On that class of stuff, yes.

*Q.* For your father? *A.* Yes, sir.

*Q.* And all the goods that were delivered at your place of business from Guigues were purchased under some arrangement made by you, were they not? *A.* Between who?

*Q.* You made the bargain for all of the goods that came from Guigues to your father's place? *A.* From Guigues, you mean?

*Q.* Yes. *A.* I thought you meant whether my father—

*Q.* No, with Guigues. *A.* Yes, that is right.

*Q.* And for your father? *A.* Yes, sir.

*Q.* Now, the one that you mentioned particularly was a conversation in which you said that Guigues told you, "I have something that I want you to look at." Was that prior to the earlier of these two contracts, the one of the date of July 26, 1904? *A.* Yes, sir; it was on that conversation that we came and made that deal.

Mr. MacMahon—Did you say that your answer yesterday was, "Guigues said, 'I have something here that I want you to look at' "?

Mr. Skinner—"I have something I want you to look at." I did not say "here."

Mr. MacMahon—Well, the word was "offer," not "look at."

The Court—What two contracts had you in mind in asking that question?

Mr. Skinner—The contracts that were offered yesterday by the defendant, one of the date of July 26, 1904, the other of August 24, 1904, made between Guigues and Lichtman. He said there was a conversation, and I wanted to make clear that the conversation preceded the earlier of these two contracts and was the negotiation that led up to the first contract.

*Q.* That, you say, is so, do you not, Mr. Lichtman? *A.* What is that?

*Q.* That conversation that you have mentioned was the one that led up to the making of the first contract? *A.* That is right.

*Q.* And you then said what he showed you, or offered you, whichever it was, was a butt grain split from the cordovan? *A.* Yes, sir; roughly terming it.

*Q.* You remember that conversation pretty well, do you not? *A.* What conversation?

*Q.* This conversation. *A.* With Mr. Guigues?

*Q.* Yes. *A.* Yes, sir.

*Q.* Do you remember the size of the piece that he showed you? *A.* He didn't show me any one piece; there was a pile there; you could look at them.

*Q.* Then he took you to the splitting machine? *A.* That is right.

*Q.* What did he show you there? *A.* He showed me the stuff just as it was coming from the splitting machine.

*Q.* What was that stuff? *A.* These here, roughly terming it, rough grain splits taken from tanned butts in bark for cordovan leather, splitting them off.

*Q.* Is that all he showed you? *A.* That is all.

*Q.* And is that all he mentioned? *A.* Yes, sir.

*Q.* Well, how is it the contract covers the shank splits, too? *A.* That was a little later.

*Q.* When? *A.* After we started some business.

*Q.* It was in this contract of July 26th? *A.* That may all be true.

*Q.* Then you had some dealings with Guigues before the contract of July 26th? *A.* When the contract was made that might have been done.

*Q.* You had some dealings with Guigues and purchased goods from him prior to this contract of July 26, 1904, did you not? *A.* We might have got the first shipment or so.

*Q.* And you said that the flesh side, I think, was up-

permost, did you not? *A.* In what respect, in which stuff?

*Q.* Well, in what Guigues then showed you? *A.* Yes, sir. You mean when the stuff was run through the splitting machine?

*Q.* Yes. *A.* That is right.

*Q.* And the thin side is always put up in splitting, is it not? *A.* What is that?

*Q.* Do you not put the thin side up in splitting? *A.* No, you take the leather and put it through the machine, and that part that you want of uniform thickness, you let it go through the top, and the other stuff that comes of in leveling that piece falls through on the bottom.

*Q.* Now, you say the flesh side was uppermost? *A.* Yes.

*Q.* Then would the machine take off a split from the flesh side? *A.* No, sir.

*Q.* It would take off a split from underneath? *A.* It would take off that grain split leveler from that cordovan.

*Q.* From underneath? *A.* From that cordovan?

*Q.* Well, from the cordovan from the— *A.* The top, the face of that cordovan.

*Q.* But the flesh side was uppermost in the machine? *A.* That is right.

*Q.* Now, the grain side is the other side from the flesh side? *A.* That is right.

*Q.* And then this grain would come off from that side of the cordovan that was down— *A.* Facing the face, or the grain, as you call it.

*Q.* Well, did the cordovan as it lay in the machine lie horizontal, flat? *A.* It had to be put in flat, or it couldn't be split.

*Q.* Then did it continue to lie flat? *A.* It would curl in as the knife gripped it and level through.

*Q.* But generally in a flat condition? *A.* Yes.

Q. And as you saw it in the machine, the flesh side was uppermost? A. Yes, sir.

Q. And the grain side was undermost, then? A. That is right.

Q. And in the taking off of that flesh side, as I understand you, the machine took off— A. I didn't say that.

Q. You did not say what? A. Taking off the flesh side.

Q. Well, the machine, then, was taking off the undermost part. Was it the grain? A. It was leveling the top piece, and the bottom piece was the fall-off from that top piece, or the leveler, as we class it.

Q. But you also said that where the grains are split for japanning, then you put the grains on top? A. That is right.

Q. Did you see that done down there at Guigues's? A. At Guigues's place?

Q. Yes. A. Yes, sir.

Q. Well, then, the method changed, did it not? A. Oh, no.

Q. You saw both methods? A. It changed inasmuch as you said; the grain was taken for japanning; and that will apply in this case the same way as the other. The piece that was wanted came through the top, and the leveler from that grain, naturally, also fell through the bottom.

Q. Then you did see the process of splitting the grain for uniformity? A. Yes, sir.

Q. Did you know Guigues prior to that conversation in 1904? A. No, sir.

Q. He was a stranger to you then, was he? A. Entirely a stranger.

Q. Did anybody introduce you? A. No one.

Q. You were not introduced by Mr. Lauster? A. No, sir.

Q. Well, you know, do you not, that Guigues had been in the Hamburg Cordovan tannery before he

started in business for himself there in 1904? *A.* I didn't know it until I was told after awhile.

*Q.* You did not know it, then, when you went to see him? *A.* No.

*Q.* You had not had any dealings with Guigues at the Hamburg Cordovan Works? *A.* I never had seen the man before never in my life.

*Q.* Had you bought any of these same goods before from anybody, before 1904, when you bought from Guigues? *A.* I don't think so.

*Q.* And did you know when you went down there to see Guigues that he had just started in business? *A.* I knew, only being a citizen in the city and knowing something about the tanneries; yes, sir.

*Q.* By general report it had come to you that he had started a factory of his own? *A.* Well, I seen it started, being equipped. I never knew Guigues. I went down there to see what sort of a tannery it was going to be, as every tanner has an interest in what is going on in his own line.

*Q.* How soon after that conversation in 1904 with Guigues did you see Baker, either in Boston or at the Guigues tannery or at your place of business, or anywhere else? *A.* I think it was in December of that same year.

*Q.* 1904? *A.* Yes, sir.

*Q.* Where was that? *A.* At the Guigues factory.

*Q.* Did you have any talk with him? *A.* Yes, sir.

*Q.* Did he tell you that Guigues was tanning the Corona Kid Company's hides? *A.* No, sir.

*Q.* Did Guigues tell you that? *A.* No, sir.

*Q.* Did you know in 1904, when you made this contract in Guigues, the first one, that he was not tanning his own hides? *A.* No, sir.

*Q.* But those sent to him by someone else? *A.* No, sir.

*Q.* Did you think that he was tanning his own hides? *A.* I was under that impression; yes, sir.

*Q.* Then when you bought you were not relying upon

this trade custom that you have mentioned, were you? *A.* It wasn't none of my business to take that into consideration.

*Q.* But you were not then relying on the trade custom, were you? *A.* It didn't come into consideration.

*Q.* Did you think he was tanning his own hides? *A.* Yes, sir; that was the impression that he told everybody and gave everybody, and everybody knows it.

*Q.* And you continued under that impression, did you? *A.* Yes, sir.

*Q.* What did you think Baker was doing there? *A* I didn't stop to think.

*Q.* Did you know when you talked with Baker that he was president of the Corona Kid Company? *A.* Yes, sir; he was introduced to me as such.

*Q.* By Guigues? *A.* I think so.

*Q.* And did you know at that time or then did you learn from him or Guigues what business they were engaged in? *A.* I then found out that Mr. Baker was having leather tanned at the Guigues factory.

*Q.* Well, then, from that time on, at least, you knew that all the leather that Mr. Guigues was tanning was not his own, did you not? *A.* No, sir; he didn't tan all the leather for the Corona Kid Company.

*Q.* I did not ask you that or say that. *A.* You asked me whether I knew that.

*Q.* No, I did not. Perhaps you misunderstood me. *A.* I beg your pardon!

*Q.* I asked you if you did not know from that time on that some of the leather that he was tanning was not his own? *A.* Some of the leather?

*Q.* Well, the hides that he was tanning—some of the butts? *A.* I got to understand then that some of the leather he was tanning was for the Corona Kid Company.

*Q.* And who gave you that information? *A.* Well, it then came out during the course of the conversation with Mr. Baker. He said, "We would sooner sell you this stuff in this condition than tan it out."

Q. And did he not tell you that Guigues was doing all their work? A. No, sir.

Q. Well, at the time that you made this contract with Guigues you did not undertake or bargain with him to take any stuff for glue stock or fertilizer, did you? A. At that time?

Q. Yes. A. No, sir.

Q. Or at the later contract, August, 1904? A. No, sir.

Q. Nor at any time during the period covered by this suit; that is, up to September 8, 1905? A. No, sir.

Q. During none of that time did you get any stuff from Guigues for glue stock or fertilizer? A. For glue stock?

Q. Well, of the kind that would go into glue stock. A. We got leather from him that we thought would make leather, but it only made glue stock.

Q. Then you did not get it for glue stock, did you? A. We didn't buy it for that purpose; no, sir.

Q. Do you remember meeting Mr. Elliott in the latter part of January, 1908? A. Do I remember?

Q. Yes. A. Meeting Mr. Elliott?

Q. Yes. A. 1908?

Q. Yes. A. I can't recall.

Q. Well, do you remember meeting him in the latter part of January, 1908, on the corner of Market and Washington streets, Newark? A. No, sir.

Q. Do you remember going with him to Achtel-Stetter's restaurant? A. No, sir.

Q. At any time? A. At any time.

Q. You mean that you never went with him at any time to Achtel-Stetter's restaurant? A. Yes, sir.

Q. Do you remember saying to him on the corner of Washington and Market streets, in the latter part of January, 1908, on a Friday evening, "Were you really up to Boston?" A. No, sir.

Q. And did he answer, "Yes"? A. No, sir.

Q. Then did you say to him, "I want to talk to you.

Let us go down to Stetter's"? *A.* Well, I say I never met him.

*Q.* Then you did not say that? *A.* Absolutely not.

*Q.* And did you say, "You and I—" *A.* I couldn't state it, Judge, because I didn't—

The Court—Wait for the question.

*Q.* Did you then say to him, "We don't want anyone to see us together. Let us go through Halsey street"? *A.* Why certainly not.

*Q.* And then did you say to him, either on the way to Stetter's or after you got there, "What did you tell the people in Boston"? *A.* Absolutely not.

*Q.* And did he reply, "Everything"? *A.* I didn't see him, didn't talk to him, didn't ask him nothing, and he couldn't have answered me anything.

*Q.* And then did you ask him, "Did you give them those records"? *A.* My previous answers will apply to this.

*Q.* And you say no? *A.* No, no, a hundred times no.

*Q.* And did he say, "Yes, I gave them your account and some others"? *A.* Well, the same answer goes right on.

*Q.* No. Then did you come away from Stetter's with him and leave him on the corner of Broad and Market streets? [No response.]

*Q.* Your answer is "No," I suppose? *A.* No.

*Q.* And did you say to him on the corner of Broad and Market streets on that occasion, "I would rather give up $10,000 than to have had you tell about those records," or "give up those records"? *A.* That is one of the most infamous lies that exists; it is a concoction; it is a conspiracy.

*Q.* Well, I think you ought to be a judge of that.

Objected to.

*Q.* Do you say that you had no such conversation with Mr. Elliott at any time or place? *A.* Absolutely not.

*Q.* And you are not simply denying the exact words

that I have given here, but you say that there was no conversation of that substance or tenor? *A.* Absolutely not.

*Q.* Did you not arrange that meeting with Elliott by telephoning to his house? *A.* That same answer will apply.

Redirect examination, by Mr. Riker.

*Q.* Mr. Lichtman, drawing your attention to the contracts which are in evidence, made by Guigues with your father, with you as attorney, I point out that the one of July 26, 1904, provides that "The payments shall be spot cash, less two per cent." *A.* Yes, sir.

*Q.* And the one of August 24th provides for two per cent. discount for spot cash in weekly payments. Did you make your payments so as to get your discounts? *A.* Every time.

*Q.* Now, you have defined leather to be what? *A.* Leather?

*Q.* Yes. What is leather? *A.* The raw hide tanned.

Objected to as not redirect examination.

The Court—I presume it is introductory.

Mr. Skinner—If it is introductory to something that has to do with the cross, I will not object.

Mr. Riker—That is what it is.

*Q.* What is leather? *A.* The product of the hide that has been tanned.

*Q.* You were asked yesterday afternoon whether offal could include leather, and I think you answered yes. *A.* Yes.

*Q.* And you were also asked whether leather could include offal, and you answered yes. *A.* Yes, sir.

*Q.* Does that amuse you as much as it amused these other gentlemen here? Is there anything amusing about that? *A.* I don't see anything.

*Q.* It is a fact, is it? *A.* Absolutely, and they know it.

*Q.* Now, you were asked whether there was a difference in method in splitting the grain off of the cordovan and in splitting the shell split off of the grain when it was to be used for cordovan. Is there any difference in method between those two processes? *A.* It is a different process.

*Q.* It is a different product, is it not? *A.* It is, absolutely, a different product.

*Q.* Is not the same method applied to producing the different product? *A.* How is that?

*Q.* Is not the same method applied to producing the different products? *A.* Splitting?

*Q.* Yes. *A.* Certainly. The piece that you want to save, or the piece that you are splitting off, always comes through the top in every instance.

*Q.* Where are the gauges of the machine that determine the thickness? *A.* They are between the knife and the top, and they are measured off, I should judge, in less than a half of a sixteenth of one inch, a hair's thickness.

*Q.* So that the piece that goes through the gauges is uniform? *A.* Yes.

*Q.* And the piece below the gauges falls off? *A.* All that comes off of that uniform piece.

*Q.* I show you *D 19,* which was handed to you by Mr. Skinner [paper shown to witness]. Those shell splits, were they tanned in bark or chrome? *A.* They were not either tanned in bark or chrome.

*Q.* What condition were they in? *A.* In the pickled condition.

*Q.* This represents goods purchased by you from the Corona Kid Company, does it not? *A.* Yes, sir.

*Q.* And the things that you got from Guigues, so far as they were part of the shell originally, or the butt, exclusive of the shank, were they tanned in bark or in chrome, or were they tanned at all? *A.* I don't just get that question.

*Q.* [Question read.] *A.* During what time?

Q. During this period from June, 1904, to September, 1905. A. There was some in the pickle and some in the bark.

Q. Did you get the grain splits in the pickle? A. No, sir.

Q. What did you get in the pickle? A. The shank splits.

Q. And the grain splits, in what condition were they? A. In the bark tan, vegetable tannage.

Q. I observe in this advertisement which has been shown you that you advertise "rough, half-tanned splits." A. Yes.

Q. What are pickled splits, so far as offal is concerned? A. Well, every split is an offal.

Q. So that you have said that to one in the trade that indicates offal, have you not? A. Yes, sir.

Q. That is what you mean by it? A. Those splits that we have there; yes, sir.

Mr. Riker—This advertisement having been used, I am going to offer it, your Honor, and ask that it be marked.

The Court—You offer the advertisement?

Mr. Riker—Yes.

The Court—Nothing else?

Mr. Riker—Yes, sir; that is all.

[Marked *Ex. D22.*]

Q. Did you see Mr. Elliott at any time during the period named?

[Question withdrawn.]

Q. Did you see Mr. Elliott at any time from June, 1904, up to 1908? A. Did I ever see him?

Q. Yes. A. Yes, sir.

Q. Did you see him at your factory? A. No, sir.

Q. You saw him at Guigues's factory? A. At the office of the Guigues place.

Q. What business did you see him on, if any? A. Taking care of the books; he was the bookkeeper, as I understood it.

Q. And what did you see him about in connection

with the books of Guigues? *A.* Just seen him there, that is all.

*Q.* Now, Mr. Lichtman, we have gone over it, but your cross-examination may leave it in doubt. Your father was building a factory on the Market street site during the year 1904, was he not? *A.* Yes, sir.

*Q.* And that building operation was not completed until some time in 1905? *A.* About the 1st of February, I think.

*Q.* And when did it begin in 1904? *A.* In May or June; May, I think.

*Q.* And were you occupying the Market street site at all as a factory, or for what purpose, during the period when the factory was being built there? *A.* It was entirely demolished.

*Q.* There was no building there to be occupied? *A.* Absolutely not.

*Q.* And during that period you were in the Arch street factory? *A.* That is right.

Recross-examination, by Mr. Skinner.

*Q.* Mr. Lichtman, let me see about this splitting, just a word, that you saw going on at Guigues's. *A.* Yes, sir.

*Q.* I understand you to say that the piece that goes through the gauges is the part for which the splitting is being done; is that right? *A.* That is right.

*Q.* And that all the rest of the hide thus being split would be offal; is that right? *A.* I didn't say that.

*Q.* Didn't you call it fall-off, then? *A.* Yes, sir. In this case we were talking about cordovan butts.

*Q.* You called it fall-off, did you not? *A.* Yes, sir.

*Q.* And you now say that that is not offal? *A.* I didn't say that.

*Q.* Well, do you want to explain that? *A.* It isn't offal.

*Q.* But it is fall-off? *A.* Yes, sir.

*Q.* Well, then, fall-off and offal are not identical, are they? *A.* It is offal, but it isn't as you want to put it.

Fall-off is the whole balance that comes from leveling that piece.

*Q.* I do not want to put it; I put it the way you put it. *A.* That is what it is; and fall-off is offal on that particular cordovan butt as it was put through this machine.

*Q.* Do you mean to say, then, that all except the part that is going through the gauges and for which the splitting process is being had is fall-off? *A.* On what particular class of stock do you refer to?

*Q.* Well, is it confined to certain classes? *A.* It isn't confined in every case, it isn't.

*Q.* It does not apply to every case, you mean? *A.* Absolutely not.

*Q.* Well, in the case of a horse hide butt being put through the splitting machine to split off the grain side, is all the rest of it except the grain side thus split fall-off?

Mr. MacMahon—What purpose is the split being taken off for?

Mr. Skinner—For the purpose of taking off the grain side, I said.

Mr. MacMahon—The grain side for what, for japanning or to preserve the cordovan?

Mr. Skinner—For any useful purpose.

Mr. MacMahon—They are two different things.

Mr. Skinner—There are two processes dealt with by the witness; one is to split the butt for the purpose of getting off the grain split, properly so called, and the other to get the cordovan, in which case the grain split is taken off and becomes another thing entirely.

The Court—Let the witness answer the question, having in view his knowledge of the matter.

[Question read.]

*A.* It depends entirely on what weight grain is being taken off and what the substance and thickness of that butt is.

Q. Then it would not be in every case fall-off, would it? A. No, sir.

By the Court.

Q. You told us about an occasion, Mr. Lichtman, when you were at the Guigues factory and Mr. Guigues said he had something to show you or something to offer you. A. Yes, sir.

Q. And exhibited the operation of a splitting machine, which was at work, I understand it, on horse butts. A. On these cordovan butts.

Q. Did you then know, or have you now any way of knowing, how long he had been conducting that operation— A. No, sir.

Q. —at that time? A. No, sir.

Q. Was there anything in view at that time that would indicate anything on that subject? A. No, sir.

Q. No pile of cordovan butts that had been treated that way? A. No, sir. You mean by the several I saw, the quantity?

Q. Anything within your actual knowledge from which a fair inference might be drawn as to the length of time he had been doing that. A. I could only judge from the length of time it took to split those I seen.

By Mr. Skinner.

Q. You did not see any accumulation, then? A. No, sir.

Q. Then what he showed you, then, was that new to you? A. Absolutely.

By the Court.

Q. Now, I am in doubt about the splitting of shanks, if they were split. What you have been talking about is cordovan butts? A. That is right.

Q. Did you have anything to do with shanks? A. We bought the split shanks; yes, sir.

Q. From whom? A. Mr. Guigues.

Q. They were split and not shaved? A. They were

split in the pickle; not shaved; no, sir. You see, the shanks were split in the pickle and the cordovan butts were split after they had been already tanned. The pickle is the wet, just cured stage, and the tanned stage, dry leather, as you would call it.

*Q.* And was the splitting of shanks in the pickle done by the same machine or the same kind of machine that did the splitting of the butts in the tan? *A.* Yes, sir; the same kind of machine.

*Q.* The splitting of the butts in the tan was by this machine that was new to you? *A.* No, sir.

*Q.* You just said the splitting of the cordovan butts in the tan was something new to you? *A.* Yes, sir; the cordovan butts, but not the machine itself.

*Q.* Was the splitting of the shank in the pickle a process new to you? *A.* Absolutely.

*Q.* And when did you first see that? *A.* At the Guigues factory.

*Q.* When with reference to this other occasion when he showed you the butts? *A.* I think a few days later, not more than that.

*Q.* And how before that had the shanks been treated? *A.* They had always been shaved off.

*Q.* Was one side better than the other? *A.* What is that?

*Q.* Is one side of the shank better than the other? *A.* Oh, yes, there is two sides to the shank, the grain and flesh.

*Q.* Which is better? *A.* The grain is better; that is really all there is to the shank; that is all the value there is to it.

By Mr. Skinner.

*Q.* But you had seen the machine before? *A.* Oh, yes.

*Q.* Often? *A.* The machine?

*Q.* Yes. *A.* I seen it every day.

*Q.* Well, not only that one, but others? *A.* In other factories.

*Q.* It was one of a common type, was it not? *A.* Yes, sir.

*Q.* And what had you seen done with that sort of machine before? *A.* Splitting hides for patent leather purposes principally; that is, automobile, furniture, carriages, automobile, saddlery leather.

*Q.* Had you seen any splitting of this kind of leather before this time in Guigues's factory? *A.* No, sir.

*Q.* Your observation had been of other kinds of hides? *A.* Yes, sir.

*Q.* And for that the splitting machine had been used right straight along for some time? *A.* Yes, sir.

*Q.* Well, you bought from Guigues, did you not, the flesh side splits from the shank? *A.* Yes, sir.

*Q.* And paid him twenty cents a dozen, did you not? *A.* I think it was thirty-five cents.

*Q.* A dozen? *A.* I think so.

*Q.* [By the Court.] Did you also buy the grain side of the shank? *A.* No, sir.

*Q.* [By Mr. Skinner.] You mean not at that time, do you not? *A.* Never.

*Q.* You bought the whole shank, though, did you not? *A.* Glue stock, yes.

*Q.* The whole shank? *A.* Glue stock, I said.

*Q.* Tell me, did you buy the whole shank? *A.* No, sir.

Further direct examination, by Mr. Riker:

*Q.* Mr. Lichtman, when Mr. Guigues demonstrated this process of taking off the grain split, so called, from the cordovan, was there any accumulation of these things around the machine? *A.* Why, I should judge there was maybe four or five hundred pounds.

*Q.* Four or five hundred pounds of it? *A.* Yes, as far as my eye could estimate weight.

*Q.* That was the part that had fallen off during the operation of the machine—

Mr. Skinner—Please do not lead.

*A.* In fact, the machine was being operated while I was there looking at these.

*Q.* How many machines were there in operation there? *A.* I have only been at one.

*Q.* You say you had seen this splitting machine used for splitting leather for japanning and enameling, the operation perhaps that you have described. What kind of hides were being split? *A.* Big cow, steer and bull hides.

*Q.* And into how many pieces are those hides split, under your observation? *A.* Well, that depends. They are split as a rule into four cuts.

*Q.* There is the slab, or flesh piece, is there not? *A.* The first is the grain, then there is the buff, then there is the deep buff, and then there is a No. 1 dash and a No. 2 dash, and a skiffing, or flesh cut.

*Q.* And what is that in character? *A.* That is offal.

*Q.* That process that you have described in connection with these thick hides is a successive one; one after another is cut off the hide by the machine, and the gauge is altered as it is cut off, is it not? *A.* That is right.

*Julius Lichtman,* defendant, sworn in his own behalf.

Direct examination, by Mr. Riker.

*Q.* Mr. Lichtman, where do you live? *A.* 620 High street.

*Q.* Newark? *A.* Yes, sir.

*Q.* And what is your business? *A.* I am a tanner.

*Q.* How long have you been a tanner? *A.* Well, about forty-two years.

*Q.* And where have you done business? *A.* Frelinghuysen avenue.

*Q.* You are doing business there now? *A.* Yes, sir.

*Q.* Speaking generally, in what city or town or towns have you done business? *A.* Well, of course, I have been working; I worked right here in the city.

*Q.* And have you been in the city ever since? *A.* Yes, most of the time.

*Q.* You actually worked in this Dawson factory, did you not, that Guigues had? *A.* Yes.

*Q.* Do you know Mr. Guigues, have you ever met him? *A.* No, I don't know Mr. Guigues; I have been working there about twenty-eight years ago.

*Q.* But have you ever seen or do you know Mr. Guigues? *A.* Oh, I know him in Salmon's; I have been there once myself in Salmon's; I saw him.

*Q.* You have been there once? *A.* Yes.

*Q.* When was that? *A.* Oh, that was about—oh, probably—when he started he was in Salmon's; I don't remember what time it was.

*Q.* At Salmon's? *A.* Yes, sir.

*Q.* Did you ever see him at the old Dawson factory, where you used to work? *A.* No, I never saw him there, only occasionally. I came over there once because my son had bought of Beebe & Son, of Boston, two carloads of pickle stuff, and they came in rotten, and I didn't have nobody to go. I know he is a practiced man, you know, and I went over to ask him what I should do with it.

*Q.* You went over to ask whom? *A.* Mr. Guigues.

*Q.* And when was that? *A.* To tell you the truth, I don't know when it was.

*Q.* Well, did you ever talk to Mr. Guigues about this material that was brought for you from Guigues by your son? *A.* I never did, because my son was doing the business there, and I don't want to interfere at all.

*Q.* Did you ever talk to Guigues about it? *A.* No, sir; I never talked, I never talk about the business; I was only there on that occasion about the stock, because it was in the summer time when the stuff came in, and it was rotten.

*Q.* There is a gentleman sitting on that first bench, in the middle, by the name of Elliott [indicating]. Have you ever seen him before? *A.* I saw him up there when I came there because I wanted to see Mr. Guigues, and he didn't know me neither, and I asked

for Mr. Guigues, and he says, "Well, wait." I said my name, who I am; I said, "I am Mr. Lichtman." "Oh, yes, all right," he says, and then he run and got me Mr. Guigues. Then the time I was there Mr. Baker was there, too, and Mr. Guigues introduced me to Mr. Baker also.

*Q.* This Mr. Baker here? *A.* Well, I wouldn't know him if I would see him.

By the Court.

*Q.* Was this on the same occasion? *A.* That same time; yes, sir.

*Q.* That time? *A.* Yes, sir.

By Mr. Riker.

*Q.* And the gentleman on the end there, that distinguished looking gentleman with the high forehead, Mr. Lauster, do you know him? *A.* Well, I don't know him much; I hear of him, yes, in the city.

*Q.* Did you ever see him, that you know of? *A.* Well, I saw him in the city, yes, but I never had anything to do with hm, because I didn't care much for him.

*Q.* Well, at that time did you talk with Mr. Elliott about this business that was being done with Guigues for your account to your son? *A.* No, sir; I didn't have anything to do with it, because I never interfere anything with what my son done, because he always tried to do right.

The Court—You seem to have answered the question. When you have answered the question, wait for the next.

*Q.* Did you ever telephone to the Guigues factory yourself? *A.* No, sir; I did not.

*Q.* Did you ever instruct anyone to telephone to the Guigues factory? *A.* For what?

*Q.* Well, did you? *A.* No, sir.

*Q.* Did you ever go to the Guigues factory any other

time except the time you told us about? *A.* No, sir; only once, because on that occasion I didn't know what to do with the stuff that time, pickled stock, and I went over there, and he told me he would see that it is all right.

*Q.* [By the Court.] That is, the Beebe stock? *A.* The Beebe stock; yes.

Cross-examination, by Mr. Skinner.

*Q.* When was that, Mr. Lichtman? *A.* I don't know; I couldn't tell you the year, and I couldn't tell you the date nor the month neither. I got to look up. Probably we will find the bill for it.

*Q.* You keep your bills, don't you? *A.* Well, if we keep specially, probably we do find it.

*Q.* You don't think you kept this specially, do you? *A.* Well, we don't keep nothing specially.

*Q.* You think you might tell the date by finding the bill, though? *A.* Well, that is what I am thinking, maybe we find the bill.

*Q.* Well, you say it was with reference to goods bought from Beebe & Sons? *A.* Yes.

*Q.* Don't you mean the company that Mr. Baker is president of? *A.* Well, I don't know nothing about it, about Baker nor nobody else.

*Q.* You saw him, did you not? *A.* I saw him up there; yes, sir.

*Q.* And your dealings had been with him, had they not? *A.* No, sir; I never done any business with Mr. Baker.

*Q.* Didn't you on that day? *A.* No, sir.

*Q.* You did not go there to do any business with him? *A.* No, sir; I only was on this case that I told you, going to see Mr. Guigues.

*Q.* Mr. Guigues? *A.* Yes, sir; by Mr. Guigues I was.

*Q.* Then on this one occasion did you not go to the factory to do business with Baker? *A.* No, sir.

*Q.* And you did go to do business with Guigues? *A.* No, sir.

*Q.* Well, what did you go for? *A.* I went not for business; I only went for him to tell me what I shall do with the stuff; a good favor I want.

*Q.* Did you go to ask Mr. Baker what you should do with the stuff? *A.* I didn't know Mr. Baker at all. What should I do with Baker? Mr. Baker is no tanner; he couldn't tell me anything.

*Q.* Why did you go to Guigues to tell you what you should do with goods that you had bought from Beebe & Son? *A.* Because they were rotten, and probably Mr. Beebe would say it is not; that is the reason I took him over to look on the stuff.

*Q.* Then it was simply to show them to Guigues? *A.* To show him the stuff. Two carloads of stuff was on the Central railroad, and I went over with the wagon; my man came back, and he said, "Mr. Lichtman, the stuff is all rotten," and I went over myself to look at it, and it was so; and I didn't know what to do, because my son was in Europe; I went over myself, and I said, "By God! I don't know where to go." He is the best man in the neighborhood, and I went over to Mr. Guigues, because he knows what pickled stock is.

*Q.* What were those goods? *A.* Cow hides, sides.

*Q.* Well, Guigues was not tanning any cow hides then, was he? *A.* I don't know what he was tanning; I don't know anything about his business.

*Q.* So that you just casually met Mr. Baker there? *A.* Yes, sir; Mr. Baker just was there, and Mr. Guigues introduced him to me.

*Q.* And did Mr. Guigues tell you who Mr. Baker was? *A.* No, he didn't say anything to me; he said, "The gentleman here, Mr. Lichtman, Mr. Baker." That is all I know.

*Q.* He did not say that he was from Boston? *A.* No, he didn't say from where or what; he only said, "Mr. Baker, Mr. Lichtman," that is all.

*Q.* He did not tell you he was president of the Corona Kid Company? *A.* He didn't say any word.

*Q.* Did you know that Beebe & Son, or the name that you gave there, had any connection with or interest in the Corona Kid Company? *A.* No, sir.

*Q.* You say you cannot fix the year. May it have been as early as 1904 or 1905? *A.* I don't know; I couldn't go on the year, because I wouldn't swear false for nobody, because I don't remember.

*Q.* Well, Mr. Lichtman, your son was practically running your business, was he not, in 1904 and 1905? *A.* Yes, he was buying and selling.

*Q.* And you left him in full charge? *A.* Yes, most of the time.

*Q.* And that business was the buying and selling of offal, was it? *A.* Well, offal is everything. What do you mean by "offal"?

*Q.* What do you mean by "offal"? *A.* Well, I don't know; I can't understand that.

*Q.* You do not know what it means, eh? *A.* Well, I know what it means.

*Q.* Well, what do you mean by it? *A.* Well, everything is offal.

*Q.* Everything? *A.* Everything what isn't regular leather.

*Q.* And by "regular leather" what do you mean? *A.* Regular leather.

*Q.* Would you say a piece that could be used for topping stock and making shoes was regular leather? *A.* That is leather; yes, sir.

*Q.* And offal does not include that? *A.* No, sir.

*Q.* That is not offal? *A.* No, sir. Any leather that it cut off before it is tanned could be made to leather also.

*Q.* What is that? *A.* Offal cut off before the hide is tanned could be made in leather also, and you call it offal, anyway.

*Q.* You want to call it offal? *A.* Offal is everything.

Mr. Riker—This is not cross-examination, your Honor.

The Court—No, I do not think it is.

Mr. Riker—We object to it.

The Court—Objection sustained.

*Q.* When you put Abe in charge of your business, I suppose, you expected to be responsible for what he did, did you not?

Objected to as not cross-examination.

The Court [after argument]—The question asked, I think, is not cross-examination.

[Plaintiff's counsel pray an exception, and the same is allowed.]

*Q.* Mr. Lichtman, you said that you you were there at your business, and went down to see Guigues because Abie was in Europe. Do you mean by that that when Abie was home you did not go to your business at all?

Objected to.

*A.* You don't want to tell me I am a liar.

*Q.* Oh, no. *A.* You know I haven't told you that.

The Court—Now, Mr. Lichtman, answer questions.

*Q.* [Question read.]

*A.* Not that, not that.

The Court—One moment.

Mr. Riker—Do not answer the question. The specific business that he was on he has described, and that is the thing that is subject to cross-examination.

The Court—Without having the exact text of the direct examination before me, I feel a little uncertain as to the shade of meaning to be attributed to the testimony as a whole or in some of its parts. On the whole, I think this is not cross-examination.

[Plaintiff's counsel pray an exception, and the same is allowed.]

*Q.* Mr. Lichtman, you said in your direct examination that you did not talk with Mr. Guigues about the business your son was doing with him. Do you remember that? *A.* Yes.

*Q.* Did you not say anything to him at all about—

*A.* No, sir; we don't speak about business at all; I only come on that occasion—

The Court—Wait until the question is finished.

Witness—Well, I don't know. I never was in court.

*Q.* Did you not say anything to him about the stuff that your son Abie had been getting for you from him before that? *A.* I never spoke one word about it, nothing at all about business. I only come on that case that I told you before.

*Q.* Well, at the time that you went there and had this talk with Guigues did you know that your son had been doing business with him? *A.* Yes, I did, yes.

*Q.* Did you know that that business had consisted of the buying of shank splits and buffings and grain splits from the cordovan after tanning? *A.* Yes, I know he was buying stuff. I never interfere much, because he knows enough what he has got to do, because he has bought from some other parties.

*Q.* And did you know that that was the kind of stuff that he was buying? *A.* Yes.

*Q.* Yes? *A.* Yes, I knowed that, certainly.

*Q.* And did you know that that had been going on for some time?

Objected to as not cross-examination.

The Court—I think this is only permissible as explanatory of the witness's answer to the question whether he talked to Guigues or Elliott—perhaps it was Guigues—about goods that his son had been buying. It would be very proper to ask what goods he understood were meant by the question. But knowledge of antecedent transactions is another proposition. I sustain the objection.

[Plaintiff's counsel pray an exception, and the same is allowed.]

*Q.* Well, you remember this conversation, do you? *A.* What kind?

*Q.* What do you mean by "what kind"? *A.* I don't know what he said, what kind of a conversation.

*Q.* Was there more than one conversation with Guigues? *A.* Well, that is the only one I had, when I was up there.

*Q.* You remember that, do you? *A.* Yes, sir; certainly I remember that, certainly.

*Q.* And do you remember all that was said? *A.* Well, what I had to say, that is all he got to say, and he went in the carriage with me—I had a carrage outside standing—and he didn't have time; he went in his working clothes with me up there—no, he didn't have time that minute, and he said, "It will be sure this afternoon;" and he come over this afternoon, and I took him over to the cars on the Central Railroad, and I showed him.

*Q.* Well, you went there, you say, for the purpose—

*A.* To get him to look on that stuff.

*Q.* Wait a minute. You went there for the purpose of getting him to look at this stuff? *A.* Yes.

*Q.* And did you then ask him to look at the stuff? *A.* Certainly.

*Q.* And did you do that in Mr. Baker's presence? *A.* I think Mr. Baker heard that, probably, what I said; I don't know.

*Q.* Well, was Mr. Baker there? *A.* Mr. Baker was there; yes, sir.

*Q.* Right in the same room? *A.* I don't know; probably he left me with him. After we was standing there a little while he introduced me to him, and he asked me what I want, and I said, "Mr. Guigues, I got two carloads of pickled stuff in, and it is all rotten; I don't know what to do with it, and I have sent a telegram to Beebe and he don't answer me."

The Court—You have answered the question.

*Q.* What was this stock, pickled shank splits? *A.* No, sir; cow hides, cuts and sides.

*Q.* Did you not go there on that very occasion that you are telling about to talk with Mr. Baker about buying some stuff? *A.* No, sir; I didn't know about that stuff to buy, anyway, because I never bought any.

*Q.* Well, after you got there, no matter what you went for, did you not talk with Mr. Baker about— *A.* No, sir; I didn't speak about business at all.

*Q.* Did you know that he was in the leather business? *A.* I didn't; he didn't tell me at all about who he is and what he is.

*Q.* Did you know? *A.* I didn't know, neither; I never saw the gentleman; I wouldn't know him to-day if I see him.

*Q.* Did you not have a conversation with Mr. Lauster, here, at the Arch street factory? *A.* No, sir.

*Q.* In 1904? *A.* No, sir.

*Q.* June or July? *A.* He never came to our place. I would fire him out if he came in.

*Q.* Did not Lauster come to your Arch street factory in June or July, 1904, and ask you if you wanted to buy some stuff of Guigues? *A.* You know what I told you before.

*Q.* Well, you are going to tell it again, are you not? *A.* Well, if I have to, I have to, of course.

*Q.* Well, you have to. *A.* Well, I did.

*Q.* Well, what do you say? *A.* He wasn't there, and he is a liar if he says so.

*Q.* Did you not say to him then, "I will send Abie down; he will attend to it"? *A.* I never said anything like that. He never was there, and I wouldn't leave him in the door, because I heard enough of him.

*Q.* That is enough. *A.* Well, if you don't want to hear any more, don't you ask me.

*Q.* Don't you tell unless I do ask you, either. *A.* Well, all right.

*Q.* Well, Mr. Lichtman, you said that this visit that you paid to Guigues's factory was when your son, Abie, was in Europe, did you not? *A.* Yes, sir.

Q. Did he go to Europe every year?

Objected to as not cross-examination.

Mr. Skinner—Can't I fix the time?

The Court—Yes, I think it is, with a view of fixing the time.

Q. Did he go to Europe every year? A. Do I have to tell you that?

The Court—Yes.

Q. Don't you want to? A. Well, of course, if I have to, your Honor. Do I have to say it?

The Court—Yes.

Witness—Well, I don't know that I have to tell you all my business.

Mr. Skinner—Well, there is no disgrace in that.

The Court—The only question is whether your son goes frequently to Europe.

Witness—Yes, he goes occasionally, when he needs it.

Q. Then more than one year he went to Europe? A. Well, I couldn't figure out; I don't keep any track. I know when he needs it he goes; when the business wants it he would have to go.

Q. So that you could not tell by reference to his visits to Europe whether this was in 1904 and 1905? A. No, sir; I don't know; no, sir; I couldn't say the year; no, sir; I don't remember any more.

Q. But you are sure he was not home at the time? A. He wasn't home, no. He has bought the stuff, and he started to go away; he was about two days on the water.

Q. When did you recall that, Mr. Lichtman? A. What?

Q. When did you recall that? A. What?

The Court—When did you remember that?

Q. That you went to Guigues's office. A. I don't recall that; I couldn't tell you when it was.

Q. [By the Court.] When did you remember that visit? When did you remember your going there? A. Because I know I had them two carloads of stuff in.

*Q.* [By Mr. Skinner.] Have you recently tried to remember about that? *A.* Well, if you do something, you always remember that; in a case like that you will remember.

*Q.* Then you have not recently tried to remember it? *A.* Because I know I lost money that time, and I know I remember very good.

*Q.* Well, then, you have not recently tried to recall about that? *A.* Well, you know what it is, if you lose any money you remember it very long.

*Q.* Please answer my question. Have you recently tried to recollect that? *A.* I don't understand very good English.

*Q.* Have you tried to remember it? *A.* I don't need to do that.

*Q.* Have you talked it over with Abie? *A.* I don't need to talk it over with Abie; I know that. I am of full age.

*Q.* Have you talked it over with him? *A.* I sent him a cable, I think.

*Q.* Have you talked recently to Abie, since this suit, about the time he was in Europe and you went down to Guigues's factory? *A.* What case?

*Q.* Since this suit began have you talked this over with Abie? *A.* About what?

*Q.* About the time you went to Guigues's factory. *A.* I wasn't in Guigues' factory as shortly as that.

The Court—You perhaps do not understand the question exactly.

*Q.* I am not asking you whether you went down to the factory since the suit began; I am asking you if you have not since this suit began talked over with Abie about that time you went down to the factory? *A.* Which factory?

*Q.* Guigues's factory. *A.* Well, how can you connect that factory to the suit? They don't come together. The suit is about a year, you know, and Guigues's busi-

ness is over— How long is that? I don't remember how long he is out of business already.

*Q.* Within the past year have you talked to Abie about the visit down to the factory? *A.* About what?

*Q.* About the visit to the factory when you saw Guigues?

The Court—Have you told your son about it?

*A.* Oh, yes. You mean when he came back, when he came back from Europe that time?

*Q.* No, since. *A.* Since the suit began, I didn't. What is the use of talking it over? We have got to try it. That was all about it. What is the use of talking about it.

*Q.* Then you have not talked with Abie at all about this suit? *A.* Certainly we are talking. There is a wrong done to us. You know that. It isn't a question of money, you know, but we—

*Q.* One minute. Have you talked with him about your recollection of the visit to the Guigues factory that you have described? Yes or no, have you or have you not? *A.* Well, I don't know. I can't understand; I can't say yes and I can't say no.

*Q.* Have you talked with Abie about testifying in this suit? *A.* What can I talk to him?

The Court—You can say yes or no to that question.

Witness—Well, I don't know what it is.

*Q.* You do not know what I mean? *A.* No.

*Q.* When I say "talked with Abie about testifying as a witness in this suit"? *A.* Who was a witness, do you mean?

*Q.* About your being a witness in the suit. *A.* Well, I ain't got nothing to say.

*Q.* Have you talked with him about it? *A.* No, I did not.

*Q.* Why did you not say so? *A.* Well, I don't understand you, because you turn it around, and I can't understand you.

*Q.* And now you understand me? *A.* Well, if you say it plain, I can.

Defendant rests.

*Joshua L. Elliott,* recalled in behalf of plaintiff in rebuttal.

Direct examination, by Mr. Skinner.

*Q.* Elliott, did you meet Mr. Abe Lichtman on the corner of Washington and Market streets, Newark, on a Friday evening in the latter part of January, 1908, and have a conversation with him? *A.* I did.

*Q.* Now, you must confine your answers to my questions, because I can only ask you about just what I put to Mr. Lichtman. Did he say to you, "Were you really up to Boston"? *A.* He did.

*Q.* Did you reply, "Yes"? *A.* I did.

*Q.* Did he then say to you, "I want to talk with you. Come down to Stetter's"? *A.* He did.

*Q.* And did he say then that "We don't want to be seen together. Let us go through Halsey street"? *A.* He did.

*Q.* Did you go through Halsey street? *A.* We did.

*Q.* And then at Achtel-Stetter's did he ask you, "What did you tell the people at Boston"? *A.* He did.

*Q.* And did you say in reply, "Everything"? *A.* I did.

*Q.* And did he then say, "Did you give them any records"? *A.* He did.

*Q.* And did you reply, "Yes, your account and some others"? *A.* I did.

*Q.* And then did you come away from Achtel-Stetter's and separate at the corner of Broad and Market streets? *A.* We did.

*Q.* And as you separated did he say that he would rather give up $10,000 than to have had you do that? *A.* He positively did.

Cross-examination, by Mr. Riker.

*Q.* Who was with you besides Mr. Abe Lichtman? *A.* No one at all.

*Q.* Were you then in the employ of the Corona Kid Company? *A.* I was not.

*Frederick C. Lauster* recalled in behalf of plaintiff in rebuttal.

Direct examination, by Mr. Skinner.

*Q.* Mr. Lauster, I think you have already testified to having been down to Lichtman's factory. You have testified to a conversation with Mr. Lichtman at his factory. Did he in that conversation say, "I will send Abie down"? *A.* He did.

Cross-examination waived.

*Benjamin E. Baker* recalled in behalf of plaintiff in rebuttal.

Direct examination, by Mr. Skinner.

*Q.* Mr. Baker, Mr. Abe Lichtman has testified that in the summer of 1905 he saw you in Boston, and that he then said to you that Guigues was not living up to his contract, and asked you to use your good offices with Guigues to have him do so. Did that conversation take place? *A.* Never.

*Q.* Mr. Julius Lichtman says that at some time, the year he cannot place, he came to Mr. Guigues's factory, and that he was there introduced by Guigues to you. Do you remember his being at the factory at any time when you were introduced to him? *A.* I do.

*Q.* Can you tell when that was? *A.* I think it was the summer of 1906.

*Q.* He says that in your presence he talked with Guigues, asked him to examine and look at some goods, a shipment of goods, that had come from Beebe & Son that were bad, or in bad condition. Did he do that? *A.* I didn't hear it.

*Q.* Did you meet him more than once there? *A.* Only once.

*Q.* Now, on this one occasion that you are describing, what did he say?

Objected to as not rebuttal.

[Counsel argue.]

At one o'clock P. M. the court takes a recess of one hour.

After recess.

[Counsel argue further.]

The Court—I think that Mr. MacMahon's recollection about it is probably correct, and I will apply the strict rule and exclude the testimony.

[Plaintiff's counsel pray an exception, and the same is allowed.]

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Cross-examination waived.

Plaintiff rests.

Mr. Riker—Before entering upon the summing up, if your Honor please, I desire to make a motion for the direction of a verdict, and that motion is that there be a verdict directed for the defendant, and on these grounds. Preliminarily I will say that they are largely the grounds urged for the nonsuit.

First, because the alleged cause of action has not been shown to be the property of the plaintiff in this suit.

Secondly, because, under the evidence, no collusion between Guigues and the defendant has been shown, and therefore no evidence is in the case in a lawful form which will suport a verdict for any specified amount, if at all.

The third ground is because, under the contract and the evidence of custom as it stands in

the case, in the record, the goods claimed by the plaintiff in this suit were the lawful property of A. A. Guigues, and the transfer of them to the defendant was a lawful act, and thereby the property in question became the property of the defendant.

On the further ground that, under the contract and the evidence produced in the cause, there arose a legal claim on the part of A. A. Guigues to property in the articles mentioned in the declaration and which are the subject of this suit, and there being such a claim on the part of A. A. Guigues, that trover will not lie as against the defendant for these goods under any circumstances.

The Court—You mean the evidence indicates a limited property in him?

Mr. Riker—A claim of right.

The Court—The right to a limited property?

Mr. Riker—Yes, adverse to the plaintiff.

I want to add to the grounds already stated the ground that there is no evidence of the possession by the defendant of the goods claimed in the declaration—that being substantially one of the grounds offered for the motion to nonsuit. At most, the books do not go to the point of showing the goods in the possession of the defendant; that is, the goods claimed.

I add to this question of the custom that, if it be the province of the Court to decide upon the existence of the custom, why, then this motion is urged on that ground.

The Court—I take it to be the duty of the jury to determine whether a custom is proved. It is the duty of the Court to say whether it is a good custom—that is, whether it is reasonable—and in the particular case can co-exist with a contract, which must itself be supported.

The attention of the Court has been given to most of these matters, and my conclusions have been reached and expressed, which, if erroneous, can be corrected in another place. For the purposes of this trial, I will deny the motion for the direction of a verdict.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. Riker sums up for defendant.

Adjourned until to-morrow, Thursday, February 1, 1912, at ten o'clock A. M.

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EIGHTH DAY.

THURSDAY, FEBRUARY 1, 1912.

Met pursuant to adjournment.

Present, counsel as before stated.

Mr. Skinner sums up for plaintiff.

At 12:15 o'clock P. M. the court takes a recess of one hour.

After recess.

The Court charges the jury as follows:

Adams, J.

Gentlemen of the Jury: In entering upon the performance of this duty of mine in an important case, I never feel a full assurance that I shall be of much assistance to the gentlemen of the jury, which, of course, is all that I aim at, and in this particular case I am perhaps even less confident than usual. The trial has been long, the evidence is voluminous and deals largely with technical matters of which I have had little pre-

vious knowledge, and I have had less opportunity than I could wish to examine it as a whole and to compare one part with another. But what I may personally do or fail to do is perhaps of little immediate consequence. Your careful, intelligent and patient attention to the testimony and proofs, and to the discussions and arguments of the very able counsel who have conducted the trial, is a sufficient guaranty that nothing important has passed unnoticed by you and that you will have the case well in hand when you retire for consultation.

What I propose to myself is not to lead your minds through the mazes of this mass of material, but rather to touch, as lightly as possible, upon a few of the leading topics, having in mind especially such questions of law as must be kept in mind in order that your verdict when rendered may stand legal scrutiny; and, though the case is a long one, I see no reason why my charge should be very long or should very much weary your patience.

The topics I mean to speak of are these: First, the parties to the action; secondly, the nature of the plaintiff's claim, as it is shown to us by his declaration, or paper which he has filed with the clerk of the Supreme Court, setting out what he conceives to be his cause of action, and also by the opening of the senior counsel for the plaintiff, presenting an issue on which the case has been tried; thirdly, the written contract, for the express documentary agreement of the parties; fourthly, the new feature introduced into the situation by the use of a splitting machine instead of a shaving knife or knives, which altered both the mode of working and the product of the work. And in this connection I shall mention the testimony of Mr. Baker as to an unwritten, or verbal, agreement which he says was made at that time, and I should be glad, if I had it, to read what Mr. Abraham Lichtman says on that subject. I have not been furnished with typewritten copies of his testimony, and my own notes are not sufficiently

full to be of use; fifthly, the existence or non-existence of a trade custom, not altering nor contradicting the written contract, but supplementing it, so that both the contract and the custom may stand and be enforced together; sixthly, what it is that the plaintiff must prove to your satisfaction in order to win a verdict that should stand in law; and, seventhly, what damages, if any, he may recover.

Now, the parties to the action. The defendant is Julius Lichtman. The plaintiff is the Corona Kid Company, suing for the use of the Corona Kid Manufacturing Company. The claim originally belonged to the Corona Kid Company. An assignment of the claim to the Corona Kid Manufacturing Company has been offered in evidence on behalf of the plaintiff. If this assignment was effectual the result was this: that the Corona Kid Manufacturing Company became the owner of the claim, and that the suit is properly brought by the Corona Kid Company, as assignor, for the use of the Corona Kid Manufacturing Company, as assignee. The defendant has urged that the assignment was invalid. A question of law was thus presented for the consideration of the Court, and the assignment was held to be effectual. For the purpose of the trial, this question has been thus set at rest and has disappeared from the field of controversy. You do not have to consider it. I may say that there is no proof, and if there were it would be entirely irrelevant, whether the corporation which is the plaintiff, or the other corporation for whose use it sues, is or is not a trust. All that you know, and all that you need to know, is that the plaintiff is an artificial person suing for the use of another artificial person, that the defendant is a natural person, and that the law of the land protects all persons, natural and artificial, alike.

Secondly, the nature of the plaintiff's claim, as ascertained by an examination of the declaration and from

the opening of the senior counsel of the plaintiff. The declaration, one of the papers in this transcript which I hold here, and which will go to you, is in the usual form of a declaration in trover. It runs thus: The plaintiff on a certain day was lawfully possessed of certain specified goods, and casually lost them out of his possession, and they came to the possession of the defendant by finding—all fiction, just a way of raising a question—and the defendant has not delivered the goods, but has converted them to his own use, etc. This declaration does not on its face imply any charge of fraud or criminality. The action of trover is a legal method of determining the title to personal property, finding out who owns it, of which A was lawfully possessed, but has been dispossessed by B. It is true that the declaration contains the allegation that the defendant contrived and fraudulently intended craftily and subtly to deceive and defraud the plaintiff. This, however, is mere legal phraseology. Fraud of the defendant is no essential part of a plaintiff's case in trover, nor is is asserted in this declaration. But when we look beyond the declaration, and notice the opening of counsel, the case at once assumes a different complexion. The allegation was there distinctly made that the conversion of these goods was collusive, and that the defendant, Julius Lichtman, obtained them by consipiring with a Mr. Guigues, who is not a party to this action, to defraud the plaintiff.

Evidence having been offered on behalf of the plaintiff which tended to show collusion and conspiracy, the acts and declarations of the joint wrongdoers became, for the immediate purpose of putting in and developing the plaintiff's case, evidence against one another. In this way the plaintiff's case has been built up. If the testimony offered on behalf of the plaintiff to show collusion were struck out, there would not be enough left to found a verdict on in favor of the plaintiff. The charge of fraud was the bridge that carried the plaintiff over and enabled him to prove collusion. He cannot now kick down the bridge on which he crossed. Con-

sequently, the case must now be tested by the theory on which it has been tried. In short, the plaintiff has treated the action, not as a mere ordinary action of trover to try title, but as a fraud case in the form of trover, and unless he proves fraud to your satisfaction, your verdict must be for the defendant.

Thirdly, the written contract, for the express documentary agreement of the parties. This contract is well drawn. I take the same view of it, considered by itself, that is taken by the learned senior counsel for the defendant—both counsel, I presume. I have specially in mind what Mr. Riker said on the subject. It is a contract to tan in a specified way and for specified prices certain specific parts of horse hide butts, to be sent by the plaintiff to Mr. Guigues for that purpose. The contract is to be construed as a whole, and the general expressions are limited by and are applicable only to the specific provisions. Taking the contract at its face value, so to speak, it bound Mr. Guigues to this, and nothing more: to tan the specific parts in the specific way and for the prices named, and to send them back to the plaintiff.

Fourthly, the new feature introduced into the situation by the use of a splitting machine instead of a shaving knife or knives, which altered both Mr. Guigues's mode of working and the product of his work.

At first Mr. Guigues followed his former practice of treating a horse hide butt in a certain stage of the tanning process; he followed his former method in treating that kind of a skin. The former method of getting out the cordovan, or valuable plate of hard interior skin or hide, was to cut down to it with knives from the grain side and through the grain; that is, from the side next to the hair. The effect of this was to pretty much destroy the grain, which had a value, but, for the purposes of the plaintiff, a value inferior to that of the cordovan. It was the sacrifice of a less good in order to secure a greater. Mr. Guigues conceived the idea that a carefully graduated splitting machine might save both

the grain and the cordovan. He experimented and succeeded. The result was the production of a grain split of some value without injury to the cordovan. This had not been provided for by the contract; for, under the method of operation in use when the contract was signed, the production of the cordovan involved the destruction, perhaps not always, but in most cases, of the exterior grain. To use Mr. Riker's figure of speech, Mr. Guigues made two blades of grass grow where one grew before. And Mr. Guigues split not only the butt, but also the shank, thus producing two shank pieces instead of one.

It will readily occur to you that such a condition of things might lead to controversy. It is somewhat analogous to the differences that may arise about remnants. A sailor goes into a South street tailor shop and throws on the counter a ten-yard roll of cloth, and says, "Make me a coat." I am not tailor enough to know how many yards of cloth will make a coat but I will assume that five yards will do it. The tailor makes the coat. What is to become of the other five yards? Suppose that, instead of five, the remnant is three or two or one yard or some fraction of a yard. A Nevada miner walks into a jewelry store in some western state, and throws a gold nugget on the counter, and says, "Make me a wedding ring and two sleeve-buttons." The jeweler makes the ring and buttons, and has half of the gold, or some other fraction, left. What is to be done with it? Two blades of grass grow where one grew before. To whom does the second blade belong, to the owner of the soil in which it grows or to the cultivator whose care has doubled the crop? Any illustration is apt to be misleading. There is a legal Latin maxim which means that similarity is not identity—that things which are alike are not the same. I refer to these illustrations, not because they prove anything, or present to the mind precisely parallel or analagous cases, but to make it clear that over such questions, human nature being what it is, controversy is apt to arise.

And this brings me to the next topic, which is the existence or non-existence of a trade custom, not altering nor contradicting the written contract, but supplementary to it, so that both the contract and the custom may be enforced together.

I said that a consideration of what I may call the "two blades of grass" situation brought me to this question of custom. This is so because they are naturally connected. It is out of such situations that trade customs arise—not to contradict or alter contracts, but to supplement them, by determining incidental questions, not covered expressly by the contract, but arising in connection with contracts, and calling for immediate decision.

Now, what is a custom—a custom which is considered to be what the courts call good, and so recognizable and enforceable as law? It is a usage current among people who are engaged in a particular trade—I am speaking of a trade custom—reasonable, not illegal, so general and well recognized in the trade that it is fair to assume that the parties contracted with reference to its existence. The question as to the existence of a custom resolves itself very much into a question of implied intention in any given case. This does not mean that the question is whether there is distinct evidence that the contracting parties had the gift of prophecy and foresaw exactly what questions were to arise. It means that the question is this: Whether there was in force a custom so general and well known that, in view of the terms of the express contract, it is reasonable to infer that the parties acted with reference to the custom.

Now, what is the proof as to the existence of a trade custom? Without going over it in detail, I merely remind you of it. No doubt you have it very distinctly in your memory; it is a striking feature in the proof. A number of witnesses testified on behalf of the plaintiff that there is a trade custom to this effect: that everything goes back that is available for the making of merchantable leather. I do not know that I am quoting the

exact language of any particular witness, but that is the gist of it. If there be such a custom—and that is a question for you—it would be reasonable and not illegal, and therefore a good custom. Did it exist? Was there such a custom? On the other hand, several witnesses on behalf of the defendant say that there is a custom to return only those things which the contract says are to be returned; that is, there is no custom, because, if you leave it all to the contract, that eliminates the idea of any custom. I think the thought has probably occurred to you, as it did to me, that probably something of this confusion in the testimony arises out of the fact that many of the witnesses were giving their idea of what the contract meant, rather than confining their attention to the strict question whether there was a trade usage.

I will now refer, in connection with the original written contract and the operations under it with the splitting machine, to the testimony of Mr. Baker on the subject of the existence of a second contract, not in writing. "I was going through the factory with him"—that is, Mr. Guigues—"one day, and I found pieces of leather in the shape of the cordovan; it was very thin; and I picked it up. I said, 'What is this?' That had been tanned in bark; it was then with the grain; it was smooth and a nice piece of leather. He said, 'I have discovered a new way of handling the cordovan; I can run it through the splitting machine and split off the grain and save the grain, and then make good cordovan out of the shell. Now, instead of shaving it and getting waste, I split it and get the grain.' I said, 'Let us see it done.' We immediately went to the beam-house, where his splitting machine was located; we got some butts that had already been trimmed, the shank had been taken off; there was the leather, or the butts, ready to be put into cordovan. We put it through the splitting machine. The first one was too thin; it didn't have the strength. The second one, the machine was adjusted so as to make it heavier;

it came out very much better. And I suppose we did about a dozen, in order to get the machine properly adjusted. And then from that time on the grains were split from the shell instead of being shaved. *Question*: I want you to give us the conversation. You were telling us of a conversation you had there with Mr. Guigues, and that you had seen the process of splitting. Was there anything further said? *Answer*: Except that it should be done in future. *Question*: What was said about that? *Answer*: That it was of more value to split the grain than it was to shave it; that I could take this grain and use it, whereas before it had been waste; and he claimed that he could make just as good cordovan after having split the grain as he could if it had been shaved, giving two pieces instead of one. *Question*: What was said then? *Answer*: He was to split the grain, to tan them in chrome suitable to be finished into patent leather. *Question*: Was any price agreed upon? *Answer*: Five cents a foot. *Question*: Was anything said as to what was to be done with the tanned grain splits? *Mr. Riker*—I think I am entitled to ask when this occurred. *Question:* When did that occur? *Answer*: That occurred, I should say, along in the latter part of 1904, perhaps in December." I think that is about all.

Mr. Abraham Lichtman testified as to this same conversation. I remember asking him about whether there was any accumulation of stuff there, showing how much had already been done. I do not remember what he said as to the conversation itself. Probably you do. If counsel can inform me, I will be very glad to have them do so.

Mr. Skinner—I think we agree, sir, that Mr. Lichtman did not testify as to that conversation at all.

Mr. MacMahon—Yes, sir. You asked Mr. Abraham Lichtman as to whether when he visited Mr. Guigues first he saw an accumulation of these articles.

The Court—I do not know that Mr. Lichtman was there. I was thinking that he did speak of it.

Now, in the sixth place, what must the plaintiff prove in order to get a verdict? The burden is on him. It is for you to be satisfied by what shall seem to you to be the preponderance of the evidence that his case is made out.

What must the plaintiff prove? For one thing, a right of the plaintiff to the possession of these articles. In order to establish a right to the possession of these goods which are not covered by the written contract in any clear or express way, I think not at all, the plaintiff must satisfy you either that there was a trade custom, supplementary to the contract, requiring a return of these articles, as being things of value, the material of which was susceptible of being made into leather, or that there was a supplementary verbal contract such as Mr. Baker has testified to. If Mr. Baker is correct, and he seems not to be contradicted, Mr. Guigues being the only other witness of this interview, his testimony stands alone that there was such a contract made for the manufacture, tanning in chrome, of such grain splits as Guigues in prosecuting his splitting work should slice off from the hair side of the butts—that would show a right of possession in the plaintiff, or the custom, if proved satisfactorily, would show a right of possession in the plaintiff.

But the next thing—and this is perhaps the critical point of the case—is that it is the duty of the plaintiff to show not merely a conversion, but a fraudulent conversion, for the reason I have already said. The only testimony tending to show conversion, these yellow sheets showing the scales, the only thing from which we get any definite figures, gets into the case because it is said to be evidence coming from a man who is said to have been a co-conspirator. Except for that, these sheets would not be admissible in evidence. Therefore I say that the conversion—(you know what I mean by

conversion: the exercising of dominion, authority, control, over these goods)—by Mr. Lichtman must be proved to have been a conversion—that is, it must appear to you as a result of the evidence that these goods which the plaintiff claims came, in fact, into his possession, and that he exercised the control of an owner over them, in exclusion of the right of the plaintiff, who says he was the true owner. That is one proposition. The next proposition is that the conversion thus effected must be demonstrated, to your satisfaction, to have been a fraudulent conversion, the result of a collusive scheme, known to Mr. Lichtman and participated in by him, to defraud the plaintiff. Mr. Julius Lichtman personally had very little to do with the matter. His son may be regarded as his authorized agent to conduct the business which this suit has brought to our attention.

If the plaintiff shall have satisfied you that he has proved these elements of his case, a right to the possession of the plaintiff, resting either on a trade custom or on the agreement with Mr. Baker, and that those goods were fraudulently converted by Mr. Lichtman, then the plaintiff will have established his case. If the case should fail as to any one of those propositions, if the proof of fraud shall be unsatisfactory to your minds, or if the right of possession shall fail of both of its two supports, the support of trade custom or the support of Mr. Baker's contract, then your verdict should be for the defendant.

If for the plaintiff, your verdict should be for the market value of the goods at the date of the conversion, and counsel agrees that you take the last date, and according to his figures, which you will have an opportunity to verify, the amount, with interest—and I charge you that interest is collectible—will be at least $23,000, which is all that he claims in his declaration. So that that is the alternative. If you find for the defendant, because the plaintiff has not proved his case, you will simply say that you find for the defendant.

I have been favored by counsel on both sides with some requests to charge.

The plaintiff has requested me to charge nineteen different propositions. Several of them go upon the idea that it is not necessary for the plaintiff to prove fraud in order to make out his case. I have already said what I have to say on that subject, but I will read, as a speciment of the requests, the first one: "That if the jury find that goods such as mentioned in the plaintiff's declaration were sold by Guigues to Lichtman and that said goods belonged to the plaintiff, the defendant is liable in this action in damages therefor." That I deny. I say that this would be ordinarily the rule in trover, but fraud has become an essential ingredient of the plaintiff's case, for reasons stated in the charge.

The second request is denied for the same reason, and the third is denied for the same reason, and also the fourth.

The fifth request I deny, unless the word "unlawfully" means fraudulently, which I do not think it does. I therefore deny it. I will read it: "That by the undisputed evidence in this case the goods in question in the raw stage, that is, as hides, came lawfully into the possession of A. A. Guigues, but if the jury find that the said goods were thereafter unlawfully sold by the said Guigues to the defendant, Lichtman, the defendant is then liable therefore, that is, for such of said goods as were purchased by him within the period above named, from November 28, 1904, to September 7, 1905, including both of said dates." "Unlawfully," I think, does not mean necessarily fraudulently. It means without right. For that reason I do not charge that, but deny it.

The sixth request I charge, with a remark. The request is: "That the rights of the defendant to the goods in question by virtue of any purchase from Guigues must stand or fall with the right of Guigues therein. The defendant, Lichtman, could acquire by purchase from Guigues no better title than Guigues himself had."

I say this is true, but it does not dispense in this case with the necessity of proof of fraud to complete the plaintiff's case.

The seventh request I deny. I am not quite sure that I understand it entirely. It seems to me to conflict with the rule that the construction of a written contract is for the Court.

The eighth request relates to the testimony of Mr. Baker. I will read the request: "That if the jury find that subsequent to the said written contract (*Exhibit P 1*) there was a conversation between Guigues and Mr. Baker, the president of the plaintiff company, as described by said Baker, in which it was agreed between them that Guigues was to split the horse butts that were being treated for cordovan by the use of a splitting machine instead of the shaving by a knife, and for the tanning of the grain thus split from said butts at a price then agreed upon, and the return of said grain to the plaintiff thereafter, and regardless of any custom to the contrary, the plaintiff was entitled to receive back from the said Guigues the said grains thus split from the butts as well as the shell tanned for cordovan." That proposition, that the plaintiff would be entitled to receive back from Guigues the grains on the footing of that contract, is, of course, true, but I say, in a cautionary way, that it does not follow from that that the plaintiff ought to recover in this case on that footing, because it is necessary to superadd the idea of fraud in order to prove the conversion.

I deny the ninth request except as I have charged, and also the tenth.

I charge the eleventh request: "That it is for the jury to determine whether the evidence has established the existence of a trade usage or custom applicable to any part of the goods sent by the plaintiff to Guigues and sold by him to the defendant, but the jury must take from the Court statement of the law as to what is a sufficient usage to be admissible as a custom binding the

parties except as the same is inconsistent with contract, either written or verbal, between said parties."

I charge the twelfth request: "That the jury in considering the testimony of witnesses produced as experts in the tanning trade for the purpose of establishing a trade usage or custom, should distinguish with care between their testimony as to the existence of such a trade custom and their interpretation of the contract in writing between the parties."

I charge the thirteenth request: "That no evidence would be admitted by the Court to show a trade usage or custom that is inconsistent with or modifying any of the provisions of the written contract."

I deny the fourteenth request except as I have charged, and charge the fifteenth: "That so far as the jury find that the testimony of any witness as to the existence of a trade usage or custom under the terms of the contract in writing has been an interpretation of said contract as altered or modified by a trade usage, the jury are to disregard such testimony." Of course that means, I suppose, that it is not for the witness to construe the contract.

I deny the sixteenth request except as I have charged, and deny the seventeenth, and also the eighteenth, and also the nineteenth.

The defendant's counsel have requested me to charge seven different propositions.

The first relates to the contract: "That under the contract in evidence in this case all that the Corona Kid Company was to receive back from Albert A. Guigues were the cordovans or tanned leather made from the flesh side of the butts, and the tanned grains from the shanks for japanning or in dull finish for topping, and that Albert A. Guigues was entitled to retain everything else from the butts sent him by the Corona Kid Company." I agree as to this construction of the written contract considered by itself alone, without reference either to the custom or to the supplemental oral contract that is said to have been made.

Secondly: "That under the contract in question Albert A. Guigues had the legal right to sell the grains from the butts after tanning in bark to Julius Lichtman, and also had the legal right to sell the shank splits and the pieces of tacked out buff buffings." I deny this request. It ignores the question of a trade custom and the question whether a supplemental verbal contract was made which affects the rights of the parties.

I deny the third request and the fourth request.

I charge part of the fifth request. I will read the whole of it, and then say how much of it I charge. "If the jury believe that Albert A. Guigues had no right to retain such fall-off, then the jury must be satisfied beyond doubt that Julius Lichtman bought such fall-off from Albert A. Guigues knowing that the said Albert A. Guigues had no right to sell it before the jury is justified in bringing in a verdict for the plaintiff, and that if the goods came into possession of Julius Lichtman without any fraud or collusion on his part, then it was the duty of the plaintiff to demand the return of the goods from Julius Lichtman before it could maintain this suit, and there being no proof of such demand, the verdict must be for the defendant." I charge the first part of that: "If the jury believe that Albert A. Guigues had no right to retain such fall-off, then the jury must be satisfied beyond doubt that Julius Lichtman bought such fall-off from Albert A. Guigues knowing that the said Albert A. Guigues had no right to sell it before the jury is justified in bringing in a verdict for the plaintiff." In other words, you must bring home actual fraud to Julius Lichtman. The latter part of the request I decline to charge, for I am not sure that at this stage of the case the fact of no demand would be sufficient ground for the direction of a verdict.

I deny the sixth request, and charge the seventh: "If the jury believes that no collusion or conspiracy in fact existed between the defendant and Albert A. Guigues to wrongfully dispose of the goods claimed in this suit, the verdict must be for the defendant." I have already said that.

I am requested to make some remarks about a particular phase of the proof, which I deny. The Court is under no obligation to comment on little bits of testimony, if the general tenor of the charge is correct.

This is all that I have to offer you, gentlemen. You may retire, and I will send to you the documentary evidence.

[The jury retires.]

Mr. Riker—It is a little late, if your Honor please, and I am embarrassed a little bit by the request. Of course, I can put it in the form of an exception, but I think your Honor's attention should be directed to this feature of it, which I do not think is sufficiently brought out in the eighth request to charge that was made. The form in which I think it should be made is this: If the contract alleged to have been made verbally by Guigues with Baker in December, 1904, is taken as proved, the evidence must show that the grain splits claimed for in the suit were purchased after the making of the verbal agreement—the grain splits claimed for being specifically bark-tanned, and the verbal contract between Guigues and Baker being alleged to be for chrome-tanning.

The Court—The language of the declaration is: "Grains from cordovan after tanning." It does not say what method of tanning.

Mr. Riker—But the evidence in the cause is that the things taken were bark-tanned.

Mr. Skinner—But it was after tanning.

Mr. Riker—Certainly, but you have got to prove that they were bark-tanned.

Mr. Skinner—That same point was made in the course of the trial, I think on the first day, and I called attention to the fact that we described in our declaration the conversion of articles, grains from cordovan after tanning.

Mr. Riker—And what you proved is bark-tanned.

Mr. Skinner—Now, Mr. Baker contracted to get chrome-tanned grains. He did not get them. That is not the offense, though. The offense is that the leather

that he should have got chrome-tanned went to Lichtman bark-tanned, and it does not make any difference how it went to Lichtman. It would be conversion to take that property and turn it over to Lichtman in any state, chrome-tanned, bark-tanned, raw or pickled. They would still be our goods. Do you see the absurdit? It means that there cannot be a conversion of our goods unless they were turned over to the man who took them in exactly the same condition that we were to get them. I say it is conversion just the same.

Mr. Riker—The point is not that; the point is this: Your Honor charged the jury that under the verbal agreement that was alleged to have been made between Guigues and Baker the plaintiff could recover for these splits. Now, I say that under that contract all that could be recovered for was the splits that were made after the making of that contract; that the splits that were made before that contract are not covered, nor would that contract justify a recovery for the plaintiff for those things that were purchased before that time.

The Court—I see the point.

Mr. Riker—On the other hand, if it was because he did not purchase chrome-tanned, but did purchase bark-tanned, that is an action which sounds in contract, and against which we would be entitled to recoup the five cents a square foot.

The Court—Does it not bear rather on the question of the right to possession than on the conversion?

Mr. Riker—It bears on the question of what can be recovered for under that phase of your Honor's charge.

The Court—I put it to the jury that the right to possession could stand on either one of two legs, or both, either on the contract with Baker or on the custom.

Mr. Riker—Yes.

The Court—You say this does not rest on the contract with Baker and would only rest on the custom?

Mr. Riker—Yes, it would only have limited support on the contract with Baker. It would have to do only

with the things made after the contract with Baker. Do I make myself clear?

The Court—In order to do justice to the case, I am willing to call the jury back, if I can explain it in any way.

Mr. Riker—I fell that their attention should be brought to the fact that, under that phase of your Honor's charge, it is only those things that are proved to have been made after the making of that verbal contract to have come into the hands of the defendant, and if there is not any proof to that effect, then that will not support a verdict at all.

Mr. Skinner—May I suggest, sir, first, that that assumes absolutely that the verbal contract made by Baker with Guigues was one that recognized Guigues's ownership of the goods and was a contract for the purchase of certain grains. That is not a justifiable construction of the arrangement made by Mr. Baker. On the contrary, we contend that Baker's arrangement with Guigues was an arrangement that recognized the Corona Kid Company's right to the property in question, and that Guigues's contract was to do something to that property. Now, his failure to do that to the property, his failure to produce grains tanned out of our hides, is not any element at all of this action. We could sue him perhaps for failing to do what he had contracted with him to do. But we say that, no matter whether he did with our goods what he had agreed to do or not, he had no right to turn them over to somebody else in any state; and I submit that to call the jury back would be, first of all, to call their attention to, I think, an improper view of the evidence and the contract, and, further, that it would perhaps do harm, as any recall of the jury is calculated to emphasize something that is not really entitled to emphasis.

The Court—I think it would probably confuse the jury. The matter has been discussed by counsel, I think, in the presence of the jury, and I think I had better leave you to your exception to the charge.

Defendant's counsel pray an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. Skinner—If your Honor please, I respectfully pray an exception to so much of your Honor's charge, or to your Honor's refusal to charge the written requests that were submitted, so far as your Honor did refuse, and to the modifications of the requests to charge. I refer particularly to the modification that attached to all of them the element of fraud as one of the essential elements in the case, without proof of which the plaintiff could not recover.

[Exception allowed.]

Mr. Skinner—I also specifically except to that part of your Honor's charge in which it was said that because the opening alleged collusion—that is, the obtaining of these goods by collusion—if the evidence of fraud was struck out, there would be nothing for the plaintiff to recover; that if the plaintiff chose to cross over on the bridge of fraud, it could not kick over the bridge and continue to cross, or some such expression. I may not have it exactly.

[Exception allowed.]

Mr. Skinner—To that part of your Honor's charge which said that unless fraud was proved the jury's verdict must be for the defendant.

[Exception allowed.]

Mr. Skinner—To the statement of your Honor in your charge of the testimony, that the former method of treating the butt, was to cut down to the hard part, the bony part; that the effect of that treatment was to pretty much destroy the grain—to that part of your Honor's charge.

The Court—You think that was an error in fact?

Mr. Skinner—I think so, sir. I could say that more clearly as to the other statement, that it was cut down

to the hard part. It may have been possibly to destroy the grain. I do not know just how far in depth the grain would go. But I do not know that the process involved cutting down to this gristle or bone.

[Exception allowed.]

Mr. Skinner—Then to so much of your Honor's charge as referred to these similar customs, the remnants in the tailor shop and the gold nugget to be made into jewelry, as possibly carrying to the jury's minds the idea that those customs were of the same kind as this, that the custom in this case was really similar to those.

[Exception allowed.]

Mr. Skinner—Then to so much of your Honor's charge as said that the right of possession of the goods was not covered by the written contract in any way, construing the written contract as not covering that point.

[Exception allowed.]

Mr. Skinner—To so much of the charge as said, again, that it was the duty of the plaintiff to show fraud; that that was the critical part of the case; and to this, if I got it rightly—I am not quite sure—I think your Honor said that the yellow sheets were practically the only evidence of conversion. I was not quite sure that I caught that.

The Court—The only evidence of definite figures, I said, did I not?

Mr. Skinner—Maybe. I did not get it all, so I state it with that explanation.

[Exception allowed.]

Mr. Skinner—To that part of your Honor's charge in which your Honor told the jury that the conversion, if effected by Lichtman, must be demonstrated to have been by fraud and the fraud known to Lichtman.

[Exception allowed.]

Mr. Skinner—To your Honor's charge, I think as covered by the first request on behalf of the defendant, in the statement of construction of the written contract. I refer to that part.

[Exception allowed.]

Mr. Skinner—And to so much of your Honor's charge as followed another one of the requests to charge presented by the defendant, in which the jury was told that if Guigues had no right to the fall-off, the jury must still find that Lichtman bought knowing that he was without right.

[Exception allowed.]

Mr. Skinner—And, generally, to all the charge not herein referred to in which fraud was made the essential element of the conversion, and the jury told that the plaintiff could not recover without proof of that.

[Exception allowed.]

Mr. Howell—We pray an exception to so much of your Honor's charge as stated that the result of splitting the butt was to obtain the grain split without injury to the cordovan. The point is that, while the testimony showed that it could be so done, the testimony does not, in fact, show that it was always so done.

The Court—No, it was not invariable; it could be done with care.

[Exception allowed.]

Mr. Howell—One other point: that your Honor stated that the interpretation of this contract, aside from trade custom, did not cover, as I understood it—the terms of the contract did not include any of these goods. In other words, your Honor said that you agreed with Mr. Riker's construction of this contract.

The Court—Yes, I agree with Mr. Riker, if you look at the contract alone.

[Exception allowed.]

Mr. MacMahon—The defendant prays exception to those portions of your Honor's charge which deal with illustrations of remnants and fall-off from other trades, as tending to mislead the jury.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. MacMahon—We also except to that part of your Honor's charge which treats of the verbal contract alleged to have been made by Mr. Baker with Mr. Guigues.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. MacMahon—And also as to that part of your Honor's charge which states that if the jury is satisfied that there was such a verbal contract, such as Mr. Baker has testified to, then that they might find a verdict for the plaintiff.

The Court—I did not say that. I said they could not on that footing alone, because they had to prove fraud besides.

Mr. MacMahon—Then I except to that part of your Honor's charge where you charged the jury that the verbal contract with Mr. Baker can be of any support to a verdict by the jury under the evidence in this case.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. MacMahon—I also pray an exception to that part of your Honor's charge concerning damages. As I understood it, you charged the jury that counsel had agreed that the amount should so much, with interest from a certain date.

The Court—No, I did not say that; I did not say there was any agreement.

Mr. MacMahon—Then I pray an exception to what your Honor said on the question of damages.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. Riker—Counsel for the defendant except to that part of the charge of the Court which deals with the verbal contract testified to have been made between Mr. Guigues and Mr. Baker in the latter part of the year 1904, for the reason that under the evidence in the cause no recovery could be had under that contract unless it appears that the goods claimed for had been tanned and produced after the making of the verbal contract.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. MacMahon—We also except to that part of your Honor's charge in which you told the jury that they might discriminate between the witnesses produced to testify as to a trade usage or custom and the witnesses who appeared to be not testifying to the trade usage or custom, but to give their opinion of what the written contract meant, and that the jury must reject the testimony of the witnesses that they considered were testifying as to the meaning of the written contract.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

Mr. Skinner—I understand that the exception to so much of your Honor's charge as related to the damages is based upon the idea that it was stated by the Court that we agreed, or counsel agreed, as to the amount of recovery?

Mr. MacMahon—That is what I understood the Court to say.

Mr. Skinner—No, I think that is quite clear, that the counsel did not agree.

The Court—I did not say that.

## DEFENDANT'S REQUESTS AND EXCEPTIONS.

Defendant's counsel request the Court to charge the jury as follows:

(1) That under the contract in evidence in this case, all that the Corona Kid Company was to receive back from Albert A. Guigues were the cordovans or tanned leather made from the flesh side of the butts, and the tanned grains from the shanks for japanning or in dull finish for topping, and that Albert A. Guigues was entitled to retain everything else from the butts sent him by the Corona Kid Company.

[Charged with remark.]

Defendant's counsel pray an exception to the refusal of the Court to charge specifically as requested.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(2) That under the contract in question Albert A. Guigues had the legal right to sell the grains from the butts after tanning in bark to Julius Lichtman, and also had the legal right to sell the shank splits and the pieces of tacked-out butt buffings.

[Denied.]

Defendant's counsel pray an exception to the refusal of the Court to charge as requested.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(3) That the Corona Kid Company knew that Albert A. Guigues was selling this fall-off to Julius Lichtman from the beginning of its contract with Albert A. Guigues, and knew that Julius Lichtman was buying the same, believing it to be the property of Albert A. Guigues, and that the verdict must therefore be for the defendant.

[Denied.]

Defendant's counsel pray an exception to the refusal of the Court to charge as requested.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(4) That Albert A. Guigues retained the goods set forth in the declaration as his own property when he returned the finished leather to the Corona Kid Company under his contract with that company, and asserted the title in himself to such goods adverse to any claim of the Corona Kid Company, and that under such circumstances neither Corona Kid Company nor its assignee may maintain an action in trover against this defendant with respect to those goods.

[Denied.]

Defendant's counsel pray an exception to the refusal of the Court to charge as requested.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(5) If the jury believe that Albert A. Guigues had no right to retain such fall-off, then the jury must be satisfied beyond doubt that Julius Lichtman bought such fall-off from Albert A. Guigues knowing that the said Albert A. Guigues had no right to sell it before the jury is justified in bringing in a verdict for the plaintiff, and that if the goods came into possession of Julius Lichtman without any fraud or collusion on his part, then it was the duty of the plaintiff to demand the return of the goods from Julius Lichtman before it could maintain this suit, and there being no proof of such demand, the verdict must be for the defendant.

[Denied except as charged.]

Defendant's counsel pray an exception to the refusal of the Court to charge specifically as requested.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(6) There being no proof of the quantity of goods alleged to have been sold by Albert A. Guigues to the defendant, there can be no verdict for the plaintiff, nor can there be a verdict for the plaintiff in the absence of proof of the value of the goods.

[Denied.]

Defendant's counsel pray an exception to the refusal of the Court to charge as requested.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(7) If the jury believes that no collusion or conspiracy in fact existed between the defendant and Albert A. Guigues to wrongfully dispose of the goods claimed in this suit, the verdict must be for the defendant.

[Charged.]

(8) That there is no evidence to indicate that Mr. Guigues, after making the verbal contract with Mr. Baker for tanning the butt grains in chrome, ever tanned the butts in bark or vegetable tanning.

[Denied.]

Defendant's counsel pray an exception to the refusal of the Court to charge as requested.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

## PLAINTIFF'S REQUESTS AND EXCEPTIONS.

Plaintiff's counsel request the Court to charge the jury as follows:

(1) That if the jury find that goods such as mentioned in the plaintiff's declaration were sold by Guigues to Lichtman, and that said goods belonged to the plaintiff, the defendant is liable in this action in damages therefor.

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(2) That if the jury find that the defendant bought of Guigues goods such as are described in the declaration between November 28, 1904, and September 7, 1905, including both of those dates, and that the said goods belonged to the plaintiff, the defendant is liable in this action notwithstanding he acted in good faith and in ignorance of who was the actual owner.

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(3) That if the jury find that the defendant bought goods such as are named in the plaintiff's declaration with in the period between November 28, 1904, and September 7, 1905, including both of those dates, and that said goods belonged to the plaintiff, the defendant is liable in this action, notwithstanding the jury may find that he believed at the time that he bought them that the man of whom he bought (Guigues) was the owner of them.

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(4) That the defendant's liability in this case does not depend upon his knowledge of any title in the

plaintiff to the goods said to have been purchased by him of Lichtman nor upon his ignorance of any lack of title to them in Guigues, the man of whom he bought. The test is, Were the goods that he bought the property of the plaintiff?

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(5) That by the undisputed evidence in this case the goods in question in the raw stage, that is, as hides, came lawfully into the possession of A. A. Guigues, but if the jury find that the said goods were thereafter unlawfully sold by the said Guigues to the defendant, Lichtman, the defendant is then liable therefor, that is, for such of said goods as were purchased by him within the period above named, from November 28, 1904, to September 7, 1905, including both of said dates.

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(6) That the rights of the defendant to the goods in question by virtue of any purchase from Guigues must stand or fall with the right of Guigues therein. The defendant Lichtman could acquire by purchase from Guigues no better title than Guigues himself had.

[Charged with remark.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(7) That it is for the jury to determine whether the goods that came to Guigues from the plaintiff to be tanned came to him under contract that was contained in the written contract between the plaintiff and Guigues

of the date of June 30, 1904 (*Exhibit P 1*), and without other contract made verbally and supplementing said written contract or implied by reason of some trade custom or usage not inconsistent with such written or verbal contract.

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(8) That if the jury find that subsequent to the said written contract (*Exhibit P 1*) there was a conversation between Guigues and Mr. Baker, the president of the plaintiff company, as described by said Baker, in which it was agreed between them that Guigues was to split the horse butts that were being treated for cordovan by the use of a splitting machine instead of the shaving by a knife, and for the tanning of the grain thus split from said butts at a price then agreed upon, and the return of said grain to the plaintiff thereafter, and regardless of any custom to the contrary, the plaintiff was entitled to receive back from the said Guigues the said grains thus split from the butts as well as the shell tanned for cordovan.

[Charged with remark.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(9) That if the jury find that any part of the goods sold by Guigues to Lichtman within the period covered by this suit was so sold prior to the making of said last-mentioned verbal contract, if such contract was made, the right of Guigues to retain any part of the horse hide butts sent to him for tanning by the plaintiff must be determined by the written contract, together with any trade usage or custom so far as the same is not inconsistent with said contract.

[Denied except as charged.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(10) That as to anything not covered by said alleged supplemental verbal contract, the rights of Guigues to retain any part of the horse hide butts sent to him by the plaintiff for tanning would after the date of said verbal contract still be determined by the written contract before mentioned (*P 1*) and any trade usage or custom applicable thereto that was not inconsistent with said written contract.

[Denied except as charged.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(11) That it is for the jury to determine whether the evidence has established the existence of a trade usage or custom applicable to any part of the goods sent by the plaintiff to Guigues and sold by him to the defendant, but the jury must take from the court statement of the law as to what is a sufficient usage to be admissible as a custom binding the parties except as the same is inconsistent with contract, either written or verbal, between said parties.

[Charged.]

(12) That the jury in considering the testimony of witnesses produced as experts in the tanning trade for the purpose of establshing a trade usage or custom, should distinguish with care between their testimony as to the existence of such a trade custom and their interpretation of the contract in writing between the parties (*P 1*).

[Charged.]

(13) That no evidence would be admitted by the Court to show a trade usage or custom that is incon-

sistent with or modifying any of the provisions of the written contract.

[Charged.]

(14) That the expert testimony as to trade usage in this case, with reference to the contract in writing (*P 1*) cannot be taken as in any way altering or modifying any part of said contract or the verbal contract supplemental thereto, but only as being an implied contract upon a matter as to which the written or verbal contract may be silent or as explanatory of some portion of the written or verbal contract that is ambiguous.

[Denied except as charged.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(15) That so far as the jury find that the testimony of any witness as to the existence of a trade usage or custom under the terms of the contract in writing (*P1*) has been an interpretation of said contract as altered or modified by a trade usage, the jury are to disregard such testimony.

[Charged.]

(16) That so much of the testimony of any expert as to trade usage or custom as is consistent with the contract or contracts between the parties, written or verbal, or explanatory of some ambiguity in said contracts, is to be considered by the jury. All else of the testimony of said witnesses as to the existence of trade usage or custom in the interpretation of the contracts between the parties, written or verbal, is to be disregarded.

[Denied except as charged.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(17) That if the jury find on all the facts in this case that the defendant purchased from one Guigues goods that belonged to the plaintiff and removed them or

caused them to be removed away from the factory premises of said Guigues, the defendant is liable therefor without any damage by the plaintiff for said goods made to the defendant.

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(18) That if the jury find that the defendant purchased of Guigues goods that belonged to the plaintiff, the defendant is liable in compensatory damages for the value of said goods at the time of conversion, together with interest on the value of each item from the respective dates of said purchases.

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

(19) That if the jury find that the goods purchased by the defendant from Guigues were the goods of the plaintiff, and that said goods were purchased by the defendant from Guigues, accompanied with malice, fraud or a wanton disregard of the plaintiff's rights, the plaintiff is entitled to recover, in addition to what has been described as compensatory damages, punitive or exemplary damages. Such damages can be recovered from the defendant, Julius Lichtman, in this case only if the jury believe that the defendant, Julius Lichtman, had knowledge that the goods he purchased from Guigues were the goods of the plaintiff, or that he subsequently obtained such knowledge and approved of his agent's conduct.

[Denied.]

Plaintiff's counsel pray an exception, and the same is allowed.

FREDERIC ADAMS, [L. S.]
*Circuit Court Judge.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

CORONA KID COMPANY, OF MASSACHUSETTS, SUING, ETC.,
*Defendant in Error,*
vs.
JULIUS LICHTMAN,
*Plaintiff in Error.*
} In Tort.

## ORDER.

(*Filed March 15, 1912.*)

Application being on file by the plaintiff in error in this cause for an extension of time in which to file the assignments of error, and no cause appearing to the contrary;

It is, on this fifteenth day of March, nineteen hundred and twelve, on motion of Riker & Riker, attorneys for the plaintiff in error, ordered that the said plaintiff in error be permitted to file assignments of error in the above-entitled cause on or before the first day of May, nineteen hundred and twelve.

We consent to the entry of the foregoing order.
PITNEY, HARDIN & SKINNER,
*Attorneys for Defendant in Error.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

CORONA KID COMPANY, SUING FOR THE USE OF CORONA KID MANUFACTURING COMPANY,
*Plaintiff, Deft. in Error,*
vs.
JULIUS LICHTMAN,
*Defendant, Pltff. in Error.*

In Tort.
In Error.

## ASSIGNMENTS OF ERROR.

(*Filed April 30, 1912.*)

The said defendant assigns the following as errors at the trial of said cause:

1. That the trial court admitted testimony of the witness, Benjamin E. Baker, as to conversations with and statements by one Albert A. Guigues, although it appeared that said conversations with and statements by the said Albert A. Guigues were not made in the presence of the defendant, Julius Lichtman.

2. That the trial court admitted evidence of an alleged verbal arrangement made between the said Benjamin E. Baker and the said Albert A. Guigues in the absence of the defendant, Julius Lichtman, modifying the terms of a written contract between the said Albert A. Guigues and Corona Kid Company, bearing date June 30, 1904.

3. That the trial court refused to strike out testimony concerning certain so-called grain splits after it appeared that said grain splits were produced before tanning, although the specifications of the declaration herein alege the conversion of 23,300 pounds of grains from cordovan after tanning, and makes no claim for products arising before tanning.

4. That the trial court permitted testimony concerning reports made by Albert A. Guigues to Corona Kid Company, although there was no evidence to show that

said reports were made in the presence of the defendant, Julius Lichtman, or to show that the said Julius Lichtman had knowledge or any cause to have knowledge of said reports or the making thereof.

5. That the trial court admitted testimony concerning complaints alleged to have been made by the said Benjamin E. Baker to the said Albert A. Guigues concerning shortages in hides, although it does not appear that the said complaints were made in the presence of Julius Lichtman, or that he had knowledge of them.

6. That the trial court refused to strike out testimony concerning said complaints, although it does not as a fact appear that there were any shortages, and although it appears from the testimony of the said witness that such shortages may not have existed, but were merely apparent.

7. That the trial court permitted the said Benjamin E. Baker to testify concerning replies made by the said Albert A. Guigues not in the presence of the said defendant, Julius Lichtman, to said alleged complaints.

8. That the trial court permitted testimony by the witness, Theodore E. Conway, concerning instructions given him by Guigues not in the presence of the said defendant, Julius Lichtman, as to the handling of grain and flesh splits in the factory of the said Guigues.

9. That the trial court admitted evidence as to the sayings and doings of the said Albert A. Guigues not in the presence of the said Julius Lichtman, on the ground that there was evidence showing collusion between the said Julius Lichtman and the said Albert A. Guigues to defraud the said Corona Kid Company, although the pleadings failed to allege any fraud or collusion, and although no such fraud or collusion was proven.

10. That the trial court refused to strike out testimony concerning visits of Abraham Lichtman to the factory of the said Albert A. Guigues, although the said

Abraham Lichtman was not connected with the said defendant, Julius Lichtman, by the evidence in the case.

11. That the trial court admitted testimony concerning trade custom in the leather trade as to the retention of portions of the hide by the tanner, without qualification as to the effect of a contract for the tannage, although it appears from the evidence that the tannage in question was being done under contract.

12. That the trial court refused to permit the cross-examination of the witness, William G. Price, sworn on behalf of the plaintiff, as to the processes employed in the tanneries in Germany, although it appeared from said witness's testimony that his whole experience regarding the tanning of horse hides was obtained in said German tanneries and in the employ of the plaintiff's assignee, Corona Kid Manufacturing Company.

13. That the trial court permitted the witness, Joshua L. Elliott, to testify as to instructions given him by Albert A. Guigues in the absence of the defendant, Julius Lichtman, concerning alleged private books of the said Guigues, and concerning shipments alleged to have been made by the said Guigues to the defendant, Julius Lichtman.

14. That the trial court permitted testimony by the said Joshua L. Elliott concerning telephone conversations alleged to have been had by the said Joshua L. Elliott with Abraham Lichtman, although the said Elliott failed to identify positively the voice of the said Abraham Lichtman, and although no authority was shown in the said Abraham Lichtman from the defendant herein to communicate with the said Elliott as by him testified.

15. That the trial court permitted the witness, Joshua L. Elliott, to use a memorandum to refresh his memory certain yellow sheets, alleged to be copies from the private books of Albert A. Guigues, for the purpose of testifying to sales by the said Albert A. Guigues to the defendant, Julius Lichtman, although it appeared that the shipments purported to be recorded in said yellow

sheets and books were but in few instances made by the said Elliott, although said Elliott admitted that only a part of the entries in said books were made by him, and that the book from which said copies were alleged to have been made was the ledger and not the book of original entries.

16. That the trial court admitted evidence of a conversation had, in the absence of the defendant, Julius Lichtman, between George Inston, Benjamin E. Baker and Albert A. Guigues, at the Hotel Manhattan, in the city of New York, in the year 1908, concerning the whereabouts of books of account of the said Albert A. Guigues.

17. That the trial court admitted in evidence certain yellow sheets prepared by the witness, Joshua L. Elliott, and alleged to be copies of the ledger of private books of Albert A. Guigues, showing transactions between the said Albert A. Guigues and Julius Lichtman, although said yellow sheets were inadmissible on the following grounds:

A. That the failure to produce the originals was not sufficiently accounted for.

B. That the originals were not books of account or books of original entry.

C. That the originals were not kept by the witness Elliott.

D. That the originals would not have been evidential as between the plaintiff and defendant, but at most could have been useed only to refresh the witness's memory.

18. Because said Joshua L. Elliott was permitted to testify as to conversations with Albert A. Guigues not in the presence of the defendant, Julius Lichtman, on the subject of ownership of the hides in the factory of Albert A. Guigues.

19. Because the said Joshua L. Elliott was permitted to testify as to a narrative of dealings between Benjamin E. Baker and Abraham Lichtman (neither said narrative nor said transactions alleged to have been narrated

being in the presence of the defendant, Julius Lichtman) regarding the price which said Abraham Lichtman would have to pay the said Benjamin E. Baker compared with the price which he was paying to Albert A. Guigues for the same articles.

20. That the trial court refused to strike out testimony of Joshua L. Elliott regarding alleged conversations with Abraham Lichtman, not in the presence of the defendant, Julius Lichtman, and subsequent to the transactions therein discussed, the said Abraham Lichtman not being connected with the said Julius Lichtman either generally or for the purpose of said conversation.

21. That the trial court permitted the witness Elliott to testify as to an offer alleged to have been made in January, 1908, by Albert A. Guigues for the return to Albert A. Guigues of the yellow sheet, *Exhibit P 2*.

22. That the court admitted testimony as to the cost of tanning in chrome grains split from the shell, although such articles are not claimed for in the declaration, and are not proven under any of the evidence in the case.

23. That the trial court admitted into evidence a certain paper purporting to be an assignment from Corona Kid Company to Corona Kid Manufacturing Company, dated June 20, 1910, *Exhibit P 7*, which admission was erroneous, for the following reasons:

A. That said paper was signed only by the said Benjamin E. Baker, as treasurer of the assignor, and no authority of said Benjamin E. Baker was proven.

B. That no action of the board of directors as to said agreement was shown.

C. That no consideration was shown.

D. That the claim purporting to be assigned by said assignment was not the claim described in the declaration.

24. That the trial court refused the defendant's motion for nonsuit.

25. That the trial court refused the defendant's motion for direction of a verdict.

26. That the trial court in its charge charged that if the jury should find that the testimony of Benjamin E. Baker established that there was a verbal contract made for the manufacture—tanning in chrome—of such grain splits as Guigues in prosecuting his splitting work should slice off from the hair side of the butts, such contract would show a right of possession in the plaintiff for such grain splits, although the uncontradicted evidence in the case was that all such grains received by the defendant were tanned in bark and not in chrome, and although such grain splits as may have been tanned in chrome were not claimed in the declaration.

27. That the trial court in its charge improperly used in illustration of the character of the fall-off, remnants from bailments in other trades where goods of other character had been left from processes of manufacture.

28. That the trial court charged that the alleged verbal modification of the contract with Guigues would be evidence in support of a verdict, although it did not appear that any of the goods sued for were produced under such verbal modification.

29. That the trial court charged that interest should be added to the amount of damages found by the jury.

30. That the trial court charged that if the jury should find for the plaintiff, they should find damages to the extent of twenty-three thousand dollars, the ful' amount of the declaration.

31. That the trial court refused to direct the attention of the jury that it was only as to those things that were proved to have been made after the making of and under the verbal contract and to have come into the hands of the defendant that such verbal contract is of any evidential value to support a verdict.

32. That the trial court charged that so far as the jury find that the testimony of any witness as to the existence of a trade usage or custom under the terms of the contract in writing has been an interpretation of said contract as altered or modified by a trade usage, the jury is to disregard such testimony.

33. That the trial court refused to charge that under the contract in evidence in this case, all that the Corona Kid Company was to receive back from Albert A. Guigues were the cordovans or tanned leather made from the flesh side of the butts, and the tanned grains from the shanks for japanning or in dull finish for topping, and that Albert A. Guigues was entitled to retain everything else from the butts sent him by the Corona Kidd Company.

34. That the trial court refused to charge that under the contract in question Albert A. Guigues had the legal right to sell the grains from the butts after tanning in bark to Julius Lichtman, and also had the legal right to sell the shank splits and the pieces of tacked out butt buffings.

35. That the trial court refused to charge that the Corona Kid Company knew that Albert A. Guigues was selling this fall-off to Julius Lichtman from the beginning of its contract with Albert A. Guigues, and knew that Julius Lichtman was buying the same, believing it to be the property of Albert A. Guigues, and that the verdict must, therefore, be for the defendant.

36. That the trial court refused to charge that Albert A. Guigues retained the goods set forth in the declaration as his own property when he returned the finished leather to the Corona Kid Company under his contract with that company, and asserted the title in himself to such goods adverse to any claim of the Corona Kid Company, and that under such circumstances neither Corona Kid Company nor its assignee may maintain an action in trover against this defendant with respect to those goods.

37. That the trial court refused to charge that if the jury believe that Albert A. Guigues had no right to retain such fall-off, then the jury must be satisfied beyond doubt that Julius Lichtman bought such fall-off from Albert A. Guigues, knowing that the said Albert A. Guigues had no right to sell it before the jury is

justified in bringing in a verdict for the plaintiff, and that if the goods came into possession of Julius Lichtman without any fraud or collusion on his part, then it was the duty of the plaintiff to demand the return of the goods from Julius Lichtman before it could maintain this suit, and there being no proof of such demand, the verdict must be for the defendant.

38. That the trial court refused to charge that there being no proof of the quantity of goods alleged to have been sold by Albert A. Guigues to the defendant, there can be no verdict for the plaintiff, nor can there be a verdict for the plaintiff in the absence of proof of the value of the goods.

39. That the trial court admitted testimony otherwise irrelevant for the purpose of proving collusion between Albert A. Guigues and the defendant, to defraud Corona Kid Company, although no collusion or fraud was set up on the declaration.

40. That the trial court admitted testimony as to transactions and conversations not in the presence of the defendant, Julius Lichtman, of Albert A. Guigues and of Abraham Lichtman, on the ground that there was evidence of collusion to defraud the Corona Kid Company, although the defendant, Julius Lichtman, was, by no evidence in the cause, shown to have any knowledge of any such collusion or fraud, or to have authorized anyone to employ unlawful means in the conduct of his business.

41. That the trial court permitted the testimony by Joshua L. Elliott concerning telephone conversations alleged to have been had by the said Joshua L. Elliott with Abraham Lichtman, although said Abraham Lichtman was, by no evidence in the case, shown to be the agent of the defendant for the purpose of said telephone communications, and although said telephone communications, if made, were in no sense binding upon the defendant.

Service acknowledged of the within assignments of error this 29th day of April, 1912.

PITNEY, HARDIN & SKINNER,
*Atty's for Plaintiff.*

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NEW JERSEY COURT OF ERRORS AND APPEALS.

CORONA KID COMPANY, A CORPORATION OF MASSACHUSETTS, SUING FOR THE USE, ETC.,
*Plaintiff-Defendant in Error,*
*vs.*
JULIUS LICHTMAN,
*Defendant-Plaintiff in Error.*

In Error to the Supreme Court.

## JOINDER IN ERROR.

And hereupon, afterwards, to wit, on the twentieth day of May, nineteen hundred and twelve, the said Corona Kid Company, by Pitney, Hardin & Skinner, its attorneys, comes into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and it prays that the court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

PITNEY, HARDIN & SKINNER,
*Attorneys for and of Counsel with Defendant in Error.*

EXHIBIT P. 1.

THIS INDENTURE made this thirtieth day of June, A. D. 1904, between the Corona Kid Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts, having its usual place of business at Boston in said Commonwealth, party of the first part, and Albert A. Guigues of Newark, in the State of New Jersey, party of the second part,

WITNESSETH, that in consideration of the mutual promises herein contained the parties hereto hereby covenant and agree as follows:

The party of the first part agrees:

1. To ship to the party of the second part for tanning an average of 200 dozen horse hide butts a day for one calendar year from the date hereof, exclusive of Sundays and legal holidays; said butts to be delivered by the party of the first part free on board the cars at New York City, Philadelphia, Pa., or Camden, New Jersey.

2. To pay the party of the second part for all leather delivered by him in accordance with this contract as follows: ten cents ($.10) a square foot for shells and five cents ($.05) a square foot for shanks, payments to be made for all leather delivered during each week, on or before Wednesday of the following week.

3. To pay all freight charges from Newark aforesaid on all leather shipped by the party of the second part in accordance with the directions of the party of the first part.

4. Not to employ any person, firm or corporation other than the second party during the continuance of this agreement to tan any horse hide butts for enamel finish.

The party of the second part agrees:

1. To receive from the party of the first part as shipped by it an average of 200 dozen horse-hide butts

a day for one calendar year exclusive of Sundays and legal holidays and to pay all freight charges for shipping said butts from New York City, Philadelphia, Pa., or Camden, N. J. to Newark aforesaid.

2. To tan the shells of all horse-hide butts received from the party of the first part during said calendar year with bark tanning and finish them into "Cordovan."

3. To tan in chrome the shanks of all horse-hide butts received from the party of the first part during said calendar year and finish with a smooth finish so that they can be japanned, all of said shanks which are suitable for japanning; and to finish all of said shanks that are unsuitable for japanning with a dull finish suitable for topping stock.

4. To do all work done under this contract in a first class manner and to make from all horse-hide butts received from the party of the first part within said year, merchantable leather of as good quality as can be produced from the raw stock received from the party of the first part.

5. To keep all horse-hide butts received from the party of the first part under this contract during said calendar year, insured fully while in his possession in companies satisfactory to the party of the first part, all policies to be made payable to the party of the first part, and delivered to it when issued.

6. To measure all skins tanned under this contract and mark the measure on each skin, and to pack them when finished in suitable packing cases to be provided by him to deliver them free on board to railway cars at Newark aforesaid and ship them wherever directed by the party of the first part.

7. Not to tan during the continuance of this agreement any horse-hide butts especially treated and prepared for enamel finish for any person, persons or corporation except the party of the first part.

*Exhibit P. 1.*

It is further mutually agreed that

(1) The party of the second part shall not be liable for failure to perform or delay in the performance of any of the agreements herein contained which may be occasioned by reason of any fire, strike among his employes, Act of God or any other unavoidable occurrence.

(2) The party of the first part shall not be liable for the non delivery of sufficient horse-hide butts in accordance with the first section of this agreement owing to unavoidable causes, preventing or delaying the importation of the same, provided that the party of the first part can show that it has placed orders for said horse-hide butts in sufficient quantities and at a proper time to ensure timely delivery. The party of the first part shall also not be held liable in case of fire, strike among its employees, Act of God or any other unavoidable occurrence at its factory. And in case of a strike or fire which affects the party of the first part, the party of the second part, upon due notice, shall not work in any horse-hide butts until such conditions are removed, which shall be done within a reasonable time, but shall work out and deliver all skins in process of manufacture.

In Witness Whereof the party of the second part has hereto set his hand and seal and the party of the first part has caused its corporate name to be signed and its seal to be affixed hereto by its President and Treasurer hereto duly authorized the day and year first above written, this instrument being executed in duplicate.

ALBERT A. GUIGUES.

Witness
J. L. Elliott.

CORONA KID COMPANY,
B. E. Baker, *Pres. & Treas.*

(Seal of Corona Kid
Company of Mass.)

*Exhibit P. 2.*

## EXHIBIT P. 2.

| | | | | | |
|---|---|---|---|---|---|
| Oct. 31 | 2300 lbs. | Butt Spts. | | | 460. |
| " | 500 " | side " | 5 | | 25. |
| Nov. 3 | 1300 | Butt " | 20 | | 260. |
| Nov. 5 | Ck 730.10 Disct. 14.90 | | | | |
| 9 | 1700 lbs. | Butt spts | 20 | | 340. |
| 12 | 2800 " | " " | 20 | | 560. |
| 15 | Cash 882. Disct 18.00 | | | | |
| 16 | 2400 lbs. | Butt Splits | 20 | | 480. |
| 18 | 5671 " | Shank Splits | 20 | | 1134.20 |
| 19 | 1800 " | Butt Splits | 20 | | 360. |
| 21 | Cash 1934.72 Disct. 39.48 | | | | |
| Nov. 23 | 1900 | Butt Spts | 20 | | 380. |
| | 3100 " | " | 20 | | 620. |
| 29 | Cash 980. Disct. 20 | | | | |
| 28 | 646 | Dz. Sk Splits | 20 | | 129.20 |
| " | 1600 " | " " | 20 | | 320. |
| 29 | 193 | Dz. Sk " | 20 | | 38.60 |
| Dec. 2 | 1000 lbs. | B " | 20 | | 200. |
| 6 | 2100 " | " " | 20 | | 420. |
| 10 | 2300 " | " " | 20 | | 460. |
| 13 | 2000 " | " " | 20 | | 400. |
| 17 | 2100 " | " " | 20 | | 420. |
| 22 | 3000 " | " " | 20 | | 600. |
| Dec. 2 | Cash 2000. Disct. 9. | | | | |
| 17 | Cancel Inv. 11/29 | | | | 38.60 |
| Dec. 30 | Check 890.21 Disct. 49.99 | | | | |
| Dec. 31 | 2500 lbs. | B. Spits | 20 | | 500. |
| 1905 | | | | | |
| Jan. 3 | 649 pcs. | Buffgs. | 5 | | 32.45 |
| 5 | 2000 lbs. | B. Splits | 20 | | 400. |
| 7 | 800 " | " | 20 | | 160. |
| 11 | 1300 " | " | 20 | | 260. |
| 14 | 1800 " | " | 20 | | 360. |
| 19 | 1600 " | " | 20 | | 320. |
| 21 | 800 " | " | 20 | | 160. |
| 31 | Ck 1000. | | | | |
| Feb. 7 | " 248.60 | All Butt Spts 900. Disct. 43.85 | | | |
| Sept. 20 | 4146 dz. Bfgs. 197388¾ ft. 2¾ | | | | 5428.19 |
| " | 1062 Dz. Pick. Butt splits at 1.50 | | | | 1593. |
| 25 | 1158 " " " " | | | 1.50 9/21/23 | 1737. |
| " | 308 " " " " | | | 1.00 | |
| " | 445 " " " " | | | 1.50 | 975.50 |
| Sept. 14 | Ck 1500 Sept. 20 ck—3000 | | | | |
| 26 | Ck 873.91 Disct. 54.28 | | | | |
| 29 | Ck 1500. | | | | |
| Oct. 3 | " 1500. | | | | |
| 10 | All Pick Butt Splits 250 | | | | |
| " | Ck 974.40 Disct. 81.10. | | | | |

EXHIBIT P. 3.

No. 6372.

J. Lichtman.

Newark, N. J., Dec. 28, 1904.

Pay to the order of A. A. Guigues
Eight Hundred, ninety 21/100 Dollars.

J. Lichtman,
A. Lichtman, Atty.

To Essex County National Bank,
Newark, N. J.

$890. 21/100

Endorsed "A. A. Guigues."

EXHIBIT P. 4.

No. 5321

J. Lichtman.

Newark, N. J., Dec. 2, 1904.

Pay to the order of A. A. Guigues
Two Thousand 00/100 Dollars.

J. Lichtman,
A. Lichtman, Atty.

To Essex County National Bank,
Newark, N. J.

$2000 00/100

Endorsed "A. A. Guigues." "Albert A. Guigues."

*Exhibits P. 5—P. 6.*

EXHIBIT P. 5.

No. 6430

J. Lichtman.

Newark, N. J., Jan. 30, 1905.

Pay to the order of A. A. Guigues
One Thousand 00/100 Dollars.

J. Lichtman,
A. Lichtman, Atty.

To Essex County National Bank,
Newark, N. J.

$1000.00/100

Endorsed "A. A. Guigues."

EXHIBIT P. 6.

No. 6444

J. Lichtman.

Newark, N. J., Feb. 6, 1905.

Pay to the order of A. A. Guigues
Two hundred fourty-eight 60/100 Dollars
In settlement of account till date.

J. Lichtman,
A. Lichtman, Atty.

To Essex County National Bank,
Newark, N. J.

$248.60/100

Endorsed "A. A. Guigues."

*Exhibit D. 23.*

EXHIBIT D. 23, MAY 24/12.

NEW JERSEY, *ss.*

(SEAL) The State of New Jersey, to the Sheriff of the County of Essex, GREETING: We command you to summon Albert A. Guigues, to be and appear before the Supreme Court of the State of New Jersey, to be held at Trenton, in and for said State, on the eighteenth day of March, 1905, to answer unto Julius Lichtman, plaintiff, in an action upon contract wherein the said plaintiff claims from the defendant seventy-five thousand dollars, and have you then there this writ.

Witness, William S. Gummere, Esquire, Chief Justice, at Trenton aforesaid, the ninth day of March in the year nineteen hundred and five.

WM. RIKER, JR.,
*Clerk.*

LINDABURY, DEPUE & FAULKS,
*Attorneys.*

I hereby appoint and depute Walter Dixon to serve the within writ.

Witness my hand and seal this 9 day of March, 1905.

WILLIAM C. NICOLL, (SEAL)
*Sheriff.*

Served the within Summons on the within named Defendant March 9, 1905, by leaving a true copy thereof at his usual place of abode.

WILLIAM C. NICOLL,
*Sheriff.*

By WALTER DIXON,
*Special Deputy.*

*Exhibit D. 23.*

New Jersey Supreme Court of the eighteenth day of March, in the Year One Thousand Nine Hundred and Five.

ESSEX COUNTY, *ss.*

Albert A. Guigues, the defendant in this suit, was summoned to answer unto Julius Lichtman, the plaintiff herein, in an action upon contract, and thereupon the said plaintiff by Lindabury, Depue & Faulks, his attorneys, complains for that whereas, heretofore, to wit, on the twenty-sixth day of July, One Thousand nine hundred and four, to wit, at Newark, in the said county of Essex, by a certain agreement in writing signed by the said plaintiff and defendant, a copy whereof is annexed hereto marked "Schedule A," the said defendant in consideration that the said plaintiff at the special instance and request of the said defendant, would buy of the said defendant a certain large quantity of shank splits, to wit, 1500 dozen, at and after the rate or price of 35 cents by the dozen for every dozen of said shank splits to be therefor paid by the said plaintiff, and a certain large quantity of butt splits, to wit, 200 tons, at and after the rate or price of 15 cents by the pound for every pound of said butt splits to be therefor paid by the said plaintiff less a discount of 2% for cash upon the terms that the plaintiff should take the said goods as fast as the defendant should make them and that the defendant should furnish the same until the said order was filled, the said defendant promised and undertook to make and deliver the said goods within a reasonable time after the making of the said agreement, to wit, the 26th day of July, 1904. And the said plaintiff in facts says that he, relying on the said promise and understanding of the said defendant and in hopes of the faithful performance thereof, did then and there in and by the said agreement, buy the said goods of the said defendant upon the terms aforesaid

*Exhibit D. 23.*

and did promise and undertake to accept the same and pay therefor at the rates or prices aforesaid.

And the said plaintiff in fact says that although the said defendant in furtherance of his said promise and undertaking so made by him as aforesaid, afterwards, to wit, on or before the tenth day of August, 1904, made and delivered to the said plaintiff the said 1500 dozen shank splits and three tons of the said butt splits and the said plaintiff paid to the said defendant the said prices so agreed upon therefor, and although a reasonable time for the making and delivering of the residue of the said butt splits has long since expired, to wit, before the commencement of this suit, and the said defendant ought to, could and might have delivered the residue of the said butt splits to the said plaintiff, and although the said plaintiff was ready and willing to receive the residue of the said butt splits and pay the said price so agreed upon therefor, to wit, at Newark, in the said County of Essex, yet the said defendant, not regarding his said promises and undertakings so by him made as aforesaid with regard to the residue of the said butt splits, hath not (although the said defendant was afterwards to wit, on the 24th day of August, 1904, and oftentimes since, to wit, at Newark in the said County of Essex, requested by the said plaintiff to deliver to the said plaintiff the residue of the said butt splits according to his promise and undertaking so by the defendant in that behalf made as aforesaid) yet delivered the residue of the said butt splits or any part thereof to the said plaintiff, but so to do hath wholly refused and still doth refuse, to wit, at Newark, in the said County of Essex.

And the said plaintiff further saith that after the making of the said agreement with the said defendant as aforesaid, to wit, on the 26th day of July, 1904, he, the said plaintiff, confiding in the said promise and undertaking of the said defendant and ex-

*Exhibit D. 23.*

cepting his performance thereof, to wit, at Newark in the said County of Essex, did make and enter into a certain bargain and agreement, to wit, with Nickelsburg Bros. & Co., a body corporate, for the sale to it of the said goods so as aforesaid agreed to be made and delivered by the said defendant to the said plaintiff as aforesaid at a certain rate or price, to wit, 26½ cents per pound, and for want of the said residue of the said goods and because other goods of the same kind could not be obtained the said plaintiff was forced and obliged to fail to deliver the said residue of the said goods to the said Nickelsburg Bros. & Co. which the said defendant ought to have delivered to the said plaintiff as aforesaid and thereby the said plaintiff hath sustained great loss, to wit, a loss amounting to the sum of $75,000, to wit, at Newark in the said County of Essex.

And whereas also, heretofore, to wit, on the twenty-fourth day of August, in the year One thousand nine hundred and four, to wit, at Newark, in the said County of Essex, by a certain other agreement in writing signed by the said plaintiff and defendant, a copy whereof is annexed hereto marked "Schedule B," the said defendant in consideration that the said plaintiff at the special instance and request of the said defendant, would buy of the said defendant all such goods classed as Split Horse Butt grains as the said defendant might make for one year from the first day of September, nineteen hundred and four with the privilege of another year under the same conditions after the expiration of the first year, at and after the rate or price of twenty cents per pound for every pound of said Split Horse Butt grains to be therefor paid by the said plaintiff in weekly payments less a discount of 2% for cash, the said defendant promised and undertook to furnish and deliver all he might make of such goods for the time aforesaid, to wit, one year from the first day of September, nineteen hun-

*Exhibit D. 23.*

dred and four, with the privilege of another year under the same conditions.

And the said plaintiff in fact says that he, relying on the said promise and understanding of the said defendant and in hopes of the faithful performance thereof, did then and there in and by the said agreement, buy the said goods of the said defendant upon the terms aforesaid and did promise and undertake to accept the same and pay therefor at the rate or price aforesaid.

And the said plaintiff in fact says that although the said defendant in furtherance of his said promise and undertaking so made by him as aforesaid, afterwards, to wit, between the said first day of September, nineteen hundred and four, and the fifteenth day of January, nineteen hundred and five, made and delivered to the said plaintiff thirty-seven tons of the said split Horse Butt grains and the said plaintiff paid to the said defendant the said price so agreed upon therefor, and although the said defendant, after the said first day of September, nineteen hundred and four, and before the commencement of this suit, made a large quantity of the said goods, to wit, seventy-five tons, and the said defendant ought to have delivered to the plaintiff the residue of the said goods, to wit, thirty-eight tons, and although the said plaintiff was ready and willing to receive the residue of the said goods and pay the said price so agreed upon therefor, to wit, at Newark, in the said County of Essex, yet the said defendant, not regarding his said promises and undertakings so by him made as aforesaid with regard to the residue of the said goods, hath not (although the said defendant was afterwards, to wit, on the first day of February, nineteen hundred and four, and oftentimes since, to wit, at Newark in the said County of Essex, requested by the said plaintiff to deliver to the said plaintiff the residue of the said goods according to his promise and undertaking so by the

*Exhibit D. 23.*

defendant in that behalf made as aforesaid) yet delivered the residue of the said goods or any part thereof to the said plaintiff, but so to do hath wholly refused and still doth refuse, to wit, at Newark, in the said County of Essex.

And the said plaintiff further saith that after the making of the said agreement with the said defendant as aforesaid, to wit, on the first day of September, nineteen hundred and four, he, the said plaintiff, confiding in the said promise and undertaking of the said defendant and expecting his performance thereof, to wit, at Newark in the said County of Essex, did make and enter into a certain bargain and agreement, to wit, with Nickelsburg Bros. & Co., a body corporate, for the sale to it of the said goods so as aforesaid agreed to be delivered by the said defendant to the said plaintiff as aforesaid at a certain rate or price, to wit, twenty-six and one-half cents per pound, and for want of the said residue of the said goods and because other goods of the same kind could not be obtained the said plaintiff was forced and obliged to fail to deliver the said residue of the said goods to the said Nickelsburg Bros. & Co. which the said defendant ought to have delivered to the said plaintiff as aforesaid, and thereby the said plaintiff hath sustained great loss, to wit, a loss amounting to the sum of seventy-five thousand dollars, to wit, at Newark in the said County of Essex.

And whereas also, heretofore, to wit, on the twenty-fourth day of August, in the year one thousand nine hundred and four, to wit, at Newark, in the said County of Essex; by a certain other agreement in writing signed by the said plaintiff and defendant, a copy whereof is annexed hereto marked "Schedule B," the said defendant, in consideration that the said plaintiff at the special instance and request of the said defendant, would buy of the said defendant all such goods classed as Split Horse Butt grains as the

*Exhibit D. 23.*

said defendant might make for one year from the first day of September, nineteen hundred and four, with the privilege of another year under the same conditions after the expiration of the first year, at and after the rate or price of twenty cents per pound for every pound of said Split Horse Butt grains to be therefor paid by the said plaintiff in weekly payments less a discount of 2% for cash, the said defendant promised and undertook to furnish and deliver all he might make of such goods for the time aforesaid, to wit, one year from the first day of September, nineteen hundred and four, with the privilege of another year under the same conditions. And the said plaintiff in fact says that he, relying on the said promise and undertaking of the said defendant and in hopes of the faithful performance thereof, did then and there in and by the said agreement, buy the said goods of the said defendant upon the terms aforesaid and did promise and undertake to accept the same and pay therefor at the rate or price aforesaid.

And the said plaintiff in fact says that at the time of the making of the said last mentioned agreement, to wit, the said twenty-fourth day of August, nineteen hundred and four, the said defendant was engaged in the business of curing and tanning hides and leather and conducted and operated a tannery and plant for the carrying on of such business, to wit, at Newark in the said County of Essex, and that from the day last aforesaid to the commencement of this suit the said defendant continued to conduct the said business and to operate the said tannery and plant, and that during the said time the said tannery and plant could and might reasonably have made and produced a large quantity of said Split Horse Butt grains, to wit, seventy-five tons, to wit, at Newark in the said County of Essex.

And the said plaintiff in fact says, that although the said defendant in furtherance of his said promise

*Exhibit D. 23.*

and undertaking so made by him as aforesaid, afterwards, to wit, between the said first day of September, nineteen hundred and four, and the fifteenth day of January, nineteen hundred and five, made and delivered to the said plaintiff thirty-seven tons of the said Split Horse Butt grains and the said plaintiff paid to the said defendant the said price so agreed upon therefor, and although the said defendant, after the said first day of September, nineteen hundred and four, and before the commencement of this suit, continued to conduct his said business and might reasonably have made a large quantity of the said goods, to wit, seventy-five tons, and the said defendant ought to have made and delivered to the plaintiff the residue of the said goods, to wit, thirty-eight tons, and although the said plaintiff was ready and willing to receive the residue of the said goods and pay the said price so agreed upon therefor, to wit, at Newark, in the said County of Essex, yet the said defendant, not regarding his said promises and undertakings so by him made as aforesaid but contriving and fraudulently intending to deceive and defraud the said plaintiff (although the said defendant was afterwards, to wit, on the first day of February, nineteen hundred and four, and oftentimes since, to wit, at Newark in the said County of Essex, requested by the said plaintiff to make and deliver to the said plaintiff the said goods according to his promise and undertaking so by the defendant in that behalf made as aforesaid), to wit, on the fifteenth day of January, nineteen hundred and five, ceased to make and deliver the said goods to the said plaintiff, but so to make and deliver the same other than as aforesaid hath wholly refused and still doth refuse, to wit, at Newark, in the said County of Essex.

And the said plaintiff further saith that after the making of the said agreement with the said defendant as aforesaid, to wit, on the first day of September,

*Exhibit D. 23.*

nineteen hundred and four, he, the said plaintiff, confiding in the said promise and undertaking of the said defendant and expecting his performance thereof, to wit, at Newark, in the said County of Essex, did make and enter into a certain bargain and agreement, to wit, with Nickelsburg Bros. & Co., a body corporate, for the sale to it of the said goods so as aforesaid agreed to be delivered by the said defendant to the said plaintiff as aforesaid at a certain rate or price, to wit, twenty-six and one-half cents per pound, and for want of the said residue of the said goods and because other goods of the same kind could not be obtained the said plaintiff was forced and obliged to fail and deliver the said residue of the said goods to the said Nickelsburg Bros. & Co., which the said defendant ought to have delivered to the said plaintiff as aforesaid, and thereby the said plaintiff hath sustained great loss, to wit, a loss amounting to the sum of seventy-five thousand dollars, to wit, at Newark in the said County of Essex.

And whereas, also heretofore, to wit, on the twenty-fourth day of August, in the year one thousand nine hundred and four, to wit, at Newark, in the said County of Essex, by a certain other agreement in writing, signed by the said plaintiff and defendant, a copy whereof is annexed hereto, marked "Schedule B," the said defendant in consideration that the said plaintiff, at the special instance and request of the said defendant, would buy of the said defendant all such goods classed as split horse butt grains as the said defendant might make for one year from the first day of September, nineteen hundred and four, with the privilege of another year under the same conditions after the expiration of the first year, at and after the rate or price of twenty cents per pound for every pound of said split horse butt grains, to be paid by the said plaintiff in weekly payments, less a discount of two per cent. for cash, the said defendant promised and

*Exhibit D. 23.*

undertook to furnish and deliver all he might make of such goods for the time aforesaid, to wit, one year from the first day of September, nineteen hundred and four, with the privilege of another year under the same conditions. And the said plaintiff further avers that the said defendant then and there undertook and to the said plaintiff then and there faithfully promised that such goods to be furnished and delivered by the said defendant to the said plaintiff, should be of a merchantable quality, and the said plaintiff in fact says that he, relying upon the said promise and undertaking of the said defendant and in hopes of the faithful performance thereof, did then and there, in and by the said agreement, buy the said goods of the said defendant upon the terms aforesaid, and did promise and undertake to accept the same and pay therefor at the rate or price aforesaid.

And the said plaintiff in fact says that the said defendant, contriving and fraudulently intending to injure the said plaintiff in this behalf, did not, nor would perform or regard his said last mentioned promise and undertaking, so by him made in manner and form aforesaid, but thereby craftily and subtly intending to deceive the said plaintiff, did deliver to the said plaintiff a large quantity, to wit, twenty tons, of the said last mentioned goods, which were not at the time of delivery thereof by the said defendant to the said plaintiff of a merchantable quality, but, on the contrary, contained a much greater quantity or amount of oil or oily substances than they reasonably and properly should have contained, whereby the weight thereof was greatly and unreasonably increased, and by reason thereof the said plaintiff hath lost a great amount of benefit, profit and advantage which he otherwise might and would have derived and acquired therefrom, to wit, to the amount of five thousand dollars, to wit, at Newark, in the said County of Essex.

*Exhibit D. 23.*

To the damage of the said plaintiff seventy-five thousand dollars, and therefore he brings his suit, &c.

LINDABURY, DEPUE & FAULKS,
*Attorneys for Plaintiff.*

To the above named Defendant:—

PLEASE TAKE NOTICE that the following are copies of the several agreements in writing referred to in the foregoing declaration as annexed thereto, and upon which the said declaration is founded:—

SCHEDULE A.

Albert A. Guigues,
Leather Manufacturer,
Ferry, Madison and Monroe Sts.,
Newark, N. J., July 26th, 1904.

Julius Lichtman

I take your order for 1500 Doz. Shank Splits at .35c. doz., and 200 tons Butt Splits at 15c. per lb. spot cash less 2%, you to take them as fast as I make them and I do furnish until order is filled.

ALBERT A. GUIGUES,
JULIUS LICHTMAN,
A. LICHTMAN, *Atty.*

*Exhibit D. 23.*

SCHEDULE B.

Albert A. Guigues,
Leather Manufacturer,
Ferry, Madison and Monroe Sts.,

Newark, N. J., August 24, 1904.

J. Lichtman, Esq.,

I agree to furnish all I make of such goods classed as Split Horse Butts grains, for the sum of .20c. per pound, for one year from September 1st, 1904, with the privilege of another year under the same conditions after the expiration of the first year.

2% discount for spot cash in weekly payments.

ALBERT A. GUIGUES,

J. LICHTMAN,
A. LIGHTMAN, *Atty.*

LINDABURY, DEPUE & FAULKS,
*Attorneys for Plaintiff.*

## EXHIBIT P. 7.

KNOW ALL MEN BY THESE PRESENTS, That Corona Kid Company, a corporation duly organized and existing under and by virtue of the Laws of the Commonwealth of Massachusetts, in consideration of the sum of One Dollar lawful money of the United States, to it in hand paid before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged and other good and valuable considerations, has sold, assigned, transferred and set over, and by these presents doth sell, assign, transfer and set over unto the Corona Kid Manufacturing Company, a corporation, duly organized and existing under and by virtue of the Laws of the State of Maine, its successors and assigns, a certain claim against Julius Lichtman, Abe Lichtman and Julius Lichtman & Son, all of Newark in the County of Essex and State of New Jersey, arising out of certain irregular transactions between the foregoing parties with Albert A. Guigues and Albert A. Guigues Leather Company respectively as to personal property belonging to the said Corona Kid Co., and it doth hereby constitute and appoint the said Corona Kid Manufacturing Company, its successors and assigns, its true and lawful attorney and attorneys irrevocable, with full power of substitution and revocation, for it and in its name or otherwise, for its or their own proper use and benefit, but at its or their own cost, to ask, demand, sue for, collect, receive, compound, discharge, and give acquittance for the same or any part thereof, and in its name or otherwise, to prosecute and withdraw any suits or proceedings at law or in equity therefor.

IN WITNESS WHEREOF the said Corona Kid Company has caused these presents to be signed in its name and on its behalf and its corporate seal affixed

*Exhibit P. 7.*

by Benjamin E. Baker, its Treasurer hereunto duly authorized this 20th day of June A. D. 1910.

CORONA KID COMPANY,

BENJAMIN E. BAKER, *Treas.*

(SEAL.)

Attest:

E. M. CHESLEY.

COMMONWEALTH OF MASSACHUSETTS, } *ss.*
COUNTY OF SUFFOLK. }

On the 20th day of June A. D. 1910, before me personally came Benjamin E. Baker, Treasurer of Corona Kid Company to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

JAMES CHRISTIE.

*Notary Public.*

My Commission expires Apr. 16th, 1914.

(SEAL.)

# New Jersey Court of Errors and Appeals.

| | |
|---|---|
| CORONA KID COMPANY, suing for the use of CORONA KID MANUFACTURING COMPANY, *Plaintiff, Defendant in Error,* *vs.* JULIUS LICHTMAN, *Defendant, Plaintiff in Error.* | *In Tort.* *In Error.* |

## Brief for the Plaintiff in Error.

### Facts.

This action was instituted to recover damages for the alleged conversion of certain portions of horse butts shipped by the plaintiff to one Albert A. Guigues for tanning.

The declaration is the ordinary form of declaration *in trover*, and claims damages to the extent of twenty-three thousand dollars. It further alleges an assignment by the plaintiff to the Corona Kid Manufacturing Company, for whose benefit the plaintiff sues, of its cause of action against the defendant.

To the declaration two pleas were filed, one the general issue, and the other a traverse of the assignment.

The facts as developed at the trial by the plaintiff show that in the spring of nineteen hundred and four the plaintiff had entered into an agreement with Albert A. Guigues, which was, on or about the thirtieth day of June, nineteen hundred and four, reduced to writing, by which the plaintiff agreed to ship to Albert A. Guigues for tanning horse butts—that portion of the horse hide covering the flanks and hind legs—in

quantities averaging two hundred dozen a day, which butts Guigues was to tan in order to obtain two products—condovan leather from the so-called shell portion of the butt (that portion remaining after the shanks, or hide covering the legs had been removed), for ten cents per square foot; and the grain or hair side of the shanks for japanning, or shoe topping stock, at five cents per square foot.

The cordovan manufacture involved tanning in what is known as bark tannage, the shank grains in what is known as chrome tannage.

It appears from the evidence that the process of making cordovan leather, theretofore generally in practice and contemplated by the parties to the agreement, was as follows: After certain preliminary processes for depilating and cleaning the hide, and after the shanks had been cut off, the whole butt was placed in the vegetable or bark tanning solution and tanned into leather. The cordovan was then obtained by shaving the grain or hair side of the butt on a shaving machine until a hard bone-like substance, known as the shell, contained within the butt, was nearly uncovered, a very thin portion of the grain being left over it. The tanned butt was then similarly scraped or shaved on the inner or flesh side until it was smooth and level, and the product thus obtained was finished upon the flesh side, making the completed condovan.

It further appears that Mr. Guigues, after the making of the contract, had the idea that it might be possible, instead of shaving the butt, as had theretofore been done, to run it through a splitting machine, whereby, instead of obtaining small and worthless scraps, a continuous piece of leather, of very light weight, it is true, but still of sufficient substance and dimension to have commercial value, might be obtained. This process of splitting was thereupon instituted at the Guigues plant, and a product variously called butt buffings and grains from cordovan was produced.

Similarly, the shanks which had been cut off from the butts were split to obtain a uniform grain, the flesh side of the shank thus obtained being the shank split referred to in the declaration.

It is to these articles thus produced and alleged by the plaintiff to have been sold by Guigues to the defendant that the plaintiff herein asserts title and the right to compensation for their conversion.

On the main question of the conversion the plaintiff swore four witnesses, Benjamin E. Baker, the president of the company; Theodore E. Conway, who claimed to have been the superintendent of the Guigues factory during the period of operation; Joshua L. Elliott, a bookkeeper at that place, and Frederick C. Lauster, a salesman.

Mr. Baker's testimony was confined chiefly to a statement of the dealings between the company and Mr. Guigues, the making of the original contract, the subsequent alleged verbal modification of it, and two conversations with Mr. Guigues, relating to alleged shortages in the goods received, and explanations concerning them given by Guigues. He also testified as to the large quantities of butts which were being shipped to the Guigues factory, but this testimony was of the most indefinite character.

His testimony, however, concerning the alleged verbal contract, inasmuch as under the charge of the court this modification was given an undue importance, should be explained in some detail. It appears from Mr. Baker's testimony that some time in the latter part of the year nineteen hundred and four, probably in the month of December, although the exact date he was unable to fix, Mr. Baker visited the Guigues factory upon his return from a trip to Europe, where he had been engaged in the purchase of horse hides. In going through the factory he found what he described as a small oval piece of leather, apparently from the shell, and picking it up, inquired

of Guigues what it was; that Guigues informed him that he had learned how to split the grains from the butts, instead of shaving them, as theretofore, and that he was still able to produce good cordovan by this method; that Baker thereupon asked Mr. Guigues whether it would not be possible to split the butts in the pickled state—that is, in the condition in which they were after being soaked in a preservative solution known in the trade as pickle, and prior to their tanning. Mr. Baker's idea in this suggestion was that if it were possible to split the butts in the pickled state there might be obtained a grain split which could be handled in a way similar to the way the grains from the shanks were being handled, while at the same time the cordovan could still be produced. Guigues informed him that he had not tried splitting from the pickle but he would try it, and accordingly the two went to the splitting machines and put through some dozen or twenty butts, finally having adjusted the machine to a point where the split seemed of satisfactory thickness and the butt apparently capable of being made into cordovan. After this experiment, according to Baker's testimony, he made the following proposition to Guigues: That in the future, instead of tanning the butt in bark as theretofore, Guigues should first split it in the pickled condition, tan the grain split thus obtained in chrome, for which he was to receive five cents a square foot, the same price as he was paid under the written contract for the tanning of the shank grains in chrome; and was still to receive ten cents per square foot for the remainder of the butt, which was to be tanned, as theretofore, in bark for cordovan.

It is significant to note here that according to the testimony of Mr. Baker concerning the alleged verbal modification of the contract which was brought about by the statement of Guigues that he had been splitting the grains from the tanned butts to make the so-called buffings, not a word was said by Mr. Baker at this time

as to the claim of the plaintiff for the buffings which he at that time must have known that Guigues was producing, and for which Guigues had not at that time in any way accounted. From this omission it would appear that to the buffings which has been produced before that time Mr. Baker did not claim title, but recognized that title to them was in Mr. Guigues. It would further appear from the testimony of Mr. Baker that the arrangement was not altogether satisfactory, and that the cordovan produced under it became of comparatively little value, so that in the final period the making of cordovan was abandoned and only the grains tanned in chrome. Mr. Baker's testimony further included a denial that the Corona Kid Company had received any of the products mentioned in the plaintiff's declaration, to wit, the buffings, grain splits from cordovan, and the flesh splits from shanks.

The testimony of the witnesses Conway and Lauster was as to the customary processes in the manufacture of the leather at the Guigues plant, and as to directions to cover up the various articles claimed for in the plaintiff's declaration at times when Mr. Baker was to be at the Guigues factory; the object of this testimony being to show that there was in the factory at large a guilty knowledge that these goods here claimed were not rightfully the property of Mr. Guigues, and that it was necessary to conceal their existence from Mr. Baker, the president of the plaintiff company, lest he should make claim for them.

It might be mentioned in passing, as an interesting commentary upon this testimony, that from Mr. Baker's testimony it appears that practically from the time of the making of the written contract until the time of his appearance at the Guigues factory, when he discovered the small piece of leather containing a part of the shell, and when he instituted the splitting experiments with Mr. Guigues and entered into the verbal arrangement with him, Mr. Baker was in Eu-

rope purchasing colt skins. The necessity for the concealment which the witness Conway testified to so imaginatively would therefore seem to have been lacking during the whole period when the concealment was necessary, for upon Mr. Baker's return he immediately learned of the splitting process which it was hoped to conceal.

The witness Conway further testified to having seen Abraham Lichtman, the defendant's son, about the factory, but did not remember ever having seen the defendant himself. He further recollected the receipt of telephone calls from Abraham Lichtman concerning Mr. Baker's approaching visit to the factory.

The testimony of the witness Lauster, so far as it related to the facts of the case, was of the same general character as that of the witness Conway. It contained a reference to a certan so-called secret chamber, in which buffings were alleged to have been concealed, and also contained an account of a visit by the witness to the office of the defendant, where the witness informed the defendant of the fact that Mr. Guigues had certain products, including those sued for, which he desired to dispose of. This testimony is the whole extent of this witness' evidence in any way connecting the defendant with the transactions. He states that thereafter Mr. Abraham Litchman called at the Guigues factory and purchased some of the bark grains. (Case, page 202.)

The most important witness for the plaintiff was Joshua L. Elliott, and upon him was thrown the burden of the proof. Elliott's testimony, taken at its face, develops the situation that he was a trusted employee of Guigues, who in his capacity of bookkeeper had access to the records of Guigues, both of the business and of a private character; that during the time of the Corona contract with Guigues the sales of certain products of the tanning were kept in a separate set of books, which have been referred to in the

testimony at various times as "secret books," although the evidence fully discloses that their existence was known to the whole factory, or certainly to the whole office force. A careful reading of the testimony will show throughout the use of terms similar to this "secret" here employed, and with equal justification, that is to say, with none at all. The inference to be drawn from the use of these terms is that they were intentionally employed for the purpose of creating the atmosphere which the plaintiff throughout endeavored by innuendo and inference to create—an atmosphere of fraudulent conduct and dealing between Guigues and the defendant for the purpose of cheating the plaintiff.

Elliott, while employed in this somewhat confidential capacity, extracted from the ledger of the "secret books" a statement purporting to show dealings between the plaintiff and the defendant. These entries he states that he transcribed upon certain yellow sheets of paper and produced at the trial yellow sheets which he stated to be the ones in question. From his testimony it appears that these yellow sheets shortly after his leaving the employ of Guigues, were transferred by him to the plaintiff in the present case, although he received no compensation for this generous act on his part, and in fact was considerably out of pocket because he was forced to pay his expenses from where he was then living, in this vicinity, to Boston, in order to deliver them. It is also interesting to note that the purpose which impelled the witness Elliott to make the copies was self-protection (case, page 121). These yellow sheets were offered and admitted by the court in evidence. They consisted, in fact, of an account showing items of charge, and showing on the other side items of credit in a series of dealings between Guigues and the defendant. These yellow sheets constituted the only proof of the delivery of any designated goods from

Guigues' factory to the defendant. Nowhere else was there any intimation of the receipt of goods by the defendant, nor of the delivery of any designated goods in specific quantity from Guigues.

This portion of the testimony of Elliott concerning the yellow sheets was by far the most important in the cause. The rest of his testimony was of the same general character as that of the witnesses Conway and Lauster, except for that concerning a number of checks aggregating slightly over four thousand dollars, signed "Julius Lichtman, A. Lichtman, Attorney," to the order of Albert A. Guigues, produced by the defendant upon the plaintiff's demand and offered in evidence by the plaintiff. These checks were marked Exhibits P. 3 to P. 6, and are referred to on pages 96 and 97 of the printed case.

Elliott further testified to and described methods of manufacture, directions to cover up the goods claimed in the declaration at various times when Mr. Baker was expected, telephone communication from Abraham Lichtman to the factory and a conversation between the witness and Mr. Abraham Lichtman, which he testified to in the following form:

> "I went over there for a check one day and he (Abraham Lichtman) had been to Boston and we were talking about getting stuff from over to the factory, and he said he had been to Boston and saw Mr. Baker and Mr. Baker offered him some splits, and that the price was very high, and that he came very near saying to him that he was buying those things in Newark off Guigues for less than half the money" (case, page 138).

The foregoing summary shows in effect the whole of the testimony submitted in the case as proof of conversion. The rest of the testimony of the plaintiff's witnesses was directed to attempts to show that due effort had been made to obtain the original books of which the yellow sheets were copies, in order, under

the theory of the plaintiff, to make the yellow sheets evidential; and to testimony of experts concerning trade custom and value.

It is of interest, as to the testimony of experts, to notice that with the exception of Mr. Stumpf, the experts were altogether employees of the plaintiff or of companies affiliated with it. The testimony as to trade custom, even from these sources, is hardly convincing, and the careful limitations which were thrown about the questions by the counsel for the plaintiff made such testimony as was given irrelevant to the issue. To this feature of the case we will advert in our discussion of the law. The remaining evidence of the experts as to value was altogether inferential in character, with the exception, possibly, of the testimony of Mr. Stumpf, which it self-contradictory.

With the case presented, as summarized above, the plaintiff rested and the defendant moved for a nonsuit, which was denied. This motion, it seems to us, was improperly denied, since there was no evidence before the jury of delivery, of purchase, or of quantity of any of the goods claimed for in the declaration, while it clearly appeared from the evidence in the case that under the written contract the very goods which were claimed were in fact the property of Albert A. Guigues and were his to dispose of to whomsoever he might please.

To the evidence of the plaintiff the defendant offered proof that in the first place there was a well recognized custom in the tanning trade that where goods were shipped under contract to be tanned, it was understood that only such portions as were specifically mentioned in the contract to be tanned were to be returned to the shipper. The testimony of the defendant's witnesses on this point is clear and convincing, but under the instruction of the court that this was not the proof of a trade custom, but was merely proving the absence of a trade custom, it seems

to us probable that proper weight was not given to it by the jury. However, as the testimony of the defendant's witnesses on this point was directed to instances where there was an actual contract or agreement as to what portions of the hides were to be tanned, it stands in the record alone and uncontradicted as the only evidence on the question of the existence or non-existence of a trade custom affecting the tanning trade in such cases; the evidence of the plaintiff's witnesses not having been directed to instances where a contract had been entered into between the parties. In addition thereto, the testimony of Abraham Lichtman showed that the character of the goods which admittedly he had purchased from Mr. Guigues was exclusively offal, or such products of the hides as even under the testimony of the plaintiff's experts were under the custom of the trade the property of the tanner.

The defendant, Julius Lichtman, himself also was placed upon the stand and his testimony was corroborative of the plaintiff's witnesses, that he had no personal knowledge of the dealings between his son and Guigues. This fact becomes almost conclusive on the case, when one considers that the fraud of the dealings was under the charge of the court an essential portion of plaintiff's cause.

We feel that the foregoing summary will give the court a complete idea of the general trend of the testimony submitted at the trial, so that an examination of the testimony of the individual witnesses will be more readily intelligible. We feel that a careful reading of the testimony will show that the summary has been in all respects a fair one, and that by reason of the manifest error throughout the case the judgment cannot stand.

We will now proceed to a discussion of a number of the errors committed in the trial of the cause, to which reference has been made in the foregoing summary, but of which no full discussion has been had.

## LAW.

### I.

CONSPIRACY, FRAUD OR COLLUSION OF THE DEFENDANT WAS NOT PRESENTED BY THE ISSUES.

The plaintiff's elaborate substructure, upon which was raised its claim for damages, had for its ultimate foundation the charge that Julius Lichtman, in his dealings with Guigues, dealt collusively and fraudulently, and that Julius Lichtman with Guigues had entered into a conspiracy by means of which the two were to defraud the plaintiff company out of its property to a large amount. This charge of fraud, being the basis of the whole action, we mean to treat first, and under two headings, first that it was not alleged in the pleadings, secondly, that it was not proven in the case.

A. *Neither conspiracy, fraud nor collusion was alleged in the declaration.*

The declaration in the case was drawn in the formal language of the ordinary declaration in trover and conversion. It is true that there are the formal allegations of improper motive and intent which are common to all such pleadings, but we take it that the trial court in his charge to the jury correctly states the law, namely, that while "The declaration contains the allegation that the defendant contrived and fraudulently intended craftily and subtly to deceive and defraud the plaintiff, this, however, is mere legal phraseology; fraud of the defendant is no essential part of a plaintiff's case in trover, nor is it asserted in this declaration."

We take it that it is so clearly established as a legal proposition that proof without allegation can be of no more weight in a suit than allegation without proof that we do not intend to discuss this point at length.

We, however, wish in particular to call the court's attention to the unusual stringency with which this rule is applied in cases of fraud:

Thus in *Davis* vs. *Davis,* 55 N. J. Eq., 37, it is said in discussing the manner in which fraud should be pleaded, the pleadings

> "must point out and state the facts which are relied on as constituting it with enough particularity to enable the person charged to deny or disprove or explain those facts. He has the right to know in advance of his answer and the production of his proofs just what he will be required to meet."

The same rule is laid down in the earlier cases of *Small* vs. *Boudinot,* 9 N. J. Eq., 381; *Smith* vs. *Wood,* 42 N. J. Eq., 567, and in the recent case of *Schuler* vs. *Southern Iron & Steel Co.,* 77 N. J. Eq., 60 (70), where the rule is thus stated:

> "It is entirely settled that the mere use of the word fraud is futile and that a complainant who desires to complain of fraud must set forth the facts which he claims constitute the fraud upon him."
>
> *Hagerman* vs. *Brown,* 73 Atl., 862.

Similarly in the case of *Bayard* vs. *Holmes,* 34 N. J. Law, 296, it was held that to introduce proof of a false pretence there must be a distinct and specific averment of each fact to be relied upon in the establishment of the false pretence, a mere general allegation that the matter stated was a pretence and that plaintiff was falsely and fraudulently deceived by it not being sufficient.

Similarly in the case of *Wilkins* vs. *Standard Oil Co.,* 70 N. J. Law, 449, a demurrer was sustained to a declaration which charged the sale of certain oils as pure and unadulterated, their adulteration and an explosion and resulting damages to the plaintiff on

account of the adulteration because knowledge of the adulteration was not charged in the declaration and without such knowledge fraud could not be predicated. We take it that these cases sufficiently show the condition of the law in our state, but instances from other jurisdictions could be multiplied almost without limit. The following will suffice: *Harrison* vs. *McCormick*, 26 Pac. (Cal.), 830, a case where evidence for the purpose of showing fraud that the quality of coal sold under a written contract differed from that theretofore sold, was excluded because there were no averments of fraud in the pleadings. To the same effect are the cases of:

*Wilson* vs. *White*, 24 Pac. (Cal.), 14.
*Hayne* vs. *Hermann*, 32 Pac. (Cal) 171.
*Winchester* vs. *Joslyn*, 72 Pac. (Cal.) 1079.
*Arapahoe Co.* vs. *Stevens*, 22 Pac. (Cal.). 23.
*Tucker* vs. *Parks*, 1 Pac. (Cal.) 427.
*Gray* vs. *Earl*, 13 Iowa, 188.
*Leffler* vs. *Field*, 52 N. Y., 622.
*Bray* vs. *Loomer*, 22 Atl. (Conn.) 831.
*State* vs. *M. L. & I. Co.*, 50 Pac., 420,

and the same doctrine has recently been asserted by the United States Supreme Court in the case of *Equitable Life Assurance Society* vs. *Brown*, 213 U. S., 25.

The above citations are but a few of hundreds that could be produced, but we take it are sufficient to show the condition of the law generally throughout the county and to make it apparent that the trial court in permitting evidence of fraud to be submitted to the jury admitted evidence which was not relevant to any issues in the case and committed an error which was most prejudicial to the interests of the defendant at the trial.

B. *The fraud was not proven.*

An examination of the evidence will show in the first place that in no instance is the defendant, Julius Lichtman, in any way connected with any of the transactions with Guigues which in any respect could be construed as improper, collusive or fraudulent. The instances supposed to be suspicious are all instances of transactions between the various witnesses and Abraham Lichtman, the son of the defendant. These instances are scarcely of such weight as to be a rational basis for the predication of fraud, but assuming them for the time being to show fraud between somebody, the question naturally arises how is the defendant connected with the fraud? It will be replied that Abraham Lichtman admittedly was the agent of his father in the conduct of his father's business and that his acts were his father's—admitting the agency, it is clearly established by our decisions that an agency to conduct business, or in fact an agency of any character is presumed, and will continue to be presumed to be an agency to act lawfully and within the limits of fair dealing, unless in addition to proof of agency there be proof of participation by the principal in the improper conduct, or proof of his subsequent knowledge and acquiescence in and acceptance of the benefits of his agent's wrong-doing.

Thus it has been held in a number of decisions in our state that the fraudulent action of an agent in inducing for instance the sale of property of his principal could not be attributed to the principal in the absence of evidence of his having authorized the fraudulent representations or of his having acquiesced therein after knowledge thereof was brought home to him.

*White* vs. *N. Y. Susq. etc. R. R.*, 68 N. J. Law, 123.

*Kennedy* vs. *McKay*, 43 N. J. Law, 888.

*Titus* vs. *Cairo, etc. R. R.*, 46 N. J. Law, 393.

*Reitman* vs. *Fiorillo*, 76 N. J. Law, 815.

These cases establish clearly the doctrine of the limitation of the agent's powers to acts within the bounds of law and of good conscience and establish the doctrine that for fraudulent sales by an agent the only remedy as against the principal is a recision of the contract, although the agent might be held in tort.

It is clear therefore that knowledge is essential before an agent's fraud may be imputed to the principal.

We challenge the defendant anywhere in the voluminous testimony in this case to show that the defendant Julius Lichtman knew of the existence of any fraud.

But even suppose the fraud of Abraham Lichtman imputable to Julius Lichtman, there are but two instances which imply on the part of Abraham Lichtman any desire to conceal from the Corona Company the nature or quantity of the dealings with Guigues and both of these instances were clearly inadmissible even assuming the agency as against the defendant Julius Lichtman.

The first was an instance testified to by Elliott (case p. 138), when Abraham Lichtman remarked to him that he had been to Boston and had seen Baker and came very near telling Baker that he did not purchase certain goods because he could purchase them for half the price from Guigues, but that he thought in time and kept his mouth shut.

The second instance was also testified to by Elliott as an occasion upon which Abraham Lichtman inquired of Elliott whether he had submitted to the Corona Company the yellow sheets which we will hereinafter discuss and upon being informed that he had, stated that he would have given $10,000 for them.

It is clear that none of this testimony is of weight in establishing fraud, for although it has been held that agents within the scope of their employment and co-conspirators in the furtherance of their joint pro-

ject may make admissions binding upon the principals or the fellow-conspirator, respectively, it has never been held that a mere subsequent narrative or expression of regret by the agent or co-conspirator was binding against his principal or his joint tort feasor as the case may be. Thus in the case of *Runk* vs. *Ten Eyck* 24 N. J. Law, 756, it was held that a letter written by an agent who was authorized to survey a certain dam describing the dimensions of the dam was not admissible in evidence as being a mere narrative and not within the scope of his employment. To the same effect was the case of—

*Little* vs. *Kerr,* 44 N. J. Eq., 263, where testimony as to a statement made by the agent of one of the parties to the effect that a certain contract had been entered into was over-ruled as incompetent because a mere narrative. The court says:

> "If the contract was completed as the language ascribed to Abbott would import, what Abbott said constituted no part of the contract, but was mere narration. The witness's testimony in this latter event, while proof of the statement of the fact, was not evidence of the truth of that fact."

See also:

*Penna. R. R.* vs. *Wetherill,* 41 N. J. Law, 147, at p. 151.

*Price* vs. *N. J. R. R. & Transportation Co.,* 31 N. J. Law, 229,

where the court says at p. 240:

> "It further appears from the case that the plaintiff was permitted against the objection of the defendant to prove at the trial the declarations of the engineer who had charge of the locomotive with regard to the accident and which declarations were made long after its occurrence. This ruling was plainly erroneous."

At the trial evidence of this character and much other of a far less damaging nature, being introduced for the same purpose, was admitted by the trial court through confusion doubtless caused by the loose way in which counsel for the plaintiff insisted that admissions by one of two joint tort feasors were admissible against both.

The true rule is that in order to make the admission of one tort feasor evidence against another, there must be established first a conspiracy between them.

*Dewey* vs. *Moyer,* 72 N. Y., 70.
*Commonwealth* vs. *Scott,* 123 Mass., 222.
*Nudd* vs. *Barrow,* 91 U. S., 426.
*Hartman* vs. *Diller,* 62 Pa., 37.
*Lincoln* vs. *Clafflin,* 7 Wallace, 132.
*Doughty* vs. *Doughty,* 32 N. J. Eq., 32.
*Berckmans* vs. *Berckmans,* 16 N. J. Eq., 122.
*Graham* vs. *Graham,* 50 N. J. Eq., 701.
*Howard* vs. *Howard,* 77 N. J. Eq., 186.
*Ormsby* vs. *People,* 53 N. Y., 472.
*People* vs. *Parker,* 67 Mich., 222.
*Phoenix* vs. *Moog,* 78 Ala., 284.
*Gerry* vs. *Frazer,* 76 Maine, 37.
*Hutchins* vs. *Hutchins,* 7 Hill, 104.
*Parker* vs. *Huntington,* 2 Gray, 124.
*Cuyle* vs. *McCartney,* 40 N. Y., 22,

in which latter case Judge Woodruff states that the delivering and accepting of an assignment (which in that case was alleged to be proof of conspiracy) establishes common intent but not necessarily common intent to defraud. We take it that in the case at bar proof of delivery of goods to Julius Lichtman might establish an intent between him and Guigues to buy and sell the goods delivered, but could not properly establish an intent on the part of Julius Lichtman to defraud the Corona Kid Company. It therefore follows that the pre-requisite of a *prima facie* case of conspiracy was lacking, and that all testimony ad-

mitted on the ground of fraud as all testimony tending to show delivery of goods and conversion was admitted, was erroneously received in evidence. That fraud was the basis of admission appears clearly from the charge of the trial court who instructed the jury that unless they should find fraud they must find for the defendant. And as laid down in the case of *Van Horn* vs. *Van Horn,* 52 N. J. Law, 482, there must be *prima facie* grounds for believing in the conspiracy before the admissions of one of the alleged conspirators are evidence against the other. A careful examination of the printed case in the suit at bar will show that practically the only grounds for believing in the conspiracy are the numerous assertions of counsel that such a conspiracy existed. Nowhere in the evidence is there the slightest proof that Julius Lichtman the defendant knowingly defrauded or conspired to defraud the plaintiff or any one else. Clearly then any testimony which for its ultimate basis relied upon a proof of fraud or conspiracy on the part of the defendant must utterly fail.

There remains here but one more point to call the court's attention to, and that is that the rule concerning narrative statements made by co-conspirators is the same as the rule regarding narrative statements made by agents, namely, that they are inadmissible as evidence against anyone but the person making them unless made in the presence of the other conspirator who is sought to be charged with them.

The following cases will suffice:

*Heine* vs. *Carter,* 94 Pa., 145.
*Moore* vs. *Shields,* 121 Ind., 267.
*Sample* vs. *State,* 121 Ill., 547.
*State* vs. *Larkin,* 49 New Hamp., 39.
*Proctor* vs. *R. R.,* 154 Mass., 251.
*Johnson* vs. *Day,* 78 Maine, 224.
*Jewett* vs. *Banning,* 21 N. Y., 27.

It follows that the trial court erred both in submitting to the jury the question of fraud as a basis upon which to rest the evidence submitted by the plaintiff and in admitting testimony whose basis was the agency of Abraham Lichtman for his father as evidential in the proof of fraud, whether such testimony related to statements made by Abraham Lichtman during the period of the alleged dealings between the defendant and Guigues or to statements made by way of narration subsequent thereto.

## II.

## EVIDENCE OF CONVERSATIONS AND TRANSACTIONS BETWEEN PLAINTIFF OR ITS AGENTS AND THIRD PERSONS NOT IN THE PRESENCE OF DEFENDANT, AND NOT SHOWN TO BE AUTHORIZED BY HIM, ARE INADMISSIBLE.

The question of hearsay evidence has necessarily to a certain extent been entered into in the foregoing discussion of fraud. We wish, however, here to call attention especially to the admission of evidence of the witness Baker as to certain transactions of Guigues, especially as regards the alleged verbal modification of the original written contract. It seems clear to us that this testimony cannot on any principle be admitted even assuming that fraud had been shown upon the co-conspirator or agency theory discussed in the preceding section as the arrangements between Baker and Guigues could not in any sense be considered in furtherance of a conspiracy between Guigues and Lichtman.

It would seem that nowhere could the wisdom of the rule against hearsay testimony be better shown than in an instance of this character, where by the testimony of a single witness as to modifications in

the terms of a written agreement, the rights of the defendant could be substantially injured. It will be remembered that the written contract of June, 1904, was construed by the court in the absence of trade custom affecting it to grant to Guigues the title to the goods here alleged to have been wrongfully converted from the plaintiff, and by means of the testimony of Mr. Baker as to statements by Mr. Guigues not made in the presence of the defendant, the terms of the written contract have been materially varied to the prejudice of the defendant.

In yet another respect did the court transgress the rule concerning hearsay evidence. A series of reports made by Guigues to the plaintiff were admitted in evidence, although no proof was submitted that these reports were in any way authorized by the defendant. But allegations concerning the slips of his books of account made some two or three years subsequent to the date of the transactions were obviously not only hearsay as far as the defendant was concerned, but were too remote to be of any probative value.

The rule concerning hearsay is so basic that it seems almost unnecessary to cite authorities in support of it. Stevens has digested the rule in article 14 of his Evidence as follows:

> "The fact that a statement was made by a person not called as a witness, and the fact that a statement is contained or recorded in any book, document or record whatever, proof of which is not admissible on other grounds, are respectively deemed to be irrelevant to the truth of the matter stated,"

to which he adds certain well recognized exceptions by reference to subsequent articles in his works. These exceptions, as far as the verbal hearsay is concerned, are confined to cases of admissions, confessions and declarations by persons subsequently de-

ceased. Our courts have followed this rule from the early case of *Demoney* vs. *Walker,* 17 Law, p. 33, and are continually reaffirming the doctrine as reference to the cases of

*Arata* vs. *Sullivan,* 63 N. J. Law, 46.
*Cowan* vs. *Blumberg,* 66 N. J. Law, 385.
*Carey* vs. *Marshall,* 67 N. J. Law, 236, will clearly show.

## III.

## THE YELLOW SHEETS.

These remarkable documents were produced by the witness Elliott. They consisted of sheets of ordinary yellow foolscap, and were stated by their producer and manufacturer to be copies of the ledger of a certain private set of books kept by Guigues, in which, among other entries, records of his transactions with Lichtman are alleged to have appeared.

These sheets were brought before the jury by two methods, both of which we insist were erroneous. The first was as memoranda to refresh the memory of the witness. Now it is essential for writings to have the character of memoranda that they be contemporaneous records (or perhaps copies known to be accurate of contemporaneous records) of events originally within the personal knowledge of the witness; and that the memoranda were known at the time of the record by the witness, of his personal knowledge, to be accurate records of the facts which they purported to record. In *Cottentin* vs. *Meyer,* 80 N. J. Law, 52, Mr. Justice Swayze, stating what memoranda might be used by a witness, lays down the rule suggested by Professor Wigmore that the memoranda is a record of the witness's past recollection.

The rule is well stated by Stevens in his Digest on Evidence, article 136:

> "A witness may while under examination refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the judge considers it likely that the transaction was at that time fresh in his memory. The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid if when he read it he knew it to be correct."

In the case of *Hill* vs. *Adams Express Co.*, 74 N. J. Eq., 338, it was laid down that

> "It is erroneous to permit a witness to use as a memorandum a document in whose preparation he did not have a hand."

In that case a witness was permitted to examine a declaration and to state whether the list of goods therein contained was a correct one. This was held to be erroneous. The case of *More-Jonas G. Co.* vs. *R. R. Co.*, 76 N. J. Law, p. 708, cites with approval the article above quoted from Stevens' Digest. The same doctrine is asserted in the case of *Meyer* vs. *Weger*, 62 N. J. Law, 432 and *French* vs. *Millville Mfg. Co.*, 70 N. J. Law, 699. The fundamental principle, however, underlying all of these decisions is that at the time the original memoranda were made the facts therein contained must have been within the personal knowledge of the person who seeks to refresh his memory, for it is obviously impossible that a man's memory be refreshed concerning a subject of which he never knew anything. The second principle underlying these decisions—that the witness knew the record from which he is testifying to have been true at or about the time of the happening of the event testified to—is in a sense a corollary of the first, since to know the record to be true, it must have

been that he knew what the truth concerning the facts there recorded was. It was developed, however, on cross examination that Elliott, the witness, did not know either the truth of the facts or the truth of the record. It appeared that but in few instances and these unidentified, did he have personal knowledge of the facts which the sheets purported to record.

It appeared that the weighing or counting of the goods was to a large extent entrusted to a boy in Guigues' employ of the name of Bambrick; that Bambrick from time to time would report goods as having been weighed out by handing to Elliott slips showing the weights of the goods. It, therefore, appears that Elliott did not know of his own knowledge what goods or what quantities of goods were being shipped.

It further appears that the sheets which Elliott used for this purpose were not even copies of the original memoranda. The original memoranda under the evidence were Bambrick's slips, the copy of the memoranda was the day book or other appropriate books of original entry which formed the basis of the bookkeeping system. These entries from the day book were transcribed by somebody—in some instances, under the testimony, by Elliott, in other instances by other persons in the Guigues employ, into the ledger, and it is a copy of this transcription of the copies of the original memoranda that is here produced to refresh the witness's memory.

This is, as far as we are able to find, an unwarranted extension of the principle of refreshment of memory.

The court was not satisfied with this error, but went a step further and permitted the sheets to be introduced into evidence as copies of Guigues' books of account. The error in this ruling is manifold. In the first place, it is clear that copies may not be introduced in evidence unless the absence of the original be accounted for.

The ruling is laid down in *Johnson* vs. *Arnwine,* 42 N. J. Law, 451, that to justify secondary evidence of the contents of a paper, the party is expected to show that he has in good faith exhausted in a reasonable degree all sources of information and means of discovery which the nature of the case would naturally suggest and which were accessible to him.

It is true that the case of *Koehler* vs. *Schiller,* 70 N. J. Law, 585, lays down the principle that the finding of fact by the trial court that proper search has been made for the missing document to permit secondary evidence thereof to be given, will not be reviewed if any evidence appears to support them. We submit, however, that no evidence of a search for the purpose of producing this paper at the trial was submitted to the trial court. The effort to account for the nonproduction of the originals consisted, first, in calling to the stand Abraham Lichtman, the defendant's son, to ascertain the time and source of his information that Guigues was a resident of Kingston, New Jersey. This having been accomplished, the former attorney of Guigues, one William Brown, was called to the stand to testify that as far as he knew Guigues was not a resident of Kingston, New Jersey, at the present time. The next step was an inquiry instituted by one Inston, an auditor in the employ of the plaintiff's assignee at the time of the bankruptcy of the Guigues Leather Company in the year 1908. It will be noted that the inquiry related to the bankruptcy of the Guigues Leather Company, a corporation not in existence at the time of this suit, that there was no duty or reason for Guigues delivering into the possession of the Corona Kid Manufacturing Company his private books, and his refusal to give them to Mr. Inston at that time did not in any sense show that he would be unwilling at a future time and under different circumstances in the interests of justice and to establish a valid claim, to give them at a later date.

The third line of inquiry was to Frederic L. Johnson, the receiver of the Guigues Leather Company, who stated that he had never received them. It will be thus seen that there was no evidence in the case to show that Guigues could not be produced or that upon his production the books themselves would not be forthcoming. A proper foundation, therefore, for the admission of copies was not laid.

A second objection to the admission of the books as books of account is that they are not proven by the person who kept them. While Elliott claimed to be bookkeeper his testimony shows that his duties comprised far other matters than bookkeeping, and that other persons actually were engaged in the keeping and supervision of the books. It is elementary that for books to have any probative value they must be established by the oath of the person keeping them.

The case of *Chafee* vs. *U. S.*, 18 Wall., 516, at p. 541, holds that in order to admit books of private persons, it must appear not only that the entries are contemporaneous with the facts to which they relate, but that they shall have been made by persons having personal knowledge of the facts and be corroborated by their testimony, if living, and accessible, or by proof of their handwriting if dead, insane or beyond the reach of the process or commission of the court. To the same effect is *Coolidge* vs. *Taylor*, 80 Atl. (Vt.) 1038, where the secretary of a cheese factory testified concerning delivery of milk in 1897 based upon books of account, and it was held to be error, since his knowledge of the accuracy of the entries was confined to the fact that he transcribed them from daily memoranda by the cheese maker as the milk was delivered, and the cheese maker was not called as a witness nor his absence accounted for.

Again, it appears that even were the originals properly accounted for, and were Elliott considered the bookkeeper, the copies were not copies of the

books of original entry, and had the original book been produced it itself for this reason would have been inadmissible.

Although in the cases of:

*Diament* vs. *Colloty,* 66 N. J. Law, 295,
*Corkran* vs. *Taylor,* 77 N. J. Law, 195,
*Corkran* vs. *Rutter,* 76 Law, 375,

it was held that ledgers are admissible in evidence where accompanied by the day book or book of original entry, it has never been permitted to introduce the ledger without its supporting books, and the law of this state is well stated in the case of *Schlicker* vs. *Whyte,* 74 N. J. Eq., at p. 839, as follows:

> "Between tradesmen and their debtors, the books of account of original entry are admissible but other books in which these original entries are posted are admissible only as supplemental to the books of the original entry so that the whole of the account should appear, and the ledger without the books of original entry are not admissible."

Citing:

*Bonnell* vs. *Mawha,* 37 N. J. Law, 198.
*Rumsey* vs *N. Y. & N. J. Tel. Co.,* 47 N. J. Law, 322.

In the latter case it was held that postings from slips showing individual credits and the books where the numbers of credits were shown but the particulars thereof were not, did not constitute these books of account within the meaning of the rule permitting books of account to be offered in evidence without the production of the original slips.

Finally, it is apparent that had the complete set of Guigues' books been produced they would have been no evidence against the defendant in this case. The admission in evidence of regularly kept books of account is an exception to the rule which denies to a par-

ty the right to make evidence in his favor. The exception arose under the customs and law of merchants, in order to obviate the practical impossibility of proof of the complicated transactions involved in running accounts covering multitudinous distinct and unrelated dealings, were the party to be confined to his unassisted memory of these events. The rule therefore was relaxed to the extent that in a suit by a merchant against another where it appeared that the merchant had kept regular and apparently trustworthy books of account, these account books might be admitted as *prima facie* evidence of the delivery and value of the goods alleged to have been sold.

The rule has gradually been broadened so that it no longer applies only to those who are strictly merchants, but applies with equal force for services and other matters which can be made the subject of book entry. The rule, however, that the books must be kept in the regular course of business, that they must be apparently regular, and that they must relate to dealings with the other party to the suit, has not been relaxed. Nowhere, we take it, will an instance be found where the books of account of third parties have been admissible as even *prima facie* evidence of dealings between the third parties and one of the parties to an action. The cases are decidedly to the contrary.

In *N. J. Zinc Co.* vs. *Lehigh Zinc Co.*, 59 N. J. Law, 189, it was held that the books of account of the plaintiff kept in the regular course of business based upon slips made out from reports sent to the bookkeeper in regard to transactions with third parties were not admissible in evidence against the defendant. This case is in a sense the converse of the present proposition. We are unable to find any law directly on the point in our own state, but in sister jurisdictions there are a number of cases holding that third person's books of account are not admissible. Such is the case of *Winter* vs. *Newell*, 49 Pa. (State) 507. It in-

volved the quantity of bark peeled by the defendant Winter, for which under a certain agreement he was liable to pay the plaintiff, who in turn were forced to pay Pratt & Gould, from whom they obtained title to the peeled instalments from time to time as the bark was removed. Pratt & Gould kept a book showing the amount of bark peeled, and this book was offered in evidence. Its refusal was held to have been correct. The court says, p. 517:

> "Nor do we think there was any error in rejecting the books of Pratt & Gould offered to show a credit for the bark in favor of the Newells. It was not shown that they requested the entry to be made and the book was not theirs nor within their control. Shop books are only evidence by custom of goods sold and delivered and work, labor and services performed. They are not evidence to prove any other fact. They may be evidence as admissions as against those who write in them just as any other writing made by a party may be evidence by way of admission, but not because they are shop books. They were not evidence by reason of any thing appearing in the case such as the agency of the Newells in procuring the entry to be made."

Again in *Rathbone* vs. *Maltz*, 118 N. W. (Nat.), 991, it was held that books of accounts kept by executors were not evidence against the decedent's wife who had nothing to do with the making of the books and did not know that they had been made.

Again in *Holt* vs. *Pie*, 14 Atl. (Pa.), 389, it was held that the admission in a suit by Pie against Holt of an account kept by the Sargeant Lumber Co. showing lumber furnished to Pie was improperly admitted. The contention was that the same carloads were sent by Pie to Holt, but the court says:

> "If the same carloads of lumber were sent to Holt from the yard of the lumber company, still

we do not see how this account was admissible as an instrument of evidence."

Again in *Brickley* vs. *Walker,* 32 N. W., 773, it was held that books of account showing credits of lumber in favor of an attachment debtor were properly excluded in an action against the sheriff for conversion in the absence of proof that the plaintiffs who claimed title to the goods knew of or acquiesced in the manner of keeping books.

Again in *McKeon* vs. *Providence Bank,* 54 Atl. (R. I.), 49, the books of a real estate agent were excluded in a suit by a plumber against the real estate agent's principal, although the books of the agent contained an item showing payment of the plumber, the court holding that such an item was neither an admission by the agent against his interest nor the record of a fact forming part of the *res gestae.*

Again in *Lake County* vs. *Savings Bank,* 108 Fed., 505, it was held that a book kept by the county clerk in the course of his business for his own convenience but not under any statutory requirement, was incompetent in an action between the county and a third party, although the book showed the condition of various county funds.

It is evident that the basis upon which the court admitted these books was that they were admissions against Guigues and that as a co-conspirator or joint *tort feasor* the admissions were binding upon the defendant. We feel that we have clearly shown that the evidence upon which this theory of conspiracy is postulated is either inadmissible or of no probative force, but, irrespective of these considerations, we insist that there is nothing to show that these books were kept in furtherance of a project to defraud. Assuming that the defendant has conspired to defraud the plaintiff, the books of account were in no sense a part of the scheme, or a step in furtherance of it. They

were in effect nothing but a record for Guigues' reference, and were in no sense authorized by or of value to the defendant, and cannot be stretched into an account in furtherance of the conspiracy.

## IV.

## THERE IS NO PROOF OF CONVERSION.

We will treat this topic under four headings:

*a.* There was variance between the goods claimed in the declaration and the proof. In the testimony of Mr. Baker (case, p. 16), it appears that the so-called grain splits which are sued for were products taken from the hides prior to tanning, and were in all respects a different article from that described in the declaration, which is limited to grains of Cordovan after tanning. The evidence shows clearly, as set forth in our statement of fact, that cordovan was manufactured by tanning the whole butt in bark, and after the tanning was completed, by removing either by a scraping or splitting process, the grain or hair side of the butt and the flesh side of the butt, leaving a uniform piece of leather, originally the interior of the butt, for finishing. It is clear that the specifications of the declaration, 23,300 pounds of grains from cordovan after tanning can refer but to the grains split from the tanned butt after the butt has been put through the tanning process, and after the cordovan has been created, needing but the removal of the ouside of both the grain and flesh portions to reveal it as finished leather.

The proof, therefore, that grains from the butts were removed in the pickled state is either a variance between allegation and proof, or the admission of the evidence was the admission of immaterial and irrelevant matter, tending, nevertheless, clearly to

prejudice the defendant before the jury. In either event the admission of this evidence was error.

*b.* No delivery was proven. Nowhere in the case is there any evidence that goods in any particular quantity were received by the defendant from Guigues. The expressman or men who are alleged to have been engaged in transporting the goods were not called. No delivery receipts were produced and a careful analysis of the testimony will show that the proof of delivery has been rested entirely upon the supposed evidence of the yellow sheets above referred to, in which certain quantities of goods are set forth. It will appear at once that the error of admitting the books for any purpose is here enhanced by accrediting to the books the full weight of books of account under the law merchant, where the entry of items in the account is *prima facie* proof of delivery. The books having erroneously been received it follows that there was no competent proof before the jury from which a delivery of a specific amount could be inferred.

*c.* No quantity proven. As to this necessary feature of proof of conversion, the remarks under the foregoing head are equally applicable. Aside from the amounts set forth on the yellow sheets no evidence of definite quantity appears in the case.

*d.* No demand for the return of the goods was proven. A demand and refusal, it has been held, are not necessary to be proven in order to infer a conversion, except in such cases where the title to the property has been transferred subsequent to the conversion.

*Earle* v. *Van Buren*, 7 N. J. Law, 344.

*Gaskill* v. *Barbour*, 62 N. J. Law, 530,

the demand and refusal, being but evidence from which a conversion may be inferred, but not the only method by which it may be proved. In order, however, to prove a conversion there must be shown some

act of dominion on the part of the defendant. A leading case in our State is:

*Frome* v. *Dennis,* 45 N. J. Law, 515,

where the facts were that the plaintiff left his plough on the farm of Cummings with the latter's consent, until it should be called for. The farm was sold to one Hibbler, the plough still being there. Later a neighbor borrowed the plough from Hibbler, supposing it to be his, and later returned it. The plaintiff afterwards informed defendant, the borrower, that it was his plough, and that he wished either its return or payment for the use, and defendant not complying, the action was brought. The judgment in favor of the plaintiff was reversed in the Supreme Court. That court stated the law in the words of Mr. Justice Depue, in *Woodside* v. *Adams,* 11 Vr., 417, as follows:

> "To constitute a conversion of goods, there must be some repudiation by the defendant of the owner's right, or some exercise over them by him inconsistent with such right, or some act done which has the effect of destroying or changing the quality of the chattel."

Justice Dixon, continuing, states, that anything less than is comprised in the above statement of the law might constitue a trespass, but would not constitute a conversion, which implied a repudiation of the plaintiff's title. He cites further the case of *Spooner* vs. *Manchester,* 133 Mass., 270.

In that case it was held that acts which in themselves imply an assertion of title, or of a right of dominion over personal property, such as a sale, letting or destruction of the property, amount to a conversion, although the defendant might honestly have mistaken his rights; but acts of an equivalent character not necessarily implying such an assertion of title or of right of dominion will not constitute conversion unless done with intention to deprive the

owner of the property permanently or temporarily, or *unless there has been a demand for the property* and a neglect or refusal to deliver it. To the same effect is *Lafferty* vs. *Sneethan,* 68 N. Y., 522.

It follows from these cases that while a demand may not be an essential of conversion, it becomes such in the absence of any proof of repudiation of title by the defendant. It is clear that in the present case, assuming even that delivery has been shown, there has been shown no act on the part of the defendant as to his treatment of the goods after they came into his possession. The mere fact that they are in his possession cannot be considered as conversion, as they might have lawfully been sent to him as bailee, to be subject to the order of the plaintiff, or might, as in the case of the plough, have been used by him in recognition of a superior title outstanding in another, which he in no respect disputed. Not until a demand, then, had been shown, and a refusal, could it be held that a conversion had taken place.

## V.

## THE PLAINTIFF FAILED TO PROVE TITLE.

The plaintiff's title to the goods alleged to have been delivered to the defendant is asserted upon proof that the hides sent to the Guigues factory were sent there either directly from the plaintiff or by order of the plaintiff, and were the plaintiff's property. This proof, in the absence of any further proof, might have constituted a proof of title sufficient to have placed upon the defendant the burden of establishing the right of Guigues to dispose of certain products of the hide. The plaintiff, however, did not content itself with this proof of title, but went further and introduced into evidence the written contract of June, 1904, under which it appeared that Guigues received the custody

of the hides for certain purposes, namely, to extract therefrom the cordovan after tanning the butt in bark, and to tan the shanks in chrome for japanned leather or shoe stock. For this work specific prices, namely, 10 cents per square foot for the cordovan, and 5 cents per square foot for the shank grains, was provided. These cordovans and these grains by the terms of the contract were the only portions of the hide, which the parties contemplated should be returned to the plaintiff. This becomes evident when we consider that for a period of seven or eight months these were the only products received by the plaintiff and no complaint was made of Guigues' failure to return the butt grain splits, buffings, or flesh splits from the shanks. This contract and the duties under it were accurately charged by the trial court in the following language:

> "It is a contract to tan in a specified way and for specified prices certain specific parts of horse hide butts to be sent by the plaintiff to Mr. Guigues for that purpose. The contract is to be construed as a whole, and the general expressions are limited by and are applicable only to the specific provisions. Taking the contract at its face value, so to speak, it bound Mr. Guigues to this and nothing more: To tan the specific parts in the specific way and for the prices named, and to send them back to the plaintiff."

It thus appears that under the contract offered by the plaintiff the *prima facie* case of title which it had established by showing shipment of the hides from it as its property was nullified and title to the goods which were alleged to have been converted shown to be in Guigues, free from any claim of the Corona.

To meet this dilemma, two methods were attempted:

In the first place, evidence was introduced, over objection, of an alleged trade custom requiring the return of all such portions of the hide as were capable of

being made into leather to the consignor, although the testimony in this line is self-contradictory in that the witnesses all admit that any part of the skin or hide can be made into leather, and that under the alleged trade custom all parts of the hide are not returned, the portion not returned being called offal. However indefinite the testimony of trade custom was, the inference intended to be drawn therefrom, and the inference which was drawn, was that the specific goods claimed by the plaintiff herein were of the kind which should have been returned.

The testimony, however, of the experts for the plaintiff, we contend was erroneously presented, as it was not limited to cases where the hides were being tanned under a specific contract providing for the return of certain portions. It might very well be, and it would seem to us unquestionably to be the fact that should a hide be shipped to a tanner with directions to tan the hide, a process we believe known as rough tanning, the duty of the tanner would be merely to remove such portions of the raw hide as would increase its value as leather, as for instance the hair or portions of bone attached to the shanks, and the like. In this case, however, all of the hide in fact would be returned to the consignor. This instance, however, is materially different from that where specific portions of the hide are directed to be tanned, and where it became necessary to divide the hide into sections to be tanned and into sections to be left, so far as the contract specified, untanned.

It must be remembered that in the case at bar a specific written contract was proven by which Guigues agreed to tan the butts for cordovan and the shank grains in chrome for japanning stock, for which work he was to receive respectively ten cents and five cents per square foot. The character of the trade custom testified to is well illustrated by the question addressed to the witness Price (case, page 81).

"Q Is there any custom of the trade as to any part of the hide being retained by the tanner?"

"A There are."

"Q What was the custom?"

Which question was objected to and objection overruled. It is evident that testimony elicited by such a question might properly apply to a case of rough tanning, such as we have cited above, but might not at all apply to a case where the terms of the contract were settled by a written agreement.

To permit, therefore, experts to testify that there was a general trade custom directing all parts of the skin to be returned to the consignor without directing the attention of these experts to the fact that in the present case a written contract determined what portions should be returned, was error, and on this branch of the case the court permitted a further error in that in his charge he directed the jury that it might, so far as it judged the testimony of any expert to be directed not to the existence of a general trade custom, but to the construction of the contract in issue, disregard the testimony of the expert.

This instruction was contained in two of the plaintiff's requests to charge which were charged by the court. The first was the twelfth request:

> "That the jury in considering the testimony of witnesses produced as experts in the tanning trade for the purpose of establishing a trade usage or custom should distinguish with care between the testimony as to the existence of such a trade custom and their interpretation of the contract in writing between the parties."

And in the fifteenth request:

> "That so far as the jury find that the testimony of any witness as to the existence of a trade usage or custom under the terms of the contract in writing has been an interpretation of said contract as

altered or modified by a trade usage the jury are to disregard such testimony."

We concede that these requests were skilfully drawn, and drawn in a way which evidently confused the trial judge in part as to the meaning of the proposition which he was asked to charge, as he adds to the charge of the fifteenth request,

"Of course that means, I suppose, that it is not for the witness to construe the contract."

As a matter of fact, the two charges meant much more. If that was the meaning of the request it would have been much simpler to have couched the request in the succinct language in the annotation of the court to it.

That it is not the function of a witness to construe a written contract is so well established that we do not intend to dispute it, but if we examine the requests above quoted it becomes clear that the court has delegated to the jury the determination of just how much of the testimony of experts was responsive to the questions addressed to them, namely, what, if any, was the custom of the leather trade, overlooking that so much of the testimony of the experts as was not responsive, and as was, on the contrary, an interpretation of the written contract, was improper and irrelevant, and that it was not the duty of the jury, but of the court, to exclude this testimony from consideration.

We do not have presented here a case of the credibility of witnesses, which it is peculiarly the jury's province to determine upon, but a case of the materiality and propriety of evidence submitted, irrespective of its credibility, which it is peculiarly the court's duty to rule upon. Indeed, the thirteenth request of the plaintiff, which was likewise charged by the court, shows the inconsistency of the court's ruling, for in it the court charges that

"No evidence would be admitted by the court to show a trade usage or custom that is incon-

sistent with or modifying any of the provisions of the written contract."

It immediately occurs to one reading these charges together that if no evidence would be admitted by the court which would modify or be inconsistent with the written contract, then the testimony of the experts must necessarily have been consistent with the interpretation by the court of the meaning of the contract. If, however, the interpretation by the court agreed with such testimony of the experts as related to the meaning of the written contract, necessarily this testimony of the experts, while perhaps irrelevant, was harmless and but corroborative of the view which the jury was compelled to take by reason of the instruction of the court.

Carrying the argument a step further, it follows that the remaining testimony of the experts purporting to be concerning the trade custom, must in fact have been concerning the trade custom, and there was no necessity for the court to direct the jury to disregard any portion of it, except so far as the jury might be permitted to pass upon the respective credibility of the experts before them.

Nor can it be argued that this instruction of the court was harmless error, for under it the jury was authorized to determine for itself what portion of the experts' testimony was interpretation of the contract and what portion of it concerned the custom. In other words, the jury was permitted by the court to pass upon the relevancy of the testimony before it. This duty, of course, is one imposed upon the court, nor do we feel that citations are necessary in support of so elementary a proposition.

In the second place, the plaintiff endeavored to extricate itself from the dilemma by recourse to an alleged verbal contract, by which the terms of the original contract were modified, if not wholly abrogated. As to the proof of this verbal contract, we

take it that there are two clear grounds of objection which were vainly urged at the trial.

First, is the method of proof. The story developed by Mr. Baker, the plaintiff's president, was that upon passing through the tannery he had there seen small pieces of leather of the shape of the shell, and picking up one had inquired of Guigues what it was; that Guigues had thereupon informed him that he had found a new method of manufacturing the cordovan, and that instead of shaving the grain off he had split it from the tanned butt; that Baker had thereupon asked whether it was not possible to split the grain from the butt before tanning and out of the pickle; that Guigues had replied that he had never tried it, but that they could see, and a number of butts were put through the splitting machine until a seemingly satisfactory product was reached; that Baker had thereupon made the following proposition to Guigues: That in the future Guigues should split the grain in the pickle and should finish it for japanned stock, for which he was to receive the sum of five cents per square foot, the same rate he had hitherto received for the shank grains, and was then to finish the remaining portion of the butt into cordovan at the old rate; that to this arrangement Guigues had assented.

We take it that it is clear, as shown under paragraph three of this brief, that the evidence of this transaction, so far as it consisted of the testimony of Mr. Baker about statements made by Mr. Guigues out of the presence of the defendant, and not shown to be authorized by him, was hearsay testimony of the most objectionable kind, and was not the basis for the satisfactory proof of the alleged verbal contract. We do not feel that cases other than those already cited under paragraphs two and three are necessary to sustain this proposition.

In the second place, assuming that the verbal contract was properly proven, it was under the proofs of the case wholly irrelevant and was never by subsequent proofs made relevant. Nowhere in the case will there be found any evidence in the slightest suggesting that any of the products to be obtained under the original contract as modified by the verbal contract, namely, butt splits from the pickled butt, the shell portion of the butt tanned in bark for cordovan, the grains from the shanks tanned in chrome, were ever received by Lichtman or were ever delivered by Guigues to anyone other than the plaintiff. In fact, the declaration makes no claim for any of the goods to be produced under this arrangement.

Such being the case, it is quite impossible to sustain the court's statement in his charge where he says:

> "The plaintiff must satisfy you either that there was a trade custom supplementary to the contract requiring the return of these articles as being things of value, the material of which was susceptible of being made into leather, or that there was a supplementary verbal contract, such as Mr. Baker has testified to."

By this statement the court in effect charged the jury that the testimony of Mr. Baker as to the verbal contract, which throughout was strenuously objected to, was evidential for the purpose of proving title in the plaintiff. The court refused as requested at the conclusion of his charge to instruct the jury that at most the verbal contract, assuming it to have been proven, was evidential as to grain splits shown to have been produced subsequent to the making of the verbal contract. And yet it is clear that such is the only reasonable view to take. If in order to establish title to the grain splits or buffings it was necessary to show that the original contract was modified by a trade custom which in effect added other terms to

it, or by a verbal amendment of it, if the jury should find that there was no trade custom applicable thereto, the remedial virtue of the verbal modification could not possibly have been retroactive. It was therefore incumbent upon the plaintiff to prove that the goods claimed for had been produced subsequent to the verbal contract.

The court, however, was not satisfied with the erroneous impression of the portion of the charge above quoted, but continuing in effect charged the jury that there was such a verbal modification and that this modification established clearly the plaintiff's title.

> "If Mr. Baker is correct, and he seems not to be contradicted, Mr. Guigues being the only other witness of this interview, his testimony stands alone that there was such a contract (verbal modification of the original contract) made for the manufacture, tanning in chrome, of such grain splits as Guigues in prosecuting his splitting work should slice off from the hair side of the butts—that would show a right of possession in the plaintiff, or the custom if proved satisfactorily would show a right of possession in the plaintiff."

This statement was in effect a direction of a verdict by the court as to the items in controversy known as grain splits or buffings.

It will be noted in the first place that the court practically charges that Mr. Baker's testimony as uncontradicted is to be believed. Such is the clear inference to be drawn from the expression.

> "And he seems not to be contradicted * * * his testimony stands alone that there was such a contract made."

But even granting that these expressions do not unduly take from the jury their right of passing upon the credibility of Mr. Baker's evidence, the statement

that if Mr. Baker's testimony is correct, all grain splits which Guigues in prosecuting his splitting work might slice off from the hair side of the butts belonged to the plaintiff, is a clear direction that if the jury believes there was a verbal contract, all of the items mentioned in the declaration and for which claim was made at the trial under the name of buffings, butt splits or grain splits, belong to the plaintiff, irrespective of the time at which these articles were produced and irrespective of the nature of the contract relations existing between them.

And yet a moment's thought will show clearly that under the verbal contract the grain product was not a bark tanned buffing, but was to have been tanned in chrome. Nowhere is there any evidence that subsequent to the verbal contract any of the butt grains were tanned in bark; while the evidence is clear that prior to the verbal contract the whole butt was tanned in bark and the buffing split off after tanning. As to this product manufactured prior to the verbal contract, the reasoning implicit in the court's charge, that in the absence of trade custom the verbal contract must have been established to show title in the plaintiff, establishes Guigues' right to the articles, while the latter words of the court categorically deny this right.

The trial court in this charge seems to have overlooked altogether the necessity of the plaintiff's showing that the butt splits or buffings were produced during the existence of the verbal contract. As we have already said, there is no evidence to show that they were, while the inference to be drawn from the testimony is clearly that they were not. Indeed, the plaintiff should have been required to show not only that these butt splits or buffings were produced prior to the making of the verbal contract, but that they were produced from butts which at the time of the making of the contract had not yet been put into the tannage

process, for as to butts on which the bark tanning process had already been begun at the time of the making of the verbal contract, and which therefore could not be split in the pickle as contemplated by the verbal contract, the verbal contract had no bearing. No such evidence was produced, and it unquestionably became the duty of the court thereupon to withdraw from the consideration of the jury altogether those features of the case which were rested upon the verbal contract.

## VI.

## IMMATERIAL AND PREJUDICIAL EVIDENCE AND ILLUSTRATIONS.

While it is perhaps scarcely logical, we wish here merely to suggest to the court's attention in a somewhat fuller way than is done by assignments of error and exceptions in the printed case, two certain rulings on evidence and portions of the judge's charge which while lying without the plane of this brief we feel should be noticed at least in passing.

A. *Evidence as to cost of chrome tanning.*

In the first place, we desire to call the court's attention to evidence which the trial court permitted in regard to the cost of finishing certain untanned hides into leather tanned in chrome. The witness Lauster, upon very slender qualifications as an expert in values, was asked (case, p. 321, *et seq.*) whether he could state the cost of tanning in chrome grains split from the shell, and over objection, was permitted to state that the cost of this process would be from three and a half to four cents a foot. It will be noted as to this evidence that in the first place it refers to the same article which we have heretofore under IVa, of this brief, referred to as not covered by the specifications in the

declaration. It now relates to a grain split from the shell before tanning, the declaration to a grain split from the shell after tanning. Furthermore, the cost of finishing such an untanned grain split in chrome tannage is an inquiry wholly irrelevant to the issues in this case. The evident purpose of this testimony is not directed to the value of any product in the suit, but is an effort to show to the jury that it was more profitable for Mr. Guigues to sell grain splits at the rate testified to by Elliott than it would have been to separate the grains in the pickle and finish them in chrome and japanning as Baker testified he had agreed with Guigues should be done under the so-called verbal contract. When the court considers that there is nowhere any evidence in the whole case that after the date of the alleged verbal contract, Guigues tanned any of the butts in a way inconsistent with the terms of the verbal contract; and when the court further considers that there is no proof of any kind that the plaintiff did not receive the grains tanned in chrome under the verbal contract, it becomes clear that the object of the testimony is not to throw any light upon the issues, but is by innuendo to raise before the jury the picture of an unfaithful agent corruptly disregarding his contracts in order to obtain a greater profit at the hands of a fellow conspirator. The basis which must be established before proof of this nature, even if under any circumstances it is admissible, is wholly wanting by the failure of this plaintiff to show any fraud.

B. *Examples from other trades in the judge's charge.*

The matter may seem in a sense a trivial one, but it is often upon the seemingly trivial that the determination of the case depends. Counsel for the defendant had used in his summing up, in designating Mr. Guigues' improvement in the former process of obtaining a cordovan by which in place of scraping or shaving away the grain into waste products he had

split it in a single sheet of commercial value, the metaphor that Mr. Guigues had made two blades of grass grow where one had grown before. The court in discussing the right of Mr. Guigues to retain this newly created product, referred to two bailments of altogether different character. The first was an instance of a sailor taking a ten-yard roll of cloth to a tailor to have made into a coat, it being assumed that five yards was sufficient to make a coat. The question raised by the court in that case was whose are the five yards remaining, or if not five, the remnant of three or of two or of the one or of a fraction of a yard. Again he cited a case of a miner who having a nugget of gold, asked a jeweler to make him a wedding ring and two sleeve buttons. He assumed that after this manufacture the jeweler still had one-half the gold left. Whose was the half. The court then shows that the metaphor used by defendant's counsel was not wholly understood. He says that in both these cases "two blades of grass grew where one grew before." As a matter of fact, in the cases cited by him there was no case of a new blade of grass growing, there was simply a remnant left by subtracting a part from the whole. Following this statement the court states that the cases are not cited as similar or analogous cases, but merely to show that such questions may arise in human affairs. We take it, however, that this qualification would not deprive the statement of its viciousness which lies in the fact that there was presented to the jury's mind instances in one case or in both cases where but one-half of a completely identical bailed object was used in the active part of the bailment as being in some sense analogous to an instance where the waste from the process of manufacture was turned into a valuable produce. In other words, the court confused in his mind and presented to the jury the confusion of a fraction of the original bailed thing and the change through ingenuity of a waste by-product to a thing of value.

## VII.

## DAMAGES.

Under this heading we insist that there were three errors made by the trial court.

A. *There was no evidence of value proven.*

Upon this ground the court should have directed a non-suit. It is true that a number of experts were placed on the stand and were asked to testify concerning the value of certain products. This testimony, however, was not definite in its nature and would not clearly relate to the items in suit, nor were the methods of arriving at the value of them such as would entitle the estimates of value to evidential dignity. They were apparently mere guesses, based neither upon the knowledge of the market nor upon a knowledge of the specific articles; nor was there any effort to prove that there was no market value for the articles, so that there might be introduced evidence secondarily of their true or actual value. The cases dealing with the measure of damage in our state are meagre, but we take it as clearly established by them that primary basis for damages in a conversion action is the market value at the place and time of conversion.

*Dimmock* v. *U. S. Bank,* 55 N. J. Law, 296, at p. 304.

*Wyckoff* v. *Bodine,* 65 N. J. Law, 95.

In this rule the basis of damage assimilates itself to the rule applied in the case of breach of contract for the purchase of goods.

*Massman* v. *Steiger,* 79 N. J. Law, 442, and cases there cited.

We think it clear from these cases that before secondary proof as to true value as distinguished from the market value of an article can be introduced, the article must be shown to have no market value. This

rule is borne out by the case of *Douglas* v. *Mercales*, 25 N. J. Eq., 144, holding that under reference to ascertain the market value of certain stock on a given day, the intrinsic value of the stock should not enter into the estimate *unless* there has been no market price within a recent period.

To the same effect see the case of *McCormack* v. *Hamilton*, 23 Gratt., 561, at 577; *Hinde* v. *Liddell*, 10 Q. B., 265. We submit that the testimony of plaintiff's witnesses on the question of value in the case at bar was not and cannot be argued successfully to be a statement of market value. The testimony of the witness Maxwell is a fair sample and an examination of his testimony will clearly show that the basis of his opinion was in no sense market value, but what he considered the real value of the product, which real value be obtained by figuring the value of the product after finishing and deducting therefrom the cost of finishing. It is held that such a process as a method of determining market value, would be clearly preposterous, the evident object of the testimony being to obtain Mr. Maxwell's opinion of the actual value of the property at that time. It is interesting to note that Mr. Maxwell in his testimony admits that he had never sold a shank split or heard of its sale; that in fact he had never handled this article as such, the nearest approach being a whole butt split of which the shank split formed a part.

B. *The court erred in charging that interest could be recovered.*

While we admit that in many jurisdictions interest upon recoveries for conversion is permitted from the time of the conversion, we are unable to find authority in our state for that proposition, and we think that the true rule is that established by the early case of

*Spear* vs. *Van Orden*, 34 N. J. Law, 653,

where it is held that interest is not recoverable upon unliquidated damages. In that case there was alleged

the beating and killing of a heifer. On certiorari the judgment allowing interest was set aside. We cannot see that in principle this case differs from the damages recoverable in a conversion action. We take it that the theory upon which interest is allowed in any jurisdiction is that it is in a measure a compensation for the period during which the owner is deprived of the value of his goods. We do not agree, however, with the doctrine which allows interest as such, and we believe that in all cases the question whether interest should be allowed is one to be submitted to the jury and not to be charged by the court. The law, we take it, is clearly stated in

16 *Am. & Eng. Ency.*, Vol. 2.

where it said:

> "It has been held that interest *eo nomine* is not recoverable in actions *ex delicto* for damages to property and according to this rule it has been adjudged error to instruct the jury that they may allow interest *eo nomine* on the amount of damages found from the date of the injury."
>
> *Reading, etc. R. R. Co.* vs. *Balthaser*, 126 Pa., State, 1.
>
> *Emerson* vs. *Schoonmaker*, 135 Pa. State, 437.

We would also suggest for the consideration of the court, although we do not find the distinction made in the adjudged cases, that in any event interest should be allowed to run only from the date of a demand upon the defendant for the return of the goods, in a case such as that at bar, it being only from such demand that the plaintiff can be said to have been deprived of the goods. As interest was claimed from the dates of the alleged delivery of the goods as shown by the yellow slips, we submit that the court erred in the date from which it might be charged.

C. The court charged that the full amount of the plaintiff's declaration, $23,000, was recoverable, if

anything was recoverable. This charge took from the jury first, the right to determine whether there had been substantially proven a conversion of all of the articles claimed for in the declaration. It might easily be that the jury was satisfied with the proof as to one item and dissatisfied with proof as to another. Under such circumstances it might be that the jury would have found that the total value of the buffings, for instance, was a certain sum of money, less than that claimed by the plaintiff. Under the charge that they were to find $23,000 or nothing this right to determine upon the proof as to the conversion of the specific articles was completely denied them.

In the second place, it denied them the right to pass upon the testimony pro and con as to the value of the specific articles. It might be, for instance, that while they agreed with the plaintiff as to the value of the buffings they disagreed with the plaintiff as to the value of the shank splits and found them to be worthless, in which event they could by no possibility have arrived at the figures claimed by the plaintiff's counsel in his summing up.

Again, it took from the jury absolutely the right to weigh the evidence, more or less conflicting, of the experts, and to determine for themselves what was the true value of each of the articles. The case was not one which presented uncontroverted testimony as to the exact value of the goods, but was a case in which the experts differed as to the amounts, not only the experts of the defendant from those of the plaintiff, but the experts of the plaintiff from one another.

Under these circumstances the court in charging that the jury must find $23,000 as the damages became in effect the jury for the purpose of assessing the damages, and confused once more the functions of court and jury.

To summarize briefly, we would therefore claim in the first place that the defendant's whole case has been

rested upon the theory of fraud, which it failed to establish; in the second place, that the whole proof of conversion and delivery was based upon supposed admissions, themselves based upon the unestablished fraud, and were incompetent as evidence; that in the third place the court permitted to be used as memoranda, not only, but to be introduced as evidence, copies of books which from the testimony of the witness were not memoranda, and under no circumstances even had the ledgers been produced should have been used as evidence; that in the fourth place, assuming the plaintiff to have shown title to the goods, no conversion of them was shown; in the fifth place, that the plaintiff failed utterly to prove title and in fact established the title of Guigues to the goods, and that the court not only erroneously refused to non suit for failure to prove damage, but erroneously charged on the question of the amount of the damages, for the conversion, and on the question of interest thereon, but further admitted prejudicial testimony as to the cost of processes of tanning, not in issue in the case, and called the jury's attention to bailments not in any respect analogous or similar to the one in suit, to the prejudice of the defendant.

We take it that any of the grounds set forth in the foregoing brief and here summarized is sufficient to justify this court in the reversal of the judgment below; that in combination they are unanswerable, and that this court must reverse the judgment below and direct a *venire de novo*.

Respectfully submitted,

RIKER & RIKER,

*Attorneys for and of Counsel with Plaintiff in Error.*

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# New Jersey Court of Errors and Appeals.

CORONA KID COMPANY, suing, etc.,
*Plaintiff-Defendant in Error,*
*vs.*
JULIUS LICHTMAN,
*Defendant-Plaintiff in Error.*

*In Tort.*

## Brief of Plaintiff-Defendant in Error.

### FACTS.

The plaintiff below, defendant in error sued in trover to recover the value of certain goods purchased by the defendant below, plaintiff in error, of one Albert A. Guigues consisting of "grains from cordovan after tanning," "shank splits" and "dry tacked out butt buffings from cordovan butts," all of them being portions of horse hides which had been entrusted to Guigues by the plaintiff below to be tanned for it. The suit at bar was brought by the Corona Kid Company of Massachusetts. The sales involved are in the period between November 28, 1904, and September 7, 1905. The dealings between Guigues and Lichtman ran from July, 1904, to some time in the year 1907, but the early part of the dealings are more than six years prior to the commencement of the suit.

Under a written contract (Ex. P. 1), Corona Kid Company, plaintiff below, shipped to Guigues' factory large quantities of horse butts, that is, the portion of the horse hide covering the buttocks of the animal. This was made up of the shell portion and

the shanks, the shell portion being so called because along with the usual hide fibre nature has put a kind of horny substance where the whip would fall. The shanks are the portion of the hide covering the hind legs of the animal. Guigues was to tan the shell portion by the process of bark tanning into a kind of leather called Cordovan while the shanks were to be tanned by another process, that of chrome tanning.

In the usual method of tannage of the shells into cordovan, the grain or hair side of the hide was shaved and these shavings were waste from the standpoint of leather and along with other similar trimmings, the flesh scraped from the hides and the hair that was taken off would by the custom of the trade belong to the tanner. Shortly after the commencement of operations Guigues substituted for this shaving the process of splitting, taking from the shell portion of the butt, by the splitting machine, a layer from the grain or hair side of the shell. Not only did he take off in splitting what had before been done by shaving, but took a further quantity of the fibre making the piece that was thus obtained of heavier substance, and more valuable, and at the sacrifice of or injury to the finished cordovan or shell (pp. 77, 80, 329). This splitting of the grain side from the shell could be done in such a way as to take off a grain that was not of uniform thickness, or the machine might be so set and operated as to take off a grain that was of uniform thickness. These grains of uniform thickness are called buffings. Large quantities of both kinds of grains were sold by Guigues to Lichtman.

Guigues also split the shanks, that is, used the splitting machine to divide the shank portions of the hide into two layers; one the upper or grain side of the hide, and the other the lower or flesh side of the hide, called the shank split. Guigues sold to Lichtman several thousands of these shank splits, in a pickled condition, that is to say, they had not been fully

tanned but had gone through the process of the Guigues factory so far as pickling. This pickling is a process that not only plays a part in the tanning of the hide, but has a preservative effect (pp. 12, 17, 402).

The first contract (Ex. P. 1), did not provide for the making of any of the articles in question, namely, grains from cordovan after tanning, shank splits, or dry tacked out butt buffing, and therefore did not expressly call for the return of any such articles. As to the grains or buffings it might be claimed that Guigues had only done by splitting what had before been done by shaving; that as these shavings were waste in the process of tanning and were not to be returned by Guigues to the Corona Kid Company so he might retain the splittings that his ingenuity had taken off as a substitute for the waste. The plaintiff therefore produced testimony showing a later verbal contract in November, 1904, by which it was agreed that Guigues should pursue this method of splitting and should tan the grains thus split off. As to any of the articles in question sold by Guigues to Lichtman, if produced after that verbal contract, plaintiff below contended that the contract showed that they were its property because by that verbal contract Guigues did not sell these grains to the Corona Kid Company but contracted to do the work of tanning upon them at so much a foot, treating the grains as the property of the plaintiff below, and himself as a contractor working upon the property of the plaintiff; also the contract was a recognition of ownership by Corona Kid Company, plaintiff below, of the grains, etc., if produced prior to the making of the verbal contract.

Plaintiff below also endeavored to establish its ownership of the articles sold by Guigues to Lichtman by offering proof of his method of dealing with them, namely, that he con-

cealed the making of them from the plaintiff below when one of these grains thus split off was discovered, gave a lying explanation of it; that he further concealed the articles after production by storing in dark or locked off places in order that they might not be discovered by Mr. Baker, the president of the Corona Kid Company, plaintiff below, on his frequent visits to the Guigues factory; that he kept a private set of books, distinct from his regular books, in which he entered sales of the articles in question and of similar articles, most of these being to Lichtman; that he had a bank account separate from his regular bank account through which he put the payments that came to him from Lichtman for the goods in question.

Plaintiff also sought to establish its ownership of the articles in question by proof of trade custom under which, in the absence of contract on that point, articles such as these produced in the course of tanning by a tanner of hides belonging to another would be returned to the consignor, the tanner retaining nothing but the waste such as the hair, the fleshing, and the little scraps taken off in trimming the hide.

Plaintiff not only relied upon this proof of concealment as tending to establish its ownership of the articles in question, but also offered this proof as a part of the circumstances surrounding the conversion of the articles, treating Guigues and Lichtman as engaged in a joint conversion.

Plaintiff below, defendant in error, produced as a witness an employee of Guigues who during the entire period of the transactions in question had been his chief assistant in the management of the business and his bookkeeper in charge of the books. This witness, Joshua L. Elliott, had taken a copy on yellow sheets of the Lichtman account as contained in the private books above mentioned, and plaintiff below sought to have these "yellow sheets" or copies of the Lichtman account used as memoranda to refresh

the recollection of the witness as to the sales to Lichtman therein recorded as well as the payments by him, and to refresh his recollection of itemized statements of account (made up from the book of which the "yellow sheets" were a copy) presented by the witness to Lichtman. At a later point in the case plaintiff below offered the "yellow sheets" themselves as evidence and they were received and marked as exhibits.

The defense did not deny that it had purchased of Guigues articles of the kind sued for; in fact defendant below admitted it and produced contracts with Guigues under which it had arranged to take from him large quantities of these articles (Exhibit D. 23, Schedules A and B). Defendant below did not deny the prices at which it was shown Lichtman had bought these articles of Guigues, nor did it produce a single witness from the many employees in the Guigues factory to contradict the proofs of concealment and deception that had been offered by the plaintiff below. The general line of defense was to put the plaintiff below to the strictest proof, to interpose objections to the admission of the evidence by which it sought to establish its case, prove by experts that the articles in question produced by Lichtman were his property by virtue of a trade custom giving the tanner the right to retain all parts of the hide not specified to be returned by the contract under which he was working, together with the denial by Abraham Lichtman, son of defendant below, of any knowledge at the time of his purchase of them as his father's agent that they were not the property of Guigues, denial of specific conversations by which the plaintiff had sought to show guilty knowledge and collusion in the mind of the said Abraham Lichtman, and a further limited denial by Julius Lichtman of particular conversations and of the number of his visits to the Guigues factory.

The plaintiff in error, defendant below now rests its case before this court on certain points raised before the learned trial judge with additions which we think were not brought to his notice and that are not covered by any exception that was allowed. The brief served upon us is a general discussion of the points without specific reference to the exceptions or the assignments of error relied upon as presenting them. We will take up these points in the order in which they are presented in the brief to which we are replying:

## I.

## THAT CONSPIRACY, FRAUD OR COLLUSION OF THE DEFENDANT WAS NOT PRESENTED BY THE ISSUES.

This point rests upon the premise that the plaintiff's action had for its ultimate foundation charges of fraud and conspiracy. We think this premise is unfounded as the plaintiff's claim was for the conversion of articles belonging to it and it was not essential to the support of this claim that the plaintiff should show a conspiracy between Guigues and Lichtman. It was impossible to develop the plaintiff's case, however, without showing such fraud as was involved in it. It was incumbent upon the plaintiff to show first its ownership of the goods that were sold to Lichtman. This could be very properly shown by any act or admission of Guigues that showed that he regarded the articles sold to Lichtman as the property of the plaintiff below, and the proof of his concealment of the processes of manufacture and of the fact of the sale and all the rest of the concealment was evidence of that character. It was also incumbent upon the plaintiff to show that the goods in question had come into the possession of Lichtman and under what circumstances. Further-

more, if circumstances surrounding the purchases were such as to show that the defendant below bought of Guigues knowing that Guigues was not the owner or under circumstances that charged him with such knowledge as a fair inference from the facts brought to his knowledge, this line of proof would of itself show a conversion in the very purchase of the articles and taking them into his possession without regard to his subsequent attitude towards the true owner and without the need of any demand from that owner upon him for the return of the article. There were also two other points of view from which the proof of Guigues' fraudulent dealings and Lichtman's participation in them, or purchase with knowledge of them, was admissible, namely, as laying the foundation for the admission in evidence of the conduct of Guigues as that of one of two joint tort feasors admissible against the other of the two, and as justifying a claim for punitive damages at the hands of the jury. It was also impossible to properly open the case intended to be made by the plaintiff within the pleadings without reference to the fraud by Guigues and the knowledge of it or participation in it by Lichtman. In the course of the charge the learned trial judge said that while fraud of the defendant was not an essential part of the plaintiff's case in trover nor asserted in the declaration the opening of counsel had put upon the case a different complexion, because it had contained the statement that the conversion of the goods was collusive, but when this is read in connection with the paragraph on page 498 beginning with line 28, it is clear that the learned trial judge was only referring to the mention of the fraud as tending to show a joint wrong in order to make admissible declarations and conduct of Guigues in the course of the joint wrong. The language of the charge is:

> "Evidence having been offered on behalf of the plaintiff which tended to show collusion and con-

> spiracy, the acts and declarations of the joint wrongdoers became, for the immediate purpose of putting in and developing the plaintiff's case, evidence against one another. In this way the plaintiff's case has been built up. If the testimony offered on behalf of the plaintiff to show collusion were struck out, there would not be enough left to found a verdict on in favor of the plaintiff. The charge of fraud was the bridge that carried the plaintiff over and enabled him to prove collusion. He cannot now kick down the bridge on which he crossed. Consequently, the case must now be tested by the theory on which it has been tried. In short, the plaintiff has treated the action, not as a mere ordinary action of trover to try title, but as a fraud case in the form of trover, and unless he proves fraud to your satisfaction, your verdict must be for the defendant."

In other words, the plaintiff has tried to show conversion under circumstances of fraud, and testimony has been made admissible by proof of fraud; if the proof that shows fraud is eliminated there is nothing left of proof of conversion because the only proof of conversion is the conversion under circumstances of fraud. We respectfully submit that this view of the plaintiff's case was incorrect and that there was enough in the case to show conversion by the defendant without resorting to circumstances showing fraud. The court might have told the jury that certain testimony had been admitted only upon the assumption that there was proved to the satisfaction of the jury the joint wrong that was the foundation of its admission and might have instructed them to disregard that testimony if that foundation was not established, but we recognize that it would have been a difficult task for the jury to have thus discriminated, and so it may be that the learned trial judge was justified in telling

them comprehensively that the plaintiff must have established fraud in order to recover.

The joint tort feasor theory as the basis for admission of testimony was not at first presented to nor relied upon by the learned trial judge. When the plaintiff below offered testimony (that of Mr. Baker, president of the Corona Kid Company) of the accidental discovery by him in the Guigues factory of a piece of leather consisting of the grain that had been split from the cordovan or butt, Guigues' lying explanation of it was that it was a mere experiment, (the fact being that he had taken off thousands of these grains by processes concealed from Baker and had sold them to Lichtman), and of the new contract made verbally with Guigues to thereafter pursue that method of splitting and to tan the grains thus obtained in chrome, no objection was made that fraud was not within the issue (see page 13, line 40; all of page 14, and page 15 to line 10). Then when the plaintiff sought to show by Mr. Baker the system of reporting by Guigues as to the disposition made by him of the hides sent to him for tanning, the objection was made on the ground that Guigues' reporting could not bind the defendant. The court permitted the testimony as a part of the history of the case (page 19). Then came testimony by Mr. Baker as to complaints by him to Guigues of shortages with a view to showing Guigues' deception and lying explanations of the shortages, all as part of the conduct of Guigues tending to show that the goods in question belonged to the Corona and that Guigues had no right to sell them to Lichtman. Here again the objection was made on the ground that complaints between the Corona Company, plaintiff below, and Guigues were not relevant or material. It seems clear that all of this line of testimony was admissible along the lines that have been indicated, namely—as part of the history of the case, the circumstances leading up to and surrounding the

production of the articles in question and their sale by Guigues to Lichtman, the ownership of them as shown by the conduct of Guigues, on whose title or lack of title the defendant below must stand or fall. And it may be assumed that these points were presented in the argument and discussion that is not recorded in the printed case in the transcript of the testimony but is there indicated. In the endeavor to meet the renewed objection and the further arguments that were being presented, counsel for the plaintiff put forth another ground of admissibility of that line of testimony, namely—that Guigues and Lichtman were joint tort feasors in combination to defraud the Corona Kid Company by the conversion of goods belonging to it, and then the objection was made on behalf of the defendant below that such collusion, or conspiracy, or fraud were not within the issues (page 20). The court, it will be seen, declined to rest the admission of this testimony upon the joint tort feasor theory but ruled that the evidence was admissible as a part of the history of the transaction between the plaintiff and the bailee. (See page 20).

When the witness was called upon to tell the answer made by Guigues to these complaints, objection was renewed on the ground that it was a conversation not in the presence of the defendant, therefore not binding on him. Nothing was said about its not being within the issue, but after the argument in which presumably all the reasons already presented for its admissibility were argued, the learned trial judge announced that that and testimony of similar character would be received as tending to show a fraudulent conspiracy between the defendant and Guigues "which conspiracy will, it is said, explain the fact of the obtaining of the goods by the defendant" (p. 24). As one witness was called to tell of instructions from Guigues for the concealment from the plaintiff below of the production of the articles in question, point that such proof

was not within the issues was again ruled upon by the learned trial judge who held that it was admissible as showing the circumstances under which the defendant acquired the property and on the further ground that though a conversation between the witness and someone other than the defendant it was admissible against the defendant under the joint tort feasor theory adopted (p. 32-35). The yellow sheets were based upon several grounds, one of which was that the entries in the books of which the yellow sheets were copies were statements made by Guigues and that Guigues "was one of two people engaging in a joint wrong that was being perpetrated upon the plaintiff company." The objection was on two grounds that the sheets were only copies of books belonging to Guigues and that no attempt had been made to produce Guigues nor account for his absence; second that even if the original books were there they would not be admissible; that by the law merchant books of account were admissible as between the parties to the dealings recorded therein but not as against any one else. There was no objection that they were part of the proof of fraud that was not within the issue (pp. 116, 117, 1st ten lines p. 118, p. 122). The ruling of the court was that the non-production of the original books had been sufficiently accounted for; that the admissibility of the books or the copies did not rest upon the law merchant; that the plaintiff was entitled to show among other circumstances of the conversion that it was wrongful or fraudulent (p. 125). Further that there was evidence tending to prove collusion between Guigues and Lichtman and the statements of one done and made in promotion of the common and lawful purpose were evidential against the other. The court having announced decision further argument was presented on behalf of the defendant below on the point that such evidence called upon the defendant to meet an issue of which he was not apprised by the

pleadings. (For this objection and the court's ruling see page 127 and 128). We have referred to the development of these objections at the trial at some length as showing that the admissibility of the line of testimony that is now under criticism was urged upon other grounds than that of the joint tort feasor doctrine; that these other grounds were for a time accepted by the learned trial judge as sufficient and that the objection to the line of testimony was not originally upon the ground that proof of fraud was outside of the issues, and for further reasons that will appear in connection with another phase of this point. We think that every bit of the testimony that was admitted by the court on the ground that it was a declaration or act of one of two joint tort feasors, was equally admissible as proof of the circumstances surrounding the conversion of the plaintiff's goods, and as showing the recognition by Guigues of ownership in the plaintiff below. The case, however, was submitted to the jury upon the theory that the plaintiff below was bound to establish fraud in order to recovery. While this was, we think, incorrect it was the least favorable to the plaintiff and even on that limited view of the plaintiff's rights the jury found for the plaintiff.

The discussion of the learned trial judge of the case of *Bordine* vs. *Combs*, relied upon by the defendant below and of the nature of the action of trover is, we submit, a luminous explanation of the relevancy and materiality of all the proof of fraud or collusion so much objected to as part of the circumstances surrounding the conversion as "narrative matter links in the evidential chain." (See p. 33, p. 124, l. 25; p. 125, l. 20, 35; p. 128, l. 20, 25).

In the elementary statement of the nature of the action of trover found in 38 Cyc., at page 2024, it is said:

> "It is well established by numerous authorities that it constitutes a conversion to receive

property from one who has no right to part with or dispose of it, and thereafter to use, sell, or exercise dominion over it, whether with knowledge of the owner's rights with respect to such property or in good faith without any notice whatever of the rights of the owner." (Many cases cited.)

On page 2052 it is stated:

"The owner of a stolen chattel may recover for a conversion thereof, even if defendant be a *bona fide* purchaser for value, without notice of the theft, unless the chattel were a negotiable instrument," showing that trover lies for the recovery of stolen goods.

At page 2079:

"Evidence is admissible to show that defendant obtained the property by fraud as bearing on the character of his alleged act of conversion."

Then as the learned trial judge pointed out there is a large class of cases where demand and refusal need not be proven if a wrongful taking is shown. 38 Cyc., 2032, citing *Earle* vs. *Van Buren,* 7 N. J. L., 344, and many other cases from other states.

At 38 Cyc., 2104 is found the citation of a long array of cases in support of the proposition that exemplary damages may be recovered in an action of trover whenever it appears that defendant's taking of the property was characterized by malice, oppression or a wanton disregard of the owner's rights. These show that many cases are brought in the form of an action of trover where the conversion has been wrongful, malicious, fraudulent or oppressive.

In other words, the action of trover rests upon a fiction of law, the loss of goods by the plaintiff and the casual finding by the defendant, but the relief given under this form of action is not confined to the fictional state of facts and this action is extended

to embrace every kind of wrongful taking of the goods of another as well as the wrongful or unlawful retention of goods that have come lawfully into the possession of the defendant.

Further we submit that under the most literal and the narrowest view of the pleading fraud was an issue presented by it. The language of the pleading in this fictional form that we are discussing, after stating the loss and casual finding, is that the defendant "Well knowing the said goods and chattels to be the property of the said plaintiff, and of right to belong and pertain to it, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf, hath not as yet delivered the said goods and chattels, or any or either of them * * * and afterwards to wit, on the day last aforesaid, at Newark in the county aforesaid, converted and disposed of the said goods and chattels to his own use, etc." Under this allegation taken in its most literal sense, the plaintiff was at liberty to show the defendant's knowledge that the goods were the property of the plaintiff by his knowledge of all or any of the circumstances under which Guigues had appropriated them, and there could be no better proof of the defendant's retention of the goods with fraudulent intent than the proof that he had purchased them knowing that they were stolen.

In the argument before the learned trial judge a point was made for the defendant below plaintiff in error that the present action should have been brought in the form of action of trespass (p. 128, l. 20), and that, as admitted in that argument, was substantially the summarization of the defendant's whole position on this point. That this was clearly untenable we think has been sufficiently shown by the principles and authorities above referred to. As Chitty tells us:

> "The injury lies in the conversion and deprivation of the plaintiff's property, which is the gist

of the action and the statement of the finding or trover is now immaterial and not traversable." (1 Chitty's Pleading, p. 146.)

"Whenever trespass will lie for taking goods of the plaintiff wrongfully, trover will also lie." (2 Chitty's Pleading, p. 154.)

The same learned author also states that the declaration in the action, whether the conversion consists of an unlawful taking and conversion or unlawful retention and conversion, should be in the form that was used in the suit at bar.

This question as to the admissibility of the evidence on the theory that Guigues and Lichtman were joint tort feasors, we think will be more clearly comprehended if the nature of the joint tort is correctly understood. The fraud, or collusion, as we have pointed out, was one of the circumstances of the conversion. Both the fraud and the conversion are tortious. The fraud may be separately actionable in the form of an action on the case for deceit; the conversion actionable in the form of an action of trover. But the fact still remains that the fraud is one of the circumstances of the tortious conversion; not an essential element of that tort, but an incidental element. If Lichtman combined with Guigues to defraud the plaintiff below by the conversion of property belonging to it, he would then be participating in both the fraud and the conversion, and they would be joint tort feasors from the point of view of either the fraud or the conversion. If it be shown that Lichtman did not deliberately combine with Guigues in the fraudulent conversion, that is, if without premeditated confederation Guigues planned a fraud upon the plaintiff below in the conversion of its goods, that conversion taking the form of a sale of them, and Lichtman bought with knowledge that Guigues did not have the right to sell, we may still look upon Lichtman and Guigues as joint

tort feasors; for every sale supposes a purchase, the purchase and the sale are only two views of one act, and the acts of Lichtman and Guigues, the one selling and the other buying, combined to make one conversion, and that, too, a fraudulent conversion. What difference does it make whether Guigues and Lichtman plan in advance to perpetrate the fraud and divide the proceeds, or that Guigues does the planning and finding it essential to his plan that he should dispose of the goods obtains a buyer in Lichtman, and the latter with knowledge of Guigues' fraud and of his lack of title agrees to buy goods to be thereafter produced by him. The sale in that case becomes a mere cloak. No title passes and the only thing accomplished by it is that Guigues gets his share of the proceeds and the fraudulent conversion at once in the form of the purchase price paid by Lichtman. Lichtman's share comes later in such profit as he may make on the goods, having purchased them at less than their market price. If the proofs were that Guigues and Lichtman met and combined, agreeing that Guigues should produce the articles in question by robbing the hides entrusted to him by the plaintiff below, and that Lichtman should take these articles at a small fraction of their real value, paying Guigues therefor and thereafter selling them for what he could get, pocketing the profit, it would be clear that the price, as between Guigues and Lichtman was Guigues' share of a joint tort. If instead of thus meeting and formally combining, the same result is accomplished, Guigues robs his employer's hides; Lichtman knows that he is going to, and bargains with him to bring them to him. They are brought to Lichtman, paid for at a fraction of their real worth. Is not the combination or joinder in the fraudulent conversion as plain? Certainly it is a jury question whether the situation and relations proven to have existed between Guigues and Lichtman constituted

a co-operation in a conversion of the goods of the plaintiff below as well as a co-operation in the fraudulent methods by which that conversion is made possible and is accomplished.

The brief to which we are replying argues that fraud was not proven and that therefore the testimony based upon proof of fraud was improperly admitted. This involves some further reference to the testimony.

Theodore E. Conway, factory superintendent under Guigues, said that Abraham Lichtman was often at the factory with reference to the delivery of the goods (p. 37); that he, Abraham Lichtman knew the conditions and knew Conway's orders (p. 58, referring to the orders to conceal from Baker); that he told Abraham Lichtman "about the stock, about the covering of it over, and that Mr. Baker knew nothing about it" (p. 59).

Joshua L. Elliott testified that he received word by telephone from Abraham Lichtman that Mr. Baker was coming to the factory (from Boston) and that he should ship the goods out before Baker got there (pp. 93, 94, 188); that on one occasion Abraham Lichtman told him that he had been in Boston and saw Mr. Baker and Mr. Baker offered him some splits and that he came very near saying to him that he "was buying those things in Newark, off Guigues, for less than half the money" (pp. 138, 160). Elliott also testified that Julius Lichtman, the defendant, was at the Guigues factory several times during the period covered by the suit (pp. 156 and 157); that on one of these occasions he talked with him about stuff he was buying (p. 158).

Frederick C. Lauster testified that, at Guigue's instructions, he went to the Lichtman office some time in 1904, saw both Abraham and Julius Lichtman and asked them to come down to the Guigues factory and look over some grains that Guigues had to sell.

Abraham Lichtman admitted that at one time, in conversation with Mr. Baker, he learned that Guigues was tanning hides for the Corona Kid Company (p. 467).

Julius Lichtman, though denying that he had ever talked to Guigues about the goods that were bought for him by his son, gave as the reason that "my son was doing the business there and I do not want to interfere at all," implying that he knew what his son was doing but left it all to him (pp. 479 and 480); that his son was in full charge of the buying and selling (p. 483); that he went to the Guigues factory once and had some talk with Guigues on another matter, but knew at the time that his son had been buying of Guigues shank splits and buffings and grain splits from the cordovan after tanning (p. 485).

We are challenged to point to anything in the testimony "to show that the defendant Julius Lichtman knew of the existence of any fraud." We will have to at once admit that the testimony directly proving Julius Lichtman's knowledge is meagre but that is inherent in the very nature of the point to be proven, namely, Julius Lichtman's state of mind. It is often difficult to prove fraud by direct proof. Fraud lies in concealment and the fraud doer works under cover for this reason: the wrong-doer seldom admits his fraud and denies it when charged. The person charging fraud is therefore usually held to prove it by proving such circumstances, such situation of the parties, such conduct or declaration as justify the inference of fraud, and by that method we think the fraudulent participation by Julius Lichtman in the fraud that undisputedly was being practised by Guigues can be demonstrated to a degree sufficient to satisfy an intelligent jury.

In the first place the testimony above referred to brought knowledge of and participation in the fraud

directly home to Abraham Lichtman and he was admittedly his father's general agent and made the original arrangement with Guigues by his father's instructions, and this deputization of the son by the father extended and continued through all the succeeding purchases, and the course of dealings between Lichtman and Guigues, covering a period of some years and involving many thousands of dollars. These dealings began certainly as far back as July 26, 1904 (see Ex. D. 13, p. 406 of Case), and they continued from that time on so that at the time of the first sale that is covered by the plaintiff's claim in the present suit these dealings had been running for about five months, and Julius Lichtman stood by aware of his son's transactions in his behalf. The son made frequent visits to the Guigues' factory, sometimes two or three times a week (p ). The wagons were bringing goods from Guigues to the Lichtman factory almost daily (p. ). The relations between the agent Abraham and principal Julius were closer than is usual between principal and agent because they were father and son. The hides from which the splits were taken bore the imprint of the Corona Kid Company. We are not told whether this stamp was put upon the flesh or the grain side of the tanned hide, but Lichtman got some from both sides. The "grains from cordovan after tanning" were the grain side of the butt, and the "shank splits" were the flesh side of the shanks. Julius Lichtman knew Guigues; had known him for years (p. 479); went to him for friendly advice (p. 479). Guigues was tanning no other hides than those that belonged to the Corona Kid Company (p ). It is therefore probable that both Abraham and Julius Lichtman learned that the goods they were buying came from hides that belonged not to Guigues but to the plaintiff below.

All these goods were bought for Julius Lichtman and came to him; were paid for by his money and

the handling of them after their purchase by their subsequent sale or otherwise, was in his behalf and for his profit. He got the benefit of the transactions and they were large, extending over many shipments and many days and weeks of time. It is therefore probable that he knew that much of his own affairs by direct contact with the goods as well as by reports from his son.

Here too is an important circumstance, that he got the goods at very much less than the market value. He was in the business of buying and selling pieces or portions of tanned hides such as these, and had been for years. Presumably he knew all about market value as well as real value, and he must have known whether or not he was paying a reasonable price for the articles in question or buying them at very much less than their value. The plaintiff's proofs showed that the grains and buffings for which he paid first $.15 per pound and later $.20 were worth $.50 to $.60 per pound (p. ). The shank splits for which he paid $.35 a dozen were worth $.96 (p. ). It will be noticed that there was not one single witness on behalf of the defendant to testify in contradiction of these values, except some witnesses called to prove that by trade custom these articles belonged to the tanner and most of these witnesses based this upon the idea that the articles in question were glue-stock and not such as could be tanned into leather profitably. It was evident that if truthful in their statements they were mistaken and were giving their own personal experience and that a very limited one in these kind of articles, or that it was their own lack of skill that had made them unsuccessful in tanning, or the fact that their experience had been in other lines that had given them the belief that these articles were not such as could be profitably tanned. It is plain from a reading of the case that the grain side of the hide is the one of greatest value and that

these grains from cordovan after tanning were high grade leather. The value of the testimony to the contrary may be judged by reading that of one of the defendant's witnesses, Mr. James J. O'Neil. He said that the shell portion of the butt, the grain having been removed, was only fit for glue-stock and that that was the way it had been treated by him in his own experience of the tanning of horse butts. How absurd and of little value this is, is shown by the fact not disputed in the case that it was that shell portion that was tanned in bark at the Guigues' factory for the plaintiff below and made into a highly valuable form of leather known as cordovan and sold by the plaintiff below in great quantities. At any rate, there was ample testimony from which the jury might have concluded that the defendant Julius Lichtman bought the articles in question for very much less than their real value, and that fact, we say, is of importance and was entitled to great weight in their minds in determining the proposition that we are now discussing—Did Julius Lichtman know of or participate in the fraud that was being practised upon the Corona Kid Company by Guigues? This it will be seen is a consideration that is free from any question involved in the points made by the defendant below that the fraud of Abraham Lichtman, if proven, was not imputable to Julius Lichtman or that the knowledge of fraud by the agent was not imputable to the principal. If Julius Lichtman had been on trial under indictment on the charge of receiving stolen goods, knowing them to be stolen, the proofs that were presented in the case at bar would have been sufficient to justify a jury under all the restrictions of the criminal law as to reasonable doubt in finding him guilty of that crime. In such a trial the purchase of the goods at less than their value would be of weight in establishing his guilt.

In *State* vs. *Goldman,* 65 N. J. L. p. 394, conviction on an indictment charging the receiving of stolen goods, knowing them to have been stolen, was under review, and the court said:

> "Knowledge in cases of this kind, of course, may be proven either by direct evidence or by facts and circumstances which impute guilty knowledge" (p. 397).
>
> "Guilty knowledge may be found by the jury where the defendant receives the goods under such circumstances as would satisfy a man of ordinary intelligence and caution that they were stolen" (p. 398).

While the court said that the proof must be that the defendant had knowledge, not that he suspicions, it also said that suspicion may be a part of the circumstances from which knowledge may be inferred, and the court held that there was no error in the charge "that the purchase of the goods very much under their value was an element upon the question of guilty knowledge."

It is one of the settled rules of the criminal law that while the burden is on the State in the trial of an indictment for receiving stolen goods to prove the stealing, "recent possession of the stolen property casts on the defendant the burden of explaining his possession" (34 Cyc. p. 524). It is equally apparent that a man charged with fraud should be eager to deny and the very fact that he resorts to technical defenses to establish his innocence instead of meeting the charge by a prompt denial may be reasonably a significant fact against him and may help to establish his guilt. If the man charged with fraud goes on the witness stand and does not deny it categorically, or at least in every particular that he has been put to denial by the proof against him; if he fails to assert that he had an innocent mind; that his mind was clear of fraud—that failure to deny may be

so added to the proof, direct or circumstantial, that he was called upon to meet as to make that which would have been of itself only sufficient to put him to explanation, now sufficient to demonstrate his guilt.

If the court will turn to the record of this case it will see that Julius Lichtman was called as a witness in his own behalf (see p. 478); that his direct testimony occupies two pages and a half of the record and that after the preliminary questions as to his business, his residence, and his acquaintance with Guigues, he said that he only saw Guigues once, and then not about the purchases from Guigues; that he never talked with him about those purchases, because he did not want to interfere with his son's handling of it; that he saw Elliott on the one occasion that he talked with Guigues, but never talked with him about the business that was being done with Guigues, for his account, by his son that he never had anything to do with Lauster and never telephoned to the Guigues factory nor instructed anyone to do so. There was no assertion by him that he did not know of his son's transactions with Guigues and purchase of goods, or that he did not know the character of the goods or the prices paid for them (he admitted on cross examination that he knew the kind of goods that his son was buying (p. 485), or no statement that he did not know that Guigues was working entirely upon hides that belonged to the plaintiff below, nor that the goods he bought came off these hides, nor that he did not know of any concealment of them, or that he did not know anything of the conduct of Guigues with reference to them that had been put in evidence as showing concealment and fraud, or that he bought in good faith, supposing Guigues to be the owner.

It is contended by the defendant below and plaintiff in error that, admitting Abraham Lichtman's agency for his father, it would be presumed to be an

agency to act lawfully unless there be proof in the participation by the principal in the improper conduct or proof of his subsequent knowledge and acquaintance in and acceptance of the benefits of his agent's wrong doing. This point does not seem to have been made at the trial, nor to be covered by any of the assignments of error. Furthermore, we think the above review of the testimony shows that there was sufficient proof from which participation by the principal, or proof of his acquiescence in and acceptance of the benefits of his agent's wrong doing, might have been inferred by the jury, and sufficient to put the defendant to denial thereof, which denial was conspicuously lacking.

It is further contended that an agent's fraud may not be imputed to his principal unless it be shown that the latter had knowledge of the fraud. It is true that the courts of this State, in the cases cited on the brief of the defendant below, plaintiff in error, appear to have followed *Kennedy* vs. *McKay*, 43 Law, 288, in the view that a principal cannot be held for the fraud of his agent. In the expression of such a rule the decision in *Kennedy* vs. *McKay* was a clear dictum. The court first found that there was no proof of agency and went on to say that even if there had been, the fraud of the agent could not be imputed to the principal. This view was rested upon the English case of *Udell* vs. *Atherton*, 7 H. & M., 172, which was later repudiated by the English courts in *Barwick against Eng. Joint Stock Bank, L. R.*, 2 Ex., 259. The text books generally and the courts of most of our States have laid down a contrary rule, viz, that the principal is responsible for the fraud of his agent in the course of his employment, and we can see no reason why a principal should not be held as well for his agent's fraud as for his agent's negligence. It may be that the New Jersey cases referred to are not to be regarded as holding broadly that the principal is in no way responsible for his agent's fraud, or that

the fraud of the agent cannot to any extent or in any manner be imputed to the principal. It may be that they are only to be regarded as holding that the principal cannot be held answerable for the fraud considered by itself in an action on the case for deceit; or it may be that some distinction is to be made in the case of a special agent from that of a general agent. One of the cases cited on the brief for plaintiff in error, viz, *Reitman* against *Fiorillo*, 76 Law, 815, at page 816, distinctly holds that even though a vendor was innocent, the misrepresentations by his agent were imputable to him, so that he could not retain any benefit under a contract procured by his agent's fraud. This is thoroughly settled in this State. An agent's knowledge of fraud in a transaction, in the course of his employment, is imputable to the principal. *Story on Agency*, page 160, sec. 140;

*Stanley* vs. *Chamberlain*, 39 Law, 565;
*Sooy* vs. *Estate*, 41 Law, 394;
*Dresser* vs. *Norwood*, 17 C. D. (N. S.), 466;
*Boice* vs. *Conover*, 65 Atl., 191.

In *Dresser* vs. *Norwood*, it was held that if an agent buy of a factor, knowing that the goods do not belong to the factor, the knowledge of the agent is imputable to the principal.

Whatever may be the law on this point, we submit that the proofs as above reviewed were sufficient to go to the jury on the question whether or not Julius Lichtman had not actually known of the fraud that was being worked by Guigues, either before he made the purchases or obtained that information afterwards, retained the benefits of the purchases and ratified whatever there was of participation by his son and agent in the fraud at the time of purchase; further, that it cannot be and is not contended that a principal may not make himself answerable for his agent's participation in the fraudulent conversion, if he ratify his agent's acts with the knowledge of the

fraud, even though he did not authorize his agent to participate in any fraud. Further, we call the court's attention to the fact that the point that Julius Lichtman was not chargeable with his agent's participation in the fraud was not raised at the trial and is not presented by any of the assignments of error.

II.

THAT EVIDENCE OF CONVERSATIONS AND TRANSACTIONS BETWEEN PLAINTIFF OR ITS AGENTS AND THIRD PERSONS NOT IN THE PRESENCE OF DEFENDANT, AND NOT SHOWN TO BE AUTHORIZED BY HIM, ARE INADMISSIBLE.

It is sufficient, we think, to refer the court to the grounds upon which the learned trial judge based his rulings by which he admitted such conversations. The objection involves a misapplication of the rule prohibiting hearsay evidence. The conversation between the plaintiff below and Guigues, or the instructions given by Guigues to his employes, were all part of the circumstances surrounding the production of the articles in question sold to Lichtman, and were pertinent and relevant as bearing upon the question of the title to the articles in question, as well as the circumstances of their conversion. If I take my watch to the jeweler to be repaired, and without my consent or knowledge he sells it to B, I may sue B in trover and as part of my proof may show by my instructions to the jeweler that he had it for the purpose of repair and without right to sell; or if as I walk down the street I am met by a polite individual who engages me in conversation and in the course of it picks my pocket, purloining my watch, and then sells it to B, in proceedings against B, whether it be by criminal indictment charging him with receiving goods, know-

ing them to be stolen, or in action of trover without regard to whether he has bought with knowledge that the watch was stolen or in good faith, I may prove the stealing, including not only the fact that the watch was taken from my pocket but the conversation and circumstances surrounding the theft. Especially is this true if the case that I am endeavoring to make out in my suit for trover is that the purchaser bought, knowing that the seller did not have title or that the watch belonged to me, and that his conversion was a fraudulent conversion. If the conversation that is sought to be proved is itself a fact tending to prove any other fact that is in issue or relevant to the issue, the fact that the defendant was not present is of no consequence. It is only when the conversation is offered to prove another fact narrated in the conversation itself, a statement, that is, of some past event or condition, that it becomes objectionable under the hearsay rule.

## III.

## THE YELLOW SHEETS.

Much of the argument that is presented in support of the objection to the admission of these papers is, we think, met by what has gone before. These were memoranda that could be resorted to by the witness, Elliott, to refresh his memory and were also admissible as exhibits. As memoranda they were not open to objection as being copies, because if the original memorandum is unavailable a copy may be used.

> 1 *Wigmore, Section* 760; see also *Sections* 750-763, both inclusive.

They were not open to objection as not being the record of facts within the knowledge of the witness, because while some of the entries, in the books from which they were copied were not made by the witness,

in person, they were all made by persons who were under his instructions and the entries themselves were entries of shipments that he testified he had personal knowledge of. Furthermore he testified that he made up and presented to the defendant below statements of account that were made from the book of which the yellow sheets were a copy. If we had those statements they would clearly be admissible. They were in the possession of the defendant and when called for the defendant stated that he was unable to produce them, as they had been lost or destroyed (p. ). Thereupon Elliott could use the ledger, from which the statements had been made, or, in the absence of the ledger, the yellow sheets that were a copy of it, as memoranda to refresh his memory of the contents of the statements, and of course the proof that itemized statements were presented to Lichtman showing the shipments, the amounts, the prices and extensions, which after being checked by him were paid, was a proper and admissible method of proving the sale and delivery of the goods to him.

As an exhibit the sheets were admissible, perhaps not as books of account are admitted by rules that have grown up in the law merchant, but as statements by Guigues of the fact of sale to Lichtman, the items and details thereof, that is statements by one of two joint tort feasors, looking upon Guigues and Lichtman as joining in the tortious act of conversion and the fraud as one of the incidents of a conversion or one of the methods by which it was accomplished. So the yellow sheets were admissible as secondary evidence of the statements of account given by Guigues to Lichtman and approved by him. There was another ground for their admission as exhibits which was presented to the learned trial judge, but which he was reluctant to take, viz., that regarding them as memoranda, which though not refreshing memory, were the record of a past recollec-

tion on which the witness could safely rely, there was no reason why they should not be put in evidence. It is true that the theory upon which such papers were originally permitted to be used as memoranda was that the witness having his memory refreshed testified from that memory and that the memorandum was not documentary evidence. Under this theory, at first, if the witness was compelled to admit that the memorandum did not refresh his memory, if with it before him he still could remember nothing, he was not permitted to use it. But when the court passed beyond this point and permitted the memorandum to become the sole testimony, the witness's recollection not being refreshed and the witness only being able to state his confidence in it as a true record of some past recollection, there was no reason why the memorandum should not go to the jury. In *Cottentin* v. *Meyer*, 80 Law 52, the court approved the admission of a book as an exhibit, though only a memorandum and not admissible itself as original evidence under the rule that permits shop books to be offered. In *Myers* v. *Weger*, 62 Law, 432, this court held that to limit the memorandum to mere reference and use it merely to excite the recollection would be too strict a limitation; that in many cases the witness is unable to remember, even after looking at the memorandum, and can only testify "because the circumstances under which the memorandum was made affords satisfactory assurance that at the time of the entry its contents were known by the witness to be true. It follows that a witness in using his own memorandum may not merely refer to it, but may also testify from it. It may be added that the use of a memorandum rests very much in judicial discretion." We submit that this judicial discretion would naturally and reasonably lead to the treatment of the memorandum as the real testimony, and that if the witness' testimony from it consisted merely

in reading it, that reading might just as well be done by the jury themselves on inspection of the memorandum, such as was permitted in the Cottentin case.

While the book from which the yellow sheets were copied was not an original book of entry, this makes no difference, because the limitation to the original books of entry is only a part of that peculiar modification of the law of evidence that has permitted a merchant's self-serving record or entries to be used by him. The books in question were not self-serving entries, but were rather admissions against interest made by one of two joint tort feasors, and a part of the circumstances surrounding conversion.

It is objected that the absence of the original book of which the yellow sheets were a copy, was not sufficiently accounted for. We refer the court to the testimony and the ruling of the learned trial judge, with emphasis upon this proposition, that the party offering copies will not be required to prove that the attempt has been made to get the original, if it be shown that such attempt when made would be unavailing. The uncontradicted testimony in this case was that the original book was sought in a number of places where it might be expected to be found; that it could not be found; that it was a book which the owner had concealed and would be likely to conceal because of the damaging evidence contained in it; that Guigues, the owner of the book, had himself stated that it had been lost, and as to producing Guigues himself, it was shown that he was a resident of another State, not amenable to process, besides being in the very nature of the case as made out by the defendant's proofs hostile to the plaintiff below, not likely to render aid and assistance and certainly not one whom the plaintiff below would be likely to depend upon as its witness. It was one of the significant facts in this case, such as often appear, not as testimony but in the lack of testimony, that Guigues was not produced by

the defendant, whose interest it was to produce him to deny the frauds charged and to purge Lichtman of participation in them. The reason why Guigues was not called to deny would be apparent after reading the testimony of Julius Lichtman, the defendant himself, if it had not already become apparent. It could hardly be expected that Guigues would be produced to purge Lichtman of the fraud, if Lichtman himself was not willing to go upon the witness stand and upon oath deny his knowledge of it.

## IV.

## THAT THERE IS NO PROOF OF CONVERSION.

It is contended that there was variance between the goods claimed in the declaration and the proof, in that Mr. Baker testified that the grain splits sued for were products taken from the hides prior to tanning, whereas the declaration described grains taken after tanning. The testimony of Mr. Baker is not correctly stated. He was not describing the grains as actually produced, but stating the agreement for their production; that the articles sold to Lichtman were of the kind described in the declaration is abundantly shown in the testimony on pages 30, 31, 42, 47, 50, 80, 92, 179, 192, 195, 196, 197, 198, 201. It is true that the proof is that in November, 1904, there was an agreement between Baker and Guigues by which the grains were to be split off in the pickled state and tanned in chrome; but the proof also is that after that date Guigues continued to split off grains from the cordovan after tanning, so that, even if the articles in question went to Lichtman after that verbal contract of November, 1904, it would not follow that they were in the pickled state. And, furthermore, what difference does it make whether they were in a pickled state or tanned? If the articles sold were

half tanned instead of wholly tanned, it would not be a sufficient variation to prevent the plaintiff's recovery. It is further contended that no delivery was proven. It is true that we did not produce the truckmen who carried the goods, but we submit that there was ample proof in that we showed that the goods were shipped and were paid for after statements showing the shipments had been examined and verified by the defendant, besides which there were the admissions of both Abraham Lichtman and Julius Lichtman that they got the goods.

It is further contended that no quantity was proven. If the plaintiff had rested its case with general proof of shipment and the fact of delivery and nothing more as to quantity than the undisputed fact of payments by Lichtman by the checks that were produced, the jury would have been justified in finding a verdict for the plaintiff for the definite amount consisting of the total of these checks. It is further contended that no demand for the return of the goods was proven. There is no need to prove demand, if it is otherwise proven that the conversion was effected. Demand and refusal is only one of the methods of proof and not an essential element. The buying by Lichtman was itself an exercise of dominion; the taking them into his possession under such purchase was itself an act of dominion, besides which it should be remembered that these goods came to Lichtman without anything of title being vested in him by the seller (28 American & English Ency. of Law, pages 702, etc.). Furthermore, there was proof that Lichtman sold the articles after they came to his hands (Exhibit D. 23). *Gaskill* v. *Barbour*, cited on brief for plaintiff in error, was a case where the goods in question were assigned after conversion. Ours is a case where the cause of action arising from the conversion of the goods is assigned, and is therefore clearly distinguishable.

V.

THAT THE PLAINTIFF FAILED TO PROVE TITLE.

Plaintiff's title was proven first by the indisputable fact that the hides from which the articles in question were taken belonged to plaintiff below. They were parts of plaintiff's property, and plaintiffs ownership would not be affected by the act of Guigues in separating them from the hide. Further the contract of November, 1904, was a recognition by Guigues that they belonged to the plaintiff below. Further, there was a mass of proof of Guigues' conduct and declarations with reference to the articles in question that tended to prove his recognition and admission of plaintiff's title. If they were his, he would not have hidden them from Baker, nor lied about their production. Further, there was the proof that by trade custom, such portions of the hide, when taken off by the tanner, belonged to the consignor, though other parts taken off in tanning became the property of the tanner.

Further, there was proof that Guigues shipped to the plaintiff below at its order grains from the horse butts and shank splits, thus recognizing the right of plaintiff to have these articles from his bands (p. ).

## VII.

## DAMAGES.

The point that the court erred in charging that interest could be recovered seems to us to be hardly raised by any of the exceptions (see p. 516). That interest is allowable (see 38 Cyc., 2090, and cases cited in about 30 States and in the United States courts without any suggestion of conflict of authority).

The statement that the learned trial judge told the jury that if the plaintiff recovered anything it should be $23,000 is incorrect. What was said was (p. 505) that plaintiff's computation of damages was at least $23,000, the limit named in the declaration. In other words, the plaintiff could not recover more than the amount claimed in his declaration. But in the same sentence the jury were told that if they found for the plaintiff the measure of damages was the market value of the goods.

References to the brief of plaintiff in error have been made and relate to a preliminary draft served upon us in advance of the printed copies, which came too late for use, but we think that the arrangement of points is similar in both so that no confusion will result.

Respectfully submitted,

PITNEY, HARDIN & SKINNER,

*Of Counsel with Defendants below,*
*Plaintiffs in Error.*