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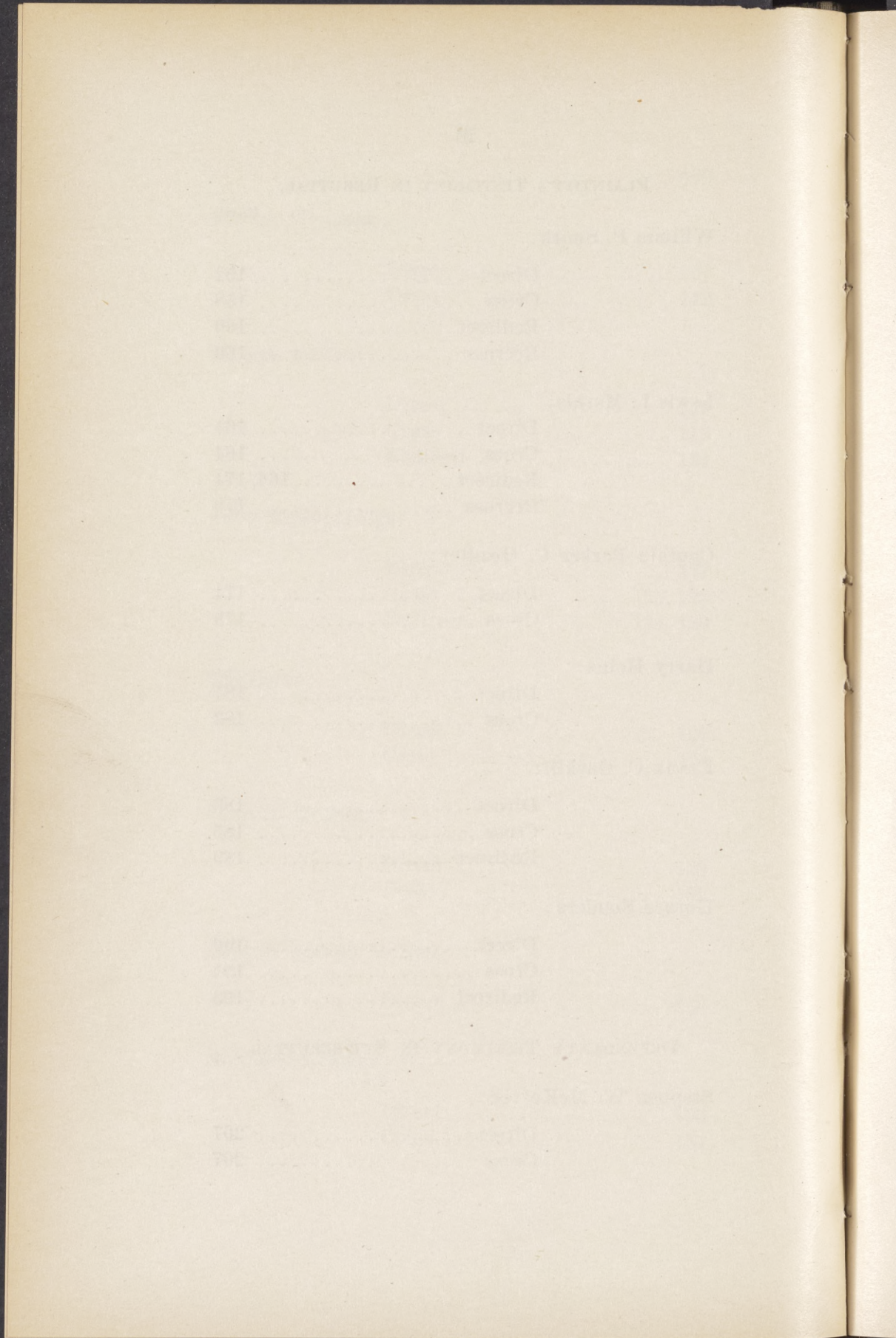
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New Jersey Court of Errors and Appeals

Notice of Appeal.

(Filed Jan. 8, 1917.)

NEW JERSEY SUPREME COURT,

10

BURLINGTON COUNTY.

BENJAMIN F. LOVELAND,
Plaintiff,

vs.

McKEEVER BROTHERS, INC.,
Defendant.

Notice
of Appeal.

20

To James Mercer Davis, Esq.,
Attorney of Plaintiff.

PLEASE TAKE NOTICE, that the defendant appeals
to the Court of Errors and Appeals from the whole
of the judgment entered in this case.

30

GRIFFIN & GRIFFIN,
Attorneys of Appellants.

40

Grounds of Appeal.

(Filed Feb. 6, 1917.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	BENJAMIN F. LOVELAND, <div style="text-align: right;">Plaintiff,</div>	}	At Law Grounds of Ap- peal.
	vs.		
	MCKEEVER BROTHERS, INC., <div style="text-align: right;">Defendant.</div>		

The appellants state the following grounds of appeal in this cause.

- 20 1. Because the Court refused to grant defend-
 ants' motion for a non-suit upon the evidence given
 at the trial.
2. Because the Court refused to give judgment
 for defendants although it should have done so on
 the evidence given at the trial.
3. Because the amount of the judgment was
 excessive.
- 30 4. Because the finding of the Court was against
 the clear weight of the evidence.

Dated, January 30, 1917.

GRIFFIN & GRIFFIN,
Attorneys for Defendant-Appellant.

To:

40 JAMES MERCER DAVIS, ESQ.,
 Attorney of Plaintiff-Appellee.

Summons.

STATE OF NEW JERSEY, ss.: to
MCKEEVER BROS., INC., defendant.

[SEAL]

YOU ARE HEREBY SUMMONED to
answer the annexed complaint of
Benjamin F. Loveland, in an action 10
at law in the Supreme Court, and take notice that
unless you file your answer to said complaint with
the Clerk of the Supreme Court, at Trenton, with-
in twenty days after service upon you of this writ
and the annexed complaint, the plaintiff may pro-
ceed in the suit and judgment may be entered
against you.

WITNESS, William S. Gummere, Esq., Chief Jus- 20
tice of our said Court, at Trenton, this eleventh day
of July, nineteen hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

JAMES MERCER DAVIS,
Attorney.

30

40

Complaint.

NEW JERSEY SUPREME COURT.
BURLINGTON COUNTY.

10	BENJAMIN F. LOVELAND, <div style="text-align: right;">Plaintiff,</div>	}	Complaint. Action at Law.
	vs.		
	MCKEEVER BROTHERS, INC., <div style="text-align: right;">Defendant.</div>		

20 The plaintiff, residing at New Gretua, in the County of Burlington, in the State of New Jersey, complains and says:—

1. That at and during the time of the matters herein complained of the said defendant was the owner and operator of a certain fish factory, located in the State of New Jersey, and employed the plaintiff in and about its business at a salary of two hundred dollars per month during that period of time extending from July 22nd, 1911, to March 31st, 1916.
- 30 2. That there is due to the plaintiff for wages, as aforesaid, the sum of \$10,009.84.
3. That there is due the plaintiff from the defendant the sum of \$169.88 for moneys advanced and bills paid at the special instance and request of the defendant and for its benefit.
- 40 4. That the total amount due the plaintiff from the defendant is the sum of \$10,179.72, and the to-

Complaint

tal amount of credits to which the defendant is entitled is the sum of \$3,163.88, leaving a balance due the plaintiff of the sum of \$7,015.84.

5. Attached hereto and made a part hereof is an itemized statement of the account sued upon. 10

Judgment will be demanded for the sum of \$7,015.84.

JAMES MERCER DAVIS,
Attorney of Plaintiff.

20

30

40

Statement of Account Sued Upon.

	Four years' work from July 22, 1911 to	
	July, 1915	\$9,600.00
	Eight mos. and 6 das. work from July	
	24, 1915, to March 31st, 1916.....	409.84
10	Paid out for pumping, Winter of 1913..	60.00
	“ “ “ taxes, 1913.....	4.80
	“ “ “ “ 1914.....	4.80
	“ “ “ “ 1915.....	5.46
	Paid bills for factory—Fall of 1914....	38.80
	“ “ “ “ “ “ 1915....	56.02
		\$10,179.72

CR.

20	May 15, 1914.....	\$800.00	
	Aug. 15, 1914.....	200.00	
	Dec. 4, 1914.....	200.00	
	Mar. 11, 1915.....	200.00	
	May 27, 1915.....	200.00	
	Aug. 24, 1915.....	500.00	
	Oct. 2, 1915.....	500.00	
	Feb. 7, 1916.....	200.00	
	Feb. 21, 1916.....	200.00	
30	Rent of meadows.....	45.00	
	Excess of check.....	13.88	
	Scrap iron sold.....	105.00	3,163.88
			\$7,015.84
	Balance due Mr. Loveland.....		\$7,015.84

Answer and Counterclaim.

(Filed Oct. 10, 1916.)

NEW JERSEY SUPREME COURT,
BURLINGTON COUNTY.

10

BENJAMIN F. LOVELAND,
Plaintiff,

vs.

MCKEEVER BROTHERS, INC.,
Defendant.Action at Law.
Answer and
Counter-Claim.

20

Defendant, a corporation duly organized under and by virtue of the laws of the State of New Jersey, having its principal office at Crab Island, Tuckerton, N. J., answering the plaintiff's complaint, says:

1. It admits paragraph one of the complaint.
2. It denies paragraphs two, three, four and five of the complaint.

30

First Defense.

1. Defendant employed plaintiff at a salary of Two hundred (\$200.00) Dollars per month as a superintendent and in consideration therefor, plaintiff agreed to devote his exclusive services to the care of defendant's plant.

2. Plaintiff in violation of his agreement neglected or refused to perform said services for long 40

Answer and Counterclaim.

periods of time but instead devoted himself to private enterprises of his own.

- 10 3. Between August 19th, 1911, and March 6th, 1916, defendant, pursuant to said contract, paid plaintiff at various times sums of money aggregating Seven thousand six hundred (\$7,600) Dollars.

Counter-Claim.

Defendant alleges by way of counter-claim against the plaintiff, that:

First Count.

- 20 1. Plaintiff while wrongfully engaged in a private business of his own obtained the services of certain of the regular employes of defendant, to assist him in said private business and charged the compensation received by said men to the pay roll of defendant.

Second Count.

- 30 1. Plaintiff without authority from defendant at various times used a boat belonging to defendant in a private business of plaintiff's and defendant was seriously damaged thereby.

2. Plaintiff while wrongfully using said boat consumed defendant's gasoline to the value of Seventy-five (\$75.00) Dollars.

Third Count.

- 40 1. Plaintiff so negligently and carelessly performed his duties as superintendent of defendant's

Answer and Counterclaim

plant that defendant sustained damages in the sum of Five thousand (\$5,000) Dollars.

Defendant demands Two thousand (\$2,000) Dollars on the first count of counter-claim, Seven hundred (\$700) Dollars on second count of counter-claim and Five thousand (\$5,000) Dollars on third count of counter-claim. 10

GRIFFIN & GRIFFIN,
Attorneys of Defendant.

20

30

40

Bill of Particulars.

NEW JERSEY SUPREME COURT,

BURLINGTON COUNTY.

10

BENJAMIN F. LOVELAND,
Plaintiff,

vs.

McKEEVER BROTHERS, INC.,
Defendant.

Action at Law.
Bill of
Particulars.

20

To James Mercer Davis, Esq.,
Attorney of Plaintiff.

Sir:

The following is a bill of particulars of the defendant's counter-claim:

1. Plaintiff wrongfully employed the following employees of defendant for the following period of time:

30

Frank, a watchman used by plaintiff in his oyster business from October, 1914, to April, 1915, both inclusive, seven months, at \$50.00 per month, including board.....	350.00
Saunders, from November, 1914, to April, 1915, six months, at \$35.00 per month	210.00
Gaskill, November and December, 1914, two, months, at \$30.00 per month.....	60.00

40

Total for first count..... \$620.00

Bill of Particulars

2. Boat wrongfully used by plaintiff was the Green Garvey Boat and gasoline was obtained from defendant's plant by plaintiff between November, 1914, and April, 1915, to the value of \$66.50

3. After July, 1915, plaintiff was employed as a watchman for six months at \$50.00 per month, but absented himself and so negligently performed his work that the steamer Chippewa sunk and plaintiff did not notify his employer of the sinking of said boat. 10

Plaintiff negligently absented himself from the plant from November, 1914, to April, 1915, both inclusive, six months, at \$200.00 per month. \$1,200.00

On account of plaintiff's negligence the machinery of said plant was allowed to rust. 20

Respectfully,

GRIFFIN & GRIFFIN,
Attorneys of Defendant.

30

40

Judgment Memorandum.

NEW JERSEY SUPREME COURT,

(Filed Dec. 6, 1916.)

10	BENJAMIN F. LOVELAND, Plaintiff, vs. MCKEEVER BROTHERS, INC., Defendant.	} Memo.
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CARROW, *J.*

20 I find that the plaintiff properly performed his contract and is entitled to recover his unpaid compensation less \$90.00 for the use of the "Green Garvey" and \$24.00 for the use of defendants' men.

The amount which I find is due from defendant to plaintiff is \$2,395.82.

30

40

Exhibit P 1.

YORK AND YORK,

Bernard F. York

Frank B. York

Attorneys and Counselors at Law,

National Shoe & Leather Bank Building,

10

271 Broadway, New York City.

Telephone 6933 Barclay

August 28, 1916.

James Mercer Davis, Esq.,

301 Market Street,

Camden, N. J.

Dear Sir:

20

Benjamin F. Loveland

vs.

McKeever Bros. Inc.

In the above matter we have examined into the facts regarding your client's claim and find that Mr. Loveland does not credit McKeever Bros. with payments on account of salary made to him between July 22, 1911, and May 15th, 1914, the date of the first credit allowed our client in your complaint. In other words, from the beginning of Mr. Loveland's employment to and including August 6, 1913, there was paid to your client the aggregate sum of \$4,600.00, as shown on the enclosed statement. These payments were all made by checks dated as thereon shown and we would appreciate it if you will consult with your client relative to same.

30

Enclosed please find statement of Mr. Loveland's

40

Exhibit

10 account as shown by McKeever Bros.' books. This account we do not believe can be disputed and we might state that same agrees with Mr. Loveland's letter to Mr. Woods (McKeever Bros.' manager) dated January 13th, 1916. Kindly advise us, so that we may take the matter up with our client with a view of settlement of all matters in dispute.

Thanking you for your courtesy,

Very truly yours,

YORK & YORK.

20 Enc.
FBY/LGL

30

40

Testimony.

BURLINGTON COUNTY CIRCUIT COURT.

<p>BENJAMIN F. LOVELAND, Plaintiff,</p> <p style="text-align: center;">VS.</p> <p>McKEEVER BROTHERS, INC., Defendant.</p>	}	<p>Action at Law.</p>	<p>10</p>
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Mt. Holly, N. J., Nov. 23, 1916.

Before HON. HOWARD CARROW, *Judge*; no jury. 20

Appearances:

For Plaintiff: JAMES MERCER DAVIS.

For Defendant: J. STANLEY GRIFFIN, of
GRIFFIN & GRIFFIN.
JOHN G. HORNER.

Mr. Davis: This suit, if your Honor please, is for the recovery of wages for work performed by the plaintiff to the defendant company, a corporation, and also for certain moneys advanced by the plaintiff for the benefit of the defendant. I will show your Honor that the plaintiff began work for the defendant on July 22, 1911, and continued until July, 1915; that he was under a monthly compensation of two hundred dollars per month, and that in addition to the wages which were accruing to 30 40

Testimony

10 him he paid certain bills for the defendant company; he paid sixty dollars for pumping out of steam boats; he paid taxes for 1913, 1914, and 1915: 1913, \$4.80; 1914, \$4.80; 1915, \$5.46; in the fall of 1914 he paid certain bills for the defendant company amounting to \$38.80; and in the fall of 1915 he paid certain bills amounting to \$56.02. As I understand, Judge Horner and I have agreed to this stipulation: That, assuming but not admitting, that the contract of employment is as is claimed by the plaintiff, there would be due, assuming and admitting payments which are claimed by defendant, there would be \$2,415.84 which would be due to the plaintiff in the present action. In other words, we are trying to save your Honor the necessity of proving certain credits to which the defendant in this case are entitled and without stating the language of the account.

20 The Court: I suppose that what you are proving due is this: That the defendant company, a corporation, is liable, if it is liable, to the extent of \$2,415.84?

30 Judge Horner: That is not exactly the situation, if your Honor please. I thought we would each make our opening and then make the stipulation at the end. That is certainly the maximum to which, under any theory of the case, we would be liable; but we contend that we are entitled to substantial credits, which would materially reduce that \$2,415.84, and possibly go so far as to entitle us to a verdict as against the plaintiff.

40

Testimony

The Court: That changes the situation.

Judge Horner: I think I can fairly state the stipulation.

Mr. Davis: If we are entitled to compensation, then compensation less the credits, which would have amounted to the figure which I have mentioned. 10

Judge Horner: I am willing in behalf of the defendant corporation to admit that if the claim of the plaintiff, as set forth in the complaint, is accurate and true, which at this time the defendant does not, however, admit in consideration of the credits which counsel for the defense know we are entitled to by reason of many payments not stated in the complaint, then and in such case the plaintiff would be entitled to \$2,415.84. 20

Mr. Davis: That will do.

Judge Horner: In other words, if the claim is good in entirety, and if our claim is no better than we now admit by reason of money payments made, then the plaintiff would be entitled to recover \$2,415.84.

The Court: I assume that counsel can get together on the figures.

Judge Horner: These are the exact figures so far as we can stipulate. 30

Mr. Davis: This man did certain work, and we have claimed for the entire period of his work. There are certain credits to which the defendant is entitled and which we admit, which did not enter into the former pleadings. Now, if our claim is correct—

The Court: If liability attaches—

Mr. Davis: If we are entitled to pay, and 40

Benjamin F. Loveland—Direct

10 disbursements made, and Judge Horner's client is entitled to credits which we concede, there would be due \$2,415.84. Judge Horner says we are not entitled to any compensation whatsoever, and he wants to recover many judgments against us for failure of consideration, and omissions, and so forth, which he wants to set up.

The Court: Isn't it just as I stated it: If liability attaches in the case, the plaintiff is entitled to \$2,415.84, unless Judge Horner shows a counter-claim?

20 Judge Horner: Or entitled to rebutment or recoument by reason of failure to perform, or make disbursements, or disbursements being unauthorized or unwarranted.

The Court: I understand.

BENJAMIN F. LOVELAND SWORN.

By Mr. Davis:

30 Q. Captain Loveland, you live in Bass River Township, this county? A. Yes, sir.

Q. Do you know a corporation, the McKeever Brothers? A. Yes, sir.

Q. The defendant in these proceedings? A. Yes, sir.

Q. Did you ever work for them? A. Yes, sir.

Q. Were there any negotiations which led up to your going to work for them? A. What do you mean by that?

40 Q. Conversation. A. A verbal contract when I started to work for them.

Benjamin F. Loveland—Direct

Q. With whom did you have that contract? A. S. W. McKeever.

Q. Is he here in court? A. Yes, sir.

Q. Now, can you tell us about when that took place? A. When I started the work?

Q. I am talking about the conversation. A. He met me at Lewes, Delaware. I was engaged there at the Fish Plant. 10

Q. How long was it before July 22, 1911, was it that you had the conversation? A. I think it was, if I remember right, the 20th day of July.

Q. Just a couple of days before? A. Yes. Mr. McKeever stopped at Georgetown, Delaware, and called me on the telephone, and wanted me to hire an automobile and come to Georgetown to see him. I said it was impossible for me to come to Georgetown, a distance of about sixteen miles, I was expecting fish at the plant, and if he would come to Lewes, Delaware, I would see him. He came there at the Rodney Hotel, where I met him at eleven o'clock in the evening. There we made the bargain for me to come to Crab Island, New Jersey, to take charge of the plant. 20

Q. What were the terms of that bargain? A. Two hundred dollars per month the year around.

Q. Was there any other item that entered into it? A. No, sir. 30

Q. What services were you to perform? A. Perform the Fish Factory duties.

Q. More than one person employed there? A. A number of persons.

Q. What duties were yours? A. Superintendent of the plant, subject to their orders.

Q. This Mr. S. W. McKeever, is he one of the corporation? A. Yes, sir; to the best of my knowledge. 40

Benjamin F. Loveland—Direct

Q. Who had active charge of the business there over you? A. Mr. S. W. McKeever and Mr. E. J. McKeever, the two brothers.

Q. Each gave you orders? A. Yes, sir.

Q. How long did they continue to do that? A. All the time I was there.

Q. All the time—

By the Court:

Q. Where is Crab Island? A. In little Egg Harbor Bay, north of Atlantic City.

By Mr. Davis:

Q. Did you accept that offer? A. Yes, sir.

Q. And you went to work when? A. 22d day of July, 1911, in landed at the plant about two o'clock in the afternoon.

Q. On the 22d? A. Yes, sir.

Q. Was Mr. McKeever there, either one or both of them? A. Mr. S. W. McKeever was with me, came from Philadelphia down with me.

Q. You were to work for McKeever Brothers, the corporation? A. Yes, sir.

Q. Did you have an appointment to meet Mr. McKeever in Philadelphia? A. Mr. McKeever, the same as last night I had the conversation, made the agreement and told me to meet him the next day at Broad Street Station. I left about seven o'clock and arrived at Philadelphia about eleven o'clock; no, it was in the afternoon, the train left about two o'clock from Lewes, and arrived in Philadelphia about five or six, and he met me in Broad Street. We went to the hotel and everything and went to Tuckerton, New Jersey, the next day.

Benjamin F. Loveland—Direct

Q. Mr. McKeever came with you? A. Yes, sir.

Q. You went to work on the 22d? A. I landed there and looked the plant over, and went home, and returned next morning at daylight and started in to work.

Q. How long did you continue to work there? 10

A. Until this last Spring, the last of March.

Q. 1916 or 1915? A. This last Spring.

Q. 1916? A. Yes.

Q. What month did you stop work? A. I received notice, I think, the last day of March, that Captain Cranmer took charge of the steamers.

Q. You went to work on July 22, 1911; did you work continuously? A. I worked continuously what orders that I had.

Q. Was there any period of time that you were 20
not in their employ? A. No, sir; no time.

Q. Did your wages continue at two hundred dollars per month, or was there any change in that?

A. Until the 24th of last July a year ago.

Q. July, 1915? A. Yes, sir.

Q. 1915. A. I left the steamers on my own account, and I wrote——

Q. What do you mean you left the steamers?

A. I was on the steamers; we were fishing and landing the fish at Long Island. I left them, came ashore, and wrote McKeever that I left them on the 24th day of July, that there was nothing for me to do or look after, and I would rather withdraw my wages until such time as they needed me. 30

Q. What did they reply? A. They wouldn't listen for my going off wages, and to come to Brooklyn. I went out there and they put me on at fifty dollars per month.

Q. July 24, 1915? A. Yes, sir. 40

Benjamin F. Loveland—Direct

Q. They put you on? A. They put me on wages at fifty dollars per month to take care of the steamers the coming winter and keep an eye on the factory.

10 Q. And then the fifty dollars per month continued for how long? A. Until the last day of March, I think, that Captain Cranmer came and told me he wanted the key to the steamers, he had authority to take charge of them.

Q. And you quit work then? A. Yes, sir.

Q. The last day of March, 1916? A. Yes, sir.

Q. Then do I understand from July 24, 1915, to March 30, 1916, you were under wages at fifty dollars per month? A. Yes, sir.

20 Q. And before that time, from July 22, 1911, until July 24, 1915, you were under contract for wages of two hundred dollars per month? A. Two hundred dollars per month the year around.

Q. Did you perform the services that were required of you? A. I did.

30 Q. Won't you just tell his Honor in a general way what services you performed under your contract of two hundred dollars per month? A. My duties was, as I understood it, to take charge of the fish plant, and to take care of all fish that came there.

Q. They were in what sort of fish business? A. In the manhaden fish business.

Q. That means what? A. Fish caught for fertilizing purposes. And I performed those duties and took care of the fish landed there.

Q. You had nothing to do with the fishing or men that did the fishing? A. Captains took care of the ships. I took care of the fish landed.

40 Q. Did you supervise the management of the plant? A. I did.

Benjamin F. Loveland—Direct

Q. What did they do at the plant? A. We cooked the fish up and pressed the oil out of them, and had the scrap for fertilizing purposes. The oil was extracted from the scrap.

Q. Were they called rend of the fish? A. Yes, sir.

10

Q. Did you spend any money on behalf of the defendant company? A. I did.

Q. Can you tell us what that amount was?

Judge Horner: May I inquire of the witness, what is the paper he is looking at?

A. A bill that I entered money to buy groceries for men of the factory.

Judge Horner: When was that made?

20

A. Winter of 1914.

Judge Horner: Have you a book that would show it?

A. I took it off my book account.

Judge Horner: I object to the use of the paper.

30

Q. Can you tell us without reference to the paper? A. About ninety dollars, practically speaking.

Q. How near is that? A. Ninety-five dollars is the amount.

Q. That you spent for groceries? A. Yes, sir.

Q. When? A. 1914, in the winter.

Q. Did you spend anything for taxes?

A. I paid the taxes for, I think, three years.

40

Benjamin F. Loveland—Direct

Judge Horner: We will admit that the gentleman paid taxes for 1913 of \$4.80, of 1914 for \$4.80, and for 1915 of \$5.46.

10 Q. Now, Captain, in the winter of 1913, did you spend any money for the defendant company for pumping? A. Yes, sir; sixty dollars for pumping out the steamer.

Q. How was that necessary? A. The sea-cock bursted, froze and bursted, the steamer practically sunk, about half full of water. I hired men and pumped night and day until we could get to the sea cock and make her tight and correct it.

20 Q. Was it necessary to do that in order to have the boat there under your care? A. Yes, sir; if I hadn't she would have filled up and sank in the river.

Q. You paid that money? A. Yes, sir; out of my own pocket.

Q. This boat was the boat of the defendant company? A. Yes, sir.

Q. Who is M. V. Woods? A. He is a relative of McKeever brothers, I think.

Q. He is the Assistant Secretary of McKeever Brothers? A. I think so.

30 Mr. Davis: Do you admit that he is Assistant Secretary of McKeever Brothers?

Judge Horner: We will admit that he was a clerk.

Mr. Davis: Will you admit that he was Assistant Secretary on July 15, 1916?

Judge Horner: I think he was at that time.

40 Mr. Davis: I show you their official stationery.

Benjamin F. Loveland—Direct

Q. You testified a short time ago that you had a letter from McKeever Brothers at the time you left the ship and wrote them, did you receive a letter from them in reply? A. Yes, sir.

Q. I show you letter on the stationery of McKeever Brothers, dated Brooklyn, New York, July 17, 1915, and signed, "Yours truly, etc., M. V. Woods," and I ask you if that is the letter you received in reply to the letter which you have just testified to? A. Yes, sir. 10

Mr. Davis: It is admitted, Judge, that M. V. Woods is Assistant Secretary of McKeever Brothers or he was on July 17, 1916? I offer this for evidence.

(Letter admitted into evidence and marked Exhibit P-1.) 20

Mr. Davis: I would like to have admitted that Woods was the Assistant Secretary on February 19, 1916.

Judge Horner: I am advised that he was. We admit that the letter of that date was sent and probably received by the defendant. 30

(Letter admitted into evidence and marked Exhibit P-2.)

Q. Now, this letter dated 2/19/16 says, "My dear Ben: Enclosed find check for two hundred dollars, dated March 6th. E. J. instructed me to say that from now on he will send you four hundred dollars per month." Who is E. J. referred to in this letter? A. E. J. McKeever, brother of S. J. 40

Benjamin F. Loveland—Direct

Q. That is a member of the corporation, McKeever Brothers? A. Yes, sir.

Q. Did you receive instructions from E. J. McKeever?

10 Judge Horner: It is admitted he was Secretary of the defendant company.

The Court: Who was the President?

Judge Horner: S. W. McKeever is President.

A. About the first of February I went to the factory and told S. W. McKeever——

Judge Horner: I object.

20 Q. I will ask the question. What were the circumstances under which this letter was written? A. I went to the factory about the first of February, around that time.

Q. Of what year? A. This last February. I told Mr. S. W. McKeever that I thought it was advisable for me to have some sufficient security of what they owe me, or some promissory note, before I started in to work for them again. He says, "That is perfectly right. We will give it to you."
30 We will meet in Atlantic City on a certain date." I had six different dates at Kuhneles Hotel with McKeever Brothers. They failed to meet me every time. After this appointment they wrote me this letter.

Q. You said, when you began to work for them again. A. I was expecting to go to work for them at the garbage plant at the same place.

Q. At higher wages? A. The wages hadn't come to that point.
40

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Q. You were working under what wages were you at that time? A. I was working at fifty dollars per month, looking after steamers and keeping an eye on the factory, not superintendent.

Q. When you began work again, what do you mean about that, a different form of work? A. Starting at the garbage plant that they now have at Crab Island. 10

Q. Was there a change in their form of business down there? A. Yes, sir; from a fish factory business to the garbage business.

Q. When? A. This last Spring.

Q. I show you a letter—

Judge Horner: We admit the letter.

Q. Dated January 11, 1916. Was this received by you? A. Yes, sir. 20

Q. About that time? A. Yes, sir.

(Letter admitted into evidence and marked Exhibit P-3.)

Mr. Davis: I would like to have the books of the McKeever Brothers in account with Benjamin F. Loveland.

Judge Horner: Were we noticed to produce them? 30

Mr. Davis: No.

Judge Horner: And we don't have them.

Cross-examination by Judge Horner:

Q. Captain Loveland, did or did not Mr. S. W. McKeever, down at Lewes, Delaware, make a definite and complete arrangement with you, or was it not suggested that you come up on a sort of 40

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tentative arrangement, and go to Crab Island, where you were to have a conference with E. J. McKeever, and the thing then consummated? A. No; he hired me outright.

10 Q. You did come up with him to Crab Island, however? A. Yes, sir.

Q. And there you met E. J. McKeever? A. I think the third or fourth day after I arrived there. The first day I started up the plant.

Q. You three, S. W. and E. J., talked at Crab Island about your employment and the terms and conditions thereof, did you not? A. No, sir.

Q. You never had any talk whatever with E. J. McKeever whatever about your wages? A. No, sir; that was settled before I landed on the plant.

20 Q. The wages that you received, or according to the arrangement with McKeever Brothers, was a substantial increase in the wages that you received at Lewes, Delaware, wasn't it? A. I—

Mr. Davis: I object to that. I can't see that it is material at all what wages he received at Lewes, Delaware.

30 The Court: I suppose it all depends on the bargain, whatever it was. The theory upon which you offer this proof is that it is inconsistent with his first statement.

40 Judge Horner: No; I don't really care what the previous wages were, but we want to show if we can by this witness that the arrangement made at Lewes, Delaware, was purely tentative, that it was not a hard and fast bargain, and I want to show that this man had a reason, if I can, for leaving Lewes, Delaware, for the time at least, and coming up with Mr. S. W. McKeever, and going

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to Crab Island to meet E. J. McKeever, because he was going or had expectancy of receiving a substantial increase.

Mr. Davis: I don't see how it can be material, relevant or competent, whatever the motives he had in going there.

10

The Court: Cross-examination; I think the Court should allow it.

A. I was at Lewes, Delaware—

Q. Answer that question yes or no? A. Yes.

Q. Some time in the Spring of 1911 you wrote to McKeever Brothers applying for the position at Crab Island factory? A. Right.

Q. And this visit of S. W. McKeever to you was probably a consequence of that communication? A. Yes, sir.

20

Q. The wages that you say you were to receive from McKeever Brothers was to have been an increase over the wages which you asked for in your letter, were they not? A. I don't remember what I asked in the letter; I don't think I asked any.

Q. Do you not recall that in your letter you applied for the position at one hundred and fifty dollars per month? A. I don't remember.

Q. Would you say you did not? A. I don't remember.

30

Q. You did or did not? A. I don't remember.

Q. Where did you have a talk with S. W. McKeever as to what your duties were to be? A. What do you mean?

Q. At the time your arrangement was made with them. A. The time I bargained with S. W. McKeever at the Rodney Hotel in Lewes, Delaware, in his room.

The Court: I thought you said Georgetown?

40

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Q. He called me at first, and I didn't go there.

Q. Will you be kind enough to tell his Honor the Judge, just what Mr. McKeever stated to you and what you said to him, as to the compensation you were to receive and the services you were to render?

10

Mr. Davis: You admit the compensation in your answer.

A. About an hour or hour and a half's conversation, talked over the proposition at Crab Island; I said I would go there for two hundred dollars per month and I was to take charge of the Fish Factory.

20 Q. In your conversation with him you told him in substance that you were a competent man to have superintendence of a factory, did you not? A. I did.

Q. You assured him that you were? A. I did.

Q. That you were competent as superintendent in all of its branches? A. I did.

Q. Did or did you not agree to give your whole time and attention to the business of McKeever Brothers for two hundred dollars per month? A. I did. Until a certain time; until I had orders to do so.

30

Q. Your understanding was you were to give your entire time to the business, until July, 1915, when you were transferred to the watching business? A. The question did not come up under the bargain.

Q. What were you to do for this two hundred dollars per month? A. Take charge of the fish factory, and take charge of all fish that came in, and see that they were properly taken care of.

40

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Q. You were to give them your services and all your services? A. Yes, sir; at the time I bargained.

Q. Yes, sir; did you do it? A. I did.

Q. And during the entire time of the contract?
A. The whole time.

Q. During the entire time of the contract? A. 10
There was different understandings after the first time.

Q. Now, Captain, between July, 1911, and July, 1915, you did as a matter of fact follow other pursuits and occupations than the business of McKeever Brothers, did you not? A. Yes, sir.

Q. You conducted an oyster business on your own account, did you not? A. Yes, sir.

Q. Going back to the year 1911, how much time were you absent from the business of McKeever Brothers? A. I don't know how much time I was absent, but I— 20

Q. Answer the question? A. I don't know how much time.

Q. In the Fall of 1911, along in October, November and December, were you not absent looking after your oyster beds? A. No, sir.

Q. Were you absent in the Spring of 1912? A. Might have been for a day and a half.

Q. In 1912, Spring, one and one-half days. A. 30
I think so.

Q. In the Fall of 1912, how much were you absent? A. I think the first day of October, if I remember right, that I went oystering, first day of October for one-half day.

Q. Is that the only time you were absent? A. To the best of my knowledge at the time you spoke about.

Q. After the first of October? A. What October? 40

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Q. 1912. A. I wasn't absent.

Q. Not in November or December, you were not absent? At the factory every day? A. 1912?

Q. Yes. A. No.

10 Q. In the Spring of 1913 to what extent were you absent? A. I don't remember just the time that I was absent.

Q. How long were you absent? A. I couldn't say.

Q. Can you tell us approximately? A. It was the understanding.

Q. Can you tell? A. No; I don't remember just exactly.

Q. One month, two months or three months? A. Not that much.

20 Q. How much? A. I don't remember.

Q. In the Spring of 1914, how much were you absent? A. Spring of 1914?

Q. Yes. A. I don't recall; I have no dates.

Q. Were you absent as much as a month? A. I couldn't say.

Q. Would you say you were not? A. I would not.

Q. In the Fall of 1914, how much were you absent then? A. What time in the Fall?

30 Q. September, October, November? A. I was, I judge, in September.

Q. How much were you there in October? A. I don't remember.

Q. November? A. I don't remember.

Q. December? A. I don't remember.

Q. In January, 1915, how much were you absent? A. I don't think I was supposed to be at the factory at that time.

Q. I did not ask you whether you were supposed

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to be, I asked you how much you were there? A. I don't know.

Q. Were you there at all? A. At different times.

Q. How many days? A. I don't know.

Q. Two days? A. I don't know; I never kept an account of it.

Q. You were talking about 1915, about a year ago. In February how much? A. I don't know.

Q. March; how much were you there? A. I never kept any account of the dates that I visited the factory.

Q. You visited the factory? A. Yes, sir.

Q. You were Superintendent? A. Yes, sir.

Q. How often did you visit it? A. I don't know.

Q. Once a month? A. I don't know.

Q. Once a week? A. I don't know.

Q. Once a day? A. I don't remember.

Q. You did not go there daily? A. No, sir.

Q. You didn't stay there? A. No, sir.

Q. You weren't there every working day? A. I wasn't supposed to be.

Q. You were not there? A. No, sir.

Q. That, Captain, obtained from the Fall of 1911 until you left their employ, did it not?

Mr. Davis: What obtained?

Judge Horner: The fact he was not there in daily attendance upon their business.

Q. Isn't that a fact? A. I don't remember the dates I was there.

Q. You were away more than you were there in the Fall and Winter months, during the time you were there of each and every year? A. I couldn't say.

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Q. You would say you were not? A. I wouldn't.

Q. Mr. Loveland, you used the employees of the McKeever Brothers, who were on their payroll, in the prosecution of your own business, did you not?

A. In the prosecution of my own business?

10 Q. Yes. A. What do you mean by that?

Q. In doing your own work? A. I had an agreement to do that.

Q. Didn't you use the employees of McKeever Brothers and who were on their payroll, in doing your own private work? A. I don't think so.

Q. Didn't you use the employees of McKeever Brothers in docking oysters? A. I did.

Q. Your oysters? A. Under an agreement.

20 Q. You used them, didn't you? A. In docking oysters when?

Q. In the Fall of 1912, 1913, 1914 and 1915? A. No, sir.

Q. How much did you use them? A. I used them in the Fall of 1911, one day or one-half a day.

Q. When else? A. I never worked at my oyster beds after that until last Summer a year ago.

Q. Did you use their men then? A. No, sir.

Q. You never used their men? A. I did at times.

30 Q. How many men, how many times? A. I used four men about one and one-half days, I think, in the Spring of 1912.

Q. What doing? A. Unloading oysters then out of a schooner.

Q. Paid by McKeevers? A. Yes, sir.

Q. They were paying them and you getting the services? A. Yes, sir.

Q. What else? A. I think I used four men in the Fall of 1913, I think.

Q. How long? A. A day and a half.

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Q. They were on McKeever Brothers' payroll?

A. Yes, sir.

Q. They were paying them? A. Yes, sir.

Q. You getting the benefit? A. Yes, sir.

Q. When else did you use them? A. No time.

Q. That is the only time you used men on McKeever Brothers' payroll? A. There was one fellow, a Pole, that heaped up about twenty bushels of oysters for me along the shore of my oysters. 10

Q. When? A. I think the Fall of 1914.

Q. How long was he employed? A. I don't know. I loaned him five dollars to go to Tuckerton, he had no money. I told him to heap up oysters when he wasn't working. I would give him money for it.

Q. He was on McKeever Brothers' payroll? A. Yes, sir. 20

Q. And employed in your business? A. Yes, sir.

Q. You have some oyster beds in Great Bay? A. I have some in Great Bay.

Q. During all that time you were operating these beds, weren't you? A. I had them operated.

Q. You superintended it? A. I looked after my interests.

Q. You would be out there on the job? A. No, sir. 30

Q. You bought seed oysters and planted them, didn't you? A. I did.

Q. Where did they come from? A. James River.

Q. You used the men of McKeever Brothers in unloading these? A. Yes, sir; to a certain extent.

Q. What extent? A. I used four men a day and a half, two different times.

Q. To unload oysters for you? A. Yes.

Q. Used in your business? A. Yes, sir. 40

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Q. When the oyster schooners came in you boarded them at the factory? A. No, sir.

Q. Never? A. No, sir.

Q. In the conduct of your oyster business you used the boat of McKeever Brothers, didn't you?

10 A. What boat?

Q. The Green Garvey. A. Never.

Q. Never had an oyster in her? A. Never.

Q. Sure you never held an oyster? A. I used the boat called Peerless in unloading these oysters.

Q. Didn't you use the Green Garvey? A. I had it in my service to go back and forth and used to go in the bay with her.

Q. The Green Garvey was used by McKeever Brothers as a sort of hack boat? A. Hack boat?

20 Q. A jitney boat. It was a small boat used by them to carry men and supplies to and from the main land, wasn't it? A. Yes, sir.

Q. About twenty-five or twenty-six feet garvy? A. About a thirty foot garvy.

Q. You say you never used that boat at all in the oyster business? A. I used it, yes, in the Fall of 1916, to go down to my oyster grounds and back again.

Q. That all? A. Yes, sir.

30 Q. Just one trip? A. A number of trips.

Q. Didn't you haul oysters on her? A. Yes, sir.

Q. Now you do admit you hauled oysters on her? A. Yes; I did; sure.

Q. Whose gasoline did you use? A. My own.

Q. Did you pay for it? A. Yes, sir.

Q. Who did you buy it of? A. Different places.

Q. Didn't you take it out of McKeever Brothers' tank? A. Never.

40 Q. Didn't you buy it over to Tuckerton and have

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it charged to McKeever Brothers? A. When I was operating the boat for McKeevers' employ.

Q. When you were through operating it about in 1915 it was a wreck, wasn't it? A. No, sir.

Q. Machinery broken up? A. No, sir.

Q. No? A. I lost the wheel and shaft the last day I went to the factory to see Mr. S. W. McKeever to make arrangement to go to Atlantic City to look over the garbage plant. 10

Q. Did you damage this boat in using it for your oyster business? A. No, sir.

Q. Didn't you run her aground once or twice? A. No, sir.

Q. Hadn't you soiled and marred the boat by the dumping of oysters in her? A. Scarred her?

Q. Yes; defaced it? A. I think not. 20

Q. How many days did you use that garvy boat in your own business? A. I couldn't say.

Q. A month? A. Practically speaking, about that.

Q. A month? A. Practically speaking.

Q. What is the value of that boat per day? A. Of that boat?

Q. Yes. You are a practical bayman, would you— A. I am—

Q. What would be the worth or hire of that boat per day? A. You could hire that boat or hire boats of the kind for fifty or seventy-five cents or one dollar per day. 30

Q. Which is it? A. Well, say a dollar per day, the highest price.

Q. All of the property and plant of McKeever Brothers during the time that you were supposed to be superintendent was in your charge and custody, was it not? A. Subject to their orders.

Q. Well, your word was supreme about the busi- 40

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ness and the affairs, subject only to the orders of McKeever Brothers, wasn't it? A. Yes, sir.

10 Q. Now, this boat that you are alleged to have spent sixty dollars in pumping out, which you say was caused by the bursting of the sea cock, was in your charge, was it not? A. Prior to the freezing of the sea cock?

Q. Yes. A. It was in the watchman's charge.

Q. The watchman was under you? A. Not me.

Q. A relative of yours? A. Yes, sir.

Q. Wasn't the freezing and sinking of that boat due to the neglect of those in charge of her? A. No, sir.

Q. Did he not fail to pump out the boat so as to fail to keep the water down below the salt boxes?

20 A. No, sir.

Q. Didn't—

Mr. Davis: I object to this line of cross-examining as incompetent, irrelevant and immaterial.

30 Judge Horner: It seems this is the very essence of the contract. He is a man said he was in general charge. If we can show that by his negligence we suffered damage, he must answer for it.

Mr. Davis: You can't set off damages in this kind of a cause. If your Honor please, the bill of particulars which I demanded pursuant to that makes no allegation of anything of that sort.

The Court: I will allow the pleadings to be amended, and allow the bill of particulars to be amended so as to get all the facts before me.

40 Mr. Davis: It seems to me that this is

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hardly fair. We have been after these people for weeks and months to get at the particulars of the situation.

Judge Horner: This is one of the elements of a whole lot of other allegations on the part of the defendant company.

10

The Court: This amounts to about thirty dollars.

Judge Horner: Sixty dollars.

The Court: Mr. Davis, the Court would not keep out any fact in the case.

Mr. Davis: Your Honor is going to be guided by elements of fairness. I filed a demand for a bill of particulars in order that I might be advised. If the defendant had any just claim whatever out of common fairness they would attend to furnishing me with it. They furnished me in response to my call for bill of particulars this answer, and there is not a scintilla in this page, not a single printed word that they would advise me of any such claim as that. When they have refused or neglected to advise me of the very nature of their demands, when I demanded it——

20

The Court: You demanded a bill of particulars?

30

Mr. Davis: Yes, sir; and they answered it, and not a single word in the bill of particulars which the Judge Horner is now asking about. And I think the Court goes a great length when he would permit a defendant for the first time to offer evidence of that kind, when I had demanded a bill of particulars concerning the set-off and counterclaim.

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10

Judge Horner: If your Honor please, I, of course, know nothing about the pleadings in this case. I have seen this bill of particulars. This case was a hurry-up case, apparently. I have here two letters written by Mr. Griffin to Mr. Davis on that proposition, and I would be glad to have your Honor read these letters, because they speak for themselves as to the proposition.

Mr. Davis: You may state to the Court that there is nothing in the letters which referred to the matter you are now talking about.

20

The Court: To finally dispose of this matter, I am inclined to allow the bill of particulars to be amended.

30

Mr. Davis: If your Honor please, you can understand that I cannot get witnesses here to meet this possible phase. These gentlemen have come here from miles. There is no train that runs there, and no way that I can get witnesses transported. I asked for this bill of particulars in order that I might be fitted today to meet any possible phase of it. I do not have witnesses here to meet that phase of it. I think if your Honor is going to allow it, he ought to allow it on terms, and grant an adjournment with costs that I may get the witnesses here. Because it is their fault that I don't have witnesses here to meet these matters now presented.

40

The Court: It is very evident that this item was not specified in response to a demand for a bill of particulars, but in order to hear the whole matter out the Court is willing to allow you to amend the bill of

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particulars. But, of course, if it is necessary for the plaintiff to take proof upon this item the Court will hear it some time in the future, if it becomes necessary.

Mr. Davis: And the terms, your Honor, that he pay the costs of getting the witnesses here. 10

The Court: Let us proceed with this case.

Q. You were superintendent of this boat? A. Yes.

Q. What was the name of this? A. McKeever Brothers, I think.

Q. You were in charge of all the property? A. Yes, sir.

Q. Were being paid or charged for your services, did you not? A. Charged for my services. 20

Q. And you permitted the watchman to be so negligent in his duties as to permit the water to come up and freeze the sea cocks? A. I did not.

Mr. Davis: I object to that.

Q. What did you do with respect or fail to do with respect to McKeever Brothers' Sweet Marie, which resulted in its sinking? You failed to do your duties. A. I didn't fail to do my duties. 30

Q. Now, Captain, this watchman was your father-in-law, wasn't he? A. Yes, sir.

Q. And he neglected the boat, didn't he? A. No, sir.

Q. Well, somebody neglected it, didn't they?

Mr. Davis: I object to it. It is not in this case if somebody else did it. If this defendant didn't do it, it does not matter what somebody else may have done. 40

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Q. Did any of the employees of McKeever Brothers neglect that boat and cause it to sink?

Mr. Davis: Same objection.

10 Judge Horner: He has testified he was in supreme control, subject only to the orders of McKeever Brothers.

Mr. Davis: He does not guarantee the faithfulness of other employees.

The Court: Suppose he allowed the men around there to knock all the window lights out of the windows, and enter the plant and destroy boats, wouldn't that be in question?

20 Mr. Davis: That is not the question. He says somebody it. They have meant to show this man had something to do with it.

The Court: I think that is competent testimony. How far it would affect the situation is another question.

Mr. Davis: The word "neglected" states a conclusion.

The Court: I will admit it.

30 (Whereupon the plaintiff, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge. (Seal)

A. No, sir.

Q. What caused it to sink? A. It—

Mr. Davis: I object to that.

The Court: The objection is overruled.

40 (Whereupon the plaintiff, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge. (Seal)

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A. The water cock bursted.

Q. What caused the sea cock to burst? A. Due to cold water.

Q. Wasn't there rock salt around there? A. Yes, sir.

Q. Did you put it there? A. I left it there, and the chief engineer— 10

Q. Did he put it there? A. Yes, sir.

Q. If the rock salt was there, it wouldn't have frozen at all? A. We don't know the reason.

Q. If the rock salt had been around there, that wouldn't have frozen? A. I don't know the temperature of salt to keep it from freezing.

Q. Did you ever know them to break that way when packed in rock salt? A. No, sir.

Q. Did any of the other boats break from freezing? A. No, sir. 20

Q. Was there any water in her when the sea cock bursted? A. I don't know, I wasn't there.

Q. Wasn't it your duty to inspect the boats? A. Yes, sir.

Q. Did you do it? A. Yes, sir.

Q. When did you see it before? A. The day before.

Q. Was there any water in her hold? A. No, sir; she was pumped out every day. 30

Q. Yet the sea cock froze? A. It bursted; I don't know whether it froze or not.

Q. You were superintendent of the shipping of fertilizer? A. I loaded it at the plant.

Q. You superintended the loading of it? A. Yes, sir.

Q. Do you recall a conference that you had with the captains and pilots concerning the amount of the load of the barge Severn?

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Mr. Davis: There is nothing in the bill of particulars, your Honor, with regard to this.

10

Judge Horner: Yes, it is there, a negligent performance of his duty. Or I will ask the indulgence of the Court to have it amended.

The Court: What is the question?

Judge Horner: I shall endeavor to show that he overloaded barges against the advice and protest of sea-faring men, which resulted in loss to the defendant company.

The Court: When did this happen?

20

Judge Horner: I think the witness will tell us, if you will let him answer the question. I will endeavor, with your Honor's permission, and indulgence, show that this witness in the absence of McKeever Brothers directed and commanded the overloading of vessels as a result whereof the vessels grounded and McKeever Brothers sustained very substantial damages.

30

The Court: It is very evident that the plaintiff is not in a position to meet that situation. I will allow, Mr. Davis, any proof of that sort, the bill of particulars to be amended, and if it is necessary to have the case postponed to a further day the plaintiff will be given an opportunity to meet that situation.

Q. Captain Loveland, do you recall a conference that you held with the pilots and captains of the fleet with regard to the loading of the barge Severn?

A. I do not.

40

Q. Isn't it a fact that you had a conference with

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the captains and pilots with regard to loading of the barge *Severn*? A. I did not.

Q. And that they advised that she should not be loaded over twelve feet draft and that you commanded with positive words of profanity that she should be loaded about fourteen feet? A. No, sir. 10

The Court: When did that happen?

Q. Do you recall when the barge *Severn* was grounded? A. I remember the time, but do not remember the date.

Q. Was it in the year 1913? A. I don't remember the date.

Q. You recall the fact? A. I do.

Q. She grounded going out the inlet? A. I couldn't say, I wasn't there. 20

Q. What was she loaded with? A. Fish scrap.

Q. You know that she grounded and that they had to have whatever is necessary; towed back and unloaded, etc.? A. I did, after she drifted there on shoal bottom.

Q. You superintended the towing her back and unloading her? A. No, sir.

Q. Didn't you have anything to do with it? A. I have no license to operate steamers. 30

Q. What did you do with it? A. S. W. McKeever directed her to come back and lighten her load.

Q. Wasn't you there? A. I was there.

Q. Her load was lightened? A. Yes, sir.

Q. So the draft would be reduced? A. Yes, sir.

Q. Wasn't the boat loaded under your supervision and direction? A. I loaded her under the Captain's orders.

Q. Didn't you overload her against the advice of the Captain? A. No, sir. 40

Q. You recall the boat *Cippewa*? A. I do.

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Q. Was she in your charge? A. She was at the time.

Q. You recall the boat Chippewa? A. Yes, sir.

Q. She sank? A. No, sir.

Q. She sank, didn't she? A. No, sir.

10 Q. What happened to her? A. I put her in the creek where she would be safe and she filled up with water.

Q. How long was she filled up with water? A. The Summer of 1915.

Q. Did you ever report it to McKeever Brothers? A. Yes, sir.

20 Q. Isn't it a fact that that boat filled with water and remained filled with water for months, and that one of their captains reported to McKeever Brothers her condition, and instantly they dismissed you and put someone else in charge? A. I don't know what somebody else reported.

Q. Wasn't that boat pumped out to your personal knowledge immediately upon your dismissal from the employ of McKeever Brothers? A. She was pumped out before I was dismissed.

Q. Wasn't it pumped out immediately after your dismissal? A. I don't know; I didn't see it.

30 Q. How did you report to McKeever Brothers the condition of the Chippewa? A. On the 27th day of May, 1914, S. W. McKeever and I stood on the deck of the steamer McKeever Brothers. The yacht Chippewa laid right to the port bow of the steamer McKeever Brothers in the creek. I told him I put that boat in the creek to keep her from sinking, that she was leaking bad and I was afraid she would sink in the deep water in the river and I put her in the creek to be safe. S. W. McKeever asked me if there was a rail way at Atlantic City
40 where we could pull her out. I told him I thought

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Stanley Vincent had one, but he gave me no orders to take her there to be pulled out.

Q. You didn't tell him she was full of water?

A. She wasn't at that time.

Q. You didn't tell him when she did? A. I told him when I went to Brooklyn.

10

Q. Do you mean she was filled in the Winter that time? A. She filled in the Summer and after that time.

Q. When you told him that he put you in charge of these boats as watchman? A. He put me in charge as watchman.

Q. Did you pump her out? A. I couldn't pump her out.

Q. Didn't other people pump her out? A. I don't know.

20

Q. You know she was pumped out? A. I got the water out of her later on.

Q. And permitted her to fill up again? A. Yes, sir.

Q. And didn't report that? A. I wrote them that I got the water out of her. I bored holes in her and let the water run out of her.

Q. During the time you were in McKeever Brothers' employ you spent considerable time duck shooting, did you not? A. Yes, sir.

30

Q. How much? A. I don't know.

Q. Week at a time? A. No, sir.

Q. How much did you spend in the time from July 1911, to July, 1915, duck shooting? A. I don't know; I used to go out mornings once in a while and stay out an hour or two hours or three hours; and sometimes in the afternoon, owing to the conditions of the weather.

Q. Frequent intervals? A. No, sir.

40

Benjamin F. Loveland—Cross

Q. How long is the longest time that you were away from the factory? A. I don't know.

Q. Did you live on this island? A. At the time I was there, I boarded there.

10 Q. While you acted as Superintendent between July, 1911, and March, 1916, did you live on the island? Where the fish factory was? A. Yes, sir.

Q. And there were accommodations for the superintendent and working people? A. Yes, sir.

Q. Is it not a fact that you were away and did not live on the island, for sometimes as long as a month at a time? A. I don't remember the exact dates, but I don't think so.

20 Q. Do you recall the time when you had an altercation with one of the employees where you struck him and he got you? A. Yes, sir.

Q. How long were you away from the plant at that time? A. About two weeks.

Q. You were in bed two weeks? A. I don't think I was in bed two weeks.

Q. And then weren't you in New Gretna two or three weeks before you went back to work? A. No, sir.

Q. How far is New Gretna? A. About twelve miles.

30 Q. As a matter of fact, how many nights did you sleep there in October, November, December, January, February, March and April in the years 1911, 1912, 1913, 1914 and 1915? A. Sleep where?

Q. At Crab Island? A. I don't know.

Q. Did you sleep there any? A. Oh, yes, several times.

Q. Where did you sleep most of the time? A. I don't know.

40 Q. Don't you know you were in New Gretna most of the time? A. I was there sometimes, Crab Island and sometimes, and other places sometimes.

Benjamin F. Loveland—Cross

Q. Are you a man of family? A. Wife only.

Q. Where does she live? A. New Gretna.

Q. She lives there? A. Yes, sir.

Q. You were supposed to be at Crab Island? A. Sometimes and sometimes home.

Q. Wasn't it understood you were to be there all the time with the exceptions of leaving Saturday night and returning Sunday afternoon? A. No, sir. 10

Q. What care did you take of the machinery of that plant? A. I—

Mr. Davis: I object to that question, as incompetent, irrelevant and immaterial, and improper in form. If he has any specific matters he can bring to his attention, it is perfectly proper to do it. 20

The Court: Objection overruled.

(Whereupon the plaintiff, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge. (Seal)

A. The chief engineer had charge of the machinery.

Q. Were you not superintendent over the engineer? A. Not on the machinery end of it. 30

Q. What repairs did you make about that? A. In what way?

Q. What machinery and plant? A. There were a number of repairs after I went there, practically everything was repaired.

Q. As a matter of fact, during the time you were superintendent, did you not neglect the machinery? A. I had nothing to do with the machinery end of it. 40

Benjamin F. Loveland—Cross

Q. You had nothing to do with the work, but you had direction of the work? A. The chief engineer was in charge of the machinery end of it.

Q. You were superintendent of the fish factory?

A. Yes, sir.

10 Q. What did you understand—— A. The day I landed on McKeevers' plant, S. W. McKeever and I walked out there, he introduced me to the chief engineer, and he says, "Val will take care of the machinery end of it for you."

Q. What were you to do according to the terms of your arrangement at this fish factory? A. I was to take care of all fish that came there. I was to cook them and have the oil extracted in the proper form.

20 Q. What else? A. That was all in connection with the fish factory.

Q. Were you required to live in the house at the fish factory? A. I was.

Q. Did you do it? A. I did.

Q. Do you mean to tell his Honor, the Judge, that you actually lived there all the time? A. Not all the time.

30 Q. Weren't you away for weeks and months at a time? A. There was times in the Winter when I was away for a time.

Q. You attempted to draw your pay, at that? A. I did, yes.

Q. How often did McKeever Brothers visit its factory? A. I don't know.

Q. As a matter of fact, they visited the factory about once in two or three months? A. Sometimes twice a week, and sometimes several months.

Q. They usually wrote you when they would be down there? A. Yes, sir.

40 Q. And you would take the boat to the mainland to meet them? A. Yes, sir.

Benjamin F. Loveland—Cross

Q. You always were out at the factory when they came, weren't you? A. Yes, sir. I might have been away sometimes.

Q. You were over there or came to meet them?
A. There might have been times when I was somewhere else.

Q. According to the arrangement were you entitled to any time off? A. The Fall of 1914 S. W. McKeever told me that I wasn't to stay to the factory all the time after the product was shipped away, and the plant was laid up I could go backwards and forwards, and I could go home and no specific time was set as to how long I was to stay there or go home. 10

Q. Was there any reason why you should stay there at the fish factory when it was shut down?
A. No, sir. There was nothing to do when the stuff was shipped away. 20

Q. When was it laid up? A. In the fall of 1914, I don't remember the exact date when the steamers laid up, and the plant was probably laid up a month or so afterwards; around October or November before the work was completed.

Q. Do you mean to say that prior to the Fall of 1914 you had no arrangement with McKeever Brothers permitting you to absent yourself from the plant? A. They told me at different times. 30

Q. Wasn't that the first time they ever told you?
A. No, sir.

Q. Then why did you tell the Judge it was in the Fall of 1914 you got this proposition of going back and forth? A. That was one time that S. W. McKeever told me that.

Q. When did E. J. McKeever tell you that? A. I don't remember.

Q. Did S. W. McKeever ever tell you such a thing before that? A. Yes, sir. 40

Benjamin F. Loveland—Cross

Q. When? A. I don't remember; but he said after the plant was completed I could have vacations.

Q. What was the length of the vacation? A. It wasn't mentioned.

10 Q. What is a reasonable vacation? A. I don't know.

Q. Would you say that two months was a reasonable or unreasonable vacation? A. I am not a judge of that.

By the Court:

20 Q. One thing we don't understand clearly and that is whether this fish factory was supposed to be in operation all the year around, or only during a portion of the year? A. Only during a portion of the year. Opened about the first of June, and laid up the last of October or tenth or fifteenth of November.

Q. That is while they are out gathering fish in the ocean in the Summer and Fall, and then the fish factory is in operation? A. Yes, sir.

Q. When they are not fishing the factory is not in operation? A. Everything is laid up. Nothing doing.

30 Q. What business is there about the fish factory for the superintendent? Who watched the plant? Who looked after it? A. We had two and three men there, all different ones.

Q. All of the time? A. Yes, sir.

Q. Hired there? A. Yes, sir.

By Judge Horner:

40 Q. That is the point that I was going to get at.

Benjamin F. Loveland—Cross

Even during the Winter months there was a force of men there? A. Yes, sir.

Q. It was your job to superintend these men?
A. I did.

Q. Wasn't it your job? A. Yes; for whatever they had to do. 10

Q. You were the general superintendent? A. On certain works.

Q. On what works weren't you superintendent?
A. On the machinery end of it.

Q. Didn't you know that, as a matter of fact, that during the time that they are not actually working making fertilizer, that it was expected that the machinery would be repaired? That the buildings should be repaired and the machinery overhauled, and the place looked after and repairing the damages of the past year, and getting ready for the next year? A. That was all done. 20

Q. Were you there to do it? A. Yes, sir.

Q. How could you do it if you were staying away for weeks and months at a time?

Mr. Davis: There is no testimony here—

Judge Horner: He said he was away a great deal.

The Court: Tell us how long you were away. 30

A. I don't remember the dates.

Q. Leaving out the dates, tell us now frankly how long you would stay away when you would go away. You said you had oyster beds, how near were they to this plant? A. The majority of my beds are within two miles of the plant.

Q. What did you do yourself with reference to 40

Benjamin F. Loveland—Cross

10 cultivating oysters? A. I never looked after my oyster beds myself, while I was in McKeever Brothers' employ, until last Summer a year ago, after the 24th of July, with the exception of two and one-half days the two different times; with the exception of two and one-half days I was not engaged in the oyster business.

Q. You have given the impression that for long periods, more than a day or two, probably weeks, you were away from this factory? A. I was not engaged in the oyster business—

20 Q. Did you go away and leave this plant, neglect the plant? A. I never neglected the plant at any time to the best of my judgment. I went away and left provisions for the men to live on. Sometimes I would visit once or twice or three times a week. Sometimes owing to the conditions or ice, I couldn't get to the plant for a month or longer. The ice used to prevent my getting there. I arranged to have provisions for the men there to look after the plant.

Q. What would the men be doing in your absence? A. Any necessary repairs.

Q. Did you tell them what to do? A. Yes, sir.

30 Q. Did the President, Mr. McKeever, know you were living off shore? A. He told me himself it wasn't necessary for me to stay there all the time.

40 Q. You have said at times you were away from the plant as much as a month at a time. Let's get down somewhat to details. I only want your fair honest recollection of the facts as they truthfully exist. In the year 1911 will you please give us and to his honor, the Judge, your best, nearest recollection of the amount of time that you were absent from that factory?

Benjamin F. Loveland—Cross

The Court: I want to ask a question. There is no jury to be affected by anything said here. We are presumed to be all sensible men. Is it your contention that the Captain was to live at the fish factory all the time, winter and summer, night and day, and not to go away? 10

Judge Horner: Yes, sir; except Sundays. That may sound fishy—

The Court: I only want to know.

Q. Would you tell us your fair, honest judgment of the time you were absent from that plant in the year of 1911? A. The winter of 1911 and 1912, I was there all the time with the exception of going home Saturday afternoon and Sunday and back Monday morning. 20

The Court: The President knew your wife was living off-shore? A. Yes, sir.

Q. That was your home? A. Yes, sir.

Q. In the fall of 1911 and 1912 you say you were there continuously with the exception of Saturday afternoons and Sunday? A. Yes, sir.

Q. How about 1912? A. Same thing. 30

Q. About 1913? A. I wasn't there all the time.

Q. How much were you absent in 1913? A. I couldn't say.

Q. Give your honest, best judgment. A. I couldn't tell. I would visit the place once or twice or three times a week. Sometimes be there all week, and some weeks away.

Q. Can you give us your honest best judgment of the time you were away? A. I don't know. 40

Benjamin F. Loveland—Cross

Q. How about 1914? A. I went back and forth in the other time—

Q. 1915? A. I was there at different times; yes, sir.

10 Q. You were away a month at a time, and never struck the place, practically every year, with the exception of the fall of 1911 and spring of 1912?

A. The winter of 1911 and 1912, and the winter of 1912 and 1913 I was there all the time.

The Court: Were you ever away when the plant was in operation? A. No, sir; no time that there was anything doing. I was there on the job, whenever fish was received I was there to look after it.

20

Q. Now, Captain, you recall the death of your father? A. Yes.

Q. When? A. On Christmas Day, if I remember right.

Q. Of what year? A. I think it was the Fall of 1912, I think.

Q. As a matter of fact Captain, were you not absent incident to the handling of the affairs of your father's estate for quite a length of time?

30

A. No, sir.

Q. No? A. Only attending the funeral after his death.

Q. Where did he live? A. At New Gretna.

Q. Weren't you absent for weeks following his death? A. No, sir.

Q. Your relations with McKeever Brothers up to the time of your dismissal from their employ were particularly friendly and cordial, were they not?

A. As far as I know.

40

Benjamin F. Loveland—Cross

Q. As a matter of fact one of the gentlemen or the corporation made you a present of a very handsome gold watch? A. Certainly did.

Q. When was that given you? A. I don't remember the date.

Q. About 1912? A. I—

10

The Court: Captain—I only want to know whether the President of the company gave him the gold watch during the period of time when you say he was neglecting his duty.

Judge Horner: Very likely he did. Captain, even after you had been dismissed from their employ as superintendent, or as you said you had given up your job, and you were on their list as watchman, they even then took up with you the proposition of this Atlantic City Garbage Contract, and it was their idea of advising you and instructing you and so on in the interest and question of handling of garbage disposal, was it not? 20

A. They contended that they wanted me.

Q. That was their disposition. The point I want to get at is this. All the time you were in their employ until the time of your dismissal in March, 1916, the relations between you and McKeever Brothers was extremely friendly and cordial. They placed every confidence in you, did they not? A. As far as I know. 30

Q. Did you get your wages regularly? A. For a time.

Q. When did they pay you regularly? A. On the first start. I don't just remember the dates they quit paying me. S. W. McKeever said to me, "If 40

Benjamin F. Loveland—Redirect

you don't need your wages, if you will let us have the use of your wages it will be quite an accommodation and we will pay you all in a lump and pay you interest on it."

10 Q. Did they ever complain to you about your wages? A. No, sir.

Q. Was there any question about your wages? A. No, sir.

Q. Isn't the true fact concerning that, that they were paying you two hundred dollars per month, and that you told them in substance that there was no need of them paying you regularly, that as you wanted money that you would ask for it, and that they said very well we could use the money in our business. A. I never did.

20 *Redirect-examination by Mr. Davis:*

Q. Captain, was there any arrangement between you and McKeever Brothers after you had begun your employment there as to the length of time or amount of time that you were to spend on the island? A. No, sir. No specific time mentioned.

Q. That is not what I asked. Was there any change——

30 Judge Horner: I object. The plaintiff's attorney should not cross-examine his own witness.

The Court: What did Mr. McKeever say to you that you should do with respect to staying there at that fish factory?

Mr. Davis: I am speaking about after he had entered into their employ. Because there was a change of conduct and I want to know whether that was fully——

40 The Court: Answer the Court's question.

Benjamin F. Loveland—Redirect

A. Mr. S. W. McKeever said I was not to stay there all the time. I could go home and backwards and forwards.

Q. In the winter time particularly, you already answered his Honor's question to the effect that you closed down the factory. That is due to what fact? A. Due to the fact that the season was over. 10

Q. Why, no fish to be caught? A. No, sir.

Q. That island is in the bay? A. In the bay.

Q. Does the bay freeze over in the winter? A. Yes, sir.

Q. Makes it impossible for boats to go backward and forward? A. In the winter of 1911 we sledged provisions for six weeks straight.

Q. How far is the island from the main land?

A. About four miles from Big Creek to Crab Island plant. 20

By the Court:

Q. When you say Mr. McKeever, the president of McKeever Brothers, engaged you to superintend the plant, what were your duties? Now let us have that more specifically definite. A. My duties was to take care of all manhaden that landed to the plant.

Q. That is fish? A. Fish, yes, sir. 30

Q. What else? A. That is all. And to look after the necessary repairs of the plant, concrete work. The plant was not finished.

Q. What about the fertilizer? A. When I take care of the fish, I cook them and press them, the oil is taken care of, the scrap is pressed, and—

Q. What do you do with the oil? A. The oil is sold.

Q. Who sells it? A. McKeever Brothers. 40

Benjamin F. Loveland—Redirect

Q. Who ships it? A. McKeever Brothers.

Q. How does it get away from the island? A. By vessels and barges.

Q. Who looks after that? A. I did, the loading of it.

10 Q. Is there anything to be done with respect to shipping the oil during the winter time? A. That is owing to the markets that demand it. There is no specific time for shipping oils.

Q. You understand what the Court is trying to find out. What work was there for the superintendent of this factory during the winter time? A. If there was any oil to ship, or scrap, during the winter time the superintendent was supposed to do it.

20 Q. When it was frozen was it possible to ship it at that time? A. No.

Q. Where was the engineer during the winter time? A. On the plant at Crab Island at the factory.

Q. He looked after the machinery did he? A. Yes, sir.

Q. How many boats were put there. Was the whole fleet around that island? A. During the fishing season they had three steamers.

30 Q. During the winter where were they? A. They were laid up in Bass River at New Gretna.

Q. They were not out there? A. No, sir.

Q. How big a place was the island? A. The island that the factory stands on contains about one hundred and fifty acres, more or less.

Q. What is there except the factory? A. Salt Grass and sedge.

Q. And a few cottages? A. Yes, a few cottages around the plant.

40 Q. Owned by the plant? A. Owned by McKeever Brothers, the cottages? A. All with the exception

Benjamin F. Loveland—Redirect

of one. There is one on the main island that did not belong to McKeever Brothers.

Q. As a general proposition when it was frozen up and the water of the bay frozen, was there on the island anything that you could do as superintendent? A. There was nothing that I could do. 10

Q. You had these three or four men there, what did they do? A. They did anything that was needed to do. Any repairs or remodeling, repainting, and so forth.

Q. Did it take all their time to do that work or were they there in the nature of watchmen? A. They were hired as employees to work there.

Q. Were they laborers? A. Yes, sir; with the exception of the chief engineer, who had charge of the men in my absence. I left him in charge. 20

Q. Now, was the plant ever neglected by you during that period of time? A. Not to the best of my judgment.

By Mr. Davis:

Q. Did McKeever Brothers ever make any complaint to you about the neglect of this plant? A. Never.

Q. When was the first thing you ever knew as to their claim of your negligent management of the plant? A. Last Spring, the last day of March, Captain Cranmer came to my home, and said he received orders to take care of the steamers and asked me for the keys and I turned them over to him. 30

Q. Who made the complaint of negligence? A. Captain Cranmer.

Q. Did McKeever Brothers ever tell you about it? A. The next day I went to Crab Island plant, S. W. McKeever was there, and I told him that Cap- 40

Benjamin F. Loveland—Redirect

tain Cranmer came over last night and demanded the keys and he was in charge of the boats, and I presumed I was through, and I thought in the mean time it was advisable for a settlement, and they said they heard I was going to leave them, and go to another fish factory the reason they put Captain Cranmer in charge.

10

Q. Did he make any charge that you had not discharged your duties? A. No, sir.

Q. At no other time? A. No, sir.

Q. What was said about the payment of your bill? A. I told him I thought it was advisable for a settlement. He said he would take it to Court before they would pay me what they owed me.

Q. Did he say why? A. No, sir.

20

Q. Did you ever know of any charge of mismanagement of the Chippewa until the case was brought into Court. Did you ever know that they made any claim that you had neglected this boat, the Chippewa, until the suit had been brought? A. No, sir.

Q. Did you know anything about the charge to yourself of the seacock bursting until this suit was brought or until today? A. No, sir.

30

Q. And with respect to this shaft and wheel of this boat that was lost, did you have any conversation with McKeever Brothers or either of them in that particular? A. Yes, sir.

Q. When and where was that and with whom?

A. The day that I towed the green garvey, so called, to the factory. Which I think was the first day of April. I told S. W. McKeever that I lost the wheel and shaft out of her the day I went to the factory to make arrangement to go to Atlantic City to look over the Garbage plant.

40

Q. Operating in their business? A. Under their orders; yes, sir.

Benjamin F. Loveland—Recross

Q. What was the conversation? A. In coming back across the bay I lost the wheel and shaft, and the day I returned the boat to the factory I offered to pay S. W. McKeever for the shaft and he refused to accept it.

Recross examination by Judge Horner:

10

Q. Why did you offer to pay for the wheel and shaft if it hadn't been your fault? A. Why did I offer—

Mr. Davis: I think why did McKeever Brothers refuse to accept it if it wasn't his fault.

The Court: There is now worrying. What is the significance of the question?

20

Judge Horner: When a man starts to make offers of reparation—

The Court: Isn't that matter of argument? You considered you were to blame?

A. No, sir, coming across the bay I struck a shoal.

Q. During the winter months there was a force of men at the factory, was there not? A. What winter months?

30

Q. October to March. A. In what year?

Q. All the years you were there. A. To a certain extent.

Q. There was a large amount of valable property there, was there not, all of the time? A. Of what kind?

Q. Oils; they had some times as high as five thousand barrels of oil there? A. Yes, sir.

Q. And that was worth fifty to seventy-five to one

40

Benjamin F. Loveland—Recross

hundred thousand dollars? A. Probably speaking was——

Q. Valuable buildings? A. Yes, sir.

Q. Valuable machinery, had they not? A. Yes, sir.

10 Q. These buildings needed attention did they not? A. Yes, sir.

Q. This oil needs supervision, did it not? A. Yes, sir.

Q. It needed care and attention, did it not? A. Yes, sir.

Q. Constant? A. Yes, sir.

Q. Did the machinery need care and attention? A. What machinery?

Q. In the factory. A. Yes, sir.

20 Q. Constant attention? A. Not constant; no.

By the Court :

Q. When the machinery was not in operation, what was necessary to be done? A. The machinery was supposed to be oiled in the fall. In other words, painted certain parts of it. And parts of it, under my experience, should not have been.

30 Q. What do you when the plant is shut down? What is there to do about the machinery? A. The outside machinery was scraped and painted with metallic paint, and fish oil.

By Judge Horner :

Q. Did you say that the machinery was scraped, painted and oiled with fish oil? A. I didn't have charge of it. The chief engineer had charge.

Q. Weren't you superintendent? A. Yes, sir.

40 Q. Didn't the presses have to be cleaned? A. Yes, sir.

Benjamin F. Loveland—Recross

Q. Was it done? A. Yes, sir.

Q. And conveyors had to be repaired? A. No, sir.

Q. Cleaned? A. The outside conveyors supposed to be cleaned.

Q. Were they cleaned? A. I don't know; I couldn't say. 10

Q. Weren't you superintendent? A. Yes, sir.

Q. In charge? A. No, sir.

Q. Whose charge? A. The chief engineer.

Q. What was the salary of the chief engineer?

A. Sixty dollars per month and board.

Q. How about the presses. As a matter of fact wasn't that machinery, while you were in charge as superintendent, neglected, suffered to rot and rust, and wasn't it neglected and repairs not made as required? A. If that machinery was neglected it was neglected in the summer of 1915, and if it was I am not— 20

Q. Prior to 1915? A. No, sir.

Q. Never? A. No, sir.

Q. You got your compensation and also your board, did you not? A. That was the bargain, verbal agreement.

Q. Two hundred dollars per month and board? A. Yes, sir. 30

Q. Can you give a fair approximation of the value of those buildings down there?

Mr. Davis: I think it is incompetent, irrelevant and immaterial.

Judge Horner: That is a matter of argument to be developed. Here was a man, superintendent, who, according to our contention, was to be on the job, and if we can show that there was valuable machin- 40

Benjamin F. Loveland—Recross

ery in addition to seventy-five thousand dollars worth of oil, I think if he can testify to the value of machinery and buildings it is competent to show the necessity of him being there.

10 The Court: Of course, it is reasonable to assume that some attention was necessary to be given to this plant. It is a fish factory, and there was machinery and there was stock, and there were buildings as you have said.

Judge Horner: But I think I am entitled to let this man testify as to his idea of the value of the property. He has so testified to the value of the oil.

20 The Court: Isn't it a fair assumption that it is a place of some value?

Judge Horner: I think your Honor has no contemplation.

30 The Witness: If I may have the privilege of answering the oil question. I called attention to McKeever Brothers at different times that these tanks were full of oil and that it was dangerous there on account of the pipes in the bottom would freeze and burst. I kept steam on continuously for this purpose running from the factory, in order to keep them from freezing.

By the Court:

Q. Who directed the steam to be kept there? A. I did it myself.

40 Q. The engineer furnished the steam? A. Yes, sir; I called their attention to the danger of storing the oil there every winter.

Benjamin F. Loveland—Recross

Q. The tax that you paid was on a little piece of ground over at New Gretna used for shoring the boats? A. Yes, sir.

Judge Horner: Will your Honor permit me to ask these two questions as to his idea of the value of the machinery and plant? 10

The Court: Ask the question.

Q. What was the value of the buildings? A. What buildings?

Q. The plant at Crab Island, the fish factory?

A. What would it bring at a public sale?

Q. No; its true value. A. The value would be what it would bring at a public sale.

The Court: You are a practical fish factory man, as I understand it. What was the reasonable value of this plant, considering it as a going concern? 20

A. In the way that that plant was built it actually cost five times more than it should.

Q. What was the value of the plant? A. Oh, the actual worth of the plant, in my judgment, would be practically speaking about two hundred thousand dollars. 30

By the Court:

Q. You had experience in this business? A. Twenty-five years.

Q. What is your title, captain? A. Practically fish factory man for the manufacturing of man-haden fish, cooking them up and extracting the oil.

Q. Your particular business is treatment of the fish to get the oil and fertilizer? A. Yes, sir. 40

*Benjamin F. Loveland—Redirect**Redirect examination by Mr. Davis:*

10 Q. Mr. Loveland, what is the custom in other factories, for the superintendent to remain on the premises during all of the winter time? A. No, sir.

Judge Horner: I object; I move the question and answer be stricken out; this is a specific contract.

The Court: But you disagree. He does not say he was required to live on the island all the time. Do you object to proof to show what the custom is?

20 Judge Horner: This is because we contend that this was a specific contract.

Witness: I want to recommend the misuse of the green garvy, so called; I built a boat cost me—

Judge Horner: I want to interpose an objection to the witness making any speeches.

The Court: Do you desire to explain your testimony?

Witness: Yes, sir.

The Court: Go ahead.

30 Witness: I built a boat, which cost me four hundred dollars; I named her after S. W. McKeever. I wore the engine out in their employ, carying mail, taking them to Atlantic City, Tuckerton, and different points, and wore the engine practically out, and never asked a cent for the boat.

Judge Horner: I move that that entirely be stricken from the record, as it is absolutely not relevant to the green garvy.

40 Mr. Davis: I will ask the Court to allow me to amend and charge you with it.

Charles M. Atkinson—Direct

The Court: This is a mere explanation of a matter of no important consequence one way or another.

By the Court:

Q. Captain, did you take these gentlemen to Atlantic City? A. I did, a number of times, and I had another man employed that ran the green gary that took them a number of times; and they particularly asked for the fast boat to take them in. 10

Q. Your boat? A. Yes, sir; she would make fifteen miles per hour.

20

CHARLES M. ATKINSON, SWORN.

By Mr. Davis:

Q. You are an attorney and counsellor of this State? A. Yes, sir.

Q. And connected with my office? A. Yes.

Q. Did you have charge of the preparation of the case of Loveland v. McKeever Brothers? A. I did. 30

Q. Did you have any correspondence with the attorneys of the defendant, York & York? A. I did.

Q. That was addressed to me, was it? A. It was addressed to you.

Q. I show you letter under date of August 26, 1914, and ask you what that is?

Judge Horner: I object to any letters by York & York. 40

Edward J. McKeever—Direct—Cross

Mr. Davis: Do you deny that they were counsel for the defendants?

Judge Horner: Yes. Griffin & Griffin are the only ones I know.

10

EDWARD J. MCKEEVER, SWORN.

By Mr. Davis:

Q. Do you know a firm of lawyers in New York by the name of York & York? A. Yes, sir.

Q. You have business with them? A. Yes, sir; he is my general counsel.

20 Q. They represented you in the first processes of this case? A. They said they would.

Q. Did they or did they not? A. Yes, sir.

Q. And they secured adjournments for you, extension of time to file answers? A. I presume that they did.

Q. Yes—— A. They told me that they obtained a lawyer.

Q. Along with them; you submitted to them your books and accounts in this case? A. Just the account of Loveland; yes.

30 Q. You knew that they were corresponding with me with respect to this case, did you not? A. I think I did, yes.

Q. You authorized them on behalf of McKeever Brothers? A. Yes.

Cross-examination by Judge Horner:

Q. Specifically the case of Loveland versus McKeever Brothers, who is your counsel?

40

Charles M. Atkinson—Recalled

Mr. Davis: I object to that. It is not a question of who is, but who was.

By the Court:

Q. Griffin and Griffin are the attorneys of record. He first went to his general counsel in New York where the concern transacts business. York and York are your lawyers in New York? A. Yes, sir. 10

Q. You put the matter before them? A. Yes, sir.

Q. And they corresponded with Mr. Davis? A. Yes, sir.

Q. And they afterwards turned it over to New Jersey counsel? A. Yes, sir.

20

CHARLES M. ATKINSON, recalled.

By Mr. Davis:

Q. In the correspondence on this question, did you receive a letter from York and York, under date of August 28, 1916? A. I did.

Q. Is that the letter? (Producing letter). A. That is. 30

Q. Does that letter refer to the matter of Loveland v. McKeever Brothers? A. It does.

Q. Was there at that time an enclosure referred to in that letter? A. There was a statement of Loveland's account.

Q. I show you statement of Loveland account, purporting to be statement of what is due, and ask you if that paper was enclosed and was referred to as the enclosure in that letter? (Producing statement). A. It was. 40

Benjamin F. Loveland—Recalled

Mr. Davis: I offer it in evidence.

Judge Horner: I object to it on the ground that here is a question of something that is by way of negotiation as between——

10 The Court: Oh, no. A compromise of debt——

Mr. Davis: No, sir; it it an admission of facts.

Judge Horner: I never saw the letter.

Mr. Davis: I showed it to you a minute ago.

That is admissible.

(Whereupon the defendant, by its counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

20 Judge (Seal).

BENJAMIN F. LOVELAND, recalled.

By Judge Horner:

Q. Prior to the beginning of this suit you conferred with Mr. Davis, representing you? A. Yes, sir.

30 Q. You told him the facts of the case?

Mr. Davis: I object to this as not cross-examination, as not competent, material or pertinent.

The Court: I can't tell from this state of the examination. What do you desire to show?

40 Judge Horner: I can show it, but I don't like to state it, because we have a very clever and astute witness.

Edward J. McKeever—Cross

The Court: Proceed with your examination.

Q. You told him the facts, what occurred, and directed him to bring suit?

Mr. Davis: I think that is privileged and clearly irrelevant, incompetent and immaterial. 10

The Court: Why do you hesitate—

Judge Horner: He is a very astute witness, is clever, as clever as any man in the Court Room, and if I state the purpose of—

The Court: What are you trying to prove?

Judge Horner: I am trying to prove: Here is a man who brings suit against these people for seven thousand and fifteen dollars and eighty-four cents, and on the admission of his counsel, it is admitted now that there is only twenty-four hundred dollars due, if you admit all of his claim. 20

The Court: That appears to be the fact; what is necessary—

Mr. Davis: We admitted that. You are four stations behind.

The Court: The pleadings show demand for much in excess of actual sum agreed to be due. 30

PLAINTIFF RESTS.

EDWARD J. MCKEEVER.

By Judge Horner:

Q. Where do you reside? A. Brooklyn, New York.

40

Edward J. McKeever—Cross

Q. What, if any, connection have you with McKeever Brothers? A. Secretary.

Q. You are, I believe, the McKeever Brothers, defendants in this suit? A. Yes, sir.

10 Q. Owners of fish factory or fertilizer factory on Crab Island on the Jersey coast? A. Yes, sir.

Q. Where is your office? A. It is Ebbett's Field, Brooklyn, New York, and Atlantic City.

Q. The Atlantic City Office is recent? A. Yes, sir.

20 Q. During the years 1911, 1912, 1913, 1914 and 1915, approximately how frequently were you a visitor at your plant at Crab Island? A. In 1911 and 1912 I went down there about once every two weeks in the summer time, during the height of the season.

Q. In the winter, how often? A. Probably once in the winter.

Q. And the next year how much, approximately? A. In 1913 I probably went down two or three times during the summer, and not at all in the winter.

Q. Next year how much, approximately? A. Maybe once or twice.

30 Q. When you had in view a visit to Crab Island what was your custom with respect to notifying anybody, if there was a custom? A. We would write up Mr. Loveland on a Sunday night and tell him we were going down a certain day, and to meet us with the boat.

Q. Would he meet you at Tuckerton or New Gretna? A. Tuckerton.

Q. Was he invariably apprised of your coming to the island? A. Yes, sir.

40 Q. Were you at Crab Island in the summer of 1911 when Mr. Loveland came to the island in company with your brother? A. Yes, sir; that is the

Edward J. McKeever—Cross

year we were building and I was there all the time.

Q. Was or was not the contract or employment made when you met then and there? A. It was.

Q. Would you be kind enough to state to his Honor, the Judge, the bargain that was made by you and your brother on behalf of McKeever Brothers between you and Mr. Loveland there? A. 10
After he came there with my brother we went around the plant and showed him all around and we went to the office and sat down, and agreed that his compensation was to be two hundred dollars per month and board.

Q. What position was he to hold? A. General superintendent over everything.

Q. What were his duties? A. To unload fish. Cook fish. Press fish. To have the oil separated 20
and put in the tanks, and the fish scrap sedulated and ready for market. And we then talked over the terms agreed and the time he was to be on the work.

Q. What was the agreement as to the time? A. He was to be on the work all during the week and go home Saturday night and return Sunday night.

Q. This was the understanding and agreement then and there? A. Yes, sir.

Q. While the plant was in operation or during 30
the entire time? A. To include the whole year because the plant needs overhauling and scraping off, for the fish sticks in a gluey substance to the chains and buckets, and they all have to be overhauled and cleaned and tried out, and if not there is a continual breakage.

Q. What was the approximate value of the plant? A. About two hundred thousand dollars.

Q. Is there necessity of having the competent men there continually? A. There certainly is. 40

Edward J. McKeever—Cross

Q. From the time of your employment until approximately the time of the dismissal of Mr. Loveland did you know that he had been absenting himself from the plant for weeks at a time? A. I did not; no.

10 Q. On the contrary, did you or did you not think he was there in constant attendance? A. I thought he was at all times.

Q. When did you first learn he had been absenting himself during the years 1913, 1914 and 1915? A. The first we heard was when Captain Valiant said, "Do you know the Chippewa is there on the bottom of the river?"

Mr. Davis: I move that be stricken out.

20 The Court: Don't give the conversation.

Q. When was that March 23d, 1916? A. I don't just remember.

Q. Prior to that time did you know that the Captain had absented himself from the business? A. No.

Q. Did you know at that time? A. No.

Q. Did you know it in March, 1916? A. No, sir; it developed since this—

30 Q. When? A. It has been developing since the time I dismissed him and put Mr. Cranmer in his place. Then the men that knew these things have come out and told us about them. They were afraid to do it before—afraid they would not get their positions back.

Q. Even as late as yesterday you learned other and additional facts as to his absenting himself? A. Yes, sir.

40 Q. Was there any claim made upon you, directly or indirectly, prior to the bringing of this suit, due

Edward J. McKeever—Cross

Captain Loveland or Mr. Loveland in the fall of 1913 for pumping out a barge or boat? A. No.

Q. By word of mouth or letter you had no such notice? A. No, sir.

Q. Do you recall a barge that went aground going out, a loaded barge? A. The Severn, yes, sir; I know the circumstances; I wasn't there. 10

Q. Did or did not that cost money to McKeever Brothers? A. We got a judgment against the people.

Mr. Davis: I move that be stricken out.

Q. What was the loss caused to McKeever Brothers by reason of that barge grounding?

Mr. Davis: I object to that question.

Judge Horner: We cannot put all our testimony in at one time. 20

The Court: Your theory is that damages accrued to the defendants because of the breach of contract?

Judge Horner: Because of his negligence and carelessness.

Mr. Davis: I think it is improper to set it off in a case of this kind.

Judge Horner: You can file a set off for anything that you can sue for. 30

The Court: You filed a counter claim?

Judge Horner: Yes, sir.

The Court: A counter claim is not a recoupment. Proceed.

(Whereupon the plaintiff, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge.

(Seal.)

40

Edward J. McKeever—Cross

Q. What was the damage sustained by reason of the grounding of this Severn?

10 Mr. Davis: You said you had a counter claim and recoupment, and you have not done it. You have simply counter-claimed.

Judge Horner: Look at the third count.

The Court: Proceed.

Mr. Davis: If your Honor please, if they are basing this as a cause of action, their bill of particulars is wholly silent on it.

20 The Court: I will let it be amended and you will be given an opportunity to meet the situation. I am not disposed to keep out upon any technical ground any fact in this case which will throw any light on the situation.

Mr. Davis: And that is the reason I took particular pains to demand a bill of particulars.

30 The Court: The Court has already made it sufficiently plain, and the Court will allow the other side their day, or some day in the future, so that nobody will be barred from showing anything that would affect the merits of this case.

Mr. Davis: My claim is that: That they cannot introduce an unliquidated claim for damages in a case of this kind.

The Court: Just exactly what they can do under the statute now. A counter claim growing out of an independent transaction can be made in a case of this sort under the present practice act.

40 Mr. Davis: This is unliquidated.

Edward J. McKeever—Cross

The Court: Doesn't make any difference.
He could sue for damages.

(Whereupon the plaintiff, by his counsel,
prays a bill of exceptions, which is hereby
allowed and sealed accordingly.)

10

Judge. (Seal.)

A. About five thousand dollars.

Q. What boat was that? A. The Severn.

Q. When was that? A. In 1913.

Q. Did you keep him after that? A. We didn't
know anything about his carelessness.

Q. Who was superintendent of that factory?

A. Benjamin F. Loveland.

Q. Was he superior to the engineer? A. Yes, 20
sir.

Q. Superior to everybody, except officers of the
company? A. Yes, sir.

Q. Did you at any time from the time he was em-
ployed modify or participate in any modification
of the original contract? A. No, sir.

Q. Did you ever tell him that he need not stay at
the island all the time, he could have a vacation, or
anything of that sort? A. No.

Q. Did you expect the man to stay there all kinds 30
of weather, winter and summer, when his family
was on the shore? A. I expected him to stay there
for the overhauling and repairing of the machin-
ery.

By the Court:

Q. When it was necessary to stay there? A.
Yes.

Q. Did you think that required him all winter 40

Edward J. McKeever—Cross

long to be there every day? A. We were building in 1911 and 1912.

Q. In other times? A. The assumption would be he would be there once or twice a week.

10 Q. When he was there once or twice a week, was he there enough? A. No, sir; not with the condition of the machinery.

By Judge Horner:

Q. When he ceased to be superintendent did you examine the machinery? A. Yes, sir.

Q. What was the condition? A. Rotten.

20 Q. What did it approximately cost you to replace the machinery? A. About eight or nine hundred dollars. After we cleaned it up and everything. Everything had to be taken apart. The boxes, conveying buckets, and machinery generally were full of everything in the way of fish scrap.

Q. Prior to the commencement of the suit had you any knowledge—prior to his dismissal had you any knowledge—prior to his dismissal and the commencement of this suit had you any idea of the omissions on his part? A. No; prior to his dismissal, no, sir, never an inkling of it.

30 Q. You, as a matter of fact, were quite fond of him? A. Yes, sir; thought he was quite the right thing.

By the Court:

Q. Did his work appear to be, so far as you could tell, during the time you could tell satisfactory?

A. It did; yes, sir.

40 Q. And these complaints and objections you are now making over himself— A. I dismissed him

Edward J. McKeever—Cross

on one complaint and the others have all come up.

Q. Did you know about them in August, 1916?

A. This year?

Q. Yes. A. Yes, sir did not know about all of them. I didn't know about any of them until we had dismissed him.

10

 NOON RECESS.

Cross-Examination by Mr. Davis:

Q. Mr. McKeever, who has actual supervision over this plant, from the point of view of the corporation? A. My brother and myself.

20

Q. Both of you together? A. Yes, sir.

Q. You visited this plant from time to time in 1911 and 1912, and on during the successive years up to the date of Mr. Loveland's ceasing to work for you? A. No, sir; not since the fall of 1912. I bought another interest in a very large business in Brooklyn, New York.

Q. The base ball business? A. Yes, sir.

30

Q. You had, nevertheless, visited this plant from time to time, had you not? A. During the summer months, yes, sir.

Q. Did you go down there in the winter at all?

A. I don't think I have been down there once in the winter until this winter since 1912.

Q. Were you there in the early part of 1916?

A. Yes, sir.

Q. When Mr. Loveland quit or was discharged?

A. No; I wasn't over there then.

40

Edward J. McKeever—Cross

Q. Not there then? A. Not that day.

Q. Had you been there that day or immediately prior thereto? A. Yes, sir.

Q. Were you there in 1915? A. No, sir.

Q. Not at all? A. I don't think I was there once.

10 Q. You entrusted the entire business to Mr. Loveland with respect to management of this plant?

A. Yes, sir; the plant was not in operation in 1915; we were running another plant at Hicks Island.

Q. Didn't operate the plant at all? A. No.

Q. The winter of 1915 and 1916? A. The summer of 1915.

Q. The summer of 1915 you didn't operate that plant at all? A. No, sir.

20 Q. No fish were rendered there whatsoever? A. No, sir.

Q. Who was superintendent in the Hicks Island plant? A. Mr. Maker, I think.

Q. Mr. Loveland was not there? A. No, sir; he was on the steamers.

Q. Was that the last summer in which this plant was operated, was the summer of 1914? A. Yes, sir.

30 Q. When were you down there in 1914? A. It might have been once in August when the team was away, and maybe once in August is all.

Q. Not later than that? A. No, sir.

Q. You knew at that time, then, how Mr. Loveland had been operating that plant? A. No, sir.

Q. Why not? A. Because I supposed he was competent and tending to his business.

Q. You don't mean the Court to understand that you went down there and didn't notice the condition of the plant that was being operated?

40 A. Certainly not; I didn't. They are all boxed up the conveyers and everything.

Edward J. McKeever—Cross

Q. In 1914. A. They are always boxed up when in operation.

Q. What else did you notice? A. I didn't go down there to notice anything.

Q. What did you go down for? A. Because my money was invested there.

10

Q. If you came there because your money was invested, you had interest in what was going on? A. I probably went down; my brother was down there—

Q. Do you mean to tell us you didn't look around to see what the condition was? A. I wasn't there an hour—

Q. I didn't ask you how long you were there, I am asking you the simple question, do you mean to tell us you didn't look around to see what conditions were? A. I certainly didn't.

20

Q. What did you go down there for? A. Down in the office to see how the time was being kept and things like that.

Q. Who kept the time? A. The time-keeper; I don't know his name.

Q. You were satisfied in 1914? A. Yes, and satisfied in 1915—

Q. Satisfied in 1915? A. Certainly.

Q. You had generally paid Mr. Loveland from time to time when demand was made for his money, didn't you? A. Yes, sir.

30

Q. You testified a while ago on direct examination that you knew what the facts were in 1916, but didn't know the negligence. A. Knew what the facts were in 1916? I didn't learn of the facts until I sent Mr. Crammer a letter to take charge of the steamers in March, 1916, when I was told the Chippewa was sunk and had been there three months. This is the first neglect I ever learned of Mr. Loveland.

40

Edward J. McKeever—Cross

Q. You didn't know then that this boat had been sunk before that time? A. No, sir.

Q. Were you the gentleman that was on the deck of the steamer, or was it your brother? A. I guess it was my brother.

10 Q. He didn't tell you anything about that? A. No, sir.

Q. This boat Severns that ran aground, you had a law suit about that, didn't you? A. Yes, sir.

Q. You know nothing about that of your own personal knowledge? A. No, sir.

Q. Was your brother there at the time? A. I think he was. Went down there after the thing was aground.

20 Q. I asked if he was there at the time? A. I don't think he was at the time.

Q. Were you present in Court when this matter was tried in New York? A. No, sir; I wasn't a witness to it because I wasn't there.

Q. I didn't ask you if you were a witness, I asked were you present in Court? A. I think I went in for a half hour or so.

Q. Were you there when your brother testified? A. No, sir.

Q. What Court was it tried in in New York? A. Federal Court.

30 Q. United States District Court for the Southern District of New York? A. I think that is it.

Q. Did you know that your brother at that time testified that the boat had not been overloaded below what the charter of the boat permitted? A. I do not.

Q. You were not present and did not hear him testify? A. I don't think.

40 Q. Did you hear him talking about the proposition before you went into Court? A. Yes.

Edward J. McKeever—Cross

Q. As a matter of fact, do you know now that he testified in New York, while Captain Loveland was there, and Captain Headly was there, subpoenaed by you to testify in your matter, that your brother testified then that the boat was not overloaded? A. I don't know, sir.

10

Q. You don't know it now? A. No, sir.

Q. As a matter of fact was a verdict rendered against you? A. A verdict was rendered against the firm that we sold the stuff to.

Q. Was there a verdict against you or your concern? A. No, sir.

Q. Then you lost nothing by reason of that so far as damage is concerned? A. No, sir; not to date, only counsel fees.

Q. That case has been determined hasn't it? A. I am not aware of it. 20

Q. Was this in admiralty? A. The case has been decided.

Q. Was this in admiralty or common law? A. In admiralty I think.

Q. Determined by the Commission or Judge? A. Commission, I think.

Q. Did he find in your favor? A. No, sir.

Q. No verdict was render against you? A. Only through our brokers. 30

Q. Was any verdict rendered against you? A. Not direct against us; but we are responsible for it.

Q. As a matter of fact, Mr. McKeever, this boat was how long? A. I haven't the slightest idea; it was a mammoth big thing.

Q. At least two hundred feet? A. I guess it was more than that.

Q. I said at least that? A. I never saw it.

Q. Did you hear it described or get any specifica- 40

Edward J. McKeever—Cross

tions in your contract? A. No; I don't think so. Only that she would carry some fifteen hundred tons.

Q. Doesn't the charter give the specifications of length and draft and beam and all? A. The charter gives carrying so much per ton.

10

Q. Doesn't it give dimensions as to its draft? A. I don't think it did, because it was chartered by H. J. Baker and Brother for our account.

Q. Mr. McKeever, isn't it a fact that when this boat was coming in the inlet that the hawser broke. A. I am not familiar with the thing at all.

20

Q. What is your report on it? You are here charging him with the negligent operation of the plant in that particular, what do you want the Court to understand the facts to be? A. My brother knows all about that.

Q. You don't know anything about that? A. Certainly not. I wasn't there. Only from what Headly, and these men testified to. I don't know whether they testified right or not.

Q. So far as you are concerned and the McKeever Brothers, I mean the corporation, you never heard any complaint of any negligence or carelessness or incompetency on the part of Captain Loveland, until after or at the time you dismissed him? A. No, sir.

30

Q. And he had been there under your employ and in your pay since July, 1911? A. Yes, sir.

Q. And this was in March, the last day of March, 1916, nearly five years, and you never heard any complaints about him? A. No, sir. If I had I would have called it off quicker than I did.

Q. And he stopped or changed his duties as general manager the twenty-fourth day of July, 1915? A. Yes, sir.

40

Q. And from July 24, 1915, until the last day of March, 1916, he occupied the humble position of

Edward J. McKeever—Cross

watchman at the salary of fifty dollars per month?

A. Yes, sir.

Q. So that there was eight months or about during the time that he was not boss over these men who have since come to you and told you about his incompetency and negligence? A. Yes, sir.

10

Q. That's a fact isn't it? A. Yes, sir.

Q. Yes—— A. He was the boss while they were working for us in the open season.

Q. I am speaking from July 24 until March 30, 1916? A. Yes, sir.

Q. You were paying him then fifty dollars per month as watchman? A. Yes, sir.

Q. He was not then superintendant of the factory? A. No, sir.

to you there is not any reason so far as the Captain is concerned for them not telling during the last eight months? A. Yes, sir.

20

Q. What is the reason? A. They were afraid Mr. Loveland would keep them off their steamers.

Q. Why would they object if he was then discharged as superintendant? A. Well——

Q. Whether he left or not, his duties had ceased as superintendant, and he was then in your employ simply in the subordinate job as watchman? A. Yes, sir; the steamers without work and lying idle——

30

Q. Does it make any difference whether he was getting fifty dollars or two hundred dollars? A. I think there is a little difference between character of man, between one ten thousand and a million dollars, different jobs.

Q. I ask you, whether or not the boats are worth one thousand dollars or worth a million dollars, does it make any difference as to whether the position this Captain occupied when he was getting

40

Edward J. McKeever—Redirect

fifty dollars per month? A. Certainly, I wouldn't pay a man fifty dollars per month for watching a garvy.

Q. In June, 1915, wasn't Captain Loveland at Hicks Island? A. He was on the steamers. If they caught any fish they went into Hicks Island.

10 Q. He wasn't at Crab Island? A. No, sir.

Q. So that more than a year elapsed during the time that he was not superintendant? A. A year.

Q. From June, 1916? A. He ceased to be superintendant on July 24th, 1915.

Q. I am asking you the simple question, that from June, 1915, he was not at Crab Island factory. That is a fact, is it not? A. Until he landed there on July 24, —

20 Q. As watchman? A. Oh, no.

Q. On July 24 he was no longer superintendant? A. That is the time he sent in the letter.

Q. Exactly so? A. Yes.

Q. What I am trying to get at is this, from June, 1915, he was not superintendant at the Crab Island Factory? A. A superintendant is supposed to control a plant.

Q. Answer the question? A. He was not at Crab Island unless the steamers went in there. He could not be at Crab Island and on the steamers.

30 Q. That's what I thought. I have been trying to get you to answer it for some time? A. I am not as though I could not answer it.

Redirect examination by Judge Horner:

Q. As a matter of fact, from July, 1915, to March, 1916, did you or did you not have any superintendant at Crab Island? A. Didn't have any.

40 Q. In the position that Mr. Loveland held, that

Stephen W. McKeever—Direct

of watchman, you made the arrangement I believe?

A. Yes, sir.

Q. What were his duties as watchman at fifty dollars per month? A. To watch the steamers. The Chippewa was there at that time, and see that she was kept there in good shape, and to attend to the three other steamers. 10

Q. Did he have any duty with respect to the factory? A. To go over there once in a while and see that things were all right.

STEPHEN W. MCKEEVER, SWORN.

By Judge Horner:

20

Q. Where do you reside? A. Brooklyn.

Q. You are a stockholder and officer are you not of McKeever Brothers? A. Yes, sir.

Q. What is your office? A. I am President.

Q. You know Loveland, the plaintiff in this suit? A. Yes, sir.

Q. Did or did you not employ him in the Summer of 1911? A. Yes, sir.

Q. Where was the first conversation that you had with him about the matter? A. I think in Lewes, Delaware, in the Rodney Hotel, I think. 30

Q. Did or did not close the contract there with him? A. Yes, sir.

Q. What did you do as a result of that? A. Well—

Q. Where did you make it? A. At the Rodney Hotel? A. Yes, sir; and we came to the plant to talk it over with my brother.

Q. He came up from Lewes and you took him to Crab Island? A. He went back to the factory that 40

Stephen W. McKeever—Direct

night in Lewes, and I met him in Philadelphia the next day, and on to Turkerton and Crab Island, and there I met my brother, Loveland and myself. I told my brother he was hired at two hundred dollars per month as superintendent of the fish factory.

10 Q. Were his duties as superintendent discussed between you and him and your brother and— A. Yes, sir.

Q. What was the discussion? A. That he was to superintend the whole structure and factory. He would do that. And all the machinery, which he is a capable man, and take care of all machinery and everything pertaining to the factory.

20 Q. What about the question of his attendance at the factory? A. He was to go home over Saturday night and come back Monday morning.

Q. Was there any modification of that plan? A. No, sir.

By the Court:

Q. Did you expect him to do that all winter long. Were there no times in the winter when you did not expect him to go to the plant? A. From Christmas up to New Years we did not expect him to go to the plant. He told me he was always away from home; so far away from Lewes.

30 Q. Your brother said his attention was required there at least once or twice a week. Do you agree with him or do you say he was required there all the time? A. I say he was required there all the time.

By Judge Horner:

40 Q. Was it understood and agreed that he should be there all the time? A. Yes, sir.

Stephen W. McKeever—Direct

Q. Are you sure of that? A. Yes, sir.

Q. Was there ever any modification of that agreement? A. No, sir.

Q. Did you in 1914 or at any other time tell him to go off from time to time as he wanted? A. No, sir.

10

Q. Did you ever know, prior to herewithin the last month or so, two months or three months, that he had used your boats in conducting his oyster business? A. No, sir.

By the Court:

Q. Did you know he had an oyster bed of his own? A. No, sir.

Q. Didn't know it? A. I knew his father died and had a will made and there was some proposition about some oyster beds willed to his brother and himself.

20

By Judge Horner:

Q. Did you know he was using your men, on your pay roll, in the oyster business? A. No, sir.

Q. Did you know he was using your men for unloading seed oysters from the boats? A. No, sir.

Q. Did you know he was neglecting your machinery? A. No, sir.

30

Q. Did you stand some loss with respect to the Severy? A. I think about five thousand dollars through our brokers.

Q. You had to make that good? A. Yes, sir.

Q. Was it ever reported to you that the Chipewa had sunk? A. No, sir.

Q. Was any complaint or claim ever made to you for the pumping out of a vessel in the winter of 1913, of sixty dollars? A. No, sir.

40

Stephen W. McKeever—Direct

By the Court:

10 Q. What about this boat *Severn*, what happened to it? A. That came into the dock there to be loaded with fish, and when they were loading it there, I came over from *Tuckerton* or *Atlantic City*, and the Captain was there and I got there about five o'clock, and said to the Captain "If I were you I would not load her to the water line." He says, "I understand my business." I says, "All right." That is all I said. I left there that night, and they were starting in loading the boat until he got enough scrap in it; and as I understand and heard afterwards—

20 Mr. Davis: I object to this.

Judge Horner: You cannot tell, Mr. McKeever, what somebody else told you. I don't think the Judge will press the question to that point.

The Court: Do you know personally what happened to the boat?

30 A. No, sir. Only the *Severn* was going out and it couldn't get over the bar and it came back then. Then they sent to me from *Brooklyn*; then I saw she was an the sand bar. Didn't have enough water to get off. Then I stayed there.

Q. What caused that in your opinion; was she overloaded? A. Overloaded.

Q. Did you ever give him permission for the use of the garvy in his oyster business? A. No, sir.

40 Q. Will you state to his Honor the Judge, the condition of the green garvy when *Loveland* returned it. You were there I believe. A. Yes, sir. *Loveland* returned the green garvy, and came up with a brand new boat and said it was his own,

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and brought the green garvy out there, and it didn't have any wheel on and everything dismantled in her. I says, "What is this. This is nothing to us." He says, "Fix it up and send me the bill." He put it there and we never did nothing only took the old engine out.

Q. Was the boat useless. Was it worth repairing? A. Not that I saw.

Q. What was it worth? A. The boat cost us pretty near about—

10

Mr. Davis: I object to that, if your Honor please, unless it be shown what was the damage done to the boat in the ordinary course of the prosecution of McKeever's business.

Judge Horner: I will try to get it that way.

20

Q. What was the garvy worth the last time you saw it prior to—

The Court: What is the garvy like?

Judge Horner: It is a boat.

The Witness: It is a garvy about thirty feet long, with an engine about twelve horse power.

Q. How much did it cost new? A. About four hundred dollars.

Q. How long had you had it? A. About five or six years.

Q. What did you use it for? A. To take light freight and mail and everything to the factory.

Q. How much did this man damage it? A. It isn't worth a cent to us now.

Mr. Davis: I move the answer be stricken out.

40

*Stephen W. McKeever—Direct**By the Court:*

Q. How much did he damage it? A. So that it isn't any good to us, at all. It would cost four hundred dollars to fix it up.

10 Q. It only cost four hundred dollars new.

By Judge Horner:

Q. Did you spend money in the improvement of the boat? A. We used to paint it up.

Q. New machinery, and so forth? A. We put a new engine in it.

20 Q. What cost was that? A. I think about three hundred dollars.

Q. Then the boat really cost you about seven hundred dollars? A. Oh, no, it only cost us about four hundred dollars. I paid one hundred and fifty dollars for the hull and two hundred and fifty for the engine, and about fifty dollars for the anchor and other equipment.

Q. All the equipment, including the anchor, lines and wrenches, oil cans, and everything? A. Yes, sir.

30 *By the Court:*

Q. Is the engine in the boat now? A. We have taken it out. I gave orders to take it out.

Q. When he brought the boat back, it had the engine in it? A. Yes, sir.

Q. It did? A. Yes, sir; I thought we could over-hall it, but it was played out.

Q. Do you know how much he caused it to be played out and how much you caused it to be played

Stephen W. McKeever—Direct

out in your business. You had it four or five years?

A. Yes, sir.

Q. You wouldn't attribute the whole blame to him, would you? A. No, sir.

Q. How much would you say he was to blame for playing it out? A. One-half of it. 10

Mr. Davis: I think we ought to show, if he is going to testify to that question, which is perfectly proper, it ought to appear what he knows of his own knowledge and what he is getting from somebody else.

The Court: I assume that he knows what he is talking about.

20

Q. You have been dealing with boats how many years? A. Thirty years.

The Court: It is a matter of arithmetic. Here is a boat which cost him new four hundred dollars. He used it in his business about five years. Now what would the depreciation be in a boat of that sort?

30

Q. How much would it decline in value? A. One hundred and fifty or one hundred dollars.

Q. Then we have it down to two hundred and fifty dollars. Now, when he got through with it how much was it damaged in dollars and cents? A. One hundred and fifty or two hundred dollars to fix it up right. It would need a new engine.

Q. You think it was damaged to the extent of two hundred dollars? A. Two hundred and fifty dollars. 40

40

Stephen W. McKeever—Direct

By Judge Horner:

Q. How near—in 1911 and 1912 were you at the plant a good deal? A. Yes, sir.

10 Q. In 1913 were you there very much? A. In the summer time I was there.

Q. The rest of the year? A. Not once during the whole winter.

Q. How about the next year? A. Wasn't there in the winter time at all.

Q. How about the next year? A. Not in the winter time at all.

20 Q. When you went there, did you notify Loveland in advance of your coming? A. We would telephone his house in New Gretna and tell him we would be in Tuckerton or Atlantic City on such a day and say that he should be there at that day. We telephoned we would be at Atlantic City certain night and he would meet us there.

Q. When you went to the plant he was there? A. Yes, sir.

Q. You didn't know of his absentism from the plant?

30 Mr. Davis: It is about time you stopped leading him, Judge.

Q. Did you know that Loveland was engaged in the oyster business? A. No, sir.

Q. Did you know he was away duck shooting? A. No, sir.

Q. Did you know he was away from the plant sometimes for weeks at a time? A. No, sir.

By the Court:

40 Q. You assumed that work was going on there

Stephen W. McKeever—Direct

satisfactorily, and it appeared to be so, did it not?

A. Yes, sir.

Q. You found nothing to the contrary? A. No, sir.

By Judge Horner:

10

Q. From a casual examination of the machinery could you tell whether it had been cleaned or repaired or not, from a casual examination? A. Passing by?

Q. Yes. A. No, sir.

Q. Could—

Mr. Davis: I move it be stricken out. He testified that he didn't examine it. What is the use of speculating whether he could do it or not do it, when he didn't?

20

Judge Horner: He said he visited the plant.

The Court: He didn't make any inspection of the machinery.

Q. Did you make an inspection of the machinery? A. No, sir.

Q. Did it run all right? A. Yes, sir.

Q. When Loveland left the plant as Superintendent did you go down to the plant? A. Yes, sir.

30

Q. Did you examine it? A. Yes, sir.

Q. What condition did you find the machinery in then? A. In very bad condition.

Q. Explain to the Judge. A. I have a couple of plans there, and if you will allow me I will show it to the Judge.

Mr. Davis: It seems to me, if your Honor please, that this is incompetent for the rea-

40

Stephen W. McKeever—Direct

son that a year has elapsed between the time that Mr. Loveland had exercised any superintendence over it, and to the time that the witness has testified concerning.

10 Q. When are you testifying? A. I am testifying that in five years there was nothing ever taken out of the casings where this machinery was, and they were not running where they should, and I found it out after Mr. Loveland came over there and Mr. Cranmer gave me the letter. And I asked him if he ever took that apart. He never did. All that machinery, he never looked after the conveyor or none of it. He had all the chain undergear full of water, and concrete over it. We had to take
20 crowbars and everything to get the dried fish away from the machinery. It was never taken apart from the first it was put in there when he came there. I found that out after he left there.

Q. Now, Mr. McKeever, during all this time that Loveland was in charge, did you assume the machinery had been looked after?

Mr. Davis: I object. It is immaterial what he assumed, if your Honor please.

30 The Court: Objection overruled.

(Whereupon the plaintiff, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Judge. (Seal.)

A. Yes, sir.

Q. Did you know that it had not been looked after? A. No, sir; because he was a competent
40 man.

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Q. At the time of your engagement of him did he assure you that he was a competent man? A. I know he was, because I was at the plant where he was.

Q. And that plant looked good? A. Any time any of the machinery broke down I have seen him get right at it and fix it up. And that plant failed and went into the hands of a receiver. 10

Q. When did you first find out, as near as you can tell, that Loveland was away from the plant so much? A. After he came over and told me that Mr. Captain Cranmer had a letter to give him taking the boats away from him.

Q. After he left your employ? A. Yes, sir.

Q. When did you find out that he had neglected your machinery? A. About three or four days before he came over. I was there getting the plant ready with the men for the garbage from Atlantic City and we had to do some alterations and to get to this here we saw that there was no— 20

Q. When he came back there he has testified that when he came back and delivered the garvy to you and told you Cranmer had taken charge of the vessels, he testified of some conversation with you as to the question of settling up or something of that sort. Now, will you tell his Honor the Judge just exactly what the conversation was with respect to that subject, if anything? A. I don't remember. 30

Q. I mean the day he brought the garvy back? A. The day he brought the garvy back?

Q. Yes. A. He told me about the letter, and I said, "Well, there is some money due you." He said, "Yes." I said, "Well, I will give you some money." He says, "You don't have to; I have given this case to my lawyer." I says, "You will catch 40

Stephen W. McKeever—Direct

10 more flies with molasses than you will with vinegar." Then I showed him that the day before I had found out about the machinery. That when the machinery was broken he would go outside and take a new conveyor in and put it on top of this machinery; that is what one of the men told me.

Mr. Davis: I move it be stricken out.

The Court: Strike it out.

Q. What damage, if any, was done to your factory by reason of failure to clean and care for the machinery, and make repairs during the time he had charge?

20 Mr. Davis: I object to that.

By the Court:

Q. Do you know—not a matter at which you can guess at—it is a matter of figures—do you know? A. That's been what I found due, the difference in the time for five years.

Q. The damage that was done to the machinery and equipment by reason of neglect, if any damage was done?

30 Mr. Davis: It is perfectly obvious, so far, that this gentleman does not know anything about that.

By the Court:

Q. Do you know in dollars and cents how much you were damaged? A. Yes, sir.

40 Mr. Davis: May I cross-examine him?
The Court: Yes, on that point.

By Mr. Davis:

Q. You are not a mechanic? A. A pipefitter and a plumber.

Q. Machinist? A. No, sir.

Q. You don't know anything about the relative value of second-hand machinery? A. I have bought a lot in my time.

Q. I am speaking of the value of machinery in the different stages of its depreciation? A. Yes, sir.

10

Q. What do you know about that? How did you learn that? A. I am in the contracting business for about forty years.

By the Court:

Q. Are you a practical man in the contracting business? A. I am a plumber, gas and steam-fitter.

20

Q. A mechanic? A. Yes, sir.

Q. Have been in the business of putting in machinery? A. Putting in sewers, paving and buildings.

Q. You don't know anything about machinery as such; you are not an engineer? A. I am a mechanic and pipefitter and plumber.

Q. Your machinery is there? A. Yes, sir.

Q. None of it was broken by reason of this neglect? A. Not until I got over, since he left there, that's the time I found it out.

30

Q. Why did you say you were damaged to the extent of two thousand dollars?

Mr. Davis: That was objected to.

The Court: He said it.

A. Because after he came there and told me about Captain Cranmer giving him the letter, we

40

Stephen W. McKeever—Direct

had taken the whole of this machinery apart, and had to put in new runners there.

10 Q. What did that cost? A. A couple of thousand dollars with the time and all. We were pretty nearly ten or twelve weeks overhauling it. April and May and June, pretty near three months, with eight and ten men overhauling all the machinery.

Mr. Davis: I still object, if your Honor please.

The Court: This was money he actually paid out.

20 Mr. Davis: He has not testified. All machinery, where is it——

The Court: You can cross-examine.

By Judge Horner:

Q. How many men did you say you employed on an average? A. Twelve men.

Q. Two and a half months? A. Yes.

Q. What was their average pay per month? A. The engineer, he got sixty dollars per month and his board.

Q. Yes. And the foremen, they got forty-five dollars per month and their board.

30 Q. Yes? A. And the laborers they got forty-five dollars per month and their board.

Q. And these men were employed for two and one-half months approximately? A. That was this year.

Q. In fixing the machinery? A. Yes, sir.

Q. Do you recall how much new machinery you bought? A. We had it right there and we put it in.

40 Q. How long have you been in this fertilizing business? A. About twenty-five or thirty years.

Stephen W. McKeever—Cross

Q. Are you familiar with the machinery? A. I am familiar with that machinery.

Q. You have been connected with it for about thirty years? A. Yes, sir.

Q. Can you tell from your experience how much of that work was made necessary and how much of the new parts was made necessary by reason of the neglect of the machinery by Loveland as superintendent? A. About two thousand dollars. 10

Cross-examination by Mr. Davis:

Q. Two thousand dollars was all you spent? A. That was this year.

Q. That is all you spent to repair and overhaul the machinery there? A. That I know of. 20

Q. That's what I am talking about. It had been sued for how long?

By the Court:

Q. When was the machinery first put in the building? A. In 1911.

Q. Was it new? A. Yes, sir.

Q. It was new? A. Yes, sir; and if new machinery is taken care of properly it will last twenty years. 30

Q. Yes; and then five years of your twenty years have gone. Wouldn't you have to repair and overhaul the machinery in the course of four or five years after it had been used? A. Yes, sir; it is like this your Honor—

Q. Why would you attribute then the whole expense to two thousand dollars to Mr. Loveland's neglect. When you say that in the ordinary course of such business machinery must be overhauled 40

Stephen W. McKeever—Cross

about every five years. That is a practical fact, isn't it? A. Yes, sir; machinery after the factory is shut down, it takes six or seven months to get it in shape to be ready for the next season, and the superintendent as I understand it with all other
10 factories was on the work every day of the year, except Sunday and Monday, from Saturday night up to Monday morning. Our superintendents were always on there.

By Mr. Davis:

Q. You say it was necessary when machinery has
20 been shut down to have it overhauled; it was necessary to overhaul this machinery by reason of the fact that the factory had been shut down for a year, wasn't it? A. Yes.

Q. Your machinery had not been operated there since October, 1914, it had been two years that this machinery had been idle, wasn't it? A. Two years, yes.

Q. Just in the ordinary course of things it would have been necessary to overhaul this machinery to get it in shape to run? A. No, sir. On the condition that when it was laid up, if the superintendent
30 had taken the proper amount of care of it, oiled up and scraped and painted, it would have been good to run another five years.

Q. Didn't you just tell his Honor, when machinery was laid up and you started it, it was necessary to overhaul it? A. I don't remember that.

By the Court:

Q. In July, 1915—was it July, 1915—until the
40 last day of March, 1916, Mr. Loveland was not

Stephen W. McKeever—Cross

your superintendent? He was only your watchman. What had he to do with machinery then? A. If in 1914, when he did shut down, if he overhauled the machinery for the eight months he was on there, the machinery would not have to be touched for three or four more years. It takes about nine or ten days to oil it up and grease it up and turn it out. And next year it is right. But if they neglect that there is thousands of dollars damage to the machinery. 10

Q. You had an engineer whose business it was to look after all the mechanical parts? A. No; only an engineer, a German, who gets sixty dollars per month and his board. He looked after the fire and pumps.

By Mr. Davis:

20

Q. I don't care whether he gets sixty dollars or six hundred dollars, was he there as engineer? A. Running the pumps and engine house.

Q. And to look after the parts pertaining to the mechanical operation? A. The superintendent was the man for that.

Q. The superintendent is the engineer? A. He is the manager and runs everything.

Q. Is he an engineer? A. Sure he is. If he didn't take his papers out he is entitled to. He runs the whole plant, I saw him run it before. 30

Q. You didn't see him run Crab Island? A. I say him run everything.

Q. You thought that he was all right? A. I know he was right; or I wouldn't have given him the watch as a present.

Q. When did you give him the watch? A. In 1912, a five hundred dollar watch.

40

Stephen W. McKeever—Cross

Q. Mr. McKeever what new machinery did you buy? As a matter of fact there was no new machinery put on there in 1916? A. We put in new conveyors.

10 Q. That is not machinery? A. Yes, sir; you count that machinery; it is right here. (Producing plans.

Q. That is the plans there? A. Plans of the machinery.

Q. The conveyors are not there? A. Yes, sir; they are.

Q. They are made of what? A. Iron and steel.

Q. These new conveyances were the only thing that you put in? A. Yes, sir.

20 Q. How long had they been in use? A. For five years, I guess. Conveyors would last twenty years if properly taken care of, which we do in our other plant.

Q. You don't know anything about the Severn, do you? A. Yes; I know something about it.

Q. About the injury to her. The cause of the occasion?

By the Court:

30 Q. Do you know whether she was overloaded or not overloaded? A. Only what the Captains told me here lately.

By Mr. Davis:

Q. Oh, you don't know? A. No, sir.

Q. You testified in the New York Courts? A. I did.

Q. Didn't you testify when Captain Hadley and Captain Loveland was there, didn't you testify that it was not overloaded? A. I don't remember.

40 Q. Do you deny it? A. No, I won't deny it.

*Joseph Hickman—Direct**By the Court:*

Q. What was she loaded with? A. Fish scrap.

Q. I suppose you defend this matter on the theory that it was not overloaded? A. I don't remember. It was a suit against our brokers.

Q. Of course, there was a law suit, and of course some formal defense was put in, and I assume this gentleman knew what it was. I simply want to know whether they defended the case through your brokers upon the theory that the boat was not overloaded? A. Our four Captains will tell you that she was overloaded.

10

Q. Did he testify that was so in that case? A. Loveland?

Q. Did you testify that way in the case? A. I don't remember that.

20

Q. Did the Captains testify that way? A. I don't remember that.

Mr. Davis: They have a right to change their testimony; but I think I can prove that Mr. McKeever testified in New York that the boat was not overloaded.

30

JOSEPH HICKMAN, sworn.

By Judge Horner:

Q. Where do you live? A. New Gretna.

Q. You were one of the Captains of McKeever Brothers? A. Yes, sir.

Q. How long have you worked for McKeever Brothers? A. Since 1912.

40

Joseph Hickman—Direct

Q. During 1912, 1913, 1914 and 1915 was Captain Loveland superintendent? A. He was superintendent until some time summer before last, July or something like that.

10 Q. You ran your boats during June, July, August and part of October each year? A. September. Some years we laid up in September, but mostly in October.

Q. And the same is true of the other Captains of the fleet? A. Yes, sir.

Q. During the time that Loveland was superintendent for McKeever Brothers, did he or did he not to your knowledge, engage in the oyster business? A. Yes, sir.

Q. Did you see him? A. I saw him; yes, sir.

20 Q. Can you tell when? A. In the Spring of 1913 he unloaded a schooner with Mr. McKeever's help. I helped unload the same schooner—

Q. Did you remember how many men he used? A. I couldn't tell exactly; somewhere between four and seven.

Q. How long were they engaged? A. Two days.

Q. Any other time? A. In the Fall he had his men working on the beds, oyster beds.

Q. McKeever's men? A. Yes, sir.

30 Q. How many? A. Two.

Q. How long? A. I couldn't say, but two days at least.

Q. You saw them? A. I saw them there.

Q. Did you ever see them there at other times? A. No.

Q. Did you ever see him use the green garvy for oystering? A. Yes, sir.

Q. Have oysters in her? A. Yes, sir.

40 Q. When was that? A. I would have to study on that. I think he was taking them up this Spring

Joseph Hickman—Direct

a year ago; taking them up and knocking them apart.

Q. Not in the green garvy? A. Yes, sir.

Q. You are a boatman of your own account? A. Yes, sir.

Q. What is a fair daily rental for the green garvy? A. Well, that's according. I wouldn't tell exactly about that. If he hires me and a garvy, it is generally five dollars per day. 10

Q. Suppose he hired the garvy without her owner or a man? A. I should want a dollar and a half or two dollars per day.

Q. Was this green garvy prior to 1915 a good boat? A. I couldn't say much about that, because I seen she had been marked on the outside for running through ice, and I couldn't tell about if she was good. 20

Q. What would you say approximately the boat was worth?

Mr. Davis: I object to that.

The Court: Upon what ground?

Mr. Davis: On the ground, if your Honor please, that there is no evidence to show what part of the damage is done by Mr. Loveland and what part in the service of McKeever Brothers. 30

The Court: We cannot keep out the value of the boat, whether worth two hundred dollars or two thousand dollars. It is a fact which is material to the case. Now, when it is come to ascertaining what proportion of the damage, if any, is chargeable to Captain Loveland, that is another question.

Q Do you know what that kind of a boat is 40

Joseph Hickman—Direct

worth? A. Yes; I have one nearly like it and I know what mine is worth.

10 Q. How much was this one worth? A. If I could tell you how much it was good, I could tell. If it wasn't good, it was about two hundred and fifty or three hundred dollars for the engine, and that is based on my own engine.

Q. Have you seen the garvy recently? A. I saw her lying on the meadows at the plant.

Q. When was that? A. As late as Wednesday.

Q. What was it worth then? A. I did not go to her to look at her.

Q. You live in New Gretna? A. Yes, sir.

Q. Mr. Loveland lives there? A. Yes, sir; neighbors.

20 Q. Beginning with the fall of 1912, how much of his time did he spend in New Gretna, so far as you know, and how much time at Crab Island plant? A. I don't know that I could answer that very well. I was away part of the time through the week. Times when I was home I generally saw him.

30 Q. How about the early months of 1913. A. Home most of the time during the day. I saw him going by backwards and forwards. I couldn't tell where he was the forepart of the time, because I was away in the morning.

Q. Did you see him in New Gretna practically every day, or not?

Mr. Davis: I object to the question as leading and suggestive in its character.

40 Q. Coming down to the fall of 1913, was he in daily attendance at Crab Island factory? The fall and winter of 1913 and 1914? A. No; I don't think he was.

Joseph Hickman—Direct

Q. Why? A. Because I saw him home.

Q. Where? A. At New Gretna.

Q. How frequently? A. About as often as I was there, two or three times a week, four times some times.

Q. Mornings? A. Mornings or evenings. 10

Q. In the afternoons? A. Lots of times.

Q. In the mornings? A. Yes, sir.

Q. How about in the fall and winter of 1913 and 1914? A. Yes, sir.

Q. Has that been so, so far as you know, during all the time from 1912 to July, 1915? A. In the winter months; yes.

Q. And in the winter months, you mean what month. November, December, January, February and March. 20

Q. Do you remember the time Mr. Loveland had some difficulty with a fellow down there to the factory who started to carve him? A. I remember hearing tell of it.

Q. How long was he away from the factory at that time? A. He was in the house practically two weeks, as near as I could tell.

Q. How frequently, to your knowledge, did he go duck shooting? A. I saw him have quite a lot every once in a while. 30

Q. Did you examine the steamer of McKeever Brothers, No. 3, in the winter of 1913? A. During the time she was sunk, I went aboard of her. I went aboard the day they were pumping her out.

Q. What caused the sinking? A. Sea cock bursted.

Q. What caused that to burst? A. I am not able to answer that question.

Q. Did you see her before she sank? A. Not aboard of her. I went by her nearly every day. 40

Joseph Hickman—Cross

Q. Do you recall a conference between Captains and pilots and Loveland with respect to the loading of the barge, Severn? A. Yes, sir.

Q. Were you present? A. Yes, sir.

10 Q. What was the object of that conference? A. The bookkeeper called us up in the office and asked us the draft to load that vessel, and our depth was twelve feet, except one fellow and his was twelve and a half.

Q. What happened? A. Loveland said the Captains did not know how much water there was on the bar, leave it to him and he would load her.

Q. Did he load her up? A. Yes, sir.

20 Q. To what depth? A. Fourteen feet.

Q. What happened to her? A. She got ashore.

Q. What happened then? A. Quite a job to get her off. It took the three boats to get her off and had to take a lot out of her then.

Q. Bring her back to the factory? A. Bring her back to the factory and take some out of her; yes, sir.

Cross-examination by Mr. Davis:

30 Q. Captain, who did load the boat? A. Who was supposed to load her? That's more than I know. Loveland put the stuff aboard her I suppose. We were away from there part of the time; most of the time we were away.

Q. Were you away when the stuff was put on the boat? A. Most of the time; yes, sir.

Q. Who was the Captain in charge of the loading of the boat. A. I don't know what the Captain of the barge name was?

40 Q. He is in charge of the loading of a vessel, of a barge such a sthis, the captain, isn't he? A. Not always; no, sir.

Joseph Hickman—Cross

Q. Under the law, isn't he required to determine when his ship is loaded, and how it should be loaded? A. No, sir; his boat is chartered to load to a certain draft.

Q. Yes; now isn't it up to him to determine when it is to him to say whether she will load fore or aft? A. I don't know how it could be, unless he owned the barge. 10

Q. How long have you been a captain? A. In the neighborhood of twelve or fourteen years.

Q. How long have you had a license? A. I haven't got any.

Q. And you are captain of a boat going to sea? A. Yes, sir.

Q. What amount of the work do you do? A. I have a man that carries the papers that covers the boat. 20

Q. You mean a licensed man? A. Yes, sir.

Q. What part of it do you do? A. I have charge of the fishing part of it.

Q. Who is the master of that ship? A. The man who holds the papers, I guess, is really the master.

Q. Then you are not captain at all? A. How is that?

Q. You are not licensed? A. There is lots of captains not got licenses. 30

Q. What part do you do; you attend to the fishing? A. Yes, sir. There's lots of us, you know, that fills places we weren't qualified for.

Q. You never took your examination then? A. No.

Q. Then you don't know whose job it is to determine when a ship is loaded and how she shall be loaded, do you? A. I understand enough to load a boat, if I haven't got a license.

Q. You are not a captain? A. If you put it that way, yes. 40

George Vailant—Direct

Q. I am not going to put it; I am going to let you put it. You are not a licensed captain? A. No, sir.

Q. Where——

10 The Court: Whose boat was this?

Judge Horner: A boat chartered through MrKeever Brothers' brokers; a big barge without power.

The Court: The barge came down to be loaded and taken away with a cargo. Now, the question is whether the master of the boat was the proper one to determine its capacity or whether that was up to the superintendent at the plant.

20 Mr. Davis: That's right.

Q. Were you on board the ship when it met with the disaster? A. No, sir.

Q. Who was the captain of it? A. I don't know; I don't know who he was.

Q. Was he in the employ, so far as you know, of McKeever Brothers, or came there in charge of the ship? A. He came on to her when she was sent there.

30 Q. In charge of the ship? A. In charge of the barge; yes, sir.

Q. You didn't see the accident? A. I didn't see her when she went there.

Q. You weren't in it? A. No, sir.

Q. And you weren't on the tug? A. No, sir.

Q. Were you in any other ship in the same tow? A. No, sir; not when she went there.

40 Q. You came there after—— A. After she got there; yes, sir.

George Vailant—Direct

GEORGE VAILANT, SWORN.

By Judge Horner:

Q. Captain, where do you reside? A. New Gretna.

Q. You are in the employ of McKeever Brothers? A. I have been with them, yes; ever since I have been there. 10

Q. You are master of one of their fishing vessels? A. Master of the E. J. McKeever.

Q. What months in the year do you board her? A. About the first of June until October, and then sometimes we freight along the balance.

Q. By freighting you mean? A. Carrying coal and oil and getting scrap, anything.

Q. Does that continue until the time of the freezing of the water? A. Sometimes it does and sometimes it doesn't. 20

Q. Freighting every year continues through October, November and December? A. First, I guess, the first year we carried some gravel and stuff, quite a lot until, I think, about the last of October or first of November.

Q. You know, Mr. Loveland, of course? A. Oh, yes.

Q. What position did he hold with the McKeever Brothers? A. He was superintendent of the factory. 30

Q. During the time he was superintendent of the factory do you know of your own knowledge that he operated his oyster business? A. Well, I know he had oysters, but I was not interested in that, and I don't know but a very little about it.

Q. Did you ever see him on his oyster beds during that time? A. No. 40

George Vailant—Direct

Q. Did you ever see him unload seed oysters? A. No.

10 Q. With respect to the months of October, November, December, January, February and March, of each year, during the time that he was in the employ of McKeever Brothers, was he or was he not to your knowledge at the factory each and every day? A. No; I couldn't tell about that.

Q. Where do you live? A. I lived at New Gretna.

Q. Where did he live? A. New Gretna.

Q. Was he or was he not about the streets of New Gretna? A. I used to see him in the winter time around the postoffice nights when I would go to get my letters; but through the summer I am away most of the time.

20 Q. I am speaking of the winter? A. I used to see him most every night.

Q. How about the day time? A. I am not around there much in the day time; I have not often seen him around; might maybe somewhere.

Q. Practically every hour of the day? A. No; well I——

Mr. Davis: Let him tell the story.

30 A. I have often seen him going gunning, fox hunting, and one thing another.

Q. Seen him out on the bay gunning? A. No.

Q. But gunning and fox hunting? A. Yes.

Q. Do you recall the conference of the captains regarding the loading of the Severn? A. I was there at the time.

Q. You were in the conference? A. Yes.

Q. What was the judgment of the captains as to the load that should be put on the Severn?

40 A. They had a man as bookkeeper, and he came to us to know how deep he should load his barge.

George Vailant—Direct

Mr. Davis: At that time when you went in, was Captain Loveland in this office—

Q. Was Captain Loveland there? A. No.

Mr. Davis: Then I object to it.

10

Q. Did you talk to Loveland about this? A. My talk was with Prescott.

Q. About the Chippewa, captain, was you the man that reported the Chippewa was sunk to the McKeever Brothers? A. Yes.

Q. Can you recall when it was? A. I don't think I can. I tell you why it was; I wanted to buy the boat; and I thought being sunk maybe they would sell it to me.

Q. Can you tell about when it was? A. No; I don't know that I can.

20

Q. May I suggest it was some time in the latter part of March, 1915? A. Sometimes in the spring a year ago.

Q. What was the result of your report that the Chippewa was sunk?

Mr. Davis: Now, he don't know the result.

30

Q. Well if you know. Do you know? A. I don't know. I think it was on account of a slow leak.

Q. Oh, but, didn't Loveland cease to be in their employ immediately after that? A. I—

Mr. Davis: He don't know what the result is.

The Court: That sort of testimony is irrelevant.

40

*George Vailant—Cross**Cross-examination by the Court:*

Q. Are you an old sea captain? A. Yes, sir; I have had a license for forty years.

Q. Who determines the capacity of his boat?

10 A. The master has full charge of his boat.

By Judge Horner:

Q. Does that obtain to these barges, as well? Or are they not just laborers on the barge? A. I don't know about barges, all I know is about my kind of boat, steamers.

Q. You have been in shipping business now all your life? A. Yes.

20 Q. Isn't it a matter of fact there isn't a real seafaring man aboard the barges? A. Yes; but—

Q. That's true, isn't it? They are not licensed captains? A. Some are and some are not.

Q. A barge like the Severn? A. I don't think that he had any license.

Q. Just a laboring man? A. Just a laboring man that shipped through to take her.

30 *By Mr. Davis:*

Q. What do you mean, a licensed captain is not required by the law? A. I don't think one is required by the law.

Q. That's what you meant? A. Yes.

Q. As a matter of fact, a man to be able to man one of these ships must know something about seafaring life, and the management of ships? A. Yes.

40 Q. A captain, a laborer or what he is, he has got

George Vailant—Cross

to say as to what is put on her and how much?

A. I always do.

Q. Isn't that the practice and the custom in sea-faring life that the man who is master of the ship, is master of the ship? A. If he is the man to load they do it, but sometimes I suppose I let somebody— 10

Q. I don't mean to say what did happen, but to say what is the proper thing. He was the proper man to say, how much was to be put on there, wasn't he? A. I should say he was.

The Court: He has answered this several times.

Q. Captain, you were captain of the tug, or whatever boat it was that was in charge of the Severn, towing it was it not? A. Captain Hadley was in charge of her, and I was to assist him, to help him get down the inner channel. 20

The Court: Was he captain of the barge, Severn? A. No.

The Court: Who was?

A. Some fellow from Baltimore; I don't know his name. 30

Q. I mean, Captain, you were on board the ship that had the Severn in tow, were you not? A. No.

Q. Where were you? A. I was on my ship, along side of her.

Q. Were you on one ship and Captain Hadley on the other? A. Captain Hadley was on the line and I was alongside guiding the ship.

Q. Captain, isn't it a fact that the hawser broke, 40

George Vailant—Cross

that was in tow of that ship? A. Yes; it broke at—

Q. You had to round a point of land, did you not there? A. Yes.

10 Q. Wasn't it a fact, Captain, that there was a heavy tide coming in at that time? A. Yes, sir.

Q. And struck the bow of the ship and turned it in, did it not? A. Yes.

Q. Was that your hawser parted? A. She struck there and he parted his hawser.

20 Q. The parting of the hawser was because of the tide at that time that struck the ship on the bow, was it not? A. Yes; she struck there, her bottom or something, you know, she swung around and got around, before we got her off she grounded.

Q. Isn't it a fact that the tide striking this ship on the bow turned her sidewise, you might say, to the tide, and parted that hawser? A. It was the bottom she struck that turned her of course.

Q. It was the bottom or was it the tide? A. I think it was the bottom. I am not positive for I wasn't aboard of her. I left her then.

Q. You had left her with your ship? A. Yes.

Q. After this line had parted you had to get loose from her? A. I cut loose before the line parted.

30 Q. Why did you cut loose before? A. We were getting into a sea where it was jumping alongside of me and there was danger of punching a hole in her side by my boat.

Q. The loading of the boat was not a particular feature about it at that time? A. I think she was loaded too deep.

Q. But that was the Captain's fault, the master's fault, if anybody's? A. I don't know whose fault it was. She was loaded too deep.

40

George Vailant—Redirect
John Breckenridge—Direct

Redirect-examination by Judge Horner:

Q. Didn't you have any conversation with Loveland about the load to be put on that boat? A. I don't think there was a word mentioned. 10

JOHN BRECKENBRIDGE, SWORN.

By Judge Horner:

Q. Where do you live? A. Tuckerton, N. J.

Q. Are you in the employ of McKeever Brothers?

A. No, sir.

Q. You did work for them for a while, did you not? A. Yes, sir. 20

Q. When did you begin? A. In May, 1913.

Q. 1913 or 1912? A. 1913.

Q. How long did you work for them? A. Eighteen months.

Q. Who was the superintendent? A. B. F. Loveland.

Q. Well, you worked for them, and were you at the factory all the time? A. All the time except Saturdays and Sundays. 30

Q. How about Loveland, was he there? A. During most of the time in the fishing season.

Q. How about the fall and winter months. A. Well after the first of the year he was away about six or seven weeks.

Q. At a stretch? A. Yes, sir.

Q. Wouldn't be there at all in six or seven weeks?

A. One time in particular.

Q. To your knowledge did he ever conduct an 40

John Breckenridge—Direct

oystering business while you were there? A. Yes, sir.

Q. Did he have you work for him? A. Yes, sir.

Q. In the oyster beds? A. Yes, sir.

Q. And paid you for it? A. He paid me.

10 Q. But you were on the McKeever Brothers pay roll? A. Yes, sir.

Q. And your McKeever pay you got? A. Yes, sir.

Q. What were you doing there? A. In the summer time I was electrician, in the winter I was generally anything.

Q. Do you know, to your knowledge, who was the other man on the oyster beds? A. Yes, sir.

20 Q. Was that man on the McKeever Brothers pay roll? A. Yes, sir.

Q. Give me the names if you can of some other men? A. John Bacon.

Q. Who else? A. That's all.

Q. How about Gaskill? A. Not in my time; that I can't remember.

30 Q. In the winter months that you were there did or did not Loveland ask you to make any repairs to the machinery and equipment? A. Well, he told me to paint, and in times when he was away he kinda left Mr. Valve over me in a way.

Q. He left you what? A. Left Valve over me in a way.

Q. Was the machinery cleaned? A. My first winter; yes.

Q. The first winter? A. The only winter I was there.

Q. Who directed that? A. Well, both of them.

40 Q. Who was boss? A. Mr. Loveland was superintendent, and I took my orders from both of them.

John Breckenridge—Cross

Q. The other man took his orders from Loveland as well?

Mr. Davis: Don't lead all the time Judge.

Q. Did he or did he not; do you know? A. I took my orders from the old engineer. 10

Q. Did the old engineer take orders from Mr. Loveland? A. I don't know; it was none of my business.

By the Court:

Q. Are you in the employ of McKeever Brothers? A. No, sir.

Q. Where do you live? A. Tuckerton, New Jersey. 20

Q. Are you a native of Tuckerton? A. No, sir; born and raised in Atlantic City.

By Judge Horner:

Q. As a matter of fact, you are now employed by the German Wireless Station at Tuckerton, New Jersey, and supposed to be working directly under the United States Government, and indirectly under the German Government are you not? A. Yes, sir. 30

Cross-examination by Mr. Davis:

Q. You were there for one winter? A. Yes, sir.

Q. And during that winter you say the machinery was overhauled and put in shape? A. Well, it was scraped.

Q. It was properly treated was it not? A. Some of it was painted with fish oil and lamp black, and some fish oil and metallic. 40

John Breckenridge—Redirect

Q. It was properly treated. Was it not taken care of? A. Yes; as far as it would go.

Q. How much work did you do for Mr. Loveland at that time? A. On oyster beds?

Q. Yes. ? A. About one day and until ten o'clock the next morning.

Q. A day and a half? A. Yes.

Q. One other man? A. Yes.

Q. He did the same you did? A. He did.

Q. That's all you know about anybody else working for him? A. That's all.

Q. Was that unloading oysters from the boat Mr. Breckenbridge? A. Yes, sir.

Q. The same as you heard Mr. Loveland testify this morning? A. Yes, sir.

20 Q. Was it the same time that he was testifying to? A. Yes, sir.

Redirect examination by Judge Horner:

Q. During the winter you were there—1913 and 1914, wasn't it? A. Yes, sir.

Q. How much time was Mr. Loveland away in the aggregate? A. In 1913 and 1914.

Q. In the fall of 1913 how much was he away?
30 A. Sometimes a week at a time; sometimes two weeks at a time.

Q. How much would it all amount to in the fall of 1913? A. Six weeks, I guess, about.

Q. In the Spring of 1914, how much was he away? A. About six or seven weeks.

Q. Didn't show up there at all? A. No, sir.

Q. Bay open? A. Bay froze up.

Q. Both times? A. Yes, sir.

Q. You could get across from land, couldn't you?
40 A. No, sir.

John Breckenridge—Cross

Q. Didn't you slide things across? A. No, sir; not in my time.

Q. You remember the time you were there, the winter he was cut? A. He wasn't cut in the winter.

Q. The time he was cut? A. He was cut in the engine room.

Q. You remember the incident? A. Yes. 10

Q. How long was he away from the factory as a result of that? A. About two weeks in bed.

Q. How long away from the factory? A. About four weeks, I think.

Q. That was in addition to the other time you testified to? A. Yes, sir.

Q. Bay was open then? A. That's a different case altogether; I am trying to tell you the right thing. 20

Cross-examination by Mr. Davis:

Q. You had no interest in that matter at that time, did you? A. No, sir.

Q. And you didn't attempt to keep any record of the days he was away and the days he was there? A. It was none of my business.

Q. And secondly, you kept no record of it? A. No; why should I? 30

Q. I can't tell—

By the Court:

Q. Do you know whether there was anything for him to do the days he was absent? A. Well, he is superintendent.

Q. Do you know whether any of his duties were neglected while he was away? A. That is something that I cannot say.

Q. You were there? A. I was there. 40

John Breckenridge—Redirect
Val Cairn—Direct

Q. Did the work go on as if he was there? A. I did my work.

By Mr. Davis:

10 Q. And everybody else you say did the same thing? A. When we were well.

Q. So far as the work to be done, and could be done, it was done right straight along? A. Yes, sir.

Q. And during the time the bay was frozen over it was impossible to get over there? A. From Mr. Loveland's statement; yes.

20 *Redirect examination by Judge Horner:*

Q. You don't know of your own knowledge? A. I wouldn't undertake it. I am not familiar with boats.

VAL CAIRN, SWORN.

By Judge Horner:

30 Q. Where do you live? A. Crab Island.

Q. You were working for McKeever Brothers? A. Yes, sir.

Q. How long have you worked for them? A. Over twenty years.

Q. What is your job at Crab Island? A. Engineers job.

Q. Do you know Loveland? A. Yes, sir.

40 Q. What is his position down there? A. Superintendent.

Val Cairn—Direct

Q. Were you during 1911, 1912, 1913, 1914 and the spring of 1915 at the factory all the time? A. Yes, sir.

Q. In the fall of 1912, that is the winter of 1912 and 1913, was Loveland at the factory all of the time? A. No not all the time.

Q. How often did he go? A. One week, fourteen days, three weeks, sometimes over. 10

Q. How often did he go? A. Three or four weeks.

Q. Do you mean three or four weeks there?

Mr. Davis: Let him tell his own story.

By the Court:

Q. Are you hard of hearing? A. Yes.

Q. Do you hear me? A. Yes, sir. 20

Q. Well, now, you tell us how much time he was there at the plant? A. One time, a week. He comes over ten or fifteen days; sometimes stay away.

Q. Was that all it was necessary for him to be there? A. In the winter time.

Q. It wasn't necessary for him to be there any more than that? A. No.

Q. Or was it? A. No. 30

By Judge Horner:

Q. How long was he away? How long he no come there? A. Three or four weeks.

Q. Not there once in three or four weeks? A. No, sir.

Q. Who was the boss? A. Ben Loveland was the boss.

Q. He your boss, or not? A. Yes; he was my boss. 40

Val Cairn—Cross

Q. He told you what to do? A. Yes, sir.

Q. Did he ever direct you to repair the machinery?

By the Court:

10 Q. Who employed you on the job? A. Superintendent Loveland.

Q. He hired you on this job? A. He was superintendent, he was boss all over.

Q. As I understand it this man worked for McKeever Brothers at the fish factory for twenty years. He is an old engineer, isn't he? He lives there. You live there all the time? A. Yes, sir.

20 Q. Have you family? A. No.

Q. Is it necessary to clean the machinery every winter? A. Yes; clean the machinery so much as you can, one man.

Q. Did Loveland ever direct the machinery to be cleaned? A. No.

Q. Did he ever direct the machinery to be repaired in the winter? A. No; he never looked it over.

Q. He attended it; no? A. He no looked over.

Q. When he came there how long would he stay?

A. About an hour or half hour. Sometimes couple
30 time? A. No, not all the time.

Q. How much is the longest time he was away there without coming at all? A. Five or six weeks, the longest time.

Cross-examination by Mr. Davis:

Q. How long you been working as engineer? A. Ten-fifteen year.

40 Q. You worked for McKeever Brothers all that time? A. Yes.

Captain McNeil—Direct

Q. As engineer? A. Yes.

Q. You had charge of all the machinery, didn't you? A. I fix the machinery; yes.

Q. You was boss of machinery? A. No; I don't know boss of machinery.

Q. Didn't you do all work of the machinery? A. Yes. 10

Q. You repaired the machinery and did all that kind of work didn't you? A. Yes.

Q. When Loveland was away you still looked after the machinery and did your duty? A. Yes; sometimes the superintendent had to go down—

Q. He came around there for different—fifteen minutes, half hour, or two hours, didn't he? A. Sometimes four weeks sometimes five weeks.

Q. That was when the bay was frozen over, and he couldn't get over? A. Sometime when the bay was frozen over. 20

Q. You looked after the business when he was away, didn't you? A. Yes.

Q. Everything went right? A. Yes.

CAPTAIN MCNEIL, sworn.

30

By Judge Horner:

Q. Where do you live? A. New Gretna.

Q. What is your business? A. Pilot and master of sea-going vessels.

Q. Do you work for McKeever Brothers? A. Yes, sir.

Q. From 1911 to 1915, who was superintendent at the factory? A. Mr. Loveland.

Q. Did he have any other business that he trans- 40

Captain McNeil—Direct

acted to your knowledge during that time? A.

Oystering.

Q. Did you ever see him oystering? A. Well, I never saw him, only what I heard others say.

Q. Did you ever see him actually conducting his oyster business out on the oyster beds? A. Yes.

Q. Did you ever see him have the men of McKeever Brothers up there working? A. One day.

Q. When was that? A. The first day of oyster season in 1912, I think.

Q. You live in the same town with Loveland?

A. Yes, sir.

Q. During the fall and winter months would he or would he not be at the factory? A. When the boat laid up I was off, and naturally I would go

20 down town to the post-office and knock around, and when I went down casually I generally saw him.

Q. In the day time? A. Day time and night.

Q. During business hours? A. Business hours, post-office about seven o'clock in the evening.

Q. Did you examine the Chippewa when sunk?

A. No, sir.

Q. Did you see her while she was sunk? A.

Yes, sir.

Q. Did it help her or hurt her to have it sunk?

30

Mr. Davis: I object to that.

The Court: On what grounds?

Mr. Davis: I can't see any liability attached to Loveland, and don't think it is material.

The Court: He has not got it that far.

Q. Was the boat hurt any by being grounded? A. Oh, yes. Machinery stands in water, and water is
40 no good to an engine.

Captain McNeil—Direct

Q. Did you talk to Loveland about the loading of the Severn? A. Once.

Q. When? A. While she was being loaded.

Q. About when? A. Just previous. It was a very important point when the Severn came there to get her draught water. It seems as though when these boats is chartered McKeever Brothers was responsible for that boat from the time that she went through the bar and she was back. He was to do this and he was responsible for her, also the draught of water. He had to deliver this after it got loaded to another sea-going tug, and was responsible to deliver that barge over the bar safely to this sea-going tug to be delivered at Baltimore. 10

Mr. Davis: I move that it all be stricken out as not responsive. 20

The Court: It will be stricken out.

Q. Did you discuss with Loveland the question of the loading of the Severn? A. Yes, sir.

Q. Give his honor, the Judge, what the subject matter discussed was.

Mr. Davis: I think that is incompetent, irrelevant and immaterial. 30

The Court: It may not be.

Q. What was said by you and by Mr. Loveland?
A. The bookkeeper asked me to give him the draft of water. He was going to forward their idea of the draft to McKeever Brothers. And I told him twelve feet, and Loveland said that I didn't know anything about it. He said he could take a boat in 40

Captain McNeil—Cross

and out of there drawing fourteen feet of water. He was only asking me for my opinion of the draught and I gave it twelve feet.

Q. Do you know that subsequently the Severn grounded? A. Most assuredly she did; she couldn't

10 help grounding.

Q. How about the steamer, McKeever Brothers, do you know anything the matter with her? A. The sea cock bursted and it sank.

Q. Did you examine her? A. No, sir.

Q. You don't know what caused it to burst? A. I suppose frost got—

Mr. Davis: Move to strike it out.

20

Cross-Examination by Mr. Davis:

Q. Now, Captain Loveland had nothing to do with the loading of this barge, did he? A. He had all to do with it.

Q. Wasn't the master of the ship the boss of the loading? A. No, sir.

Q. How long have you been a sea captain? A. Twenty-five or thirty years.

30 Q. Licensed that time? A. Fifteen years.

Q. And you mean to say that the master of the ship does not determinè how much is loaded and where it is put? A. Not in that case.

Q. I am not talking about that case. A. In that case he had nothing to do with the draught.

Q. I am talking to you about the loading of a ship; don't the master of the ship determine how much load and where shall be put? A. Not in that boat, he would not.

40

*Captain McNeil—Cross**By the Court:*

Q. What are the duties growing— A. He chartered under the understanding that he was to be towed over that bar and towed back, and McKeever Brothers was responsible for the draught, and he was out and had nothing to do with it. 10

By Mr. Davis:

Q. This discussion that you were talking about was to get the opinion of how much draught a boat would have to have to go through there? A. Yes, sir.

Q. And that was before the boat was loaded? A. Yes, sir. 20

Q. And that was when the charter was being made up? A. Yes, sir.

Q. And the opinion that Mr. Loveland gave was that he could carry the boat out through that with fourteen feet draught? A. Yes, sir.

Q. When the charter was made up did you see it? A. No, sir.

Q. How much draught did the ship have when she went out? A. Fourteen feet when she started out. 30

Q. Were you there? A. I helped pull on it.

The Court: What was her capacity?

Q. How much draught would she stand? A. She loaded one hundred ton to the foot. When she was loaded a foot she had one hundred ton in; she happened to be just on that scale; if she drew twelve feet she had twelve hundred tons in. 40

Q. How much draft did she have? A. When she started out she drew fourteen feet.

Q. How much scrap did she have in her? A. Round about, she was carrying somewhere in the neighborhood, here or about—

Q. I am not asking you to calculate; I am asking you if you know. Do you know how much?

10 A. I should judge somewhere around fourteen hundred ton.

Q. Do you know or are you just judging? A. I know that she drew or loaded one hundred ton to the foot.

Adjournment for the Day.

Mt. Holly, N. J., November 24, 1916.

20

(Trial of the cause resumed at 10.00 A. M.)

STEPHEN W. MCKEEVER, recalled for defendant.

Direct examination by Mr. Horner:

30 Q. Mr. McKeever, did you or did you not know that that Chippewa was sunk prior to receiving the report thereon by Captain Cranmer? A. No, sir.

Q. Have you or have you not examined the Chippewa since her sinking? A. Yes, sir.

Q. How long have you been engaged in the boat business and machinery business? A. Going on thirty-five years.

40 Q. Have you made an examination of the extent of the injuries done to the Chippewa by reason of being sunk and lying under water? A. Yes, sir.

Stephen McKeever—Recalled—Direct

Q. State briefly how great, what damage was done. A. In the Chippewa it has a pipe boiler, and being under water the pipes are all rusty, and we got her to Atlantic City and we dismantled the whole thing and it is in the junk heap, and we sent for an estimate and it cost \$1,100 to put a new boiler in, a pipe boiler. 10

Q. Is that, in your judgment and experience as a steamfitter, a reasonable charge?

Mr. Davis: I object. He is asked whether that is a reasonable estimate to put a boiler in in an engine.

Mr. Horner: Steam and pipefitter, we will put it.

Mr. Davis: No matter what it is. 20

By the Court:

Q. Does that come in your line? A. Yes, sir.

Q. That is in your line? A. Yes, sir.

Mr. Davis: I am surprised that Mr. McKeever answered that the installing of steam boilers is in the line of pipefitting. I never heard there was any relation between steam boilers and the line of pipefitting. 30

Mr. Horner: Your Honor missed the point. This man said he had had dealings in installing boilers on vessels for thirty-five years.

The Witness: This is a pipe boiler, it is not a steam boiler. There is a pipe boiler. There are thirteen or fourteen little pipes in a pipe boiler that gets up steam in five minutes. In any other system it has a regular boiler made out of sheet iron. 40

*Stephen McKeever—Recalled—Cross**By Mr. Horner:*

10 Q. Was or was not the damage done to the boiler of the Chippewa the damage resulting from her sinking and lying under water for a considerable length of time? A. Yes, sir.

Cross-examination by Mr. Davis:

Q. Mr. McKeever, you did know that this boat was in the creek there, did you not? A. Yes.

Q. You knew she was there some time before Mr. Cranmer took charge, did you not? A. A year or so.

20 Q. And you knew that she was there because she was leaking, did you not? A. Yes, I knew we laid her up as our private yacht.

Q. And didn't you know she was there because she was leaking and she was put there for safe-keeping? A. Put her there in the fresh water so she would not get wormy. If they kept her at the factory she would have been wormed, so we put her in fresh water so she would not worm.

Q. You know she sank a year or so before she was put in the creek? A. No, sir.

30 Q. Didn't you know she had sunk a year or so before? A. No, sir.

Q. Before 1911, that this boat had sunk? A. No, sir.

By the Court:

Q. What kind of a boat was this? A. 110 feet over all, private yacht.

Q. How long had it been in use? A. It was built in 1906, and we bought it in 1910.

40

Stephen McKeever—Recalled—Cross

Q. You bought it second-handed? A. Yes, sir; a private yacht.

Q. What did you give for the boat new? A. We paid, I think, \$5,000. The new cost was \$20,000. The man wanted to get rid of it, his wife died, and so we bought it in Albany of one of the ice kings. 10

Q. Well, now, why do you think that Captain Loveland should bear that expense, just tell me? A. Well, on account of being sunk there and laying in the water, they told me.

Q. You didn't know anything about it yourself? A. No, sir; I didn't see it lay there. In the water for three months.

Q. Was the boat an addition of the fish factory, connected with the fish factory? A. No, sir; she was our own private yacht. We put it up in New Gretna in the fresh water. 20

Q. What do you mean by our own? Did it belong to the McKeever Brothers corporation or you individually? A. Belonged to the corporation.

By Mr. Davis:

Q. Didn't this boat sink, that is, get full of water, before 1911? A. No, sir. 30

Q. You are sure of that? A. Sure of that.

By the Court:

Q. Did you have it repaired afterwards? A. She was in first-class order when she went over—

Q. No, I mean have you had her repaired since Cranmer took charge of her? A. No, sir; they got her over to Atlantic City and we sent after the firm that ordered—I tried to find out whether we could put her in shape and she fell all apart. So 40

Stephen McKeever—Recalled—Cross

we asked for estimates over at Robinson's and he wanted \$1,100 to put a new boiler in. A regular boiler in a steamboat will cost \$500 or \$600, and this is a pipe boiler.

10 *By Mr. Davis:*

Q. Now, in 1912 do you remember writing to Captain Loveland to repipe this boiler because it needed repiping, in 1912? A. No, sir.

Q. Did you write such a letter? A. No, sir.

Q. You remember being with Captain Loveland on the deck of your steamer when he pointed out this boat up in the creek, May 27th, 1915? A. No, sir.

20 Q. Were you there in 1915, May 27th? A. No, sir; I was there to look after the inspection of the boilers.

By the Court:

Q. Let me ask you this question: when was it that this boat sank?

Mr. Davis: You mean the first or the second time?

30 The Court: Any time, the last time it sank.

Mr. Davis: It was in December of 1915, if your Honor please.

The Court: Well, you know that in July, 1915, Mr. Loveland, according to the admitted proof, ceased to be superintendent down there. Now did the boat sink before that or after?

40 The Witness: I understand it sunk before that.

Stephen McKeever—Recalled—Cross

By Mr. Davis:

Q. You don't know, do you, Mr. McKeever? It is only what people tell you? You don't know anything about that? A. No, I didn't see it sink.

Mr. Davis: Then I move that part of it be stricken out. 10

The Court: Where he got his information from other sources—

A. Our men that is working on it, captains. That is how we got to New Gretna. Anything there the captains told us about it.

Q. In 1915 Captain Loveland was on Hicks' Island, was he not? A. That is in the beginning, in June, I suppose he was, on the boats. 20

Q. Now how far is Hicks' Island away from Crab Island? A. I guess it is about one hundred and twenty miles. But understand Mr. Loveland, the superintendent, was in New Gretna every three or four days. He only goes there when he gets fish, that one hundred and twenty miles, and he was home every Saturday night and Sunday.

Q. Isn't it about three hundred and fifty miles, the course you have to go, from Hicks' Island to Crab Island? A. Well, from the Battery to Hicks' Island it is one hundred miles by railroad, and it is sixty or eighty miles from Crab Island to the Battery. That is about one hundred and eighty miles, about two hundred miles. 30

Q. That is in a direct line, practically? A. Yes, sir.

Q. But by water route isn't it about three hundred and fifty miles? A. I don't think so.

Q. Mr. McKeever, isn't it a fact that during that 40

Stephen McKeever—Recalled—Cross

time that Captain Loveland was on the boats, on the steamers, from June during the remainder of 1915? A. What?

Q. I said isn't it a fact that from June, 1915, on the balance of the season that Captain Loveland was on your steamers going out to Hicks' Island?
10 A. Made a landing at Crab Island, I understand, every other week.

Q. Every other week? A. Or every week when he came back, and then go home Saturday night and come back Monday.

Q. But my question is this. At that time wasn't Captain Loveland engaged in steamers, not on the Island but plying from Crab Island to Hicks' Island and other places? A. Yes, sir.

Q. Then this boat was not sunk on May 27th, you claim, when you went to get the steamers inspected? A. N. Mr. Loveland quite as superintendent, and after he had taken charge of the steamers, it was after he had taken charge of the steamers that the boat had sunk.
20

Q. Now, Alderman, didn't you just say a few moments ago that you didn't know when it was sunk? A. That is what the captain said.

Q. But his Honor has told you you must not testify what information you got from other people. I am just asking what information you yourself got.
30 A. It is all men that worked for me.

Q. They will have to testify. A. They did testify, Captain Valiant.

Q. They will have to testify to such circumstances as they know and you will have to testify what you know. So on the 27th of May, 1915, on the day that you had the steamers inspected, that boat was not sunk to your knowledge A. To my
40 knowledge she was not sunk.

Stephen McKeever—Recalled—Cross

Q. Did you see her on that day? A. I certainly did.

Q. And she was not sunk on that day, was she?
A. No, sir.

Q. Now let me refresh your memory. Isn't it a fact that it was on the 27th of May that you were down when the steamboats were being inspected? 10

A. Yes, sir.

Q. And it was in June that Captain Loveland left Crab Island and was on the steamers plying to Hicks' Island; that is a fact, isn't it? A. But he came back——

Q. No, won't you answer the question? Isn't that a fact? A. I don't know whether it was or not. I didn't see him go on her.

Q. That is what he was paid for? A. To go on her. 20

Q. And you don't know whether he was on it?
A. I didn't see him.

Q. So far as you know he was on it? A. I suppose so.

Q. And he continued on the steamers, so far as you know, until what time? A. I don't know anything about what time he quit.

Q. What time did you suppose he quit? A. I don't know anything about what time he quit, only I have been told by my captain in July sometime. 30

Q. Well, now, you received a letter from him dated July 24th, didn't you, 1915? A. Now, counselor, I want to tell you I never read the letter——

Q. I didn't ask you that. A. I never received any letter, because I don't receive letters. He writes to the office.

Q. But didn't you get the information or didn't you see the letters he wrote you on the 24th of July, to tell you that he was going to quit the steamers 40

Stephen McKeever—Recalled—Cross

and ask for a statement and that at that time you changed or your corporation changed the amount of his pay, and put him in doing other business?

A. I wasn't there at all, counsellor. My brother. The finance part I never touched at all. Mr. Loveland will tell you that himself. I never touched
 10 any of the business part of the companies at all, solely a part of the factory and outside contracts. I ran away from school when I was nine years old and I have been hustling ever since.

Q. Alderman, you had considerable affection for Mr. Loveland, didn't you? A. He was an all right fellow.

Q. And you liked him then and you like him yet? A. Sure I do.

20 Q. And, Alderman, in May of 1915 do you remember meeting Mr. Loveland in Philadelphia in the Philadelphia Postoffice Building? A. And he said he would stick to me till hell froze over. I never beat a man out of a dollar in fifty years I have been in business, wouldn't do it.

Q. The question I am asking you is, didn't you meet him there in the Philadelphia Postoffice Building? A. To see about the boats, yes.

30 Q. That was a day or so just before you had the ships inspected down at Crab Island, wasn't it? A. I would not be certain about it.

Q. Just a short time anyhow? A. I suppose so.

Q. Do you remember a conversation at that time that you had with Captain Loveland in which you told him you wanted him to go on the steamers and it didn't matter which one he was on, go on there and pass away his time, and that he was just as sure of his money as that you two fellows were standing there alive? A. I guess I did say that.

40 Q. And wasn't it then that the Captain said he

Stephen McKeever—Recalled—Redirect

would stick to you till hell froze over? A. I guess so. That is the time.

Redirect examination by Mr. Horner:

Q. Alderman, at the time you had this conversation at the Philadelphia Postoffice with Mr. Loveland did you or did you not know that he had used your men in his oyster business and been absent from your business, neglected his duties, neglected your machinery and so on? A. No, sir. 10

The Court: Now let me ask this question: I want to clear my own mind up with reference to this particular phase of the case. I will ask this question first of counsel. Did Captain Loveland say anything about getting permission from Mr. McKeever to use these men? 20

Mr. Davis: Yes, your Honor, he testified about it.

The Court: Did he say so?

Mr. Davis: Yes, sir.

The Court: I think he started to do it——

Mr. Horner: No, I think not.

The Court: I am not certain about that. 30

By Mr. Horner:

Q. Mr. McKeever, did you ever grant Captain Loveland or Mr. Loveland permission to use the men on your payroll in and about his oyster business? A. I certainly did not.

Q. When he ceased to be in your employ as superintendent did he or did he not enter your employ as a watchman? A. Yes, sir. 40

Stephen McKeever—Recalled—Recross

Q. And what were his duties as watchman? A. As I understood from my brother he was to look after the boats and go over to the factory once in a while and see how she was running.

10 *Recross examination by Mr. Davis:*

Q. You and the Captain had been good friends?
A. Always.

Q. And from your point of view there was nothing too good for the Captain, was there? A. That is right.

Q. Anything that he wanted or any request that he made——

20

The Court: You needn't go over that, Mr. M. Davis. I understand that Mr. McKeever and his brother, the President and Secretary of this corporation, had no fault to find, had no fault whatever to find with Captain Loveland down to the latter part of March, 1916. So far as they knew everything that he did was satisfactory.

The Witness: Yes, sir.

30

The Court: And what they are complaining about now are things that they have subsequently learned which were not within their knowledge and not reasonably ascertainable; isn't it?

The Witness: That is it; yes, sir. That is everything.

Mr. Davis: My question was pertinent right along that line.

By Mr. Davis:

40 Q. Now, if Captain Loveland had taken two of your men when they were not running the plant

Stephen McKeever—Recalled—Recross

and used them for a day and a half, you don't mean to say that you would have accepted any money from him for the pay of those two men, do you? Would you, Alderman? A. No, I don't know anything about that. That is up to the timekeeper.

Q. I am asking you now as an officer of this corporation if Captain Loveland had come to you and said to you, "Alderman, I used two of your men for a day and a half unloading my oyster boat here with seed oysters. They have not been needed in the operation of this plant. I am willing to pay you for them"; would you have taken it? 10

Mr. Horner: I object to the question, because it is not predicated on the facts in the case.

The Court: There is another question. It involves the legal question, what he would have done. 20

Mr. Horner: Exactly. It is going into the realms of speculation.

Mr. Davis: But when the relations between these people are extremely cordial—

By the Court:

Q. How much is your bill for these men? A. The work is not a matter of any great consequence? A. No, sir. 30

Mr. Horner: About \$600.

By Mr. Davis:

Q. Now as a matter of fact, Alderman, didn't Captain Loveland tell you that he had used these men unloading his oyster boats and offered to pay you for the use and that you refused to accept it? A. No, sir. 40

Captain Joseph McNeil—Direct

Q. That is not true? A. No, sir. And the last superintendent that we had, he died of tuberculosis and I gave him a house that cost \$10,000.

Q. I don't doubt it at all, and I think you would have given Captain Loveland the same thing if he wanted it? A. Sure I would.

Q. Is your memory real good, Alderman? A. I am over sixty-two now.

CAPTAIN JOSEPH MCNEIL, sworn for defendant.

Direct examination by Mr. Horner:

Q. Captain, did you have a conference with Captain Loveland regarding the loading of the Severn, the barge or lighter Severn? A. Yes, when I was approached on that—

Mr. Davis: You have answered it.

Q. Will you tell his Honor the Judge what you said to him and what he said to you?

Mr. Davis: I object unless the time and place is fixed.

Q. Was the loading of the Severn—

Mr. Davis: I object. Let him fix the time.

Q. Did you have a conversation with Captain Loveland at Crab Island prior to the loading of the Severn?

Mr. Davis: I object. He has already an-

Captain Joseph McNeil—Direct

swered that he had a conversation and he must fix the time.

The Court: As near as you can get. You don't have to have the precise moment.

Mr. Horner: Does your Honor admit the question? 10

The Court: Well, you have got to come within a reasonable distance of the precise time.

Q. Do you recall the time the Severn was loaded?

A. Yes, sir.

Q. When was it? A. It was in 1912.

By the Court:

20

Q. 1912? A. If my memory serves me right it was 1912.

The Court: Well, when was it? Let's agree on it. It is generally conceded in the testimony, and no one seems to have the exact date—probably Captain Loveland knows more about the exact date than anybody else it was in the fall of 1913.

Mr. Loveland: Am I allowed to answer that question? 30

Mr. Horner: Yes.

Mr. Loveland: To the best of my knowledge I think it was the summer or practically speaking the fall of 1913.

By Mr. Horner:

Q. Well, just prior to the loading of the Severn did you have a conversation—— 40

Captain Joseph McNeil—Direct

Mr. Davis: I object. He has already testified that he had a conversation. Now Judge Horner insists on leading him and placing the time.

Mr. Horner: We have fixed the time.

10 Mr. Davis: No, you have not fixed the time.

The Court: Ask him when he had the conversation.

Q. When did you have the conversation with him? A. It was just prior to her arrival to load.

Q. What was said by you and what was said by him to you in your presence?

20 Mr. Davis: I object to that as being incompetent, irrelevant and immaterial. This man had not a thing to do with the loading of the ship. Whatever he may have said is incompetent, irrelevant and immaterial.

The Court: I am inclined to receive the proof, because there is a question of fact whether the master had all to do with the capacity of the ship or whether the superintendent had something to do. There seems to be a dispute about that.

30 Mr. Davis: But my objection is, if your Honor please, that it does matter whether Captain Loveland had anything to do with it or whether the captain of the ship had anything to do with it. This man didn't.

The Court: Who?

Mr. Davis: This witness had nothing to do with the loading of the ship; therefore it is immaterial.

40

Captain Joseph McNeil—Direct

The Court: No, if Captain Loveland said something which is inconsistent with his statement now that might be useful afterwards in the case. I don't see that it is.

Mr. Horner: Then, if your Honor please, on another phase, if Captain Loveland had anything to do with the loading of this ship and he was advised by men of competent knowledge that he was doing a hazardous or dangerous thing, it certainly put him on his guard and he should not go ahead. 10

The Court: Let's find out. This man was on the stand yesterday. Was that question asked?

Mr. Horner: No, I didn't touch that phase of it. 20

Mr. Davis: I think it was, your Honor. I think he testified about that yesterday.

By the Court:

Q. Were you asked that question yesterday afternoon when you were on the stand? A. I think I was.

Mr. Horner: He was the last witness. I thought I had overlooked the matter at that time. I don't want to press it. 30

The Court: I think you went all over that.

Q. I will ask you something I didn't ask you yesterday. Did you see the Chippewa in the winter of 1915 and the spring of 1916 while she was sunk?

A. Yes, sir.

Q. How frequently did you see her, I mean while she was sunk? A. Not very often.

Q. To the best of your recollection how long was 40

Norman Hickman—Direct

she sunk? A. She was sunk either one or two winters; one summer and winter anyhow, one summer and winter to my knowledge.

NO CROSS-EXAMINATION.

10

NORMAN HICKMAN, sworn for defendant.

Direct-examination by Mr. Horner:

Q. You live where? A. New Gretna.

Q. Are you in the employ of McKeever Brothers?

A. Yes, sir.

Q. How long have you been working for them?

20 A. Ever since 1912.

Q. During 1912, 1913 and 1914 and part of 1915 who was the superintendent? A. Benjamin Loveland.

Q. Where did you live? A. New Gretna.

Q. Did you ever see Loveland while he was in the employ of McKeever Brothers gathering oysters?

A. Yes, sir.

Q. How many times? A. Two times, a portion of two days.

30 Q. Did he have other employees of McKeever with him? A. Yes, sir.

Q. How many men? A. Two.

Q. Can you tell when that was? A. It was in the fall of 1913.

Q. Did you work for McKeevers in the fall and winter months? Did you ever work for them in the fall and winter months? A. Not except this year; no, sir

40 Q. In the fall of 1912 and the early winter of 1915, the fall of 1914 and the winter of 1915 did

Norman Hickman—Cross

both you and Loveland live in New Gretna? A. Yes, sir.

Q. How close were your houses to each other? A. Well, it was about 75 yards.

Q. And during that time did you or did you not see Loveland around New Gretna? A. Most of the time when I was there; yes, sir. 10

Q. Did you see him in the mornings? A. Well, around all the time; yes, sir.

Q. In the afternoons? A. Yes, sir.

Q. In the evenings? A. Yes, sir.

Q. It would not be possible for him to be at New Gretna and also on Crab Island, would it? A. I shouldn't think so.

Q. Did you ever see Loveland use a green garvey in gathering oysters? A. Yes, sir. 20

Q. Do you recall how many times? A. No, sir.

Cross-examination by Mr. Davis:

Q. You saw him using two men on how many occasions? A. Two times.

Q. What do you do in the winter time? A. Well, I haven't been doing much of anything.

Q. Well, does that apply to every winter? A. No, not every winter.

Q. Does it apply to the winters of 1912 to 1915? A. Yes, sir. 30

Q. Never did anything in the winter time? A. No, sir.

Q. Where do you loaf? A. At home, of course.

Q. Loaf at home? A. Sure.

Q. What do you know about whether or not Mr. Loveland went to the McKeever factory during the winter months? A. What do I know?

Q. Yes. A. I don't know whether he went there or whether he didn't. 40

Wm. P. Smith—For Plaintiff—Rebuttal—Direct

Q. That is what I thought. A. That is certain times.

DEFENDANT RESTS.

10 PLAINTIFF'S TESTIMONY IN REBUTTAL.

WILLIAM P. SMITH, sworn for plaintiff.

Direct examination by Mr. Davis:

Q. Captain Smith, what is your business? A. Well, I sail private yachts and I also have a marine railway shipyard, do different kinds of work for people that bring a boat there, overhaul them.

20

By the Court:

Q. Where is the place? A. Tuckerton, New Jersey.

By Mr. Davis:

Q. Were you a captain for John P. Crozer for a number of years? A. Been with him for twenty-seven years.

30

Q. What is the practice among marine men, that is, shipping men, with regard to who directs and oversees the loading of a ship? A. The captain.

Q. Is there anybody else that has a higher supervision than him? A. No, sir.

Q. His word is law so far as the ship is concerned, is it not? A. Yes, sir; nobody allowed to go aboard if he says not.

40 Q. And in the loading of a barge with merchandise does that same rule apply? A. Well, the in-

Wm. P. Smith—For Plaintiff—Rebuttal—Direct

insurance company has something to do with that. The insurance company generally puts their loading mark on the barge and you are not allowed to load that below the insurance company's mark. If they do the insurance is no good.

Q. Well, as to who shall say as to whether or not it is loaded up to that point, whose word is supreme? A. The captain's. 10

Q. Now, captain, did you know this boat, the Severn, owned by the McKeever Brothers? A. Well, all I know of her, I just seen her come to the factory and seen her go out of the inlet. I was close by when they undertook to go out with her.

Q. Did you see her in tow the day that she drifted ashore? A. Yes, sir. 20

Q. Now suppose that that boat was in tow of a steamship and a vessel was tied to her side—I don't know what the terms are that you seafaring men use—and the hawser parted, that is, between the tug and this barge: what should the captain have done to have saved that ship from going ashore? A. Threw his anchor.

Q. If he had thrown his anchor promptly he would have saved the ship from going ashore? A. Yes, sir. 30

Q. Now, captain, did you see this private yacht that belonged to McKeever Brothers at any time, the Chippewa? A. Yes, sir.

Q. Did you see her at any time about the year 1911? A. Yes, sir.

Q. Where was she? A. She laid in the canal at Crab Island fish factory.

Q. And what was her condition at that time? A. Sunk as far as she could get on the bottom.

Q. And how far was the water in her? A. Well, 40

Wm. P. Smith—For Plaintiff—Rebuttal—Direct

I don't know how high it was just exactly, but it was over the top of her stove.

Q. Over the top of the stove? A. Of the cook-stove, about three foot over her floor.

Q. And that was before Captain took charge as superintendent there, do you know? A. Well, that I don't know.

Q. When do you say it was you saw her sunk?
Mr. Davis: He says 1911.

(Witness refers to memorandum.)

By Mr. Horner:

Q. When did you make that memorandum? A.
20 This memorandum is a copy of a bill that was sent to Mr. McKeever for the work that I done that was made out at that time, at the time that I went to Crab Island and towed the Chippewa from Crab Island to Tuckerton.

Q. When did you make it out? A. That bill was made out, Tuckerton, New Jersey, November 20, 1911.

By Mr. Davis:

30 Q. That is a bill that you sent for work done on this boat? A. Yes, on this boat and the other one, McKeever Brothers.

Q. What date was that? What date was it that you saw this boat?

By the Court:

40 Q. What was the period of time that she was sunk in 1911? A. July, 1912.

Wm. P. Smith—For Plaintiff—Rebuttal—Direct

By Mr. Davis:

Q. 1911? A. 1911. I towed her from Crab Island. I saw her a week ahead of that. I went after her and she was sunk and I couldn't bring her up because she was sunk, just a week ahead of that time. 10

Q. The first time you saw her did she have as much water in her as she did the next time? A. The first time I saw her she was sunk and the next time she didn't have so much in her, because they pumped her out, and I couldn't take her away until they did.

Q. You took her up to Tuckerton, did you? A. Yes, sir.

Q. Did you pull her in on your railway? A. 20 Yes, sir.

Q. What did you find to be her condition? A. Well, I found some bad seams and one piece of plank that was bad, that had to be taken out and put in.

Q. Did those seams allow water to go into the ship? A. Yes, the calking was out of it.

Q. If this boat had laid in the water, Captain, such as you have testified you saw her at that time, would it have affected the tubes in her boiler? A. 30 Well, I should think it would ruin them.

Q. Did you put in new ones at that time? A. No, sir; I had nothing to do with the machinery.

Q. You just simply overhauled the hull? A. That is all; yes, sir.

Q. And what was the condition of the boiler and the engine at the time that you saw her and had her on your railway? A. Well, the engine had been painted with white lead and tallow, but of course it had been under water and it was rusted. 40

Wm. P. Smith—For Plaintiff—Rebuttal—Direct

Q. And the tubes in the boiler? A. Well, I suppose they were the same. Of course I didn't examine them.

Q. How about the outside?

10 Mr. Horner: I move that the testimony on the question of supposition be stricken out. He says, "I suppose certain things happened." He didn't examine them.

The Court: No, he can't testify to that.

Q. How about the outside, did you examine that?
A. The boiler?

Q. No, the outside of the boiler. A. No, I didn't examine the boiler.

20 Q. If the ship had been in water such as you saw this ship and have testified, would the water have reached her boiler as she lay there? A. Yes, sir.

Q. And if the water did reach her boiler would it affect it? A. Yes, sir.

Q. And it would affect it in what way? A. It would eat it up. The salt water would eat the boiler up with rust.

Q. When you saw this ship in 1911 was the water salt at that place? A. Yes, sir.

30 Q. You are familiar with the condition of the water around Crab Island, are you, or are you not?
A. Yes, sir.

Q. Supposing that this boat was leaking and was filling every day or so, necessitating her being pumped out constantly; would it be a safe place or not to put the boat in a creek where the water was shoal, or ought she to be kept in the salt, deep water? A. She ought to be kept where it was shoal. If the water came in her she would go to
40 the bottom.

Wm. P. Smith—For Plaintiff—Rebuttal—Direct

Q. Are you familiar with the creek there? A. Where, at Crab Island?

Q. The creek at New Gretna. A. No, I am not familiar with it.

Q. Now this bill for the repairs of this ship, has it ever been paid? A. Part of it. That bill there has been paid all but about \$50. That I cast one side, didn't expect to get it. 10

Q. Well, it has not been paid, has it?

Mr. Horner: I object. What is the difference whether it has been paid or not?

Mr. Davis: I think Mr. McKeever said he didn't owe a man in the world a dollar.

The Court: That is not material.

Mr. Davis: Except to go to his credibility. 20

The Court: Well, you can't discredit him upon an immaterial matter.

Q. How long should a boat of that character, Captain, be allowed to go without being overhauled? A. Well, we always overhaul our boats once a year sure.

Q. If this boat was built in 1906 and in 1911 she was under water such as you saw her there, in your opinion would it or would it not necessitate a new boiler? 30

Mr. Horner: I object. He says he knows nothing about boilers.

Mr. Davis: He never said anything of the kind and you know he didn't.

The Court: Well, he is a yachtman. I think his testimony is useful, perhaps.

(Question repeated.)

40

Wm. P. Smith—For Plaintiff—Rebuttal—Cross

A. Well, of course it might not need a new boiler. It might be repaired, put new tubes in it.

Q. Would in your opinion new tubes be needed when the boat was under water, such as you saw it?

A. Yes, the government inspectors wouldn't pass it, I don't believe, without.

By the Court:

Q. Are you a shipbuilder? A. No, I am not a shipbuilder.

Q. Do you build yachts down there? A. I repair boats and do work.

Cross-examination by Mr. Horner:

20 Q. Captain, you do nothing in your shipyard with respect to the machinery or boilers of steam yachts, do you? A. Well, I will repair them for people if they want it done. I get people to do it for me.

Q. Well, you don't profess to have any competency of your own? A. No, sir.

30 Q. Now, Captain, whether the boilers or tubes or pipes in the boiler were injured by being in the water depended on the length of time it was under water, wouldn't it? A. Well, of course the longer it is under water the worse it is for it.

Q. There is many a vessel that is under water for a few days or even for a week without any substantial damage done to her boilers; isn't that so? A. If she is gotten up and taken care of right away.

Q. You got her up, didn't you? A. No, sir; she was gotten up by themselves.

Q. They towed her to Tuckerton? A. Yes, sir.

40 Q. And you repaired her? A. Yes, sir.

Wm. P. Smith—For Plaintiff—Rebuttal—Cross

Q. And when she left you so far as her hull was concerned she was in good condition, wasn't she?

A. Yes, sir.

Q. You of course don't know anything about the machinery? A. No, sir; only just as I seen it.

Q. You didn't see anything about the machinery that startled you or caused apprehension on your part, did you? A. Well, I didn't like the looks of the engine very much. 10

Q. Because it was rusty? A. Yes, sir.

Q. Is that the only objection? A. Yes, sir.

Q. There are lots of engines used on the bay and ocean that are rusty, are there not? A. Well, they don't aim to run a rusty engine very long.

Q. Well, all the engines I have seen down there were rusty. A. That is gas engines. We are talking about a steam engine now. 20

Q. The fact that the engine was painted and oiled, as you have said, was an indication that it was being taken care of, wasn't it? A. Yes, sir.

Q. You said that a boat should be overhauled every year? A. Every year.

Q. That depends on what water she is in, doesn't it? A. It doesn't make any difference what water it is in.

Q. Whether salt or fresh water? A. No, sir; it don't make a bit of difference. 30

Q. You don't mean to say that a vessel has to be calked every year? A. She wants painting.

Q. For appearance sake? A. No, sir; to protect the bottom. And you are supposed to go over your vessel and see whether there is any places that are going to make a leak.

Q. That is always up to the man in charge, isn't it? A. Yes, up to the man that overhauls her on the railway. 40

*Wm. P. Smith—For Plaintiff—Rebuttal—Redirect
Recross*

Q. The man in charge in the water? A. Well, the man in charge of the boat in the water don't know anything about that, what shape her bottom is in.

Q. What do they put a boat in fresh water for?

10 A. They put it there to stop the worms from eating them.

Q. Then a boat could lie in fresh water for a number of years without having its hull seriously hurt, couldn't it? A. Well, there is a fresh water worm too.

Q. A fresh water worm too? A. Yes.

Q. Is there in Bass River? A. Well, I don't know about that.

20 *Redirect examination by Mr. Davis:*

Q. After you took this boat to Tuckerton and while she was there did she fill with water? A. Yes.

Q. And leaked badly, did she? A. Yes, sir.

Q. How long did it take her to fill up, Captain? A. Well, she would leak from 800 to 1,000 strokes in the night.

30 Q. That is, pumping strokes, you mean? A. Yes, pumping strokes, three inch strokes.

Q. And that means how much in gallons, Captain? A. Well, I couldn't tell you how much, but it was about a foot or eighteen inches deep under her floor, and she would leak over her floor in one night.

Recross-examination by Mr. Horner:

40 Q. Captain, before she left your yard all that damage had been repaired, had it not? A. Yes, sir.

Lewis L. Mathis—For Plaintiff—Rebuttal—Direct

Q. Now isn't it a fact that practically every vessel leaks some? A. Yes, sir.

Q. And isn't it a fact that the only way that a vessel can be kept from sinking is to pump her? A. Why, if she leaks if you don't pump her she will sink.

10

Q. Doen's practically every vessel leak some? A. Yes, sir.

Q. And isn't it necessary in the care of vessels that they be pumped from time to time? A. Yes, if she leaks.

Q. And they all practically do leak, don't they? A. Yes, sir.

Q. But, captain, do they leak so as to sink a boat like this one if she is not pumped every night? A. Well, they generally put them where they won't sink when they get to leaking that bad. A man can't sit up and pump all night.

20

Q. Well, a usable and seaworthy boat doesn't leak like this one, does it? A. No, she wouldn't leak, because she wouldn't be fit to go to sea in her.

Q. After you put this boat in repair would or would not the freezing of the water tend to cause new leaks in her? A. It would; that is, in this way. If a boat is afloat and there is plenty of water in her and it freezes up tight, when the tide rises and falls the boat rises and falls with the water, the ice won't hurt it. But if she is on a shallow bottom and the water freezes in her the ice will drop away and pull the calking out where it is fast to it.

30

LEWIS L. MATHIS, sworn for plaintiff.

Direct-examination by Mr. Davis:

Q. Mr. Mathis, you work for McKeever Brothers? A. Yes, sir.

40

Lewis L. Mathis—For Plaintiff—Rebuttal—Direct

Q. Did you know this Chippewa? A. Yes, sir.

Q. In 1911? A. Yes, sir.

Q. Did you work for McKeever Brothers at that time? A. Yes, sir.

10 Q. Do you know whether this Chippewa sank in 1911? A. I knowed she had water in her.

Q. That is what I refer to. I don't mean that she went clear out of sight. A. Yes, sir.

Q. Did she fill with water? A. Yes, sir.

Q. How deep did she fill with water? A. Why, about—well, it was over her stove.

Q. Was it over her boiler? A. Well, I couldn't say positive about that.

Q. Well, is the boiler below the level of the stove or not? A. Some of it; yes, sir.

20 Q. How long did she lie that way? A. Well, a long time.

Q. Well, give us an idea. What do you mean by a long time? A. Why, she laid that way off and on two months.

Q. In salt water? A. Salt water.

Q. Then she was taken away by Captain Smith, was she not? A. I took her away the first time.

Q. Was that before Captain Smith took her away? A. Yes, sir.

30 Q. You pumped her out, did you? A. They had her pumped out, yes, sir.

Q. Did you bring her back to Crab Island? A. Yes, sir.

Q. And did she sink afterwards, or rather, fill with water? A. Yes, sir; as long as I was there.

Q. And how long was that? A. Well, I was there two years and four months.

Q. She filled with water? A. Always; that is, partly, you know. She always was a bad leaker.

Lewis L. Mathis—For Plaintiff—Rebuttal—Direct

Q. How long would it take her to fill up? A. Well, I don't know. They kept pumps on to her.

Q. How often did you have to pump her out? A. Well, did we have to——

Q. Yes, how often was it necessary to pump her out? A. Well, she should be pumped out every two or three days. 10

Q. Would she fill if she was not pumped out in that time? A. Well, you see that a boat after she gets so much water into her, the pressure gets more, the pressure of the water, you know, and she naturally will go out of business.

Q. Do you know anything about her condition in 1915? A. No, sir.

Q. You left the employ of McKeever Brothers when? A. I left in 1913 if I remember right. 20

Q. Do you know anything about the Severn? A. Yes, sir.

Q. Do you know anything about the accident that happened to her? A. I wasn't there the day that she went ashore, but I was the day they got her off; yes, sir.

Q. Now from where she was on the shoal how far was it to the deep water where she was being towed? A. I don't just understand.

Q. Well, do you know the course of the channel at the point where she was being towed there? A. Yes, sir. 30

Q. Now from the channel where they tow the ship in at this point, and this ship in particular, how far was she ashore? A. How far was she ashore?

Q. Yes, how far was it to the place where she was on the shoal bottom, or how far has she drifted from the channel when she struck ground? A. Oh, yes. Why, where they claimed that she hit that 40

Lewis L. Mathis—For Plaintiff—Rebuttal—Cross

caused the parting of the hawser to where she fetched up?

Q. Yes. A. Yes, I understand. That is what I wanted. About, I should judge 500 yards.

10 Q. Now assuming, Captain, that she was in tow of a tug there and the hawser had parted, if the captain of this scow had thrown his anchor could he have pulled his ship up and kept her off shore?

Mr. Horner: I object. This witness is not qualified.

The Court: What is he, the master of a ship?

20 Mr. Davis: I thought all of these men down there were captains, if your Honor please, near captains.

Q. Captain Mathis, are you an experienced seafaring man? A. Yes, sir.

Q. How long have you been following the water? A. All my life.

Q. Are you a licensed captain? A. Yes, sir.

Q. And how long have you been a licensed captain? A. About two years.

30 Q. And before that time you had followed the water all your life? A. All my life.

Q. And had sailed ships through the bay and in the sea? A. Both in the bay and in the sea.

Cross-examination by Mr. Horner:

Q. Captain, you say you take vessels to sea? A. I was asked if I was a captain.

Q. Well, I know, but captain of what? A. What makes a captain?

40 Q. I don't know. A. Well, if you have a license

Lewis L. Mathis—For Plaintiff—Rebuttal—Cross

and you get papers out to take charge of a boat, don't that make a captain?

Q. Well, what kind of a boat have you a license to take out? A. I have a license to take a boat anything under sixty-five feet.

Q. How long was the Severn? A. Two hundred and fourteen feet. 10

Q. Then you have no permission or anything of the sort to handle a boat of the size of a caliber of the Severn? A. I didn't say that I did.

The Court: Isn't the principle the same? Does the size of the boat have anything to do with it?

Mr. Horner: I should imagine it would. 20

By the Court:

Q. What kind of a boat do you run, Captain? A. I run a passenger boat last summer a year ago, carried passengers from Tuckerton to Atlantic City.

Q. What other boat have you been on? A. I have a big boat now, a knockabout, that carries about 550 bushels. 30

Q. What do you do with it? A. I carried about 8,000 bushels of oysters this fall.

Q. Where did you go? A. I go from Great Egg Harbor down to Atlantic County, and I go up in Barnegat Bay, somewheres about thirty-five miles each way.

Q. Do you ever go outside? A. Yes, go outside there in the wintertime.

Q. Out to sea? A. Yes. 40

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Redirect*

By Mr. Horner :

Q. Is your boat a gasoline power boat? A. Yes, sir.

10 *Redirect-examination by Mr. Davis :*

Q. If this ship had parted its hawser in the channel used by the boats in passing out through and the captain would throw his anchor— A. Captain Herman?

Q. I don't know what his name is—the captain of this barge had thrown his anchor, could he have saved the ship from going ashore? A. Most assuredly.

20 Q. What was the proper thing for him to have done if the ship had parted its cable or the hawser? A. What do you mean?

Q. What should the captain of the barge have done when the hawser between the barge and the tugboat had parted? A. Why, anchor.

Q. Thrown the anchor? A. Had her already hung, he did.

Q. Did you look at the draft of this boat, the Severn? A. I did.

30 Q. And how much water was she drawing? A. She might have been two inches over thirteen feet.

Q. And who was with you at that time? A. The bookkeeper, Matthew Preskin.

By the Court :

Q. What was her capacity?

By Mr. Davis :

Q. His Honor asked you what was her capacity?

40 A About 1,700 tons.

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Redirect*

Q. Well, how many feet, how many feet of draft, how much water was she capable of taking? Suppose she had been loaded down full, how much water would she require?

By the Court:

10

Q. Was she overburdened with cargo? A. No, sir.

Q. Was not? A. No, sir.

By Mr. Davis:

Q. If she had been loaded down, Captain, how much water did she draw? A. I think she was about seventeen feet.

20

Q. Now do you know anything about this green garvey? A. Yes, sir.

Q. When did you first know it, Captain? A. 1916, July 18th.

Q. Was that the time that you went to work there? A. Yes, sir.

Q. What was her condition then? A. Good.

Q. And was the engine put into it afterwards or before? A. Both.

Q. A change of engine, was there? A. Yes, sir.

30

Q. When was the second engine put in, that is, approximately, Captain? A. In the spring, the next spring, I think.

Q. That was the spring of 1911? A. I think so.

Q. And how much power was in that engine? A. Seven and one-half horse.

Q. Was that the engine that remained in her during the time that Captain Loveland was there? A. Yes, sir.

40

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Redirect*

Q. And did you operate that engine at any time, that boat? A. Two years and four months.

Q. And what happened during the time that you were operating it, if anything? A. I had one to
10 burst up; I had both of them to burst up.

Q. Both engines? A. Both engines; yes, sir.

Q. Well, how? A. Why, the first one, the connecting rod, the pin on the connecting rod gave way, and when the connecting rod on her crank went through her hand hole plate, that put her out of business. That was the first one. And the last
20 one I had a knock into her and I took her out to the machinist and he said he would fix her all right. I was busy with my mail and so on and I ran her down one day and when I came back her wristpin gave way, the shoulder on it, and she went right down through herself, went right down through the base of her.

Q. Shot the connecting rod through the base of the engine? A. The base of the engine; yes, sir.

Q. Was that the engine that was in it during the time that Captain Loveland had it? A. Yes, sir.

Q. And who repaired it? A. Mr. Heinz, Harry Heinz.

30 Q. What about the condition of the hull of this boat? A. Well, the hull was in pretty fair shape.

Q. Had she been injured by the putting of oysters in it? A. She didn't have no oysters in her when I was there.

Q. Well, did you see it when you saw it last, had there been any injury inflicted upon this boat? A. No, sir.

Q. So far as you could see it, by putting oysters in it? A. No, sir.

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Redirect*

By the Court:

Q. When did you last see the boat, Captain? A. Well, I see her last Friday.

Q. Well, when you saw her—did you see her last summer? A. No, sir. 10

Q. Did you see her in the spring? A. I think I saw her last spring.

Q. Did you see anything, any damage that had been done to her because of the putting of the oysters in her? A. No, sir; I didn't.

Q. Did you look at her carefully? A. Well, no, I wasn't interested in it. No, sir; I didn't look at her carefully; no, sir.

Q. Would putting oysters in a boat of that size injure it? A. No, sir. 20

Q. Why not? A. I carried everything and anything that would go to a fishing plant, barrels of meat—

Q. Is that what the boat is for? A. It is a freight boat.

Q. It is a carryall? A. Carry all for everything, and for machinery; and I have carried hundreds of tons in her.

By Mr. Davis:

30

Q. In this same boat? A. In this same boat, hundreds of tons.

Q. Don't they use garveys down there in the bay for the purpose of putting their oysters into them when they dredge them out of the bay? A. Yes, sir.

Q. And it doesn't injure them, does it? A. I have had it thirty-five years.

40

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Recross*

10 Q. And used for that purpose? A. And used for that purpose all the time, and only cost me \$26, that is, I have had garveys, understand? I didn't have it built. I have had garveys that old. My father had it built ahead of me.

By the Court:

Q. Not with an engine in them? A. Oh, no, not with an engine in them; no, sir.

By Mr. Davis:

20 Q. What was the cost or the value of a boat of that kind new? A. That time or now?

Q. At that time? A. My boss has got one—

Mr. Horner: You answer the question, Captain; not what your boss has got.

A. Without the engine?

Q. Without the engine? A. Why, about \$185.

Q. And what would the engine cost, seven horsepower Mianus? A. At that time she cost \$165, that one, \$165.

30 Q. Then \$185 and \$165 would be the cost of this thing new? A. For me to have her built; yes, sir.

Recross examination by Mr. Horner:

Q. Now, Captain, when did you cease working for McKeever Brothers? A. Two days before Thanksgiving, 1913.

Q. Well, then, since that time you haven't been intimately acquainted with this garvey, have you?

40 A. Yes, sir.

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Recross*

Q. How? A. Why, Mr. Loveland and I have been old friends all our lives.

Q. Then you know what he has told you about her? A. No, I have seen her. He comes along—I go right by the plant most every day. 10

Q. When did you last see her afloat? A. Well, that I don't just remember.

Q. Well, when was it, last summer? A. Last summer?

Q. Yes. A. No, sir.

Q. The summer before? A. Surely.

Q. What? A. Yes, sir.

Q. You saw her before, well, when was the last time? A. I couldn't say. 20

Mr. Davis: He has told you the summer before.

A. I couldn't say.

Q. Well, these injuries she had sustained while you were operating her were all repaired, weren't they? A. To a certain extent.

Q. And the boat was in workable order, wasn't it? A. Yes, she was in workable order.

Q. And she was in workable order when you saw Mr. Loveland have her, wasn't she? A. Yes, sir. 30

Q. And you say the last time you saw her—can you recall the last time you saw her? A. No, sir; I didn't tax my mind with that.

Q. Did you ever see her with the wheel off and the shaft gone? A. No, sir.

Q. Then you haven't seen her since March of 1916, have you? A. Oh, I wouldn't say just when I last saw her.

Q. You don't know whether it has been one year, two years or three years? A. Yes, sir; I do. 40

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Recross*

Q. Well, when was it? A. Well, I couldn't come within three months' time.

10 Q. Now if a barge is being towed out and she has too much draft, she is too heavily loaded, loaded beyond the depth of water over the bar, she is liable to strike, isn't she? A. If she is loaded too deep.

Q. And if she does strike it is an indication that she was loaded too deep, isn't it? A. Well, that is the condition of the tide.

Q. Well, she wouldn't strike unless she was loaded too deep, would she? Look at me. Never mind looking at this gentleman? A. She would do what?

20 Q. She wouldn't strike unless she was overloaded, would she? A. Well, that is under certain conditions.

Q. What conditions? A. Well, you can start down, and the tide ebbs and flows five feet, and you can start with half tide, the captains could go with half tide and they could strike or they could go down on the high water.

Q. Well, if it struck it indicated this inevitable thing, that her draft was greater than the water under it, wouldn't it? A. Not altogether; no, sir.

30 Q. Well, what in heaven's name would make her strike if it was not that? Will you please tell me what would make it strike? A. They could go down two hours before high water.

Q. I didn't ask you if they went two hours before or two hours after; but if a boat going along a stream with water under it and it strikes it, indicates that the boat is overloaded for the water under it? A. They used—

40 Q. I didn't ask you what they used. Answer the question yes or no. (Question repeated.)

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Recross*

A. I fail to answer that. I don't understand it.

Q. Well, if you have a twelve foot draft of water and you have a boat that is loaded thirteen feet, two inches, she is going to strike, isn't she? A. That is not the situation down there.

Q. I didn't ask you whether that is the situation, but she is going to strike, isn't she? A. Surely. 10

Q. When she strikes she is very apt to part her hawser, isn't she? Answer that. A. I couldn't say.

Q. You know boats that have struck and their hawsers parted immediately? A. No, sir.

Q. Never heard of it before? A. Well, I might, but I don't know.

Q. Did you never see that thing happen? A. No, sir. 20

Q. Was there steam power on the Severn? A. No, sir.

Q. What crew did the Severn have? A. He had a wife—

Q. I didn't ask you about the family, I asked about the crew? A. Well, she was the cook, and two men.

Q. Well, could those two men handle the anchor on the Severn? A. Most assuredly.

Q. How much did the anchor weigh? A. I don't know. 30

Q. A big heavy anchor for a two hundred foot boat, wouldn't there be? A. Yes, sir.

Q. You saw the anchor? A. Yes, sir.

Q. What did it weigh? A. I couldn't say.

Q. How many tons, five? A. No, sir.

Q. Two? A. I couldn't say.

Q. Sure it is not five? A. I couldn't say. 40

*Lewis L. Mathis—For Plaintiff—Rebuttal—
Redirect
Captain Parker C. Headley—For Plaintiff—Re-
buttal—Direct*

Redirect examination by Mr. Davis:

10 Q. Captain, it did have some power to handle its anchor? A. Yes.

Q. What power did it have? A. Gasoline.

Q. Captain, what was the depth of water in the channel at this point? A. Fourteen feet.

Q. Was it safe to carry a ship out of a draft of thirteen feet, two inches? A. Most assuredly.

Q. Did you see this ship when she was loaded or after she was loaded? A. Yes, sir.

20 Q. And in your opinion was this ship overloaded and drawing too much water? A. No, sir.

By Mr. Horner:

Q. Did you ever superintend the loading of a ship of this size or anything approaching its size? A. Never got that big.

30 CAPTAIN PARKER C. HEADLEY, sworn for plaintiff.

Direct examination by Mr. Davis:

Q. Now, Captain, you are a licensed captain? A. Yes, sir.

Q. And did you run one of the tugs for the McKeever Brothers? A. Yes, sir.

40 Q. How long have you been in their employ? A. I was in their employ two years, two fishing seasons.

Captain Parker C. Headley—For Plaintiff—Rebuttal—Direct

Q. How long have you been a captain? A. Thirty some years.

Q. You operated these ships in the operation of gathering up fish, did you, Captain? A. Yes, sir; that is my business.

Q. And did you operate the tug that carried these barges to sea? A. Yes, sir; I was in charge of the steam towing that barge, towed her in and towed her out.

Q. That is the Severn barge? A. Yes, sir.

Q. You say you towed her in? A. Yes, sir.

Q. And she came in light? A. Yes, sir.

Q. And then she was loaded? A. Yes, sir.

Q. And you towed her when she went out on her way to sea? A. Yes, sir.

Q. Captain, will you please tell us what is the custom with regard to the duties of the captain in overseeing the loading of his vessel? A. He has full charge of his vessel, to see that she is properly loaded and in trim for sea.

Q. Is there any one else that has a higher duty? A. He is the supreme.

Q. He is the supreme? A. Yes.

By the Court:

Q. That is, he determines the capacity of the boat, does he? A. Yes. He can even bond and nearly sell the vessel.

By Mr. Davis:

Q. Is that the maritime law, captain? A. So I understand; yes, sir.

Q. Which controls all shipping activity? A. Yes, sir.

Captain Parker C. Headley—For Plaintiff—Rebuttal—Direct

Q. Captain, how much water was this Severn drawing after she was loaded, on her way to sea?

A. Thirteen feet full, according to her marks.

10 *By the Court:*

Q. How much would she stand? A. How much could she load to?

Q. Yes. A. Why, sixteen or seventeen feet.

Q. Well, she was not overburdened, in your opinion? A. No, sir; she was not near loaded.

By Mr. Davis:

20

Q. Was thirteen feet too much water for her to draw going out? I mean was she loaded too deep?

A. Well, I will tell you, the water there was there, I sounded very carefully fourteen feet of water; but when she would be loaded to thirteen feet it would form a suction on the bottom and become unmanageable.

Q. But I am speaking about the depth of water now? A. Yes, sir.

30 Q. Did she have sufficient depth of water? A. Yes, she would have went out.

Q. She would have gone out? A. Yes, sir.

Q. Now, in your opinion, what caused the accident to this boat? A. Well, there is two things that were the main causes: one would be bad steering; the man that was steering this vessel didn't properly take advantage of this tide. Remember we was butting the tide.

40 Q. Won't you explain to his Honor the condition

Captain Parker C. Headley—For Plaintiff—Rebuttal—Direct

of the tide at that time? A. At this particular place we were going out the channel was a curve of the beach and the tide was setting in, coming in; we were heading the tide, and this steamer or this barge got a shear of tide across her bow.

10

Q. What do you mean, got a shear, captain? A. Got a shear in her course and started across the channel, which was narrow just across there, headed for this other shoal. The channel is narrow. And I just had strain enough to bring this boat by the line, just moving her out gently; and when this shear started on her I had to put on more power to straighten her.

Q. Keep her from going ashore? A. Yes, keep her from going, and the hawser parted and I just about broke her headway and then she drifted in.

20

Q. Captain, if at the time this hawser parted the captain of this barge had cast his anchor would he have saved the ship from going on the shore? A. Most assuredly. He had four or five hundred yards to drift.

Q. And how long did it take him to drift that four or five hundred yards? A. Well, I suppose ten or fifteen minutes.

Q. Could he have cast his anchor within that time safely? A. Yes, sir.

30

Q. Now, could you say from what you saw, captain, was there anything that Captain Loveland could have done in the loading of this ship to have saved the accident and was there anything he did that he ought not to have done that would have saved and prevented this accident from happening, Captain Loveland, you remember, being on Crab Island? A. I don't see anything that he could have done to have prevented it.

40

Captain Parker C. Headley—For Plaintiff—Rebuttal—Direct

By the Court:

Q. Did he omit to do anything that he should have done, in your opinion? A. No, sir.

10 *By Mr. Davis:*

Q. Captain, did you testify in the New York court? A. Yes, sir.

Q. In this McKeever Brothers matter? A. Yes, sir.

Q. Did Mr. McKeever, the Alderman here, testify—

The Court: That is, Samuel W. McKeever?

Mr. Davis: I don't recall the initials.

20 Q. Did he testify in the New York courts in the suit in that matter? A. Yes, sir.

Q. Were you present? A. Yes, sir.

Q. Did he testify at that time that the ship was was not overloaded? A. I don't seem to remember his testimony.

Q. Well, was the testimony that was produced on the part of the people who were defending this suit to the effect that the ship was not overloaded? A. Yes, sir.

30 Q. You were called on to testify? A. Yes, sir.

Q. Did you so testify there? A. Yes, sir.

Q. Did McKeever Brothers or not secure your attendance at that court for the purpose of testifying and giving your testimony? A. Yes, sir.

Q. Before you went there did you tell them what you would testify to? A. No, sir.

Q. I mean with regard to the loading of this ship. Were you asked what your testimony would be in that particular?

40

Captain Parker C. Headley—For Plaintiff—Rebuttal—Cross

By the Court:

Q. In other words, did their counsel—did you tell their lawyer what you knew about it? A. Before I went to the trial?

Q. Yes. A. Yes, sir.

10

Q. You told him that in your opinion the boat was not overloaded? A. Yes, sir.

By Mr. Davis:

Q. Captain, have you taken ships or boats out of this channel into the sea drawing more water than thirteen feet? A. Yes, sir.

Q. Is it safe? A. Well, I have taken schooners, the James Lord, the same season before I quit, drawing thirteen feet six inches.

20

Q. That was more water than this boat was drawing? A. Yes, sir; took her out safe.

Cross examination by Mr. Horner:

Q. Captain, if the Severn had been drawing but twelve feet of water in your opinion would this shearing and grounding have happened? A. That would be liable to happen at any time, if the man steering that vessel didn't understand and keep his vessel directly after the tug.

30

Q. Now the vessel that you took out had its own power? A. Yes, sir.

Q. This was a towed vessel? A. Yes, sir.

Q. Now, of course, the nearer the bottom of the vessel is to the ground or the bottom the more the suction, isn't it? A. Sure.

Q. And the fact that this was loaded close to the bottom had a tendency to increase the suction? A. Yes, sir.

40

Captain Parker C. Headley—For Plaintiff—Rebuttal—Cross

Q. And that, coupled with the tide, made the steering rather difficult, did it not? A. Yes.

10 Q. Then the increased load was an important factor in causing the grounding of that vessel, wasn't it? A. Yes, I suppose it was liable to make the shear, suction.

Q. The increased load was an important factor. Now, Captain, there is quite a difference in running a vessel out under its own power and being towed, isn't there? A. Yes, sir; the man being towed should be an experienced man and keep his vessel directly after the one that is towing in a narrow channel, not to run her ashore at any time.

20 Q. The channel that you were running out of was about one hundred feet wide, wasn't it? A. Yes, sir.

Q. And this boat was probably two hundred feet long? A. Yes, sir.

Q. There was no master on board the Severn, was there? A. Yes, sir.

Q. There was? A. He was master of his own ship, had a license, had the government give him the papers. He was captain of that boat.

Q. Wasn't he just a roustabout? A. I guess not.

30 Q. Did you see the papers? A. No, sir; I didn't see his papers, but he would be finable to go to sea without them.

Q. But it was simply a towed boat and he was not the captain? A. He has to have a license and has to have the paper of the United States Government to run that vessel.

Q. Do they have to have papers? A. Anything that comes up to the tonnage and measurement has to have a licensed captain, has to have papers.

40 Q. Even though it never travels under its own

Captain Parker C. Headley—For Plaintiff—Rebuttal—Cross

power? A. Inside or outside, sail or scow or what it might be, over a certain tonnage has to have papers.

Q. Does a garbage scow have to have, Captain?

A. If it is big enough, up to a certain tonnage, it does. 10

By the Court:

Q. Where do you live, Captain? A. Tuckerton, New Jersey.

By Mr. Horner:

Q. Captain, even if the barge captain had cast his anchor and the hawser broke wouldn't she have gone aground anyhow? A. No, sir. She was in the entrance of this narrow channel and went across to a broader, another channel, where there was lots of room to anchor. 20

Q. Would she have room to swing? A. Lots of swinging room when she drifted in.

Q. Isn't the channel only one hundred feet wide? A. Where she broke loose is a narrow place, but she didn't ground there, she went off four or five hundred yards before she brought up, across a broad place in the channel, lots of anchorage. 30

By Mr. Davis:

Q. Captain, the Lord, did she have power of her own or did you tow her out? A. I towed her out; yes, sir. 40

Harry Heinz—For Plaintiff—Rebuttal—Direct

HARRY HEINZ, sworn for plaintiff.

Direct examination by Mr. Davis:

- Q. You are an engineer? A. Yes, sir.
- 10 Q. You are not a captain, are you? A. Yes, sir.
- Q. Well, Captain, did you work for McKeever Brothers? A. Yes, sir.
- Q. How long? A. A little over two years, that is, two fishing seasons.
- Q. When did you begin? A. In 1912.
- Q. And you worked the fishing seasons of 1912 and 1913? A. 1913.
- Q. Do you know anything about this green garvey? A. Yes, sir.
- 20 Q. What do you know about it? A. In what respect?
- Q. Well, are you an engineer? A. Yes, sir.
- Q. Did you repair any part of this engine in the green garvey? A. Yes, sir.
- Q. What did you repair? A. Why, it kept me busy all the time repairing her.
- Q. What was the matter with her? A. Well a whole lot.
- 30 Q. Well, we don't know if you don't tell us? A. I fixed a hole she punched in the bottom of her, and then you had to keep going over her at all times to keep her in running condition.
- Q. Well, they worked her hard or not? A. Yes, sir.
- Q. Do you remember the time—I don't mean the date, but the time—when Captain Loveland lost the wheel and shaft of the green garvey? A. Yes, sir; I was with him.
- 40 Q. You were with him? A. Yes, sir; I was running the engine.

Harry Heinz—For Plaintiff—Rebuttal—Cross

Q. What was the condition of that engine then as compared with its condition before? A. The same, she was in good condition; good running condition.

Q. As good condition as she had been before or not? A. Yes, sir. We run across the bay in her. 10

Cross-examination by Mr. Horner:

Q. You are sure that the garvey was in good running condition? A. Yes, sir.

Q. When the captain lost the shaft and wheel off of her? A. Yes, sir.

Q. Did or did not McKeever Brothers put a new engine in her while you were there? A. No, sir.

Q. During the season of 1912 and 1913 and 1913 and 1914 you were in the employ of McKeever Brothers? A. Not in the fall of 1914; no, sir. 20

Q. Well, did you work right straight through or only the summer months? A. Just the summer months.

Q. How many times during the time that you were working for McKeever Brothers and on their payroll did you work on the oyster beds of Captain Loveland? A. None.

Q. Never? A. Never. 30

FRANK C. GASKILL, sworn for plaintiff.

Direct-examination by Mr. Davis:

Q. Are you a captain? A. No, sir.

Q. What was your business there, Mr. Gaskill?
A. I was cook, full charge of the kitchen. 40

Frank C. Gaskill—For Plaintiff—Rebuttal—Direct

Q. And how long had you been there? A. I commenced in 1911, December 28th.

Q. And how long did you continue? A. I left there in 1914 the last of November.

10 Q. You stayed there all the time or not? A. I had my visits off, the same as the rest of the people did that worked around there.

Q. I understand that, but I mean you spent the whole winter and summer there, did you? A. The first year.

Q. Did you notice the condition of the machinery at the time that the factory was closed down? A. Yes, sir; 1914.

Q. Did you notice it before that time? A. Yes, sir.

20 Q. And what was the condition of it? A. The condition was right up in good shape. Everything was painted, the elevator was scraped and cleaned, the presses was scraped and cleaned and the fish scales scraped off and under them, and scraped the stuff away back under the shaft, scraped the shaft and everything laid up in good shape around there, and all the men sent off with the exception of two men.

Q. Did you help to do any of it? A. No, sir.

30 Q. Did you see any of the other men doing it? A. Yes, sir; occasionally, because when I was not cooking and had nothing to do I would walk around and back of the factory. I have been into that factory work myself and I used to do it.

Q. Did it where? A. Crab Island.

Q. Before you went on as cook? A. Yes, sir, I cooked in summer and used to work winters and springs, that is, before McKeever got it.

40 Q. I mean prior to your working in the factory, before you went there in 1911. A. Yes, sir.

Frank C. Gaskill—For Plaintiff—Rebuttal—Cross

Q. And at that time you had experience with the machinery that was being used? A. Quite a lot.

Q. Was this machinery in your opinion well kept or not? A. It was well kept. It was counted a first-class factory in machinery work as there was anywhere along the shore; well took care of and painted. 10

Q. Was it that way at the close of Captain Loveland's connection with that particular factory as superintendent? A. What do you mean?

Q. I mean when the factory was closed down, that is, when it was used no longer. A. When the factory was closed down for fishing purposes it was supposed to be painted up, which it was. That was at the end of the fall. Fishing was done with.

Q. That was 1914? A. That was 1914. That was the last season the factory was run for fishing purposes. 20

Cross-examination by Mr. Horner:

Q. You only stayed there one winter? A. That was the first one I was there; yes, sir.

Q. That was 1911 and 1912? A. That is correct.

Q. Mr. S. W. McKeever was there a great deal that winter, wasn't he? A. That first one? 30

Q. Yes. A. Well, not so much.

Q. He was there practically every week, wasn't he? A. Well, he used to make trips there.

Q. Yes, he was there very frequently, wasn't he? A. Yes, sir.

Q. And things were kept in fine shape, weren't they? A. Sure.

Q. Now the next winter he wasn't there nearly as frequently, was he? A. In 1912, in the winter time? 40

Frank C. Gaskill—For Plaintiff—Rebuttal—Cross

Q. Yes. A. No, sir; I stayed there till when the fishing season closed down.

Q. Then you left? A. Everybody left except the watchman and chief engineer.

10 Q. You didn't know what was done towards cleaning up the factory in 1912 and 1913, did you? A. Every thing was in shape so we could go on there in the spring and go to work there, and it was in fine shape, ready to operate and did operate.

Q. How about the fall of 1914 and 1915? You don't know what was done during the winter cleaning up, do you? A. No, sir; 1915 I wasn't there.

Q. 1914 and 1915? A. 1914 I was there till the end of the fishing season, and the factory was also put in proper shape.

20 Q. Then how do you account for the fact that in 1916 when these presses and conveyors were opened they were found to be filled with fish and fishy matter and the bearings unoiled and other defects?

Mr. Davis: I object. He is not called on to base his judgment on the testimony.

The Court: This is cross-examination, if such and such were the fact.

30 A. I saw it myself. The presses were under there and cleaning them out with cold chisels, knocking every scale off of them.

By the Court:

Q. You say that work was thoroughly done? A. Thoroughly done, the stuff dug out and wheeled away and oiled up and painted in good shape, the ten boilers painted up in fine shape, to the elevator.

40 Q. When did you say you left there? A. This was the latter part of September that this work

Frank C. Gaskill—For Plaintiff—Rebuttal—Cross

was done. I left—this was on the last day of November when I left there for good.

Q. Now let me ask you this question: were you there in the wintertime, the winter of 1911 and 1912, 1913 and 1914? A. No, sir; only the first year. They didn't need me there as cook at that time. 10

Q. Was Captain Loveland there? A. Yes, sir.

Q. All the time? A. Not all the time, I don't presume he was there all the time. He made his trips as stated before, backwards and forwards. Things were properly laid out in the fall every year at all fish factories.

Q. What is that? A. I say at all fish factories everything is laid off properly, scraped off, and then they do something in the spring when new repairs is needed. 20

By Mr. Horner:

Q. You don't know how many times he was there in the winter of 1912 and 1913, do you? A. 1912 he was there pretty near all the time, because they were putting in a lot of new repairs.

Q. You were not there; how do you know it? A. Well, then, I can't answer that.

Q. Well, then why don't you tell the truth, Gaskill? You were not there in the winter of 1912 and 1913, were you? A. Pardon me. I misunderstood you. I thought you said 1912. I told you I was not there in 1913. 30

Q. 1913 and 1914 you were not there, were you? A. No, sir.

Q. You don't know how long he was there? A. No, sir; I can't answer that.

Q. Did you work for him on his oysterbeds while you were on the McKeever payroll? A. No, sir. 40

Frank C. Gaskill—For Plaintiff—Rebuttal—Cross

Q. Never? A. Never.

Q. Nothing at all? A. Nothing at all.

Q. Never did anything for him in his personal business while you were on McKeever's payroll?

A. No, sir.

10 Q. How long would it take to clean up that factory from the time the fishing season closed? A. According to how many men they had to work on it.

Q. Well, all the gang that they had on hand. A. A month or six weeks. That is what they generally lay out to lay the factory up. And I stayed there to cook for them and then I went home.

Q. What relation are you to Loveland? A. None at all.

20 Q. What was your position there? A. I was cook, head cook, full charge of the kitchen.

Q. Loveland was superintendent, was he? A. I used to take orders from him or McKeever there. They used to both give me orders, of course.

30 Q. Do you mean to say that the woodwork around these conveyors was taken off and the presses and what not cleaned up? A. The presses was properly cleaned. They were covered with canvas and wood around the bottoms. The covers and lids was taken off and they dug it out there with shovels.

Q. What year did they do that? A. That was 1914, when I left there.

Q. 1914? A. Yes, sir.

Q. You were not there the winter of 1914? A. Wasn't I there when the factory was laid out?

Q. I don't know. A. Well, I know, I was.

40 Q. You mean to say that the woodwork was taken off, unscrewed, etc., and the conveyors exposed to view and the work was all taken out? A.

*Frank C. Gaskill—For Plaintiff—Rebuttal—Re-
direct*

Why, sure, that I know that that was done and how it was done. I have helped do it many times.

Q. In that factory? A. Yes, sir.

Q. For McKeever Brothers? A. No, sir; before he ever got it, a good many years. I have been in the business fifteen years. 10

Q. Did you ever see Mr. McKeever in the factory? A. I saw Mr. McKeever in the factory and his brother lots of times.

Q. What did you go in the factory for? A. To pass away the time. At that time, you mean?

Q. Yes. A. To pass away the time. It don't take me all the time to get food and cook it and prepare it, does it?

Q. I don't know. A. I wouldn't suppose. I wasn't hired to stay in the kitchen all the time as a state prison. 20

Redirect Examination by Mr. Davis:

Q. Mr. Gaskill, as I understand you went there in the spring of the year or when they began fishing? A. Yes, sir.

Q. And stayed there until they were through the season? A. Yes, sir; excepting the first year. 30

Q. The first year you were there the whole year round? A. The whole year round.

Q. And how the men that did the fishing, or rather the men that worked around the place, before they go away for the season do they clean up the machinery and get it in shape for the winter, so it will remain idle during the winter? A. They keep so many men on to do that and let the rest off and let them go and put so many on, and they always scrape and clean and paint and dispose of 40

*Frank C. Gaskill—For Plaintiff—Rebuttal—Re-
direct*

what fertilizer, oil and everything they have got and clean everything up, just for the watchman or whoever is left all winter.

10 Q. You yourself stayed there until those men were through cleaning up? A. Yes.

Q. And when they were through and went away they didn't need a cook and you went away? A. Didn't need a cook until the next spring.

Q. In 1914 you say the place was cleaned up? A. Yes, sir.

Q. And was so each year before that time or the time you were there? A. Yes, sir.

20 Q. I mean that they cleaned it up each year? A. Yes, sir; cleaned it up and laid it out, because they had to keep anywheres from four to ten or twelve men to clean up. And while they were cleaning up the factory they were shipping oil and scrap and getting clear of all the stuff they had made during the summer and getting the property cleaned up, and I stayed to cook for them until everything was left.

30

HORACE SOUDERS, sworn for plaintiff.

Direct examination by Mr. Davis:

Q. Mr. Souders, were you employed at any time by McKeever Brothers?

A. I was employed by Mr. McKeever for the short season.

40 Q. When was that short season? A. Beginning in 1912.

Horace Souders—For Plaintiff—Rebuttal—Cross

Q. Watching the boats, did that include the watching of the factory or what? A. Yes, sir.

Q. What did you get per month for watching the factory and these other boats? A. Well, I never received anything.

Q. Weren't you to be paid for it? A. Well, I was 10
promised pay.

Q. Did you watch this Chippewa? A. I watched the Chippewa.

Q. Did she take water or not? A. She took water so that she had to be pumped all the time.

Q. How frequently was it necessary to pump her? A. Well, I watched her every day and pumped her if there was any water in her; yes, sir.

Q. Did she leak much? A. Not at first.

Q. Well, when she did begin to leak more? A. 20
Well, in 1914 I informed Mr. Loveland, Mr. B. F. Loveland, that she was leaking so bad that I couldn't keep the water out of her. Mr. Loveland put her in the creek so she couldn't sink.

Q. She was leaking so fast you couldn't keep it out? A. I couldn't keep the water out without there was something-being done to her.

By the Court:

Q. What was that, the Chippewa? A. The Chip- 30
pewa, yes, sir.

By Mr. Davis:

Q. That was 1914? A. That was 1914.

Cross-examination by Mr. Horner:

Q. How long did you work for McKeever Bros.? A. Well, I worked for him from 1912 to 1915 and when Mr. Loveland took charge. 40

Horace Souders—For Plaintiff—Rebuttal—Cross

Q. From 1912 to 1915? A. Yes, sir.

Q. Do you mean to say that you were never paid anything? A. Not for the Chippewa.

Q. But weren't you paid or working for Loveland? A. Yes, sir; I was paid for the work.

10 Q. Then what did you mean by telling the Court that you were not paid? A. Well for the Chippewa.

Q. Wasn't the Chippewa one of the fleet of McKeever Brothers? A. Yes, sir.

Q. Well, what did you expect, extra pay? A. Well, but she was brought to me.

By the Court:

20 Q. Did you ever ask for your pay? A. Not for the Chippewa. When I took the steamers I took the steamers for \$35 a month, and after I had had the steamers the Chippewa was brought to me in my charge, to watch her.

By Mr. Horner:

Q. You watched her and pumped her out? A. Yes, sir.

Q. And it was part of your duty to do it, wasn't it? A. Yes, sir.

30 Q. Do you remember the steamer of McKeever Brothers that sank in 1913? A. Yes, sir.

Q. Why did she sink? A. Well, that I couldn't tell. The water came in her.

Q. You failed to pump her out, didn't you? A. No, sir.

Q. Didn't the water get up over the rock salt? A. Not when I left her; no, sir.

40 Q. You didn't leave her till 1915? A. Leave what?

*Horace Souders—For Plaintiff—Rebuttal—Re-
direct*

Q. The steamer McKeever Brothers. You were there from 1912 till 1915? A. Well, I know that. I kept the water out all the time I was there.

Q. Well, she sank while you were there? A. Well, she didn't sink, but she got water in her. 10

Q. The cocks froze and broke, didn't they? A. Well, that is what they told me.

Q. Wasn't that because of your neglect? A. No, sir; I had no neglect there. I done my duty.

Q. Now you say you advised Mr. Loveland in 1914 of the condition of the Chippewa? A. Yes, sir.

Q. You are a relative of Loveland's? A. I am his father-in-law. I can't help that. 20

Redirect-examination by Mr. Davis:

Q. Now, Mr. Souders, were you to get any extra compensation for taking care of the Chippewa? A. I will tell you now, as far as that is concerned. Mr. McKeever, of course, and me was good friends. Mr. McKeever on the 18th day of August, 1914, he took dinner with me. He asked me how I was getting along with the Chippewa. I told him all right. He says, "Well, Mr. Souders, I will send you a check for taking care of her. You keep on taking care of her." 30

By Mr. Horner:

Q. This McKeever? A. S. W. McKeever.

PLAINTIFF RESTS.

Benjamin F. Loveland—Recalled—Direct

The Court: I want to ask Captain Loveland a question.

10 BENJAMIN F. LOVELAND, recalled.

By the Court:

Q. I want you to explain, Captain, about your taking the men away from the fish plant to do your oystering. I don't think that matter has been satisfactorily explained up to date. A. The spring, if I remember right, of 1912, I took four men from the Crab Island plant to unload a schooner of oysters from James River. I worked them one day and the next day till about ten o'clock, returned to the factory. And the fall of 1913 I used four men one day and the next day about ten or eleven o'clock. I offered to pay Mr. S. W. McKeever for the services of those men.

Q. Did you tell him about it? A. I did, and offered to pay him for the services of those men, and he told me I was absolutely welcome to their services.

30 *By Mr. Davis:*

Q. Now, captain, were those men doing anything at that time on Crab Island? A. They would have been doing something if they had stayed to the plant; but I offered to pay Mr. McKeever for the services.

By the Court:

40 Q. How much would their services be worth? A.

Benjamin F. Loveland—Recalled—Direct

We paid other men two dollars a day for that work.

Q. How much then would that be? Have you figured it out? A. It would be, practically speaking, \$12. That would be, practically speaking, \$24 for the two different times. 10

Q. Is that the only time you used them? A. Yes, sir.

Q. Now, what about this green garvey? They say you destroyed that boat hauling oysters. A. To the best of my judgment I never damaged the boat one penny.

Q. Mr. McKeever says it is damaged about \$200. A. Damaged the boat about \$200?

Q. Yes. A. Well, the actual cost of a boat like that, it would not cost that when she was new, speaking of the boat. 20

By Mr. Davis:

Q. You mean the hull? A. The hull.

By the Court:

Q. How much have you used the boat? A. The fall of 1915. I left the steamers, I think, on the 24th day of July and came ashore, and I used the boat going to the factory and back in McKeever's service, and I used her also at that same time going in the bay and back again. 30

By Mr. Davis:

Q. That is for your own use? A. For my own use. 40

*Benjamin F. Loveland—Recalled—Direct**By the Court:*

Q. Didn't you haul oysters in her? A. I am speaking of that time.

10 Q. How much did you use her? A. There was a time I used her for dredging, that is, practically speaking, the whole time, we will say three weeks, other times that I used her to go back and forth that I hauled oysters in what we term as a row garvey.

By Mr. Davis:

Q. Did you have anything to do with the loading of the Severn? A. I delivered the scrap aboard of her; yes, sir.

20 Q. Well, did you say how much she could carry? A. No, sir. It was up to the captain. There was, if I remember right, there was five different hatches on that barge Severn. The captain would direct me to put so much scrap in hatch No. 1, which was started; when he got a sufficient amount there he would move me to the next hatch and so on, and when he got her to the draft that he wanted her he would tell me to stop and I stopped loading her. I have loaded not one but, practically speaking, three or four hundred barges in my time.

30 Q. Mr. McKeever says that when you quit or left in March, 1916, they discovered that you had neglected to look after the machinery of this plant, so that the machinery was in a serious condition, causing quite an outlay of money to put it in shape. What do you say about that? A. In my judgment of the last twenty-five or thirty years of experience with the fish factory business I don't think McKeever's plant was damaged one cent. In my

40

Benjamin F. Loveland—Recalled—Direct

judgment the machinery in that plant, that I can go there and run it for the next ten years without any repairs. It is the best plant that I ever saw in my life. It is as good machinery as money can buy.

Q. The question is, the very best kind of machinery will be rendered valueless unless it is looked after; isn't that so? A. If this machinery took any damage it done it the summer of 1915, when I was away from the plant. If I am allowed to go on and explain— 10

Q. Yes. A. The chief engineer, Val, who testified here yesterday, told me—

(Objected to.)

Q. Was he in charge of it in 1915? A. No, he was not. 20

Q. Was he in charge of it in 1915? A. He was not. This man was on the payroll up to the 25th of July, when he was watchman.

Mr. Davis: But I am saying that there was testimony in this case to show that this man Val was in charge of this machinery.

Mr. Horner: You heard Val and what he said. 30

The Court: He can't testify what he said, can he?

Mr. Davis: I am explaining that the machinery in 1915 was not taken care of and that Val was this man's servant in charge of the machinery there.

The Court: Let's see how far we can go with that. What do you want to show about Val? 40

Benjamin F. Loveland—Recalled—Direct

The Witness: Val, the chief engineer, told me——

By the Court:

10 Q. Who is that, the man that was on the stand yesterday? A. Yes, the old gentleman, the German fellow, who was chief engineer of the plant.

Q. According to your statement you say he was chief engineer? They say he was only an ordinary engineer? A. Yes, sir.

Q. Well, go ahead? A. And at different times when we came into the factory in the summer of 1915, Val told me that——

20 Mr. Horner: That is what I object to, what Val told him.

The Court: Well, I don't know whether that would bind anybody.

Mr. Davis: It is not for the purpose of binding this gentleman, but it is for the purpose of explaining the situation.

The Court: Well, it hasn't any probative force at all.

30 Mr. Davis: It certainly does have probative force if it is an admission of the chief engineer that he neglected it.

Q. You got information of what kind, without giving what the conversation was? You got information and what information? A. This chief engineer told me that he wouldn't do anything to the factory if McKeever Brothers didn't send him some money. Can I go on?

By Mr. Davis:

40 Q. Go ahead if you want to. A. And he told me

Benjamin F. Loveland—Recalled—Direct

to tell McKeever Brothers if they didn't send him some money for something to eat to stay on the island that he would leave the plant.

Q. Did you take that message to McKeever Brothers? A. I delivered that message to McKeever Brothers at Brooklyn.

10

Q. To whom did you make that statement? A. To S. W. and E. J. McKeever, in their Brooklyn Baseball Club office. Mr. E. J. McKeever made the remark, he says, "That is the kind of a man he is, after we have had him for twenty years."

Q. Now Captain, in 1914 what did you do if anything with respect to putting the machinery in shape? A. It was laid out just the same as previous years.

Q. Well, that don't mean a thing to the judge. What did you do? He doesn't know what happened in previous years. I want you to tell us what you did? A. The machinery was scraped and painted. We painted it with what we term metallic paint, a cheap grade of paint, and fish oil. Fish oil is supposed to be a preparation, a great preventative of keeping iron from rusting.

20

Q. What did you do about these conveyors? A. The outside conveyors was scraped and painted, and the inside conveyors wasn't. I never did that until the last.

30

Q. What was done in regard to the cleaning there under them and things of that sort? A. We never did that.

Q. Was it necessary to do it? A. No, sir.

Q. Mr. McKeever testified that the bearings, I think, which operated those conveyors, were working on the—I don't remember his words—on the axles, that they hadn't been oiled and taken care of.

A. It would be impossible for any conveyor to work

40

Benjamin F. Loveland—Recalled—Direct

on any axle in any conveyor there is in that plant. There isn't a wheel of any conveyor in that plant that is under eighteen inches in diameter, and how could any conveyor wear on the axle of any shaft or bearing?

10

By the Court:

Q. Now, Captain, they say that you neglected your business there in winter time and that you were hired to stay there winter and summer, that you were supposed to be on the fish island all the time, excepting week ends, when you were permitted to visit your family at New Gretna. What do you say about that? A. S. W. McKeever told me in the fall of 1915, after the plant was laid up, he says "After the product is shipped away and the plant is laid up you are not supposed to stay here all the time. You can go backwards and forth."

20

By Mr. Horner:

Q. May I ask when he told you that? A. I don't remember the date.

Q. You said the fall of 1915? A. I meant 1914. I made a mistake on that.

30

By Mr. Davis:

Q. Go ahead, Captain. Is there anything further you want to say? A. No more that I want to.

By the Court:

Q. What about the boat Chippewa that was sunk? They say that you are responsible for the sinking of that boat? A. Mr. Souders reported to me in the fall of 1914 that the boat was leaking so bad that he couldn't keep her afloat, and I put her in

40

Benjamin F. Loveland—Recalled—Direct

this creek where she would be safe. If she had filled up and sunk in the river where the water was deep, practically speaking, fifteen feet of water where she laid, she would have sunk out of sight. I put her in the creek where she was safe and we kept the water out of her that winter, 1914. And the day that I reported to Mr. McKeever, on the 27th day of May, 1915, up to that time, prior to that time she never had had any water in her. 10

By Mr. Davis :

Q. Was that the day that you met him in Philadelphia? A. The day the steamers were inspected we were standing back of the steamer McKeever Brothers. While I was away that summer on steamers at Hicks' Island the yacht Chippewa filled up with water. 20

Q. And in your opinion what was your business during that summer when you were away at Hicks' Island? Did you have supervision of this boat during that time? A. Mr. McKeever told me my duties was that I could go on any one steamer or on first one and then another, just to pass away the time. I had nothing to do, nothing to look after prior to that. And when I met McKeever in Philadelphia the same summer, 1914, or 1915—if it is right—last May a year ago—I asked Mr. McKeever—or Mr. McKeever told me that the boats was going to Hicks' Island and they was not going to operate their plant at Crab Island; and I told Mr. McKeever I would like to have a statement and go off wages until such time as they needed me. He says, "No, you go on the steamer, if you have nothing to do, and look after it, and you get your same pay at the rate of 30 40

Benjamin F. Loveland—Recalled—Direct

\$200 a month"; and he says, "You are just as sure of your money as we are standing here alive."

Q. When you went to Crab Island the 27th of May what did you see—

10 Mr. Horner: He has not said he was at Crab Island on the 27th of May.

Q. Where was it then? A. We was on the steamers at Bass River the 27th of May. That was the day the steamers were inspected, started to have the steamers inspected.

Q. Was the Chippewa near at hand at that time? A. Laid right on the port bow of the steamer McKeever Brothers, practically speaking, about twenty feet from the port bow.

20

Mr. Horner: This is objected to as not rebuttal.

The Court: I will allow it.

Q. What did you say to Mr. McKeever and what did he say to you with respect to this Chippewa? A. I told Mr. McKeever standing right there on the deck of this said steamer that I put this yacht Chippewa in that creek where she would be safe to keep her from sinking. S. W. McKeever says to me, he says, "Is there any railway in Atlantic City where you can take that boat and have her overhauled?" I says, "I think Stanley Van Sant has a railway there." But he never gave me any orders any time to take that boat and have her overhauled.

30

By the Court:

Q. Now going back to the green garvey, Captain, 40 Mr. McKeever says that you practically destroyed

Benjamin F. Loveland—Recalled—Direct

the green garvey by carrying oysters in her and other things, putting the boat to uses which were not incident to your employment? A. The first day that I landed——

Q. Now, I want to know about that. I want to know whether that green garvey, when you got through with the green garvey, was rendered useless? A. To the best of my judgment, outside of the time that she was used, that she was not damaged one penny's worth. 10

Q. What was her use? A. Wear and tear.

Q. What was it worth? What was the wear and tear and use? A. Age on a boat, every month or year counts to a low percentage. The life of one of those boats with proper care, will last twenty years, the hull. The life of a gas engine is owing to the work it has to do. 20

Q. He says this gas engine was absolutely played out when you got through with it. A. The gas engine of the green garvey?

Q. Yes. A. The gas engine of the green garvey was absolutely in as good running order as it ever was in the world.

Q. When you got through with it? A. Yes. The day that I lost the wheel and shaft, I never used her afterwards. The boat was used afterwards. Captain Valiant, the gentleman that testified here yesterday, and two other gentlemen came from the factory with this same boat. In the meantime, after I took her to the factory, some employees of Mr. McKeever's put a left handed wheel on this engine and they ran her backwards; and they made this successful trip with this engine from the factory, from New Gretna, and back again, running her backwards. 30

*Benjamin F. Loveland—Recalled—Direct**By Mr. Davis:*

Q. You mean by a left hand wheel a wheel that turns the other way? A. The other way, running the engine backwards.

10 Q. They reversed the engine? A. Yes.

By the Court:

Q. What do you say the rent for such a boat would be, \$1.50 a day? A. Practically speaking that.

Q. \$1.50 a day? A. As a rule they hire them for that.

20 Q. How many days did you have use for this boat? A. In my own employ?

Q. Yes. A. Practically speaking about two months.

Q. About sixty days? A. Yes, sir.

By Mr. Davis:

30 Q. Now, Mr. Loveland, was there any arrangement between you and the McKeever Brothers with respect to the use of this boat? A. The first day that I landed at McKeever's plant, about two o'clock in the afternoon, Mr. McKeever and I, this gentleman, looked the plant over and then I told him—

Q. By the way, let me interrupt you right there. At that time was the other Mr. McKeever present? A. No, sir.

Q. Was he there that day at all? A. No, sir.

Q. When did he come? A. The third day.

40 Q. Now go ahead and tell us what was said between you and McKeever with respect to the use

Benjamin F. Loveland—Recalled—Direct

of this green garvey. A. The first day that I landed at McKeever's plant to look the plant over, we had supper. After supper Mr. McKeever told me to go home. He says, "You can have the boat and I will send a man up with you to run it." I says, "No, I can run her myself," and he says, "You are to have—we are to furnish you a boat and gaso- 10
line to go back and forth with." That was the agreement.

Q. Was there anything at any time ever said by him about the use of this boat for your own personal use, individual use, outside of their business?

A. No.

By the Court:

Q. The oyster business? A. Never. It was the understanding between Mr. McKeever and I, S. W. McKeever and I, that I should have the privilege of looking after my oyster interests. 20

Q. When was that made? A. That was the winter—I think it was the winter of 1912 that I entered into the oyster business.

Q. Did he know that you had entered into the business? A. Yes, I told him the circumstances, after my father's decease, I told him the circumstances, the oyster ground that my father left me in his will; I told him what I paid for it. And he told me I was perfectly welcome to look after my oyster business. I did it at such times it didn't interfere with McKeever Brothers' business. 30

By Mr. Davis:

Q. During the fishing season that McKeever 40

Stephen W. McKeever—For Defendant—Sur-rebuttal—Cross

Brothers conducted their business did you do anything in the oyster business? A. No, sir.

Q. That is not the season of the year when you can bother with them, is it? A. No, sir; I never
10 touched—

Mr. Horner: There is no question pending.

A. I never touched my own oyster lot no way until after July 24, 1915, that I discharged my own self from McKeever Brothers.

Q. When were those two days that you spoke about? They were before that time, weren't they?

A. Oh, that is unloading schooners, yes.
20

Cross-examination by Mr. Horner:

Q. You admit that you never cleaned the inside conveyors? A. The inside conveyors?

Q. Yes. A. Never did it in all my life in all the fish factories I was ever to.

Q. Then when this fellow Gaskill said you did he made a mistake, didn't he?

Mr. Davis: I object. It is not proper to
30 have him comment on the testimony of somebody else.

Q. Didn't Gaskill work for you on your oyster business? A. Yes, sir.

Q. While he was on the McKeever payroll? A. No, sir.

Q. Never? A. No, sir.

Q. He worked for you? A. Yes.

Q. Works for you now? A. No, sir.

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Plaintiff Rests.

Stephen W. McKeever—For Defendant—Sur-rebuttal—Direct—Cross

DEFENDANT'S TESTIMONY IN SUR-
REBUTTAL.

STEPHEN W. MCKEEVER, recalled for defendant.

Direct examination by Mr. Horner:

10

Q. Mr. McKeever, did Loveland ever offer to pay you for the use of your men which he had used in his oyster business? A. No, sir.

Q. Did he ever tell you that fall or state that he would do no more work for you until you furnished him with some money or some food or smething of the sort? A. No, sir.

Q. Did you ever tell him that he could take off the time that he wanted to attend to his oyster business? A. Never knew anything about it.

20

Cross-examination by Mr. Davis:

Q. You never knew anything about it? A. No, sir.

Q. Didn't you testify yesterday that you know that his father had left a will by reason of which and by virtue of which he got an oysterbed? A. I recollect I did.

30

Q. Then you did know something about it? A. About what?

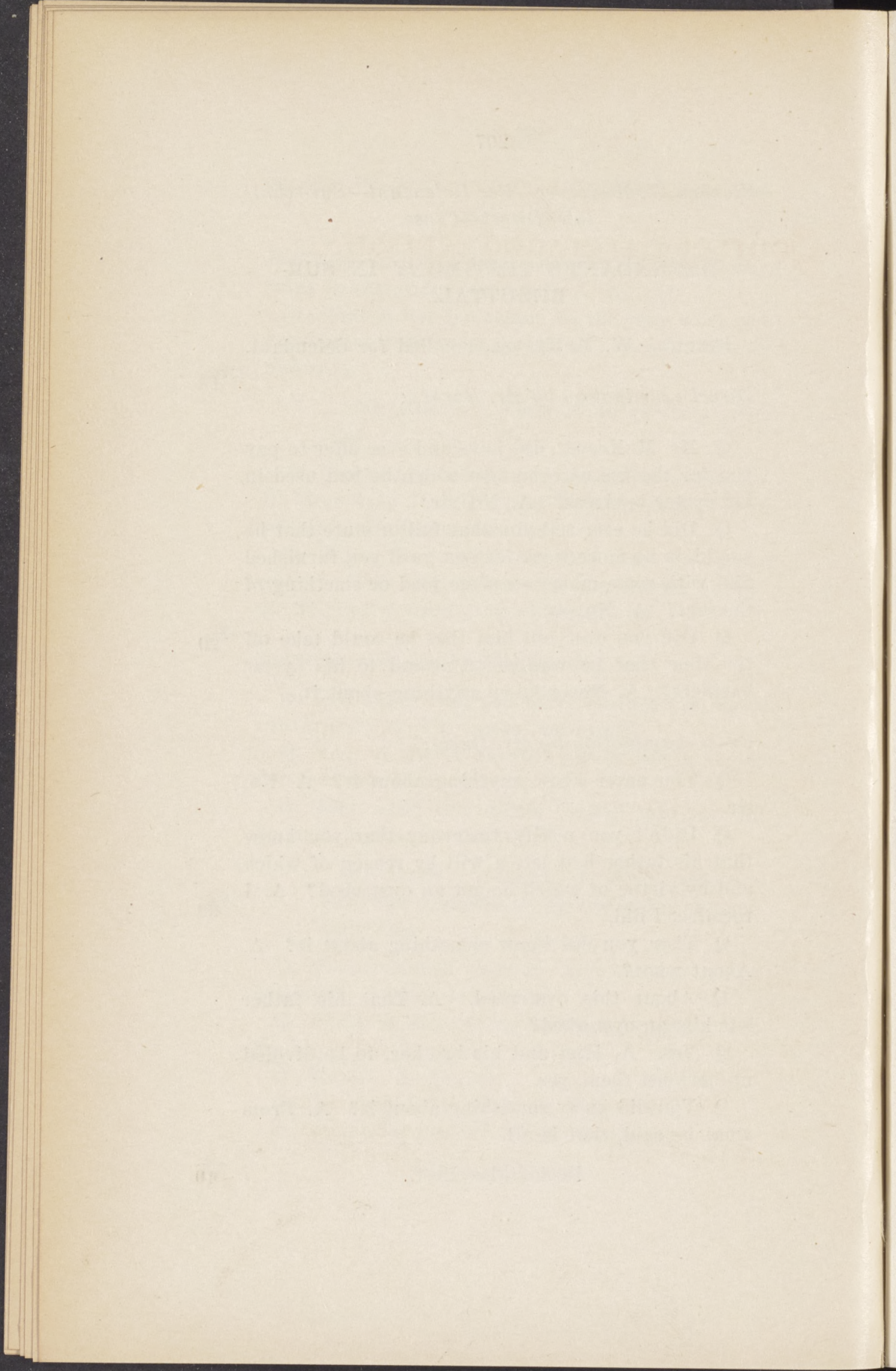
Q. About this oysterbed. A. That his father left him an oysterbed?

Q. Yes. A. Him and his brother, to be divided up between them, yes.

Q. You did know something about it? A. From what he said, that is all.

Both Sides Rest.

40



NEW JERSEY

Court of Errors and Appeals.

BENJAMIN F. LOVELAND,
Plaintiff-Respondent,

vs.

At Law.

MCKEEVER BROS., INC.,
Defendants-Appellants.

Brief for Defendants-Appellants.

Plaintiff, Benjamin F. Loveland, sued defendants, McKeever Brothers, for a sum of seven thousand and fifteen dollars and eighty-four cents (\$7,015.84) for wages alleged to be due for services rendered as superintendent of defendants' factory at Crab Island, Tuckerton, New Jersey.

Defendant's answer contained a general denial and in the answer and bill of particulars it was alleged:

(A). That plaintiff, in consideration of a sum of \$200.00 per month, agreed to devote his exclusive services to the care of defendants' factory.

(B). That plaintiff in violation of his agreement neglected his duties and embarked in the oystering business on his own account.

(C). That he used in his oystering business a boat known as the Green Garvey which belonged to defendants' factory and seriously damaged it.

(D). That he took men away from the factory and put them working on his oyster beds without the knowledge of defendants and charged their full wages to defendants' pay roll.

At the trial of the case defendants' produced cancelled vouchers showing the amounts paid to plaintiff and it was admitted that although the suit was for seven thousand and fifteen dollars and eighty-four cents (\$7,015.84) the actual balance due plaintiff, if he should have a full recovery without deductions, was two thousand five hundred and nine dollars and twenty-two cents (\$2,509.22).

The case was tried before Judge Carrow without a jury on the 23d and 24th of November, 1916, and the Court on December 6th, 1916, filed a memorandum of judgment as follows:

Carrow, J.:

"I find that the plaintiff properly performed his contract and is entitled to recover his unpaid compensation less \$90 for the use of the "Green Garvey" and \$24 for use of defendant's men.

"The amount which I find is due from defendants to plaintiff is \$2,395.82."

POINT I.

The finding of the Court is defective as a matter of law.

The effect of the finding is that a dishonest servant may recover the agreed price of his services less the amount which may be shown to have been stolen.

On no other theory can this finding be based.

We have been unable to find a case exactly in point in New Jersey, but we refer to the case of

Sipley v. Stickney, having very similar facts and turning on the same legal propositions, found in (190 Mass., 43, 76 N. E., 226, 5 L. R. A. N. S., 469) holding that "the wilful failure of a person in charge of a farm as manager for the owner to return to the owner an accurate statement of the expenses incurred in running the farm is a bar to recovery by the manager for his services in running the farm, although the stipulation of the contract requiring him to return an accurate statement of his expenses is not of the essence of the contract."

This case also holds that where a contractor commits a wilful default and yet claims the contract price, he in effect claims the right to break his contract.

It may be urged that the above case turns on the breach of an express contract, but honesty is an implied term in every contract of employment (Peterson v. Mayer, 46 Minn., 468, 49 N. W., 245, 13 L. R. A., 72).

It has also been held in Henderson vs. Hydraulic Works (9 Phila., 100), that fidelity is a condition precedent whenever an agent seeks compensation from his principal.

The case of Peterson vs. Mayer, moreover, holds that "to allow a dishonest servant to recover the value of his services, less the amount which may be shown to have been stolen, would neither subserve the ends of justice nor tend to promote common honesty."

Intentional frauds practiced upon the employer have been held to preclude the right of the employee to recover compensation (Prescott vs. White, 18 Ill. App., 322; Lilley vs. Elwin, 11 Q. B., 742; 12 Jur., 623; 17 L. J. Q. B., 132; 63 E. C. L., 742 and other cases cited in 26 Cyc., p. 1040).

CONCLUSION.

McKeever Brothers, the defendants in this case, are men of many affairs. They own the Brooklyn National League Baseball Team and have other interests which take up their time so that they, as the testimony shows, seldom visit Crab Island.

They left everything there in charge of the plaintiff as their trusted superintendent.

It is our contention that the superintendent, by his fraudulent conduct, forfeited his wages and that the finding of the Court below should be reversed.

Respectfully submitted,
GRIFFIN & GRIFFIN,
Attorneys of and Counsel with
Defendants-Appellants.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

BENJAMIN F. LOVELAND,
Plaintiff-Respondent,

VS.

MCKEEVER BROS., Inc.,
Defendant-Appellant.

ON APPEAL FROM

SUPREME COURT.

BRIEF FOR PLAINTIFF.

The defendant is the owner of Crab Island, situated in Little Egg Harbor Bay, Ocean County, New Jersey, on which it has a plant for the rendering of menhaden fish, caught by them in the Atlantic Ocean. The plant is an expensive one, being worth about \$200,000. In the conduct of this business, the defendant employed the plaintiff, Benjamin F. Loveland, at a salary of \$200 per month from the twenty-second day of July, 1911, until the twenty-fourth day of July, 1915, from July 24, 1915, until March 31st, 1916, the plaintiff drew wages at the rate of \$50 per month. Plaintiff's salary not having been paid, suit was entered against the defendant for the entire amount of salary accruing to the plaintiff from the date of his employment until the date of his discharge, and, also, the plaintiff sued for certain moneys which he had expended on behalf of

the defendant, at its request, such as the payment of taxes and the like.

The plaintiff sued for the whole amount of money accrued during the period of his employment, because he had no book account of the payments received by him. After suit had been begun and before answer was filed, the defendant was represented by York & York, attorneys of New York City, and on August 28, 1916, they addressed the following letter to the attorney of the plaintiff:

“August 28, 1916.

James Mercer Davis, Esq.,
301 Market St.,
Camden, N. J.

Benj. F. Loveland vs. McKeever Bros., Inc.

Dear Sir:—

In above matter we have examined into the facts regarding your client's claim and find that Mr. Loveland does not credit McKeever Bros. with payments on account of salary made to him between July 22, 1911, and May 15th, 1914, the date of the first credit allowed our client in your complaint. In other words, from the beginning of Mr. Loveland's employment to and including August 6, 1913, there was paid to your client the aggregate sum of \$4,600.00, as shown on the enclosed statement. These payments were all made by checks dated as thereon shown and we would appreciate it if you will consult with your client relative to same.

Enclosed please find statement of Mr. Loveland's account as shown by McKeever Bros.' books. This account we do not believe can be disputed and we might state that same agrees with Mr. Loveland's letter to Mr. Woods (McKeever Bros.' manager) dated January 13th, 1916. Kindly advise us, so that

we may take the matter up with our client with a view of settlement of all matters in dispute.

Thanking you for your courtesy,

Very truly yours,

Enc.

York & York.

FNY/LGL''

The statement of account sued on attached to this letter showed that there had accrued to the plaintiff for salary and items of money paid on behalf of the defendant by the plaintiff the sum of \$10,179.72. The defendant claimed credit for \$7,763.88 "balance due Mr. Loveland \$2,415.84."

On page 17 and following (state of the case) it was admitted in open Court that if liability attaches in the case the plaintiff is entitled to \$2,415.84 unless Judge Horner shows a counter-claim. In other words, to use Judge Horner's words "If the claim is good in entirety, and if our (defendant) claim is no better than we now admit by reason of money payments made, then the plaintiff would be entitled to recover \$2,415.84." In other words, the defendant both in the communication of August 28, 1916, and in open court admitted that unless the defendant established its counter-claim or that the plaintiff's claim should be reduced by reason of the defendant's failure to perform or make disbursements or disbursements being unauthorized or unwarranted, then the plaintiff was entitled to recover \$2,415.84. The defendant, however, in its answer filed October 9, 1916, which is subsequent to the date of the admission by its attorneys under date of August 28, 1916, claim that the plaintiff neglected and refused to perform the services agreed upon; they claim credit for \$7,600; they allege by counter-claim that the plaintiff used the employees of the defendant in his

private business; that he used a boat of the defendant in his private business and seriously injured her; that the plaintiff consumed the defendant's gasoline; that the plaintiff so carelessly and negligently performed his duties; that the defendant suffered damages by reason of the negligent performance by plaintiff of his duties. Considerable testimony was taken, over two hundred pages, before Judge Carrow sitting without a jury. At the close of the case Judge Carrow made the following finding of fact: "I find that the plaintiff properly performed his contract and is entitled to recover his unpaid compensation less \$90.00 for the use of the "Green Garvy" and \$24.00 for the use of defendant's men. The amount which I find is due from defendant to plaintiff is \$2,395.82.

The defendant seeks to review the finding and judgment of the trial Court by reason of the fact, to use the astonishing language of the defendant's counsel, "The effect of the finding is that a dishonest servant may recover the agreed price of his service less the amount which may be shown to have been stolen, on no other theory can this finding be based."

ARGUMENT.

The findings of fact by the trial Court do not support the allegation of the defendant's counsel.

1. In the first place there was abundance of testimony from which the Court might have found, which it did, that the plaintiff had fully performed his contract. There is no allegation in the defendant's brief that there isn't sufficient testimony for the Court to

have so found and the Court does find as a fact that the plaintiff properly performed his contract. In other words, all that he had agreed to do, all that was in the contract of employment to be observed and performed by the plaintiff had been observed and performed by him. There is no testimony in the case to support the allegation of the defendant's brief that the plaintiff was dishonest, rather the Court finds as a fact that the plaintiff properly performed his contract. Neither is there anything in the testimony to warrant the claim of the defendant that the plaintiff has stolen anything from the defendant.

The Court makes no such finding and the allowance that was claimed of the two items—is perfectly harmonious in the view of the Court, so that it seems to us that the defendant's argument is based wholly upon an ^{unagreed} ~~estimated~~ state of facts, which the Court distinctly found to be untrue, and, of course, if the defendant's premises are incorrect, his conclusions are likely also to be incorrect. The facts concerning the Green Garvy (pages 36 & 204) show that the defendant put at the disposal of the plaintiff a boat called the "Green Garvy" for use in going to and from the mainland to Crab Island, and to do general hack work with. The plaintiff testified (page 205) that he was permitted by the defendant to look after his oyster business and in looking after his oyster business he used the Green Garvy. It appears that he had no specific permission from the defendant for the use of this Green Garvy for the plaintiff's individual business, and that he had used it about sixty days. Plaintiff testified that the use of such a boat could be obtained for \$1.50 per day and he conceded that there was due to the defendant \$90.00 for the use of its boat. Plaintiff, however, testified that looking over his personal oyster

business did not interfere at all with the defendant's business and the Court found that the plaintiff had properly performed his contract which excludes the idea that the prosecution of the plaintiff's personal business interfered with the defendant's personal business. There also appears from the plaintiff's testimony the fact that he had used on two occasions the men employed by the defendant, in unloading some boats loaded with some seed oysters, belonging to the plaintiff. It was not disputed that the value of the services rendered to the plaintiff by the defendant's men was \$24.00. The plaintiff testified that he had offered to pay this sum of money to the defendant, but that one of the officers of the defendant company refused to accept it and said that he was welcome to the services, however, the plaintiff conceded that the sum of \$24 for the use of the men was due to the plaintiff and was willing that it should be deducted from the amount of the judgment. These are the plain unvarnished facts of the case. There is not a scintilla of testimony, nor a suspicion contained in the testimony that the plaintiff was dishonest with the defendant, nor that their contract with the defendant was in any wise interfered with by the two items above mentioned, nor did the defendant offer any testimony to that effect.

2. The authorities relied upon by the defendant have no application to the facts in this case and do not support the defendant's contention. The chief authority relied upon is the case of **Sipley vs. Stickney**, 109 Mass. 43. That case held that the "wilful failure of a person in charge of a farm as manager for the owner to return to the owner an accurate statement of the expenses incurred in running the farm is a bar to the manager for his services for

running the farm, although the stipulation of the contract required him to return an accurate statement of his expenses is not of the essence of the contract." The Court in that case cited certain cases as authority for proposition there stated. An examination of the cases therein cited do not support the conclusions of the Court. The cases therein cited are cases in which there was an entire contract and a material part of the contract had not been performed. The Court held in those cases where there is an entire contract, failure of an essential part thereof prevented a recovery by the plaintiff. The case seems to hold that "a wilful default in the performance of a stipulation not material to the essence of the contract bars a recovery." "If the failure to perform the express contract be intentional, it is such bad faith that he can recover nothing," and the whole case turns upon the question of the intentional failure to perform a *contract*. The Court appearing to be of the opinion that if the plaintiff repudiates the binding effect of the contract upon him, he cannot be heard to ask the Court to make a contract binding upon the defendant. The cases, however, cited by the Court in this opinion are cases that lay down the doctrine that when one has voluntarily failed to complete a piece of work to be done under a special contract for an entire sum he is without remedy. It comes to the question of an entire contract.

In the case, however, of **Sampson vs. Somerset Iron Works**, 6 Gray, 120, decided by the same Court, it was held under a written contract to perform for a fixed quarterly salary the duties of general agent of a manufacturing corporation one of which, specified in the contract, is to render monthly accounts of the funds in his hands, a failure so to render accounts would not defeat his right to recover his

salary while he remains their agent. As to the attitude to make reports "it was distinct and separable from many other things to be done by him in his capacity as agent, and, therefore, cannot be regarded as a condition precedent. It was a stipulation only upon the breach of which he was liable for damages for whatever injury was, in any way, caused to the defendants." Reconciling these two decisions, it appears that the only ground for the Siple decision was that the default was wilful.

In the present case, however, there is no wilful default on the part of the plaintiff to perform his contract. It isn't claimed by the plaintiff that the use of the Green Garvy was a wilful default to his contract, nor was it claimed that the use of the defendant's men, amounting to \$24 was a wilful default of the plaintiff's contract. The defendant seems to contend that it is evidence of the breach of good faith and yet there was sufficient testimony on which the Court could have found that the plaintiff used the Green Garvy and the defendant's men with their consent and acquiescence. But at any rate, the Court found as a fact that the plaintiff had properly performed his contract, which negatives the ground upon which the two Massachusetts cases were determined, and, therefore, the Siple case doesn't meet the facts presented in the present case.

A New York Court has determined that with them in **Turner vs. Konwenhoven**, 2 Northeastern, 637, the plaintiff, a farm hand, sued to recover moneys due from him to the landlord on a contract for services rendered by the plaintiff. The principal question litigated was whether or not the plaintiff had retained and converted any of the moneys received by him from the sale of the farm products for his own use and thus defrauded the defendant. Evi-

dence was introduced upon the trial tending to show that the plaintiff had appropriated and embezzled some of the moneys received by him, belonging to his master, to his own use and it was claimed that the contract was an entire one and full performance of the same was a condition precedent to the recovery of any part of the servant's wages. The Court held that as there was no charge of embezzlement or criminal appropriation, but a mere claim of failure to pay over money which might have been caused by mistake, plaintiff could recover his salary, less such damage as defendant could show. That is exactly what the Court did in this case. He allowed the plaintiff to recover for the proper performance of his contract and allowed the defendant to recoup such sum of money as was due to it by reason of the plaintiff's use of the Green Garvy and the defendant's men.

California also approves this ruling. In **Stone vs. Bancroft**, 70 Pacific, 1017, affirmed 72 Pacific, 917, the Court, held "Where, during the term of a contract of employment defendant prevented plaintiff from working under the contract, the fact that plaintiff devoted a small portion of the period to other work, which did not interfere with his efforts on defendant's behalf under the contract, did not constitute a breach of contract by plaintiff, so as to preclude his recovery of salary accrued." In **Williams vs. Crane**, 116 Northwestern, 554, 453 Michigan, 89, the plaintiff became a tenant on defendant's farm for a year under an agreement for a share of the crops. During the year, it was agreed that the relation of landlord and tenant should not exist and the tenant should work on the farm as an employe from the beginning of the tenancy. Plaintiff sued for the services rendered and defendant sought a credit for the

money earned by the plaintiff working for third persons during the existence of the relation of landlord and tenant. It did not appear that any loss occurred to defendant by plaintiff's absence while working for others." Held, that the credit was properly refused.

A number of cases have been cited by the defendant which have no application at all to the facts in this case. The defendant argues from the theory that the evidence shows the plaintiff to have been dishonest in his dealings with the defendant. The defendant has not pointed out a single word of testimony which supports its conclusions. There is none to be found. There is not a single word of testimony in the case anywhere which would even hint to any dishonesty on the part of the plaintiff in his dealings with the defendant. The cases, therefore, cited by the defendant have no application at all to the facts of this case. It is, therefore, useless for us further to comment on the cases cited by the defendant's brief.

In conclusion let me again call attention to the finding of the Court. "I find the plaintiff properly performed his contract." This was the determination of a fact which was litigated between the parties. If the plaintiff performed his contract, he is entitled to his compensation. The defendant's claim that the plaintiff was dishonest in his relations with his master finds no support whatever from the testimony, therefore, the argument of the defendant in this matter has no bearing on the case and the appeal should be dismissed.

All of which is respectfully submitted,

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Plaintiff-Respondent.*