

INDEX

	PAGE
Notice of Appeal	1
Summons and Complaint	3
Answer	7
Reply	10
Charge to Jury	11
<i>Plaintiff's Testimony:</i>	
Lena B. LaRue—Direct	23
Maidland B. Sloat—Direct	33
Cross	34
Raymond D. Stryker—Direct	34
Cross	54
Re-direct	75
William T. Morecraft—Direct	76
Cross	85
Re-direct	93
Ralph Ogden Smith—Direct	93
Peter Merlett—Direct	95
Cross	102
Calvin Reed—Direct	103
Cross	105
Re-direct	106
Motion for Non-suit	107
<i>Defendant's Testimony:</i>	
Clyde Potts—Direct	109
Cross	134
Recalled—Cross	196
Ethelbert Bacon—Direct	166
Cross	172
Re-direct	185

	PAGE
Alexander G. Anderson—Direct	186
Calvin Reed—Recalled—Direct	187
Cross	190
John Van Cleve—Direct	192
Cross	194
George D. Westervelt—Direct	194
Cross	196
 <i>Plaintiff's Rebuttal:</i>	
Helena B. LaRue—Recalled—Direct	199
Richard Ambrose—Direct	200
Motion for Direction of Verdict	201
Rule to Show Cause	203
Plaintiff's Acceptance	204
 <i>Rule for Judgment</i>	 <i>205</i>
 <i>Acknowledgment of Service ...</i>	 <i>206</i>
 <i>Memorandum</i>	 <i>207</i>
 <i>Certificate of Clerk of Somerset</i>	
 <i>County Circuit Court</i>	 <i>209</i>
 <i>Exhibit P,</i>	 <i>211</i>

NOTICE OF APPEAL.

SOMERSET COUNTY CIRCUIT COURT.

HELENA B. LARUE, Admin- istratrix of KARSNER D. LARUE, Deceased, Plaintiff,	}	10
vs.		ON APPEAL.
CLYDE POTTS, Defendant.	}	NOTICE OF APPEAL.

To William C. Gebhardt, Esquire, Attorney for
Plaintiff, and Helena B. LaRue, Administratrix
of Karsner D. LaRue, Deceased, Plaintiff:

20

Take Notice that the defendant appeals from the whole of the judgment entered in this cause, to the Court of Errors and Appeals, upon the following grounds:

1. Because the trial Judge refused to grant the defendant's motion to non-suit the plaintiff and direct a judgment of non-suit to be entered against the plaintiff. 30

2. Because the trial Court refused to direct the jury to find a verdict in favor of the defendant.

3. Because the trial Judge refused to charge the eighth request of the defendant, as follows:

10 “If the explosion of the gas in the sewage disposal tank at Ocean Grove was caused by the striking of a match by Stryker, and Stryker knew of the danger of striking a match but LaRue did not, then the act of said Stryker in striking said match was the proximate cause of the death of said LaRue and a verdict should be rendered for the defendant.”

4. Because the trial Judge refused to charge the ninth request of the defendant, as follows:

20 “Karsner D. LaRue, the deceased, should have had knowledge that gases explode by ignition, and the defendant was under no duty to inform the said Karsner D. LaRue before entering said sewage disposal tank of the danger incident to such ignition, and the defendant is not liable to the plaintiff in this case.”

5. Because the trial Judge refused to charge the twelfth request of the defendant, as follows:

30 “The explosion of said gases in said sewage disposal tank, which caused the death of plaintiff’s intestate, was not the probable and natural result of the act of the defendant in permitting plaintiff’s intestate to go into said tank without warning him of the danger of igniting said gases, and the verdict should be for the defendant.”

FRANK S. KATZENBACH, JR.,
Attorney of Defendant.

SUMMONS AND COMPLAINT.

The State of New Jersey to Clyde Potts:

You are summoned to answer the annexed complaint of Helena B. LaRue, Administratrix of Karsner D. LaRue, deceased, in an action at law in the Somerset County Circuit Court. And take notice that unless you file your answer to said complaint with the clerk of the Circuit Court of Somerset County within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

Witness, George S. Silzer, Judge of the Circuit Court of the county of Somerset, this fourth day of 20 November, nineteen hundred and sixteen.

ALEX. G. ANDERSON,
Clerk.

WM. C. GEBHARDT,
Attorney.

Complaint.

SOMERSET COUNTY CIRCUIT COURT.

10	HELENA B. LARUE, Admin- istratrix of KARSNER D. LARUE, Deceased, <i>Plaintiff,</i>	}	ACTION AT LAW.
	vs.		COMPLAINT.
	CLYDE POTTS, <i>Defendant.</i>	}	

20 The plaintiff, Helena B. LaRue, administratrix of Karsner D. LaRue, deceased, who resides in the borough of South Bound Brook, in the county of Somerset, and state of New Jersey, says that:

1. On the twenty-fifth day of April, 1915, the defendant was engaged in the business of civil and sanitary engineering, a part of his business being the installing of sewage disposal plants, including septic plants, in this state.
- 30 2. Prior to the month of April, 1915, the said borough of South Bound Brook, by its borough council, of which the said deceased was a duly elected member, passed a resolution to install a sewage disposal plant, including a septic tank, in said borough, and asked for proposals for the building and furnishing thereof.

3. Subsequently, and prior to the said twenty-fifth day of April, 1915, the defendant made a proposal to the council of said borough offering to erect and furnish said sewage disposal plant and tank, and requested the common council to appoint a committee to inspect the sewage disposal plant and tank installed by him at Ocean Grove, in this state, which committee was subsequently appointed by the council of said borough for that purpose, and the said deceased was appointed as one of that committee.

10

4. On the said twenty-fifth day of April, 1915, the said deceased being one of the committee as aforesaid, was invited by the said defendant to go to Ocean Grove to inspect the sewage disposal plant and tank erected and furnished by the said defendant at that place, and was taken there by defendant in his automobile for that purpose. That the object the defendant had in view in inviting said committee to inspect said plant at Ocean Grove was to thus induce said common council to employ him to superintend the building of the proposed plant in said borough of South Bound Brook.

20

5. Defendant was an expert in the construction of sewage disposal plants and septic tanks and knew that it was dangerous to go immediately into said tank without allowing sufficient time for the gas to escape therefrom.

30

6. Defendant then and there negligently and carelessly invited and directed the said deceased, who had no knowledge of the danger, and who had received no warning thereof, to descend into the said plant or tank, and said deceased thereupon went into the said tank or plant.

7. When the said deceased arrived at the bottom of said plant or tank the gas therein exploded and immediately caught on fire and by reason thereof the said deceased was so burned that on the said twenty-fifth day of April, 1915, the said deceased died, leaving him surviving his widow, the said Helena B. LaRue, and one son, Roebing, aged nine years.

- 10 8. The said plaintiff brings into court the letters of administration upon the estate of said deceased, which were granted unto her by the surrogate of the county of Somerset, in the state of New Jersey, on the twenty-fourth day of September, 1915.

Plaintiff demands \$20,000 damages.

WM. C. GEBHARDT,
Attorney of Plaintiff.

20

[ENDORSED]

Service of the within summons and complaint is hereby acknowledged this fourth day of November, 1916.

Atty. of Defendant.

30

ANSWER.

SOMERSET COUNTY CIRCUIT COURT.

<p>HELENA B. LARUE, Admin- istratrix of KARSNER D. LARUE, Deceased, <i>Plaintiff,</i></p>	}	<p>ACTION AT LAW.</p>	<p>10</p>
<p>vs.</p>		<p>ANSWER.</p>	
<p>CLYDE POTTS, <i>Defendant.</i></p>	}		

The defendant, Clyde Potts, residing at Morris-²⁰
 town, in the county of Morris and state of New Jer-
 sey, in answer to the plaintiff's complaint, says that:

1. He admits the first paragraph.

2. He admits that the borough of South Bound
 Brook had authorized the construction of a sewage
 system, in accordance with plans prepared by him,
 but this defendant has no information as to whether
 a resolution was passed by the borough council with
 reference to the same. ³⁰

3. He denies the third paragraph.

4. He denies the fourth paragraph.

5. He admits that he is an expert in the construction of sewage disposal plants and septic tanks. He denies the other averments in paragraph five.

6. He denies the sixth paragraph.

7. He admits that the said deceased was so burned on April 25th, 1915, that he died, and as to the remainder of paragraph seven avers that he has no knowledge or information as to the respective matters alleged sufficient to form a belief.

8. He avers that he has no knowledge or information as to the matters alleged in the eighth paragraph sufficient to form a belief.

FIRST DEFENSE.

20 The defendant was guilty of no act of omission or commission which constituted negligence and caused the death of plaintiff's intestate.

SECOND DEFENSE.

30 The plaintiff's intestate was guilty of contributory negligence in (a) that after descending into said sewage disposal plant at Ocean Grove, and while in said sewage disposal plant, he lighted a match, against the advice and instruction theretofore given to him, and of the danger of doing which he had knowledge, thereby causing the ignition and explosion of gas which resulted in his death; and (b) in entering said sewage disposal plant after being advised not to open or enter said sewage disposal tank.

THIRD DEFENSE.

No act of the defendant was the proximate cause of the death of the plaintiff's intestate; that the death of the plaintiff's intestate was caused by the lighting of a match by one Raymond C. Stryker against the advice and instruction theretofore given to the said Raymond C. Stryker, and of the danger of which he also had knowledge, so that the act of the said Raymond C. Stryker was the proximate cause of the death of the said deceased, Karsner D. LaRue. 10

FRANK S. KATZENBACH, JR.,
Attorney for Defendant.

20

30

REPLY.

SOMERSET COUNTY CIRCUIT COURT.

10	HELENA B. LARUE, Admin- istratrix of KARSNER D. LARUE, Deceased, <i>Plaintiff,</i>	}	ACTION AT LAW.
	vs.		REPLY.
	CLYDE POTTS, <i>Defendant.</i>	}	

1. The plaintiff denies all the allegations of the defendant's answer.

20 2. Plaintiff denies the allegations of the second defense set up by the defendant and denies that plaintiff's intestate was guilty of contributory negligence and denies that plaintiff's intestate while in said sewage disposal tank lighted a match and denies that he knew of any danger in going into the said sewage disposal tank and denies that the said deceased was warned of the danger and denies that the said deceased was advised not to open or enter said sewage disposal tank.

30 3. Plaintiff denies the third defense and denies that the death of the deceased was caused by the lighting of a match by one Raymond C. Stryker and denies that the act of the said Raymond C. Stryker was the approximate cause of the death of the said deceased.

WM. C. GEBHARDT,
Attorney of Plaintiff.

CHARGE TO JURY.

SILZER, J.:

Gentlemen of the jury: In this case the widow of Mr. LaRue, as administratrix, sues to recover damages, claiming that his death was caused by the negligent act of the defendant. 10

There are a great many facts in this case, gentlemen, that are not in dispute. There is, for instance, no dispute about the fact that the borough of South Bound Brook was about to build a sewage disposal system; that Mr. Potts had been engaged as the engineer; that Mr. LaRue and others were on the committee, and that on the 25th of April, 1915, they visited Belmar and afterward Ocean Grove for the purpose of inspecting septic tanks, and that while Mr. LaRue and Mr. Stryker were in the tank at Ocean Grove an explosion took place, as a result of which Mr. LaRue was injured, and later died of his injuries; that he left a widow and a boy. There is also no dispute about the fact that in tanks of this kind there is a gas known as methane gas produced, and that when this is mixed with air it becomes very explosive, provided there is a flame of some kind brought in contact with it. So you see those are the facts which are practically not disputed. The dispute arises by reason of the plaintiff's allegation 20 that Mr. Potts was negligent—careless; and this suit is brought upon the theory that Mr. Potts owed to Mr. LaRue a duty, and that he failed to perform that duty, and, having failed to perform that duty, is liable. They allege, first, that Mr. Potts failed to provide a reasonably safe place for them to go; and 30

second, that even if the place was safe in itself, they failed to give adequate warning of the dangers which existed there. And this is the law, gentlemen, in a case of this kind :

One who, by invitation, induces persons to come upon the premises of another, is under a duty to exercise ordinary care to render the premises reasonably safe for such purpose, or at least, to abstain from any act that will make the entry upon, or use
10 of the premises, dangerous. Where the person extending the invitation has no right or power, or chooses not to change the existing condition of the premises, then it is his duty to warn such persons of latent, that is, hidden dangers of which the person extending the invitation knew, and which the other person could not see, and of which he had no knowledge.

Now, the plaintiff's contention is that Mr. Potts did not exercise reasonable care in providing a safe place
20 and she bases that upon this allegation that the place could have been made safe if the lid of the tank had been removed for a sufficient length of time to allow the gases to escape ; then it would have been perfectly safe to go down, whether anything had been lighted there or not. But it appears that the tank was not open for any such length of time, apparently, because, from what happened it is quite certain that there was sufficient gas left to explode. So that brings the plaintiff to the second contention, namely,
30 that it was Mr. Potts' duty to warn Mr. LaRue of the dangers that existed there.

Now, Mr. Potts had knowledge that gas of this kind was contained in tanks of this kind, then when it mixed with air and was ignited it would explode, and, as I said, the contention of the plaintiff is that it was the duty of Mr. Potts to give Mr. LaRue ade-

quate warning of those dangers. Now, was that warning given? That brings you, gentlemen, really to the examination in the case. Was adequate warning given to Mr. LaRue? As I recall the testimony of Mr. Morecraft and Mr. Stryker, it is, generally speaking, to the effect that no warning of any kind was given dealing with the danger of the light or the dangers of going into a tank of this kind. On the other hand, Mr. Potts, as I recall it, and Mr. Bacon—I think they were the only two, but you will remember, gentlemen—testified that Mr. Bowen, the man who was killed himself, at Belmar said, in effect, that while in the tank they must not strike any light. So, you see, there is that question of fact to determine, first, whether that warning was given, and whether it was an adequate warning. You see, if the warning was given, either by Mr. Potts himself or through his men, or if Mr. LaRue knew it, or it came to his knowledge in any way before he went into the tank, then, of course, Mr. Potts could not be held responsible. The duty of Mr. Potts was as I outlined it to you, and if he gave the warning, why, that is all he was called upon to do. So, you see, your first question is, was the warning given? If you find that the warning was given, and Mr. LaRue had adequate warning of the dangers that existed there, then you need not go any further in the case, gentlemen, because your verdict, in that case, would be no cause of action, because you cannot hold Mr. Potts responsible for anything more than his duty, and if he performed his duty that is the end of it.

Now, if you find that Mr. Potts did not, either through himself or through his agents, give warning, then you may determine whether Mr. LaRue had any knowledge of the dangers. If Mr. LaRue had the knowledge that it was dangerous to go into a

tank of this kind, and that if a light was lighted, or if the composition was produced, in any way, that there might be an explosion, why, then he took his chances, and he could not ask somebody else to be responsible for it. If he had no such knowledge, then, of course, he would not be responsible for his ignorance of the physical conditions and the results that would happen. If Mr. LaRue knew, either by warning from Mr. Bowen, or in any other way, 10 that this was a dangerous place for him to go, and he went into it, then he took his risk, and, of course, his widow could not recover; and if he knew that this was a dangerous place, and either he or Mr. Stryker lighted a match down there, with that knowledge, then, of course, there could be no recovery. On the other hand, if you find that Mr. LaRue did not know of the dangers and was not warned of the dangers, and in perfect ignorance of the danger that existed, went into this tank, then he could not be 20 held responsible even if Mr. Stryker lighted the match, because Mr. LaRue could not be chargeable with the carelessness of somebody else in going into this tank, nor he would not even be responsible if he lighted the match himself, if he had no knowledge or was not warned that it would be dangerous to do such a thing.

So take up then, first, gentlemen, the question, was there warning given by Mr. Potts? If you find that Mr. Potts gave the warning, that is the end of the 30 case; you will find a verdict in favor of the defendant, no cause of action. If you find that Mr. Potts did not give the warning, then you determine whether Mr. LaRue was guilty of negligence or not. If you find that he was not, and that Mr. Potts was guilty of negligence, then you come to the question of damages.

Now, damages in a case of this kind, gentlemen, are fixed by our statute, under what is known as the Death Act. In a case of this kind, gentlemen, you and I are both bound by the law. This the law that is made by the legislature of New Jersey, our representatives, and I must take it and you must take it as we find it. And the statute provides this:

“Every such action shall be brought in the name of the personal representative of the deceased and the amount recovered in such action shall be for the exclusive benefit of the widow and next of kin, and in every such action the jury may give such damages as they deem fair and just with reference to the pecuniary injury resulting from such death to the widow and next of kin of the deceased person.” 10

Now, you see, that limits it, gentlemen, to the pecuniary loss, the money loss, and all that you can award in this case is the money loss. It does not make any difference how much sympathy we may have for Mrs. LaRue and the loss of the association of her husband, and the boy the loss of his father, and all those sentimental considerations. The law does not permit us to take that into consideration. It puts it in the most cold-blooded fashion. But while that is the law, we must take it; it puts it upon the money loss. What is the money loss the widow has suffered? 20

Mr. Gebhardt: And will suffer.

The Court: And will suffer in the future. This is the only case, gentlemen, which she or the boy can bring. Whatever is recovered, if there is any recovery, must be included in this suit. This is the only suit that can be brought for the death of Mr. LaRue. So the question is, what, if you come to the question of damages, is the money loss; that is the pecuniary 30

loss to the widow and next of kin? Now, it is rather difficult, gentlemen, to estimate, but it is something which, as the statute says, must be left to the jury to find what they deem is fair and just under all the evidence in the case.

Now, I think I ought to warn you about this, gentlemen—counsel made this suggestion, for instance, that the widow received a thousand dollars a year out of the fifteen hundred, and you might thereby
10 get yourselves into this error by thinking that here is a thousand dollars; now Mr. LaRue was 31 years of age, and he lived, say, 20 years, so we will say a thousand dollars a year for twenty years is twenty thousand dollars. But, you see, gentlemen, there is this difficulty about reasoning that way. If you reasoned in that way and said twenty times one is twenty thousand, why then she would not only have the twenty thousand in capital upon which she would get her interest each year, which, at five per cent,
20 would make the thousand dollars itself—she would have a thousand dollars a year and twenty thousand dollars, besides, capital, while if her husband was living and she was getting a thousand dollars a year she would not have had the twenty thousand dollars capital itself. I do not know whether I have made that clear to you or not. Our courts have expressed it in this way: What the plaintiff is entitled to recover is a capital fund, so to speak, which shall represent the present value of all the pecuniary loss that fell
30 upon the widow and next of kin by the premature taking off of the intestate. That fund is to be ascertained by taking into account all the possibilities. The intestate might have died by the course of nature shortly after the accident; he might, had he lived, suffered financial reverses. The wife, had he lived, might have died long before he did, so might the next of kin. Nothing is to be paid for loss of

society or wounded feelings or anything else which cannot be measured by money and satisfied by pecuniary recompense.

So, you see, gentlemen, it is a difficult thing to determine just what the damages are in a case of this kind. For instance, you say this man was 31 years of age; how long would he have lived; how long would the wife have lived; how long would the child have lived; would he have retained his health; would he have retained his income; would he have earned more income? So, you take all those facts into consideration, gentlemen, and determine what you think, if you come to the question of damages, is the pecuniary loss to the widow and next of kin based upon the facts and circumstances as you have them before you, and put that sum into a capital fund, as I have already outlined to you. 10

Take the case, gentlemen, and determine, first, whether there was negligence on the part of Mr. Potts. If you find that he was not negligent, then your verdict is for the defendant. If you find that Mr. Potts was negligent and Mr. LaRue was also, then your verdict is for the defendant. On the other hand, if you find that Mr. Potts was negligent and Mr. LaRue was not, then you take up the question of damages and determine what you think is fair compensation. 20

I have some requests to charge. The plaintiff asks me to charge as follows:

30

“1. It was the duty of the defendant to warn the deceased of the danger involved in going down into the tank in question (the request reads ‘if the plaintiff’) if the plaintiff knew of such danger or by the exercise of ordinary care on his part would have known it.”

I so charge you.

“2. Such warning should have been given in terms sufficiently clear to call the attention of the deceased to such danger of which he was or ought to have been aware.

“Such notice should have been given in sufficient time to enable the deceased to profit by it.”

I so charge you.

10 “3. It was the duty of the defendant to give the deceased adequate warning, that is, such warning as would have fully apprised the deceased of the danger, and whether such warning was given in time

and given in such manner as to fully apprise the deceased of the danger involved,” that question is for you to determine.

I so charge you.

The defendant asks me to charge as follows:

20

“1. If Karsner D. LaRue, the deceased, had knowledge of the danger of lighting a match while in the sewage disposal tank at Ocean Grove, and lighted a match he was guilty of contributory negligence and the verdict must be for the defendant.”

I so charge you.

30 “2. If Karsner D. LaRue had knowledge of the danger of lighting a match while in the sewage disposal tank at Ocean Grove, and descended into the tank with Raymond C. Stryker, and Stryker lighted a match, knowing the danger thereof, the defendant is guilty of no negligence and the verdict must be for the defendant.”

I so charge.

“3. The burden of proof is upon the plaintiff to establish by a preponderance of evidence the cause of the explosion in the Ocean Grove sewage disposal tank.”

I so charge.

“4. The explosion in the sewage disposal tank does not cast upon the defendant the burden of showing the cause of said explosion.”

I so charge.

10

“5. If Karsner D. LaRue and Raymond C. Stryker were warned of the danger of striking a match in a sewage disposal tank, and a match was struck by either of them when in the sewage disposal tank at Ocean Grove, the defendant is not liable and a verdict should be rendered in his favor.”

I so charge.

“6. The evidence shows that there is no danger 20
in entering a sewage disposal tank immediately after the lids have been removed therefrom, unless the gases in said tank are subjected to ignition by spark or flame.”

I so charge.

“7. If the explosion of the gas in the sewage disposal tank at Ocean Grove was caused by the striking of a match by Stryker, and Karsner D. LaRue knew of the danger of striking a match, then the act 30
of the said Raymond C. Stryker in striking said match was the proximate cause of the death of the said Karsner D. LaRue and a verdict should be rendered for the defendant.”

I so charge.

No. 8 I refuse to charge.

(Said request was not read to the jury, but is as follows:)

“If the explosion of the gas in the sewage disposal tank at Ocean Grove was caused by the striking of a match by Stryker, and Stryker knew of the danger of striking a match but LaRue did not, then the act of said Stryker in striking said match was the proximate cause of the death of said LaRue and
10 a verdict should be rendered for the defendant.”

No. 9 I refuse to charge.

(Said request was not read to the jury, but is as follows:)

“Karsner D. LaRue, the deceased, should have had knowledge that gases explode by ignition, and the defendant was under no duty to inform the said Karsner D. LaRue before entering said sewage disposal tank of the danger incident to such ignition,
20 and the defendant is not liable to the plaintiff in this case.”

“10. If Karsner D. LaRue entered the Ocean Grove sewage disposal tank, after being informed that the Ocean Grove authorities did not desire the said plant to be inspected on Sunday, against the protest of the defendant, he was a trespasser upon said property and the defendant is not responsible for the consequences of said trespass.”

30 I so charge you, gentlemen, because if Mr. Potts protested as mentioned in this request against going into the tank, why, then, of course, he could not be charged with the responsibility for anybody going into it.

“11. If the cover of the manhole of the sewage disposal plant at Ocean Grove was lifted by the assistants of the defendant, Messrs. Bowen and Bacon, and after said Karsner D. LaRue had been notified by the defendant that the authorities of Ocean Grove did not evidently want the plant inspected on Sunday, and this notification was within the hearing of Messrs. Bowen and Bacon, (then) Messrs. Bowen and Bacon were acting without the scope of their employment and the defendant is not liable for the entry of said LaRue into said disposal tank.” 10

I charge you that, gentlemen, for if Mr. LaRue and the party entered on their own initiative and not at Mr. Potts' direction or invitation, then, of course, Mr. Potts cannot be held.

No. 12 I refuse to charge.

(Said request was not read to the jury, but is as follows:)

“The explosion of said gases in said sewage disposal tank, which caused the death of plaintiff's intestate, was not the probable and natural result of the act of the defendant in permitting plaintiff's intestate to go into said tank without warning him of the danger of igniting said gases, and the verdict should be for the defendant.” 20

Counsel will take their exceptions before the jury retires.

30

Mr. Gebhardt: I ask an exception to the charging of the second, fourth, fifth, seventh, and 11th requests to charge.

The Court: Of the defendant?

Mr. Gebhardt: Of the defendant.

The Court: Your exception will be allowed.

Mr. Katzenbach: I ask for an exception to that part of your Honor's charge which related to the duty of one who invited another on the premises on the ground that these were not the premises of Mr. Potts.

10

The Court: I think you misunderstood me, Mr. Katzenbach.

Mr. Katzenbach: Did I?

The Court: Yes.

Mr. Katzenbach: Then I do not want to take an exception.

20

The Court: What I said was this: "One who by invitation induces persons to come upon the premises of another."

Mr. Katzenbach: Oh, I did not hear "of another."

The Court: Yes, that is it.

Mr. Katzenbach: Then I ask for an exception to that part of your Honor's charge which left the sufficiency or adequacy of a notice or warning to the jury.

30

The Court: Yes.

Mr. Katzenbach: And to the refusal to charge the eighth, ninth and twelfth requests.

The Court: Your exceptions will be allowed for refusing to charge 8, 9 and 12.

Gentlemen, you may retire, and when you have finished your deliberations you will please return here on the 15th, before Judge Beckman. I am sorry to send you out so late, gentlemen, but it hardly seemed worth while, when we finished at 3 o'clock, to bring twelve men back here and lose another day. 10

Swear the officers.

Mr. Katzenbach: This map was not offered in evidence.

The Court: It will be considered offered in evidence. We agree to offer that blue print also. 20

(Map marked D4.)

(Blue print marked D5.)

(The jury retires.)

TESTIMONY.

The Court: Now, gentlemen, there must be much in this case that is not in dispute, I think, as you said that the Senator stated some correctly and some incorrectly. I suppose there is no dispute that Mr. LaRue is dead.

10 Mr. Katzenbach: Not at all, I am sorry to say.

The Court: There is no dispute that he died as the result of an explosion at the Ocean Grove tank on the day in question?

Mr. Katzenbach: No; we admit that.

The Court: There is no dispute that there was an explosion in the tank?

20

Mr. Katzenbach: That is true.

The Court: Yes. Now, the main thing I think we can save time on: Can you agree on the kind of gas that is generated in a tank of that kind? There is no dispute about that either, as I understand, is there?

30 Mr. Katzenbach: I do not know. I never have heard Mr. Gebhardt's contention. Of course, your Honor is familiar with ——

The Court: I am under the impression that there is no dispute as to what the character of the gas itself is. I do not think there is a dispute about that.

Mr. Katzenbach: We know what it is, and are willing to admit what a sewer gas is composed of.

The Court: Well, will that not save some time, gentlemen, if there is no dispute about it?

Mr. Katzenbach: I have not heard Mr. Gebhardt say.

10

Mr. Gebhardt: My understanding is, it is known as methane gas or marsh gas, and that it is highly explosive and inflammable when it comes in contact with anything in the way of a spark or flame sufficient to explode it.

The Court: After mixing with air.

Mr. Gebhardt: Yes.

20

Mr. Katzenbach: The methane gas must be mixed with air.

The Court: Yes.

Mr. Katzenbach: And it must come—because of itself, the composition of methane gas is harmless, unless that combination of methane gas and air is subjected to ignition by a flame of an intensity of about 1346 degrees Fahrenheit.

30

The Court: Well, then, I understand, gentlemen, you agree at least to this extent; that is to say, that in tanks of this kind methane gas is produced; that that gas, if mixed in the proper proportion with air becomes explosive when it comes in contact with

something which will ignite it, as you say, about 1300 degrees—what do you say?

Mr. Gebhardt: Yes, something that has that intensity of heat.

The Court: So, you see, you agree on that.

10 Mr. Katzenbach: Something that has that intensity of heat.

Mr. Gebhardt: Yes.

Mr. Katzenbach: And that a lighted match has an intensity of heat of more, or approximately 2000 degrees Fahrenheit.

The Court: That is, a lighted match would be sufficient to explode it.

20 Mr. Katzenbach: Produces sufficient heat.

The Court: Yes. Well, that will save us some time. That gets the atmosphere clarified at least to that extent.

30 Mr. Gebhardt: There is another admission I would like to have the other side make, and that is that Mr. Potts was an expert in this line and knew of the danger of this explosion before these people went down into the tanks under the conditions that we have agreed to now.

The Court: I think what you mean, Senator, is that Mr. Potts knew that methane gas will be produced and that if it was mixed with air and a sufficient amount of heat applied it would explode.

Mr. Katzenbach: Yes, that we admit.

Mr. Gebhardt: The 1345 degrees of heat that you have just mentioned.

Mr. Katzenbach: I think it was 1346, Senator.

Mr. Gebhardt: Well, 1346; that is one degree out of the way.

Mr. Katzenbach: Yes. Well, I was going to say approximately that would be the degree of heat.

10

Mr. Gebhardt: And that was known to Mr. Potts?

Mr. Katzenbach: Oh, certainly, certainly; that is known to Mr. Potts.

Mr. Gebhardt: Not is, but was known at that time.

20

Mr. Katzenbach: Of course, it was known and had been for many years known.

Mr. Gebhardt: And will you further admit that Mr. Potts had designed and constructed a large number of these tanks throughout the country?

Mr. Katzenbach: Yes, certainly. We admit that, I suppose. How many would you want to admit?

30

Mr. Gebhardt: All that he made. About how many?

Mr. Katzenbach: Well, a hundred; would that be sufficient?

Mr. Gebhardt: Two hundred, I would rather have it that way; whatever it was.

Mr. Katzenbach: We will say a hundred. Mr. Potts says at least a hundred.

Mr. Gebhardt: A hundred. He has a large number of men in his employ doing all this, engineers, and so on?

10

Mr. Katzenbach: Well, that I cannot answer. I will have to ask Mr. Potts how many, but he has, of course, men in his employ, assistant engineers. How many do you think —

Mr. Gebhardt: How many has he got? I don't know.

Mr. Katzenbach: How many assistant engineers
20 have you, Mr. Potts?

Mr. Potts: Four.

LENA B. LARUE, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination.

30 By Mr. Gebhardt:

Q. Mrs. LaRue, are you the widow of Karsner D. LaRue?

A. I am.

Q. Are you his administratrix?

A. I am.

- Q. How old was your husband when he died?
A. 31.
Q. Whom did he leave?
A. Myself and a little boy.
Q. How old is the boy?
A. 9.
Q. And how old are you?
A. 30.
Q. Now, prior to Mr. LaRue's death, what was the
general condition of his health? 10
A. Very good.
Q. What was his business?
A. Accountant.
Q. By whom was he employed?
A. New York and Pennsylvania Paper Co.
Q. How long had he been employed there?
A. From 1907.
Q. What salary did he receive?
A. About \$1600.

20

Mr. Katzenbach: I did not catch that.

The Court: About \$1600. Is that what you said,
Mrs. LaRue?

Witness: Yes.

- Q. What proportion of this \$1600 a year that he
was earning did he give to you?
A. All of it. 30
Q. What did you do with it?
A. Well, I tried to pay for a home; around the
house.
Q. I mean, what proportion of it was used on
yourself and boy, just in a general way?
A. Well, I don't know.

Q. Did you give any of it back to him?

A. Yes, a little.

Q. For what purposes?

A. Commutation ticket and lunch, and so forth.

Q. What about his clothes?

A. Well, I gave him money to buy his clothes, of course.

Q. In other words, you handled the money?

A. I did.

10

By the Court:

Q. Was the home a building loan?

A. No.

Q. In what way did you pay for it? The Senator wants to find out how much went for the different things.

A. Well, it was mortgaged, of course, and we paid what we could every six months.

20 Q. How much would you pay on an average every year on the house?

A. Well, I am sure I don't know, because there were sidewalks and improvements all the time.

By Mr. Gebhardt:

30 Q. The most important thing I want to know is, about how much was used of this salary by your husband personally, just an estimate. You cannot be expected to give it exactly.

A. Possibly \$5 a week.

Mr. Gebhardt: Cross-examine.

Mr. Katzenbach: No cross-examination.

The Court: Senator, that is very indefinite. It seems to me it is very indefinite.

Mr. Gebhardt: In what respect?

The Court: It does not show how much of this \$1600 was used for family use, how much was paid on principal on the property.

Mr. Gebhardt: My idea, your Honor, was that 10 she and her son, for their use and for other household uses, got all of it, and it all went for the benefit—well, for their benefit, you might say, outside of the \$5 a week that she paid back to him.

The Court: That is just the reason why, Senator, because it appears that a good proportion of the \$1600 apparently went to pay assessments and improvements and payment on account of principal of the property. That, of course, was not paid her. 20

Mr. Gebhardt: It is impossible for us to give that exactly.

The Court: She may be able to ascertain that during the evening. I think you ought to have something a little more definite; it may be misleading, otherwise.

Mr. Gebhardt: Usually we do not go into it at 30 all.

The Court: For instance, suppose a thousand dollars of this had gone for the payment of principal on the mortgage—this is simply for illustration—it would reduce very much the amount which Mrs. LaRue had for her use and the boy.

By Mr. Gebhardt:

Q. In whose name did the house stand?

A. Mine.

Q. Is it in your name?

A. Yes.

The Court: Have you not any way of finding out, Mrs. LaRue, from any papers that you have, if you
10 had time over night?

Witness: Yes, I think I have.

The Court: I think that would be better, Senator, to give her a chance to look it up.

Mr. Gebhardt: My idea was that all that except their actual—Well, she would be entitled to the part which she had for herself and boy that is taken away, and in the savings that might have been added to her
20 by paying off this mortgage and paying for this property, of benefiting her, or would have benefited her if he had not been taken away.

The Court: Yes, but do you not see, that she inherits any way?

Mr. Gebhardt: How could she inherit it if he was taken away and could not live?

The Court: Well, she gets it. You may decide
30 about that.

Mr. Gebhardt: That is all, Mrs. LaRue.

MAIDLAND B. SLOAT, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination.

By Mr. Gebhardt:

Q. Mr. Sloat, where do you reside?

A. My home is in Mt. Vernon, N. Y. 10

Q. Did you know Karsner D. LaRue in his lifetime?

A. I did.

Q. State, if you know, where he was employed at the time of his death.

A. He was employed by the New York and Pennsylvania Company, whose office is 200 Fifth Avenue, New York, the company of which I am the treasurer.

Q. Do you know what salary he was receiving 20 every week from that company?

A. I do.

Q. How much was it?

A. He was paid by the year, \$1500 a year.

Mr. Katzenbach: How much?

The Court: \$1500.

Witness: Yes, sir. 30

Q. How long had he been in the employ of that company?

A. Since July, 1907.

Q. How long had he been receiving this much salary?

A. I shall have to refresh my memory. I think I

made a memorandum of that (referring to paper).
Since November 1st, 1911.

Q. Did you see him frequently while he was in
your employ?

A. I did. He was in my own department; I saw
him every day.

Q. What was the general condition of his health?

A. I believe it to be good.

10

Mr. Gebhardt: Cross-examine.

Cross-examination.

By Mr. Katzenbach:

Q. Had Mr. LaRue been continuously in the em-
ploy of your company, Mr. Sloat, from July, 1907?

A. He had.

20 Q. Were there any interruptions of any length of
time on account of illness or anything of that kind?

A. I believe not.

Mr. Katzenbach: You think not. That is all.

RAYMOND D. STRYKER, called as a witness on be-
half of the plaintiff, being duly sworn, testifies as
follows:

30

Direct examination.

By Mr. Gebhardt:

Q. Mr. Stryker, where do you live?

A. South Bound Brook.

Q. How long have you lived there?

A. Five years.

Q. How old are you?

A. 34.

Q. In April, 1915, were you a member of the common council of South Bound Brook?

A. I was.

Q. And when were you first elected as a member of the common council at that time?

A. I was elected in November, general elections 10 in November.

Q. And were you a member of any special committee of the common council?

A. I was.

Q. What committee was that?

A. Sewer committee.

Q. How did you become a member of that committee?

A. I was appointed a member of that committee by Mayor Baldwin. 20

Q. Now, do you remember about the trip on the 25th of April, 1915, to Belmar and Ocean Grove?

A. I do.

Q. How did you first learn of that proposed trip?

A. Sometime prior to April the 25th. In 1915, Mayor Baldwin said at a meeting of the common council that Mr. Potts had arranged to take the sewer committee to Ocean Grove and examine a septic tank.

Q. When were you appointed a member of that committee? 30

A. I don't remember.

Q. Well, as near as you can.

A. Sometime prior to April 25th.

Q. Can you give us a little nearer than that?

A. No, I don't remember what date of the year.

Q. Did you attend, after you were elected in 1914, regularly, the meetings of the common council?

A. Yes, sir.

Q. What were you appointed on this committee for? What were your duties?

A. Our duties were to look after the construction of the sewer, such as we built.

Q. Now, as a member of that committee did you express to Mr. Baldwin or to Mr. Potts or anybody else a desire to go to Belmar or Ocean Grove to examine tanks there?

A. I did not.

Q. Was any action ever taken by the common council instructing or directing the committee to go and inspect the tanks at Belmar or Ocean Grove?

A. There was not.

Q. And at whose request did you understand you were going down there?

A. Mr. —

20

Mr. Katzenbach: That is objected to.

A. Mr. Potts.

The Court: One moment. Do not answer, Mr. Stryker, when it is objected to. I will overrule that question.

Mr. Gebhardt: I will ask an exception.

30

The Court: Yes. Strike out the answer.

Q. Did you ever ask Mr. Potts to take you there?

A. I did not.

Q. Now, at this time, that is, up until April 25th, 1915, what situation was the sewer matter in, the

building of the sewer, and so forth; what condition was it in?

(Question read.)

A. The condition at that time was to the effect that we were to advertise for bids and if the cost of construction was not excessive, then we were to accept the contract and go ahead and build the sewer.

10

Q. Now, before going to Belmar or Ocean Grove, had the council ever taken any action of any kind with respect to instructing the sewer committee to go and visit these tanks; any resolutions passed by them?

A. There had been.

Q. How?

A. I did not understand your question previously.

Q. Before going to Ocean Grove and Belmar, had the common council taken any action at any of its meetings, either instructing or directing the sewer committee to go to these tanks and examine them or inspect them?

20

A. They did not —

Mr. Katzenbach: That is objected to on the ground that the action of the common council is an action that would be recorded by the clerk. There may have been some action when Mr. Stryker was not present.

30

Mr. Gebhardt: He said he was there all the time.

Mr. Katzenbach: I did not understand that he said he was there all the time.

Mr. Gebhardt: Oh, yes.

The Court: You say you have been present at every meeting?

Mr. Gebhardt: Yes. I would not have asked him, otherwise.

Mr. Katzenbach: You can ask him if he was at
10 any meeting.

Mr. Gebhardt: Is there any dispute about this, Mr. Katzenbach?

Mr. Katzenbach: I do not know what you are trying to arrive at, Senator, altogether. There might not be any dispute about it, no.

Mr. Gebhardt: I am trying to show that no action
20 was taken at the common council, either directing or instructing the sewer committee to go and examine these tanks.

Mr. Katzenbach: That would seem to me to be quite immaterial.

Mr. Gebhardt: I think it is quite material.

Mr. Katzenbach: And, in the next place, the witness has testified—I suppose I could have objected
30 to it, but did not care to—that he been that through Mayor Baldwin. He has testified to what took place.

Mr. Gebhardt: No, I want to go further than that, Mr. Katzenbach, to show that he received no instruc-

tions from the common council—and there is not any use of beating about the bush. The reason for asking this question is to bring it home to Mr. Potts that it was at his invitation or request that these visits to these tanks were made.

The Court: That, you dispute, I understand.

Mr. Katzenbach: Yes.

10

The Court: Is not there some way of proving that except inferentially?

Mr. Gebhardt: I do not see any way it can be proved. If we produce the clerk, he will simply —

The Court: Is the mayor alive?

Mr. Gebhardt: Yes, the mayor is here in court.

20

The Court: I understood you to say that the mayor had arranged this with Mr. Potts, or Mr. Potts had invited them through the mayor.

Mr. Gebhardt: Yes.

The Court: If that is the case, you can prove it that way, Senator.

Mr. Gebhardt: I am not sure that we can, your 30 Honor.

The Court: Well, then, that is different.

Mr. Gebhardt: The mayor refuses to tell me one way or the other. That is plain fact. Therefore, I am trying to do it in this way.

The Court: I will let you show whether there was official action or not.

Mr. Gebhardt: Will you repeat the question?

The Court: Was any action taken by the board at any meeting at which you were present—I understand you were present at all—instructing or inviting the sewer committee to go to the tanks in question? That is the point. You may answer.

10 Witness: There was no action taken by the council.

Q. Now, on the 25th of April, 1915, what did you do with respect to going anywhere as a member of this committee?

A. I met at the fire house of South Bound Brook.

Q. How did you come to do that?

20 A. At the direction of Mr. Ambrose, who came to my house the night before and said the mayor

Q. Who was Mr. Ambrose?

A. Mr. Ambrose is councilman.

Q. At that time?

A. Yes, sir.

Q. Is he yet?

A. He is yet. He said that the mayor had sent him over to inform me Mr. Potts would be ready to take us to Ocean Grove tomorrow; that would be Sunday; to meet at the fire house about 10 o'clock.

30 Q. Well, did you meet?

A. We did.

Q. What time?

A. About 10 o'clock.

Q. How did you get to Belmar and Ocean Grove?

A. Mr. Potts came there with an automobile. We got in, the three members of the sewer committee.

Q. Who were they?

A. Mr. Morecraft and Mr. LaRue and myself.

Q. Yes?

A. Went to New Brunswick; and there we got Mr. Bowen, Mr. Potts' assistant engineer, and from there we proceeded to Belmar.

Q. Now, what did you do when you first got to Belmar? 10

A. We arrived at Belmar and went to the Commercial Hotel.

Q. Who was there?

A. Mr. Bacon.

Q. Who was Mr. Bacon?

A. Mr. Bacon was another assistant of Mr. Potts.

Q. Just an ordinary person or professional man?

A. Professional; assistant engineer.

Q. Then what did you do?

A. We had dinner at the Commercial Hotel. 20

Q. Who paid for the dinner?

A. Mr. Potts.

Q. Then what did you do?

A. From there, as we were through dinner, Mayor Baldwin drove up in another automobile. From there we went to Belmar inspecting sewage tanks.

Q. Now, just tell what you did when you first got to this tank.

A. Upon arriving at Belmar—the manhole lids had been removed some time prior to our arrival; I don't know how long. And we were directed in the tanks, in the tank, rather, at Belmar. 30

Q. When you arrived at the tank was the manhole cover off or on?

A. It was off.

Q. Do you know how long it had been off?

A. I do not.

Q. Well, what did you do?

A. We then descended into the tank.

Q. Who descended in the tank?

A. Mr. Potts, Mr. Bacon, Mr. Bowen, Mr. Morecraft, Mayor Baldwin, Mr. LaRue and myself.

Q. I wish you would state the relative positions of the different persons while in the tank.

10 A. Upon getting into the bottom of the tank, Mr. LaRue and myself and Mr. Bowen went to the far end of the tank. There was two parties. The other party remained in the end —

Q. Where was Mr. Bacon?

A. Mr. Bacon was in the end of the manhole that we went down.

The Court: This is Belmar?

Witness: Yes, sir.

20 Q. How close was he to you and Mr. LaRue and Mr. Morecraft?

A. About 30 feet.

Mr. Katzenbach: Who was this that was 30 feet away?

Mr. Gebhardt: Mr. Bacon.

Q. Now, how long did you stay down there?

30 A. About one-half hour.

Q. Just state to the Court and jury whether you and Mr. LaRue and Mr. Morecraft, while in the tank, were all the time together or not.

A. We were not together. We were not together. Mr. Morecraft was with the other company, up under the manhole. Mr. LaRue and myself were in the other end of the tank.

Q. At the other end of the tank?

A. Yes, sir.

Q. While you were down there was Mr. Bacon and Mr. LaRue near you at any time?

A. No, sir; not except possibly when we were to go out or when we went in.

Q. That is what I mean.

A. Not down in the tank, we were not together at no time.

Q. Now, either before you went into the tank or after you got into the tank, please tell the Court and jury whether any warning of any kind was given to you or Mr. LaRue by anybody. 10

A. There was not.

Q. Were you so close to Mr. LaRue all the time that if any warning had been given to him you could have heard it?

A. Yes, sir.

Q. Now, what did you do at the end of the half hour? 20

A. At the end of the half hour we came out.

Q. And then what did you do?

A. Drove in our automobiles and came to the gates of Ocean Grove, which were closed, being Sunday.

Q. You went in then to that tank, did you, at Ocean Grove?

A. The automobiles were left on the outside and we unloaded and went into this tank at Ocean Grove. Mr. Potts took us in. We didn't know where the tank was. 30

Mr. Katzenbach: I do not think these gentlemen can hear. Will you speak a little louder, Mr. Stryker?

Witness: Yes, sir.

(Question and answer read.)

Mr. Katzenbach: Is that what you mean?

Mr. Gebhardt: What do you mean, Mr. Katzenbach?

Mr. Katzenbach: Well, it would appear as though they got out from the automobiles into a tank.

10

Mr. Gebhardt: I did not hear it that way. They went to the tank, and did not know where the tank was, Mr. Potts took them there.

Mr. Katzenbach: That was true; they said that. All right, if it is satisfactory to you.

20

Mr. Gebhardt: I do not think that there is any question in the jury's mind. They could not get into Ocean Grove, of course, it being Sunday, with the automobile, so they stopped outside and went into the village itself, and then Mr. Potts took them to the tank. Is not that plain?

Mr. Katzenbach: That is much plainer than the answer.

Mr. Gebhardt: I thought the answer was plain.

30

The Court: Proceed, Senator.

Mr. Katzenbach: I beg your pardon.

Mr. Gebhardt: All right, sir.

Q. As you approached the tank, where was Mr. Potts?

A. He was with the company.

Q. Now, what did you do when you arrived at the tank?

A. When we arrived at the tank, Mr. Morecraft said that if the tank was similar to the tank we had just been into at Belmar, he believed he would not go in. Mr. Potts said that this tank would be more similar to the one built and constructed at South Bound Brook and wanted to see it; and Mr. Potts and Mr. Bowen lifted the manhole lid. 10

Q. Now, after the manhole lid was lifted up, how long was it before you descended into the tank?

A. Immediately.

Q. Who went down first?

A. I did.

Q. And what did you go down?

A. Went down an iron ladder.

Q. And who followed next?

20

A. Mr. LaRue.

Q. Now, just tell where you went when you first got down to the bottom of the ladder, and then where Mr. LaRue went when he came down.

A. I went down the ladder with my face toward the ladder.

Q. Using what?

A. Turned around —

Q. Using what, Mr. Stryker, your feet, or hands and feet both, or what?

30

A. Yes, sir, hands and feet both, my face toward the ladder.

Q. Yes.

A. Turned to the left, facing the ladder, walked about 10 feet to the left with my face toward the ladder, to the left. Mr. LaRue came down, walked

behind me, took a position to my right, slightly ahead of me, faced this way (indicating).

Q. Well, was he facing you?

A. Partially facing me, yes.

Q. Was he in a position where you could see every move he made or not?

A. Yes, I was.

Q. Now, what was the next thing that you knew that occurred?

10 A. The next thing was an explosion. Fire and water.

The Court: Fire and what?

Witness: Fire and water.

The Court: You say fire and water?

Witness: Fire and water, yes, sir.

20

Q. Now, please tell the Court and jury whether you, in going down the ladder into the tank or after you got into the tank, did anything to create a spark or flame in the way of lighting a match or anything of that sort?

A. There was not.

Q. Did you do anything, first?

A. No, sir, positively not.

Q. Did Mr. LaRue?

30

A. He did not.

Q. Now, just go on and tell all that you know that occurred from that time on.

A. When the explosion occurred, I was thrown in the sludge tank. That is composed of solids, I believe. I do not understand the sewer workings.

Mr. Gebhardt: I am going to ask the witness to mark on this paper about where the ladder was and where he stood and where Mr. LaRue stood and where the sludge tank was. Mark it good and plain so that the jury will be able to see it (handing paper to witness).

(Witness marks on paper.)

Mr. Gebhardt: It is not as large as I would like to have it made. 10

Mr. Katzenbach: Had he not better explain it, Senator, as he marked it there?

Q. Suppose you stand up here and explain it to the jury.

(Witness stands before jury.)

A. Well, I can explain it better off the paper. We will say that cuspidor is the manhole (indicating). I went down that manhole this way (illustrating) with the iron ladder here. I walked over to the left 10 feet, approximately, stood here. Mr. LaRue came down, walked behind me and stood here with his face this way (indicating).

Q. Now, which way, under these circumstances, which way were you blown?

A. I was blown in the sludge tank here (indicating). 30

Q. Right diagonally?

A. From the manhole.

(Witness resumes the stand.)

Q. Now, go on and tell, please, just everything that occurred as far as you can tell it.

A. When the explosion happened I was blown in this sludge tank which is composed of solids, and had gotten in probably near my shoulders; and by holding my hands out, by good luck I was on the side of the tank that by holding my hands out I grabbed ahold of the tank this way (illustrating) and pulled myself out on the floor. I looked up once
10 to find out where the hole was, the manhole. There was fire then in the tank. There was a man fast on the ladder.

Q. Now, just as nearly as you can, give the jury some idea of what the effect of this explosion was, so far as you could see it. In other words, was it followed by fire?

A. It certainly was followed by fire.

Q. What kind of a fire?

A. I do not know what kind of fire.

20 Q. But, I mean, how big or how dense; what was the color of it?

A. I don't know.

Q. Why do you not know?

A. I didn't open my eyes to see, except once. I don't remember the color.

Q. Why did you not open your eyes?

A. I tried to save my eyes if I could.

Q. From the flame?

A. Yes, sir.

30 Q. Well, was the heat intense or was it mild?

A. It was very intense.

Q. What effect did it have on your clothes?

A. It burned my clothes off me.

Q. And this sludge tank that you were thrown into, was that of a wet nature, or what?

A. It is composed of solids, if I understand it right, sewage solids.

Q. How solid was it; how deep did you go into it?

A. Well, I think I was in at least 3 or 4 feet in this tank. The thing was ready to be emptied.

Q. Did it, or not, have the effect of wetting your clothes?

A. Well, yes.

Q. And in that condition then they were to what extent burned off of you?

A. Well, my trousers—and my left leg was completely burned off, and the right leg was burned off at the knee. The back of my coat was burned. In fact, all they give me when I left the hospital was a collar and pair of hose supporters. 10

Q. Now, this flame and fire that you have spoken about, did that extend over the portion of the tank where you and Mr. LaRue had stood?

A. Please ask the question again.

Q. I say, did the flames that you have spoken of, the fire, extend over the place where you and Mr. LaRue stood? 20

A. It did.

Q. Now, go on and tell what occurred next.

A. When I tried to get out of the hole there was a man fast on the ladder. His flesh was running off of him and I didn't expect there would be any chance for me to get out, so I was going to lie down on the bottom of the tank again, and there was another explosion which threw me down on the bottom. I lay there possibly for a few seconds and got up again, and then the hole was free. And I started up the iron ladder alone and got nearly out myself, until I didn't have any strength left, and I began to fall back in. 30

Q. Then what occurred?

A. Then I hollered to some one to help me, and everybody ran away except Mr. Morecraft.

Q. Who was Mr. Morecraft?

A. Mr. Morecraft is a member of the sewer committee.

Q. And what did he do?

A. Mr. Morecraft was then rolling Mr. LaRue in the sand, and I hollered the second time, and he came over to me and grabbed me by the arm and hand and lifted me off the hole.

10 Q. Where were Mr. Bacon and Mr. Potts at that time?

A. I didn't see them.

Q. Well, did you look around to see them?

A. I didn't particularly look for them, no. I didn't see them.

Q. Did you afterward find out who the person was that had first obstructed the hole?

A. Yes, sir.

Q. Who was it?

A. Mr. LaRue.

20 Q. Now, did you actually see Mr. LaRue blown toward this hole, or how he got there?

A. I did not.

Q. Can you tell why you did not?

A. Because I was blown in the sludge tank; terrific fire and heat, and I couldn't keep my eyes open. I couldn't see which way he went.

Q. I understand that there was nobody down in this tank but you and Mr. LaRue?

A. Yes, sir.

30 Q. Were you with Mr. LaRue all the time before you went down into this tank?

A. Please ask it.

Q. Were you with Mr. LaRue all the time before you went down into this tank, or not?

A. Yes, sir.

Q. Before going down into this tank was any warning of any kind given?

A. There was not.

Q. Are you still a member of the common council?

A. No, sir.

Q. When did you go out?

A. My time expired January 1st, 1917.

Q. Was there subsequently a contract given out for the construction of the sewer while you were a 10 member of the council?

A. Yes, sir.

Q. When was that?

A. I think it was October 15th, 1915.

Q. That was some six months after this accident?

A. Yes, sir.

Q. Do you know what the contract price was?

Mr. Katzenbach: Well, I object to that. I do 20 not think that is material.

The Court: As I understand, it is for the purpose of showing Mr. Potts' interest, is it not?

Mr. Katzenbach: Is that it?

Mr. Gebhardt: Surely.

Mr. Katzenbach: Maybe we can agree upon a 30 price.

Mr. Gebhardt: It will only take a minute, Mr. Katzenbach, to get it from this witness.

Mr. Katzenbach: All right.

Q. What was the contract price for the construction of the sewer?

A. Something over \$25,000; twenty-five thousand two hundred some odd, I think.

Q. What was Mr. Potts to receive of that if the town employed him; what percentage?

A. I believe the council —

10 Mr. Katzenbach: That is objected to if the council employed him, because I think the council had employed him.

Mr. Gebhardt: Well, that is the question. We do not think it had.

The Court: I understand you both agree as to that, the council employed him. The question was whether he was to get this or not.

20 Mr. Gebhardt: It had not employed him to do this particular part of the work. If he did it he was to have 7 per cent., as I understand it, of the contract price.

The Court: Mr. Katzenbach said that the contract itself was all completed.

Mr. Gebhardt: What contract?

30 The Court: But it was the contract with reference to the sewage. I understand you agree to that with this exception, if the work was done he would get additional compensation, and if it was not done he would get what was provided in the contract.

Mr. Gebhardt: I do not understand it so at all. He was paid, as I understand it, for the drawing of the plans.

The Court: Ask Mr. Stryker, then.

Q. Tell us about it, Mr. Stryker.

A. Of course, he was paid for the drawing of the plans. That was by the council before my time as a councilman, and the conditions were he would be paid 7 per cent. in case we built a sewer. The price was not prohibited when we advertised for bids. Then Mr. Potts was to do the work and receive 7 per cent. If we did not accept any contract we would not pay him. 10

The Court: That was for supervision, was it?

Witness: Yes, sir.

20

The Court: So, if you did not build it there was nothing supervised. That is the long and short of it, is it not?

Witness: Yes.

The Court: It was probably all contained in the original contract.

Mr. Katzenbach: Yes.

30

Mr. Gebhardt: Cross-examine.

Cross-examination.

By Mr. Katzenbach:

Q. Mr. Stryker, what is the term of a councilman at Bound Brook, three years?

A. In South Bound Brook it is three years.

Q. You served your full term?

A. Yes, sir.

10 Q. Then you could not have been elected in 1914, could you?

A. I couldn't? You are always elected two months before you take your seat and serve three years. My time was out in January, 1917, which makes three years. I was elected at general election.

Q. I just wanted to see. You say you served three years. That would make you serve the year 1917?

A. I beg your pardon. It was 1913.

Q. So it was in November, 1913?

20 A. November, 1913, yes, sir.

Q. That you were elected. So that you had been in council for the year 1914 and up to April 25, 1915, before this accident occurred. That is right, is it not?

A. Yes, sir.

Q. Had you been a member of the sewer committee all that time?

A. From when?

30 Q. From the day of your entrance in the council?

A. No, sir.

Q. From what time had you been a member of the sewer committee?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. During the year 1914 or 1915 had you met Mr. Potts personally?

A. I met him in a meeting of the council, yes, sir.

Q. You had met him at meetings of council?

A. Yes, sir.

Q. And you also were personally acquainted with Mr. Walter C. Bowen, the assistant?

A. I met him at the council, yes, sir.

Q. Mr. Bowen had been at South Bound Brook 10 prior to April 25th, 1915, to do some work in connection with this sewage disposal plant, had he not?

A. He had.

Q. In other words, there were some things that had been done by the borough councilmen that were prior to the letting of any contract for this main work?

A. There was.

Q. And you had met Mr. Bowen during those periods when he had been at work there at South 20 Bound Brook?

A. I did not meet him at work; I met him in council.

Q. You met him in council?

A. Yes.

Q. But he had supervised or superintended work there?

A. I think he had.

Q. Prior to that?

A. Yes, sir.

Q. So that he was not a stranger to you when you met Mr. Bowen on this occasion, was he?

A. No, sir.

Q. Now, all that you know with reference to this trip to Belmar and Ocean Grove was communicated to you by Mayor Baldwin in the meetings of the council?

A. Yes, sir, that was suggested there. We spoke of it there. I was not notified to go over there.

Q. You had not had any interview personally with Mr. Potts on the subject at all, had you?

A. No, sir; no, sir.

Q. So that your information came by the channel of Mayor Baldwin?

A. Yes, sir.

10 Q. And the particular message that was brought to you a short time prior to April 25th, was through Mr. Ambrose who was connected as a member of council or clerk?

A. Member of the council.

Q. Now, then, on the day in question, April 25th, you, with Mr. LaRue and Mr. Morecraft were at the fire house, as I understand it?

A. Yes, sir.

Q. And then Mr. Potts came along with an automobile?

20 A. Yes, sir.

Q. Do you know who drove the car?

A. I don't know the man's name, no, sir.

Q. Well, it was some one, not Mr. Potts?

A. How is that?

Q. It was not Mr. Potts that drove it?

A. No, Mr. Potts'—I guess it was his driver.

Q. Then you five, the three councilmen, Mr. Potts and the driver, went to New Brunswick first, and there you got Mr. Bowen, did you not?

30 A. Yes, sir.

Q. He went in the car and you went on down to Belmar. Do you recall about what time you arrived at Belmar?

A. About noontime.

Q. About noontime?

A. Yes, sir.

Q. Then, as I understand it, you went to the Commercial Hotel?

A. I believe that was the name.

Q. And had dinner there?

A. Yes, sir.

Q. And then after dinner you got into the automobile and went down to the Belmar tank?

A. Yes, sir.

Q. Now, when you went to the Belmar tank, you went down through a manhole, did you not? 10

A. Yes, sir.

Q. And you found, when you got down there, a concrete platform over which you could walk, did you not?

A. Yes, sir.

Q. And Mr. Bowen went in first, did he?

A. I don't remember.

Q. You don't remember?

A. No, sir.

Q. But Mr. Bowen and Mr. Bacon went in and Mr. Potts was there? 20

A. Yes, sir.

Q. And Mr. Morecraft, Mr. LaRue and yourself?

A. Yes, sir, and Mayor Baldwin.

Q. And you were there about half an hour?

A. A half hour in the tank.

Q. How large was this tank?

A. Well, I don't know, Mr. Katzenbach.

Q. Well, approximately. I just want generally the length and breadth of it. 30

A. Probably 40 feet long.

Q. Forty feet long?

A. Forty or fifty feet long.

Q. And about how wide?

A. Fifteen feet.

Q. Fifteen feet wide. So that for a half an hour

you were down in this chamber about 40 feet in length and 15 feet in width. Now, you went along this platform. Do you know about what the width of the platform was?

A. No, I do not.

Q. You do not?

A. No, sir.

Q. You could all of you easily walk along it, could you not?

10 A. Not side by side.

Q. Not side by side?

A. No, sir.

Q. Now, then, what was done by Mr. Potts down there?

A. I don't know.

Q. Did not Mr. Potts demonstrate in any way during this half hour?

A. He might have ——

Q. The workings of the plant?

20 A. He might have explained the workings to the men that he had in the tank ——

Q. I mean to say ——

A. (Continued) at his end of the tank.

Mr. Gebhardt: Just a minute. You broke right in and drowned his answer.

Mr. Katzenbach: I had no intention of doing it.

30 Mr. Gebhardt: I know you did not. That is the reason I stopped you.

The Court: "He might have explained the workings to the men that he had in the tank, at his end of the tank."

Q. Were you down there for a half an hour and did not hear what Mr. Potts said?

A. I didn't hear anything Mr. Potts said, no, sir.

Q. You did not hear anything that he said during the whole half hour that you were in the tank?

A. Except probably he might have said something that I would have heard going out or coming in; nothing inside of the tank.

Q. But not inside of the tank?

A. No, sir.

10

Q. Now, during that half hour, were you with Mr. Bowen?

A. Mr. Bowen, yes, sir.

Q. You were with Mr. Bowen?

A. Yes, sir.

Q. And was Mr. Bowen making an explanation to you?

A. Yes, sir.

Q. He was making the explanation?

A. He was explaining.

20

Q. Who was with you?

A. Mr. LaRue.

Q. So that you did not hear anything that Mr. Potts said?

A. No, sir.

Q. And the only things you heard were what Mr. Bowen said?

A. We were listening to Mr. Bowen, yes, sir.

Q. What did Mr. Bowen say while you were down there?

30

A. He was explaining the different workings of the tank. I can't remember just what he said in the way of that.

Q. He explained how the sewage entered the tank, did he?

A. How is that?

Q. He explained how the sewage entered the tank?

A. Entered the tank.

Q. Then how it went into these settling basins; did he explain that?

A. He probably did, yes.

Q. Then did he explain what processes of composition went on?

A. He probably did.

10 Q. Well, then, did he explain what gases were formed?

A. I don't remember of any gases, no, sir.

Q. You do not remember anything of that kind. But you did not hear Mr. Potts say anything and you were with Mr. Bowen the entire time?

A. Yes, sir, we were over in the other end of the tank.

Q. Who was Mr. Morecraft with?

A. Mr. Morecraft was with Mr. Potts.

20 Q. Mr. Morecraft was with Mr. Potts?

A. Yes, sir.

Q. And then after you had spent this half hour there, you six gentlemen came out?

A. Yes, sir.

Q. Mayor Baldwin had gone on some time before that?

A. I think he did go out of the tank before the rest of us did.

Q. You say you think he did?

30 A. I think he did, if I remember right.

Q. Mayor Baldwin went out of the tank before the rest of you?

A. Yes, sir.

Q. And had gone on towards—well ——

A. I do not know where he went.

Q. You do not know where he went?

A. No, sir.

Q. Then you six gentlemen went out of this tank at Belmar and proceeded down to Ocean Grove?

A. Yes, sir.

Q. Now, when you got down to Ocean Grove, as I understand it, you found the gates closed?

A. The gates were closed.

Q. So that the automobile could not be driven in. So that you six got out of the automobile. The driver did not get out, did he?

A. I don't think so, no, sir.

10

Q. You walked on down towards the beach, did you?

A. Yes, sir.

Q. And whom did you walk with?

A. Who did I walk with?

Q. Yes. That is, if you can recall.

A. Mr. Morecraft, Mr. Potts, and Mr. LaRue, Mr. Bowen and Bacon.

Q. Well, of course; but did you all walk down together?

20

A. We all walked together, yes, sir.

Q. Now, when you got down there to the ocean, did you come out directly upon the tanks or did you have to go some little distance after reaching the Ocean Boulevard?

A. We turned to the right.

Q. You turned to the right?

A. Yes, sir.

Q. And then you walked up towards the tanks, did you?

30

A. Yes, sir.

Q. And when you got there, what, if anything, was said by any one that you can recall? What conversation took place?

A. When we arrived at the tank?

Q. Yes.

A. The only conversation I heard was what Mr. Morecraft said to Mr. Potts.

Q. Yes. And that was as soon as you got there?

A. Yes, sir.

Q. That was to the effect, Mr. Morecraft asked if this was a tank similar to the one at Belmar?

A. Yes, sir.

10 Q. And then what did Mr. Potts and Mr. Morecraft do, to your knowledge?

A. Mr. Potts and Mr. Morecraft then walked away from the tank a little ways.

Q. Yes. About how far did they walk away from the tank?

A. Only a few feet.

Q. A few feet?

A. Yes, sir.

Q. Well, could you express it a little bit more definitely? About how many feet?

20 A. Well, I don't know. Probably 10 or 15 feet; and walked back.

Q. And that left Mr. LaRue and yourself and Mr. Bowen and Mr. Bacon near the manhole of this tank?

A. At that time, yes, sir.

Q. At that time?

A. At that time.

Q. Now, then, while Mr. Potts and Morecraft were away, what, if anything, was said by Bowen?

30 A. I do not remember that anything was said by Bowen. They returned immediately.

Q. You say they returned immediately?

A. Yes, sir.

Q. Then what, if anything, was said, to your recollection?

A. Then Mr. Morecraft said that he believed he would not go down in this tank.

Q. Mr. Morecraft said he would not go down in it?

A. Yes, because it was similar to the one in Belmar.

Q. Mr. Morecraft said he would not go down in it?

A. If it was.

Q. If it was?

A. Yes.

Q. That was the question he had asked before, 10 was it not? Did he ask it the second time?

A. He did when he came back. He said he believed he would not go down.

Q. After that, what was next said by anybody?

A. If it was similar to the one in Belmar. Mr. Potts said this was more similar to the one at South Bound Brook.

Q. Mr. Potts —

Mr. Gebhardt: He did not finish his answer. It 20 is the most important thing he testified to in this case.

Mr. Katzenbach: I object to that comment and ask that it be stricken out.

The Court: Yes. Finish your answer, Mr. Stryker.

Mr. Katzenbach: Mr. Stryker, let me just say, if 30 I interrupt you do not hesitate to let me know. I have no intention of interrupting you.

Mr. Gebhardt: I do not say that you do have. We all do it.

The Court: Did you have anything to add to that?

(Answer read.)

A. (Continued) Mr. Potts said this was more similar to the one to be installed at South Bound Brook and wanted us to see it.

10 Q. After you say that you heard that, will you state what was the next thing that occurred?

A. The next thing occurred was Mr. Potts and Mr. Bowen took off the manhole lid.

Q. Mr. Potts and Mr. Bowen?

A. Positively.

Q. Took off the manhole lid.

The Court: It is about the hour of adjournment. We will adjourn until tomorrow morning at 10.15 A. M.

20

(Adjourned to tomorrow, January 10, 1917, 10.15 A. M.)

January 10, 1917; 10.15 A. M.

RAYMOND D. STRYKER, resumes the stand and testifies as follows:

Cross-examination (continued).

30

By Mr. Katzenbach:

Q. Now, Mr. Stryker, I understood you last evening to say that Mr. Potts and Mr. Morecraft walked toward the ocean when you got to Ocean Grove at the tank there; is that so?

A. Yes, sir.

Q. Now, Mr. Morecraft and Mr. Potts, where did they go after that, did you say?

A. They came right back to the entrance of the tank, the manhole.

Q. They came back to the entrance of the tank?

A. Yes, sir.

Q. This entrance of the tank at Ocean Grove, is it of the same character of entrance as at the tank at Belmar? I mean, you entered by a manhole?

A. Manhole, yes, sir.

Q. And there was a cover over this manhole at Ocean Grove?

A. Yes, sir.

Q. Just the same as there had been a cover over the Belmar tank manhole?

A. I didn't see the cover on at Belmar. It was off when I got there.

Q. Mr. Stryker, are you sure the cover was off the tank at Belmar when you got there?

A. Yes, sir.

Q. You are quite positive as to that?

A. Yes, sir.

Q. Now, you, of course, recall testifying in the suit that you instituted against Mr. Potts growing out of this accident, do you not?

A. Yes, sir.

Q. I want to read you this testimony given by you in that case and ask you whether it is correct or not: "Q. Had you ever been down in Belmar before?

A. No, sir. Q. How did you go to the tanks? A. In Mr. Potts' automobile. Q. When you arrived there,

what happened? A. The lids were removed and we descended. Q. Did you say the lids or lid? A. Lid.

Q. What was this lid? A. It is a manhole lid. Q. That is about 2 feet in diameter? A. About like that

(indicating about 20 inches). Mr. Lindabury: The

10

20

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witness indicates about 20 inches. Q. You are not familiar with the common size of manhole? A. No.

Q. But it was about 20 or 25 inches? A. Yes. Q.

After these gentlemen took the lid off, what happened? A. We went down in it. Q. Who went

first? A. I do not remember. Q. Who did you see

remove the lid? A. Mr. Potts. Q. Who went first?

A. I do not remember. Q. Did Mr. Potts go in? A.

He did. Q. Did the whole party go in? A. Yes, sir.

10 By the Court: (This question was put to you) Who

did you see remove the lid? A. Mr. Potts. By

Mr. Lindabury: Did he remove it alone or did he

have help? A. He was assisted by Mr. Bowen. Q.

Mr. Bowen assisted Mr. Potts in taking the lid off?

A. Yes. Q. Do I understand that the whole party

went into the tank? A. We did. Q. Have you any

idea how large the chamber was? A. At the Belmar

tank? Q. Yes." Now, does that refresh your recol-

lection, Mr. Stryker, as to what you testified to in

20 your suit against Mr. Potts?

A. At the Belmar tank —

Q. No, no; I am asking you whether that refreshes your recollection.

A. It does.

Q. Now, then, what is the correct statement; were

the lids off at the Belmar tank when you got there,

as you said yesterday and have said this morning,

or were the lids removed by Mr. Potts and Mr.

Bowen at the Belmar tank as you stated in your

30 suit against Mr. Potts?

A. The lid—the hole that we went down in at the

Belmar tank, Mr. Potts and Mr. Bowen took off.

There was another lid —

Q. You say now, then, that the lid at the Bel-

mar tank was removed by Mr. Bowen and by Mr.

Potts?

A. Yes, sir, the one we went down in.

Q. The one that you went down in?

A. Yes, sir.

Q. That was the lid that you referred to in your testimony in your suit, was it not?

A. Yes, sir.

Q. The one that was removed by Mr. Potts and Mr. Bowen in your presence at Belmar?

A. Yes, sir.

Q. On April 25, 1915?

A. Yes, sir.

10

Q. So that, now, then, it is a fact that you were mistaken in your testimony yesterday when you said that the lid had been removed?

A. Well, there is two lids there, Mr. Katzenbach. There is two lids.

Q. I am asking you about the manhole where you went down.

A. The manhole that I went down, Mr. Potts and Mr. Bowen removed the lid at Belmar.

Q. At Belmar?

20

A. Yes, sir.

Q. Now, you said yesterday that the lid had been removed, did you not?

A. There was one lid off, yes, sir.

Q. There was one lid off?

A. Yes, sir.

Q. Well, in your testimony, this question was asked you: "Did you say the lids or lid?" and your answer was "lid." Is that correct?

A. I don't remember that.

30

Q. Well, when you got there and were entering this sewer tank at Belmar, did you enter a manhole from which Mr. Potts and Mr. Bowen then and there removed the lid?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. Now, Mr. Stryker, at Ocean Grove there was a manhole, was there, covering this tank?

A. Yes, sir.

Q. And that manhole was removed just the same way that the manhole at Belmar had been removed?

A. Yes, sir.

Q. And then after the manhole at the Ocean Grove tank had been removed, what then occurred?

A. Do you mean what was said or what was done?

10 Q. What was done, first?

A. It was said first; it was not done first.

Q. What is that?

A. It was said first; it was not done first.

Q. Well, then, said. Now, then, let me ask you what was done at Ocean Grove?

A. Mr. Morecraft said he believed he would not go in the tank if it was similar to the one at Belmar. Mr. Potts said that this tank was more similar to the one to be installed at South Bound Brook, and he wanted us to see it.

20 Q. So that Mr. Potts said that he wanted to see it, or wanted you to see it?

A. Wanted us to see it.

Q. Wanted us to see it?

A. Wanted us to see it.

Q. Now, did not Mr. Potts say that the one at Belmar was more similar to the tank to be installed at South Bound Brook?

A. He did not.

30 Q. He did not. Well, now, then, was there anything else said at all that you can recall before there was any act done by any of the persons there?

A. What do you mean by act, by entering the tank?

Q. Yes.

A. No, sir.

Q. Nothing was said further than that?

A. No, sir, I immediately went down.

Q. You immediately went down?

A. Yes, sir.

Q. Now, then, the way in which you descended was by putting your hand on an iron ladder, was it not?

A. Yes, sir.

Q. And you put your feet on a lower round of that ladder?

10

A. Yes, sir.

Q. And that ladder was directly perpendicular?

A. I don't remember.

Q. You don't remember that?

A. No, sir.

Q. You got down to the bottom of the tank, did you?

A. Yes, sir.

Q. And what did you see down there?

A. I don't remember seeing anything special. 20

Q. You saw nothing special there?

A. No, sir.

Q. You were in a concrete chamber, were you not?

A. Yes, sir.

Q. You saw that, did you not?

A. Well, I presume the floor was concrete; it was very hard. I didn't take especial notice how the tank was constructed.

Q. Then when you got down to the bottom of the tank, how far did you go into the tank?

30

A. About 10 feet.

Q. About 10 feet from the manhole?

A. From the ladder, bottom of the ladder.

Q. Or from the end of the ladder. Then you went on a level, did you?

A. I presume it was level, yes, sir.

Q. Well, you walked right over?

A. Yes, sir.

Q. There was light there so that you could see?

A. Yes, sir.

Q. And you took a position in this tank about 10 feet from the bottom of the ladder. Now, you illustrated yesterday, as if I was now going down the ladder, this is right, is it not (illustrating)?

A. Yes, sir.

10 Q. Until you got there?

A. Yes, sir.

Q. Then you turned around this way, did you, swinging to the right?

A. No, sir.

Q. You swung around?

A. To the left.

Q. To the left. And then you walked in this direction down there (illustrating); is that right?

A. Yes, sir.

20 Q. A distance of 10 feet?

A. About 10 feet.

Q. Well, about 10 feet?

A. Yes, sir.

Q. Then you turned again to the left?

A. Turned to the left, yes, sir.

Q. Now, in the meantime, while you were walking down the tank, who came down?

A. Mr. LaRue.

Q. You recognized Mr. LaRue?

30 A. Yes, sir.

Q. How far did Mr. LaRue walk?

A. He came the same distance, walked behind me about 2 feet, took a position to the right, slightly forward.

Q. That is, he walked behind you this way (indicating)?

A. Yes, sir.

- Q. As my hand is now going over here?
A. Yes, sir.
Q. And took a position about 2 feet away?
A. About, yes, sir.
Q. So that Mr. LaRue was in plain sight of you?
A. Yes, sir.
Q. And you were in plain sight of Mr. LaRue?
A. Yes, sir.
Q. Now, then, at that juncture did you see anybody else in the tank? 10
A. Nobody in the tank, no, sir.
Q. No one in the tank at all?
A. No, sir.
Q. Just you and Mr. LaRue stood there in the tank?
A. Yes, sir.
Q. Were you, either of you, moving or not?
A. Well, Mr. LaRue had just gotten there when the explosion happened.
Q. You say that Mr. LaRue had just got in there? 20
A. Just got in there, yes, sir.
Q. But was he standing when the explosion occurred?
A. He had just stopped; just as it exploded.
Q. He just stopped?
A. Yes, sir.
Q. Now, how long had you been there before the explosion occurred?
A. I was probably there 3 or 4 seconds before Mr. LaRue came in. 30
Q. Then Mr. LaRue had followed you very closely down the ladder, had he?
A. So close that he stepped on my fingers.
Q. That he stepped on your fingers?
A. Yes, sir.
Q. So that there was only a difference then of the

3 or 4 seconds in the time that Mr. LaRue took this position?

A. Yes, sir.

Q. Over to your right?

A. Yes, sir.

Q. Now, what were you looking at as you stood there?

A. I don't remember what we were looking at.

10 Q. You do not remember what you were looking at?

A. We were not in long enough to see anything.

Q. Did you do anything while you were in the tank except to stand there and walk to your position, and stand there?

A. No, sir.

Q. You did not do a thing?

A. No, sir.

Q. Did Mr. LaRue do anything?

A. No, sir.

20 Q. So that you two were just simply standing in the tank?

A. We were not standing. We had just reached there, just reached the spot.

Q. But you were not in motion?

(No answer.)

Q. Is that right?

A. No, we were not in motion.

30 Q. When the explosion occurred?

A. Well, what do you mean by in motion?

Q. Well, were you walking or standing still?

A. Well, of course, I can't just remember whether we were standing stock still or not.

Q. You do not remember that?

A. No, sir.

Q. Did you do any act yourself other than either to walk or stand still while you were in the tank?

A. I did not.

Q. Did Mr. LaRue do any act?

A. No, sir.

Q. What did you say or hear?

A. We just had gotten into this position when the explosion happened. After that I couldn't see anything.

Q. Now, when the explosion happened what occurred to you? 10

A. I was blown in the sludge tank.

Q. You went into the sludge tank. And then from the sludge tank you walked toward the man-hole, did you not?

A. No, sir.

Q. Right away?

A. No, sir, I did not.

Q. Did not?

A. No, sir. 20

Q. How long were you in the sludge tank?

A. Until I had time to pull myself out.

Q. Well, I know that, but I mean to say, you were not unconscious?

A. No, sir.

Q. And then you went over to the ladder?

A. Yes, sir.

Q. And then you were assisted out?

A. Not at that time, no, sir.

Q. Well, then what occurred? 30

A. I tried to get out and couldn't.

Q. Could not?

A. No, sir.

Q. And then I think you said there was a second explosion, did you not?

A. Second explosion.

Q. And it blew you over into another sludge tank?

A. It did not.

Q. Or threw you down right at the base of the ladder?

A. Threw me down under the manhole.

Q. At the base of the manhole. Then you subsequently got out with assistance, as I understand it?

10 A. Yes, sir.

Q. Well, describe, as far as possible, this chamber that you entered at Ocean Grove.

A. I couldn't describe it, Mr. Katzenbach.

Q. You could not describe it?

A. No, sir; we were not in there long enough to see anything.

Q. To be able to get its dimensions?

A. No, sir.

20 Q. You do not know the character of the floor, except you think it was concrete?

A. I think it was, yes, sir. It was a hard substance.

Q. So that you were not in this chamber but a very short period, as I understand it?

A. Yes, sir.

Q. You were a cigar salesman in April, 1915?

A. Yes, sir.

Q. And you were smoking on that day; that is, you had not sworn off smoking?

30 A. No, sir.

Q. And you smoked a number of cigars each day?

A. Yes, sir.

Re-direct examination.

By Mr. Gebhardt:

Q. In this cover of the tank at Ocean Grove, were there any holes in it, in the top of it, or not?

A. I don't remember.

Q. You do not remember. Now, you have stated that Mr. Potts said to you that this tank at Ocean Grove was more similiar to the one to be built at 10 South Bound Brook and that he wanted you to go in. Please state whether or not that was said in the presence of Mr. LaRue.

A. It was.

Q. And was it said to one of you or all of you?

A. It was said to all of us.

Q. Now, did you ever ask Mr. Potts to take you on this trip?

A. I did not.

Q. Or anybody else?

20

A. No, sir.

Q. You simply got word that the trip was to be made?

A. Yes, sir.

Q. And you went.

Mr. Gebhardt: That is all.

WILLIAM T. MORECRAFT, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination.

By Mr. Gebhardt:

10 Q. Mr. Morecraft, were you on the sewer committee of the South Bound Brook council in April, 1915?

A. Yes, sir.

Q. And did you go on the trip to Belmar and Ocean Grove?

A. I did.

Q. Please state whether or not you asked Mr. Potts to take you on that trip.

A. I never did.

20 Q. Please state whether you were ever instructed by the common council to take the trip.

A. I was.

Q. How?

A. I was.

Q. In what way?

30 A. The first was that at a meeting of the council, Mayor Baldwin said that Mr. Potts had invited us to go to Ocean Grove and Belmar to inspect the sewer tanks. We thought the matter over then, if we would like to go, and they all said they would like to see, and then they appointed—no, it was left to Mr. Baldwin to see Mr. Potts to see what day he would be ready. They thought they could all go better on a Sunday than any other time, most of them did.

Q. Now, please state whether or not you ever asked Mr. Potts to take you.

A. I never did.

Q. When you arrived at Belmar that day, what is the first thing you did, or the first thing that the crowd did?

A. After we got to Belmar?

Q. Yes.

A. I think we stopped at the hotel and had dinner there.

10

Q. Who paid for the dinner?

A. I presume Mr. Potts did.

Q. Well, did you?

A. I did not.

Mr. Katzenbach: I move that that be struck out, what he presumed.

Witness: I don't know. I didn't see him pay for it.

20

Q. What did you do after dinner?

A. After dinner, he said, "Now, we will go down to the tanks." I had never been there before, and got in the automobile, and the chauffeur—he had the chauffeur there; I don't know who he was—drove us down to the tanks at Belmar.

Q. Now, please state whether when you arrived at Belmar, and before you went into the tank, you were with Mr. Stryker and Mr. LaRue all the time.

30

A. With them all the time they were in the tank.

Q. I mean after you arrived at the tank.

A. When we went down; all the time by them.

Q. Yes?

A. I was.

Q. Now, please state whether or not at any time

there before you went into the tank, or after you got into the tank, any warning was given by Mr. Potts or his assistant with respect to the danger of explosion.

A. There was not.

Q. Please state whether there was anything said about having a light down there.

A. No, sir.

10 Q. Now, after you left the Belmar tank and went to the Ocean Grove tank, and before you went down, before anybody went down into the tank at Ocean Grove, what was said by Mr. Potts about the Ocean Grove tank?

20 A. We walked around the tank, and I asked Mr. Potts if it was similar to the Belmar tank. He said it was, but he said this was a little more like the one that we expect to instal at South Bound Brook, and that sometime, whether it was just then or a little after—I think it was a little after—I asked him how far the sewage went out in the ocean from the tank. He said it went out in the ocean there. I said how far did the pipes go out. I think he said about a thousand feet. Well, I said, “If it is similar to the Belmar tank, I don’t think it is worth while to go down in there; I don’t think I will go down.” “Well,” he said, “just as you like about that; it is similar to the one there, and this is more similar to the one there, and it is a little more like the one at Bound Brook.” I think Mr. Stryker said, “I believe that I will go down,” as near as I remember
30 now, and he started toward the tank; and then Mr. LaRue said, “I guess I will, too.” So they started toward the tank. I saw Mr. Stryker go down; I saw Mr. LaRue go down.

Q. Just before they went down, Mr. Morecraft, was there anything said by Mr. Potts in the way of urging them to go down, that you heard?

A. Mr. Potts urging them to go down?

Q. Yes, or suggesting that he would like them to see it?

A. I don't remember that there was.

Q. You do not remember?

A. I don't remember now that there was, that he did urge them to go down?

Q. How?

A. I don't remember that he did.

Q. Well, now, go on and tell the story. 10

A. As I said, I saw Mr. Stryker start and go down the ladder in the tank. Mr. LaRue followed down.

Q. How long was that after the lid was taken off?

A. Oh, I don't think it was more than two or three minutes, as I remember it, more than two or three minutes. Mr. Potts and Mr. Bowen, I think it was, they had some sort of an instrument like a knife blade—I do not know what it was—that they ran around the edge to loosen the tank, to loosen the cap on the manhole. 20

Q. Now, were there any holes in the lid, and perforations in it?

A. I don't remember.

Q. Well, go on?

A. Mr. Potts and I, I think, were then about the flag pole. There was a flag pole, and I think the vent was in that flag pole, but I do not just remember what he said, or what I said to him, but I was talking some way with him and I had turned my back from the manhole. I did not see Mr. Bowen start to go down. I have heard say he started, but I didn't see that. 30

Q. What did you do when they started to go down the hole?

A. I was about 12 feet from the hole, and I saw Mr. Stryker and Mr. LaRue go down. I did not see

Mr. Bowen start to go down. I had turned my back from them toward the ocean, talking to Mr. Potts.

Q. How far away were you from the manhole when the explosion occurred?

A. About 12 feet, as near as I remember.

Q. Now, go on and tell what you saw?

A. Well, just about a minute afterward, they got down, there was an explosion.

10 Q. Just describe to the Court and jury the character of the explosion, how high the flames were?

A. Well, as near as I can, it was like the shot of a gun. There was not no rumbling sound or anything like that before. It appeared to be instantaneous, and then I saw the fumes start up; oh, well, I suppose the manhole was about 24 inches, as near as I know. It appeared to go up 10 or 15 feet, and I heard a man say, "Help me. Oh, help me," and right over the hole I saw—well, the shape of a man in the fumes, and I went to him and I helped him out.

20 Q. Who was that man?

A. Mr. LaRue.

Q. Did anybody else assist you in helping him out?

A. Did not.

Q. Where were Mr. Potts and Mr. Bacon at that time?

A. Mr. Potts, I do not know.

Q. Were they not near?

A. Sir?

Q. Were they near by?

30 A. I didn't see anybody come and help me.

Q. What effect did your helping Mr. LaRue out have on you?

A. Well, I suppose ——

Mr. Katzenbach: That is immaterial, it seems to me.

Mr. Gebhardt: I just want to show the character of the flames, the extent of the flames; that is all.

The Court: Did his feeling have anything to do with that, Senator?

Mr. Gebhardt: I do not mean that way. I mean how much it burned him.

The Court: Burned whom? 10

Mr. Gebhardt: Mr. LaRue. I mean Mr. Morecraft.

The Court: Well, you can ask him that.

Mr. Gebhardt: That is what I mean by the question. I do not want to be too direct, so that Mr. Katzenbach would find fault with me.

Mr. Katzenbach: I have no fault to find. 20

The Court: Were you burned, Mr. Morecraft?

Witness: A little.

The Court: Tell it.

Q. How were you burned?

A. I was not burned so very bad. I took ahold of 30
him and I couldn't get him out at first and, of course, the fumes were very hot and I held my head to one side. I went over to the hospital with the others. My mustache, one side was burned off and my eyebrow and part of my hair, about skin deep. I was not burned so very bad. His body kept the most of it

from me. When I got ahold of him and pulled him towards me, he was burned all over, except his breast, I suppose when I pulled him towards me—some time to get him out, that protected me. The fumes otherwise would blow my eyes out, going up the way they was, all around. I think that was what saved me, because it was so hot. It burnt part of my hair off, only skin deep, where the flesh was. I was not burned very bad. The hands were blistered
10 up, as if from the heat of his body, probably. I do not remember just how. Somewhere around the shoulder I had ahold. I was not able to put his hand up to assist me any. I couldn't get him out at first. I thought maybe that somebody had ahold of his feet below, but they had not. I couldn't get him out at first. Then, somehow or other, I appeared to get a better hold of something, and I got him out. That is all. Of course, it hurt my eyes a little, the flames. I had quite some pain afterwards, two or three days.
20 And I got him out.

Q. What became of Mr. Bowen?

A. Now, I didn't see him go out the hole, and I did not see him until quite some time afterwards; then he was sitting on a settee somebody had brought from the boardwalk, I suppose. He was sitting there. My back was towards the hole when the explosion was, and I did not see him blown out.

Q. After you got Mr. LaRue out, what did you do next?

30 A. He had strength enough to get up on his feet, and I heard somebody off a ways say, "Tell him to lay down; tell him to lay down," and I thought maybe that would be good. I said, "Mr. LaRue, lay down and I will roll you," and he lay down and put his hands up over his head, like that way to help me. He rolled over and I got around him with my hands

and rolled him over five or six times as near as I can remember.

Q. What condition were his clothes in?

A. Sir?

Q. What condition were his clothes in?

A. Oh, they were in bad shape. I couldn't say it was blazing, but they appeared to be shriveling up with the heat, you know. The only fire I saw at all was after he laid over on his back. He said, "Put that fire out under my arm." His arms were by his side, and some man had come up at that time, and I took his foot and shoe and just rubbed that out, a little blaze; it was not over an inch in diameter. That is all the fire, real fire, that I saw. 10

Q. Did you see his body?

A. Sir?

Q. Did you see his body where the clothes —

A. The trousers were burned off and shriveled up, both his knees. His shirt and vest was on. I didn't see his body, no, not until afterwards in the hospital. 20
The breast was not burned any then, but all below was all burnt and charred.

Q. Do you know when he died? How long afterward, that is what I mean?

A. I heard it was six hours; that night. The accident happened, I believe about 3 o'clock, and I heard that he died about 9, six hours after the accident.

Q. What next was done? What next did you do after that?

A. Well, after I rolled him over five or six times, 30
I heard somebody calling for help behind me. Now, I was not only 10 or 12 feet away from the hole, and I looked around and I saw a man in the hole there, and I went to the hole; and it was Mr. Stryker. Now, he was not able to put his hand up that way for me to help him, and I got ahold of his hand so (illustrating), and pulled him up. Now, he was able to assist

me; I did not have much trouble. All I done was just to take hold of his hand; I took ahold of his hand with my left hand, and the right hand ahold of his arm, if I remember right, and pulled him up. He was able to help. And after I got him up he walked off. I turned right away back to Mr. LaRue, because Stryker was able to walk off, and I went back to Mr. LaRue and was stooping over him, and somebody walked up, and I looked up, and it was Mayor Baldwin. And then I said—I looked towards the hole, and I didn't see anything of Mr. Stryker, and I said, "Oh, he is in the hole again." So he and I, we started towards the manhole, and I happened to look on down a little further then, I should say 25 feet, and I seen Mr. Stryker standing up by himself leaning over like that, and I went to him then and some other gentleman came up, I don't know who, and he walked himself on over towards the—I do not know whether it was a hotel, or a building of some kind over there--went over there and sat down on the porch.

Q. Now, did anybody assist you in helping Mr. LaRue and Mr. Stryker out?

A. I didn't see anybody.

Q. While this was all going on, where was Mr. Potts?

A. I don't know, unless he was with Mr. Bowen who was first blown out. He might have been assisting him off at a distance. I didn't see him at all after the explosion, until some time afterward.

Q. Where was Mr. Bacon?

A. I don't know.

Q. He was there before the explosion occurred?

A. Yes. He might have been with Mr. Bowen, but I don't know.

Mr. Gebhardt: Cross-examine.

Cross-examination.

By Mr. Katzenbach:

Q. Mr. Morecraft, you were a little deaf, I think.

A. I am a little hard of hearing, yes. I hear ordinary conversation.

Q. If I don't speak loud enough, let me know, will you?

A. I hear you distinctly. 10

Q. I will try to speak loud. If I do not, let me know.

A. Your voice carries well; I hear you.

Q. Now, whatever was said about the inspection of the sewer tanks was said by Mayor Baldwin in common council, as I understand it; is that right?

A. About the invitation?

Q. Yes. That is, Mr. Potts was never there and asked you and the other members of council to go down to Belmar and Ocean Grove, was he? 20

A. He was not.

Q. And all that you know —

A. Not to ask. He had been there before, but he never asked us to go down personally, no.

Q. Mr. Potts had been at the council meetings? I did not speak loud enough?

A. You spoke loud enough. If you don't speak quite so loud I think I will hear you better.

Mr. Gebhardt: You are drowning his voice. 30

(Answer read.)

Q. Now, Mr. Potts had been at the meetings of the common council at Bound Brook on several occasions, had he, explaining the plans that he had drawn for this sewage plant at Bound Brook?

A. He had been possibly three or four times.

Q. Yes?

A. I don't remember how often.

Q. But he had been there?

A. Yes, he had.

Q. And at no one of these times that Mr. Potts had been there he had asked you to go down to Belmar or Ocean Grove?

A. No. May I tell you why the invitation was
10 given?

Q. Yes. I have no objections at all, if you know; anything that Mr. —

A. We had heard that his work in other places had not been satisfactory. I went to a place, a plumber here in town; what is that man's name, he is an inspector of the Skillman plant up there, I think.

A Juryman: Boesiger?

20 A. Boesiger, that is the place. I asked him about that work that had been done up to Skillman, if it was satisfactory. He said it was not.

Q. I am not asking you if it was satisfactory. He said it was not. I am asking you; I want to know —

A. If you will just let me get to it, I will get to the point. I will get back.

Q. All right.

A. I had taken down notes, what he said, stated to him, "May I say this to the council?" He said,
30 "Yes." Then he said considerably more. I said, "Will you be willing to come down before the council to make that statement?" He said, "I will." I told that in the council, that the work up there had not been satisfactory, that Mr. was willing to come down to make a statement before the council. That brought about the talk whether the tank would

be satisfactory or not. Then, after the next meeting I think it was Mr. Baldwin said that he had an invitation from Mr. Potts for the sewer committee to go down to inspect that tank, to look over it, and that is the way I think the invitation came.

Q. That is, you wanted, the council wanted to see some work that Mr. Potts had done?

A. After he had given the invitation, we thought it would be a good thing to go down, without expense, and all that, yes. 10

Q. So that you went down then to Belmar by reason of what Mayor Baldwin had said in council; is that right?

A. We went down after we had a notice from the clerk.

Q. Yes?

A. To meet at the fire house at 10 o'clock Sunday morning, to go down with Mr. Potts to Belmar.

Q. Now, you did go down to Belmar; you went into the tank at Belmar, did you not? 20

A. I did.

Q. And you were in the tank at Belmar about a half an hour, I think, were you not?

A. Yes, I think so.

Q. That is not a very large tank, is it?

A. No.

Q. It is a concrete sort of a chamber built under the surface of the earth?

A. Yes.

Q. And it had a platform running along there? 30

A. Yes, it was a concrete platform, as near as I can tell, about 4 feet wide.

Q. Yes. While you were down there in this tank at Belmar, did Mr. Potts address the members of council down there and explain the workings of it to them?

A. Yes, both he and Mr. Bowen.

- Q. Mr. Bowen did that?
A. Well, he did some of it.
Q. Yes. Well, now, you were all there together, were you, in this tank at Belmar?
A. Inside?
Q. Yes.
A. Down below?
Q. Yes.
A. Well, we strung along.
10 Q. You were all walking along there together?
A. Yes.
Q. Not very far apart. Close together, were you?
A. Well, it is not a very large tank, that I suppose we was; there were some six or eight down there; I couldn't tell you just how many. I could tell you by going over the names.
Q. You were all close together; is that what you say?
A. Well, yes. I should say—when I say close together,
20 together, now, I mean —
Q. Who did most of the talking down there, Mr. Potts?
A. Sir?
Q. Did Mr. Potts do most of the explaining?
A. The most I remember is what Mr. Bowen said. I asked him if there had been any chemicals, if they used any chemicals or acids, or chloride of lime, or anything like that for to help to consume solid matter. He said, so far they had to have no use; nature
30 took care of that.
Q. So that you were with Mr. Bowen?
A. Yes. Part of the time. I might have been some time with Mr. Potts.
Q. And some of the time with Mr. Potts?
A. Might have been. I don't remember anything that Mr. Potts said there. I have no doubt that he

said something there, but I did not appear to remember what he said. I remember what Mr. Bowen said to me.

Q. You asked Mr. Bowen that question?

A. Yes.

Q. And when you asked him that question, how far away was Mr. Bowen from you?

A. From me?

Q. Yes.

A. When I asked Mr. Bowen a question?

10

Q. Yes.

A. Why, I suppose 2 or 3 feet.

Q. About 2 or 3 feet?

A. I should say so.

Q. Do you remember any other questions that you asked of Mr. Bowen?

A. Yes, I said to him, "What do you mean by nature taking care of it?" "Well," he said, "you see those little bubbles on the water." There was water there and some little air bubbles there about the size of a pin head. "Do you see that? Well, that means there is life below there; the bacteria is consuming the solid matter above," and they have so far—nature has taken care of most of the solid matter—that we have not used any chemicals or chloride of lime or anything of that kind. I spoke about these things.

20

Q. Now, do you recall asking any question of Mr. Potts?

A. Sir?

Q. Do you recall asking any question of Mr. Potts?

30

A. I do not. I might have, now.

Q. Do you recall anything Mr. Potts said in the way of explanation of the workings of the tank?

A. He might have; I don't remember.

Q. Well, you were right near him?

A. Yes.

Q. That was a room—what about were the dimensions of it; do you recall?

A. You asked me what the dimension was?

Q. I say, it was not large, was it?

A. I should say, as far as I remember it, about 40 to 60 feet in length, and I should say from 15 to 30 feet in depth, width.

Q. Then you had a concrete platform upon which you all went?

10 A. Yes, sir, about 4 feet wide, I should say, as near as I remember.

Q. And you were all on that platform?

A. Yes.

Q. And you were down there about half an hour?

A. Yes.

Q. Now, you went to Ocean Grove afterward, I think, did you not?

A. Yes.

20 Q. And you went down to the tank there at Ocean Grove; you went down to the tank at Ocean Grove?

A. Yes, towards the tank; we went towards the tank on top, yes.

Q. And after you got there do you recall Mr. Potts saying anything at all with reference to that tank, and if so, what did he say, all that he said about the inspection of it? Did he say anything about the superintendent not being there?

A. I was close by Mr. Potts and talking with him. As I say, we talked about the flag pole where the dent was, and we talked about if it was similar to the one in Belmar, as I said before.

30

Q. Yes.

A. And that it was, but it would be a little more like the one he expected to instal at Bound Brook, and then, as I said, we talked about who would go down. I said, I thought I would not go down that. Mr. Stryker said he thought he would.

Q. Mr. Stryker said he thought he would?

A. And Mr. LaRue said then he guessed he would, too. I told you that before.

Q. Yes. And then they both went down?

A. Yes, both went down.

Q. And then you walked over towards the ocean, as I understand?

A. Yes, sir, with Mr. Potts, and I turned around towards the ocean, my face towards the ocean, and my back was towards the tank.

10

Q. Yes.

A. And I didn't see Mr. Bowen start to go down.

Q. You did not see how Mr. Bowen got out?

A. I did not.

Q. You assisted Mr. LaRue in getting out?

A. Yes, sir.

Q. And then afterwards gave a hand to Mr. Stryker?

A. That is right.

Q. You knew Mr. Bowen before you met him that day at New Brunswick, did you not?

20

A. Oh, yes. He had done some work up on the canal before he started, preliminary work.

Q. Yes, Mr. Bowen had been at South Bound Brook and had done some preliminary work, and you had met him there?

A. Yes.

Q. Now, had the land as yet been acquired to build the plant on?

A. Yes.

30

Q. The land where the tank was to go, had that been acquired or purchased by the city or by the borough on April 25, 1915?

A. Oh, yes. They had it, because we had put the pipe across in the winter while the water was out of the canal. Yes, the pipe had been through.

Q. You had put the pipe down in the winter time as preliminary to building this plant?

A. Yes; and may I say a word more?

Q. Certainly.

A. The land was bought or mostly given to us by the Standard people. We bought 10 feet or more, or so, I think from the railroad company. Mr. Potts assisted in the purchase in the preliminary proceedings in regard to acquiring the land for the borough, and he also sent his assistant, Mr. Bowen, there for 10 to oversee the work of putting the pipes through. Before that was done I asked in the council if that would be binding on the contract, because he had offered to do the work for 7 per cent. of the actual cost. I asked if that would be binding, and they said it would not, but that a fair price would be paid him for the work that he done. Now, the contract for the sewer was not given until, I think, October 10th, 1915, and then is when the contract was passed; 20 and he was ordered then to go ahead with that work, but the work that he done, the preliminary work, that was to be paid for at a fair price, not as a part of the contract.

Q. Of course, the contract that was awarded in October was not Mr. Potts' contract; it was with some other contractor in the borough, I suppose?

A. We couldn't give him the work to go ahead until we had made a contract with the contractor.

Q. In other words, Mr. Potts had a contract and 30 he was to get 7 per cent. upon the main contract if the borough let it; that was it, was it not?

A. Yes. It states in there, if for any consideration at all they should not go on with the work, or so on; of course, we couldn't give the contract until the contract had been given to the contractor; then he was able to go ahead.

Re-direct examination.

By Mr. Gebhardt:

Q. What was this ladder made of, in the Ocean Grove tank?

A. Iron or steel; iron of some kind.

Q. And what vents were there, if any, besides this flag pole vent? 10

A. I don't know of any.

Q. And how wide, or how large in diameter was this flag pole vent?

A. As I remember it now, it was 6 or 8 inches in diameter, the pipe.

The Court: At the base?

Witness: At the base. And how thick that was, I don't know. I don't know how large the space inside was. As near as I could tell you, the pipe was 6 or 8 inches at the diameter, by looking at it. 20

Q. And that was the only vent you saw?

A. That is all the vent I know of.

RALPH OGDEN SMITH, called as a witness on behalf of the plaintiff, being duly sworn testifies as follows: 30

Direct examination.

By Mr. Gebhardt:

Q. Professor Smith, what is your profession?

A. Teacher of chemistry.

Q. Where?

A. Rutgers College.

Q. How long have you been engaged in that?

A. Since 1905.

Q. Are you a graduate of any college?

A. Rutgers; University of Pennsylvania.

Q. When did you graduate?

A. Rutgers College in 1902; University of Pennsylvania 1905.

10 Q. Are you familiar with gases that are formed in septic tanks, sewer tanks?

A. Yes, sir.

Mr. Katzenbach: I thought this was admitted yesterday.

The Court: Yes. What is the purpose of this, Senator?

20 Mr. Gebhardt: Well, I am not going very far into it. I just wanted to ask him what was the character of the gas and then ——

The Court: Well, that is all admitted.

Q. Is this gas called methane, sometimes called fire damp?

A. Yes.

30 Mr. Katzenbach: Well, that is practically —— All this has been admitted.

The Court: Yes. What is the necessity of proving that which is admitted, Senator?

Mr. Gebhardt: Well, it is a question of how far it has been admitted.

The Court: I do not think there is much question about it.

Mr. Gebhardt: I do not know just what we agreed to yesterday.

The Court: It has been admitted this was methane gas, and when it mixes with air and comes in contact with flame, it explodes. What more of an admission do you want than that? 10

Mr. Gebhardt: No, I think, if your Honor please, we went a little further than that; if it comes in contact with any intense heat of a certain degree, 1346 Fahrenheit.

Q. Now, one more question. Can a spark of 1346 degrees Fahrenheit be made, in heat intensity?

A. It can.

20

The Court: Of course, it must follow, something exploded. Something must have started it. There must have been a flame of some kind.

(No cross-examination.)

PETER MERLETT, called as a witness on behalf of the plaintiff, being duly sworn testifies as follows: 30

Direct examination.

By Mr. Gebhardt:

Q. Where do you live, Mr. Merlett?

A. South Bound Brook.

Q. What public position do you occupy?

A. I am borough clerk.

Q. How long have you been borough clerk?

A. I think since April, 1913.

Q. Have you brought with you the records of the borough, the minutes of the borough council?

A. I have.

Q. And letters in the possession of the borough council?

10 A. I have.

Q. Will you produce them, please? I will first ask you to produce a letter written to the chairman of the sewage committee, under date of July 5, 1912, from Clyde Potts?

A. (Witness produces papers.) Would you like to have it there?

Q. I would like to have you hold it for a minute.

Mr. Gebhardt: Do you admit the writing of the 20 letter?

Mr. Katzenbach: I would like to see it first.

Mr. Gebhardt: That is what I mean, after, would you admit it?

Mr. Katzenbach: Certainly.

(Letter handed to Mr. Katzenbach.)

30

Mr. Katzenbach: Yes, that is admitted.

Mr. Gebhardt: I would like to have that letter read.

The Court: Do you offer it in evidence?

Mr. Gebhardt: I offer it in evidence and ask to have it read.

The Court: You may read it, Senator.

Mr. Gebhardt: I would like to have the clerk read it. But, I will read it myself.

(The letter of July 5th, 1912, was marked P1.)

(Mr. Gebhardt reads letter to the jury.)

10

Q. Now, I would like to have you produce the record of the borough council in respect to that proposal of Mr. Potts. First, have you gone over the record carefully to fish out all the actions of the common council with respect to this proposal?

A. I think I have, yes.

Q. Have you gone over it carefully?

A. I think so.

20

Q. All right, sir. Just read the record, what the record shows with respect to this proposal, first giving the date of it.

A. (Reading) "June 12, 1912. Resolved: That the Borough Council be empowered to employ Mr. Clyde Potts, sanitary engineer, to draw and submit a plan for a sewerage system, that will be in conformity with the laws of the State of New Jersey, and that will be adequate to care for the sewerage of said town for the time being and for ordinary future conditions, at a cost not exceeding \$350.; also estimate the cost of installation.

30

"This resolution was carried unanimously on roll call."

Q. I did not quite catch the first part, Mr. Merlett?

A. (Reading) "Resolved: That the Borough Council be empowered to employ Mr. Clyde Potts, sanitary engineer, to draw and submit a plan for a sewerage system, that will be in conformity with the laws of the State of New Jersey" —

Q. That is all; that part I wanted. Now, what do you find next on the record?

A. Next on the record is August 7th, 1912.

10 Mr. Katzenbach: What date was that, Mr. Merlett?

Witness: August 7, 1912.

A. (Reading) "Engineer Clyde Potts presented the plans and maps of the proposed sewer system, together with specifications and estimated cost of installing same. Mr. Potts explained these in detail, and recommended that at present, pipes be laid
20 parallel to the water main. He also stated that these plans were made, to care for the sewerage of a much larger population if necessary.

"After considerable discussion, during which a number of questions concerning the system were asked, a motion was made and carried that the plans be made and accepted."

Q. What next?

A. This is June 25, 1913 (reading): "The following resolution was offered; Whereas the Mayor and
30 council of the Borough of South Bound Brook are of the opinion that it has become necessary for the public health and the growth and prosperity of the Borough, that sewers and a general system of sewers and drains, and a disposal plant and outlet be provided for all that part of the Borough east and including Madison Street, and that sewers in con-

formity with such system constructed as soon as the necessary proceedings will permit the following streets: Main, Canal Road, Elizabeth, Cedar, High, Prospect, Clinton, Washington, Franklin, Johnson, and Maple.

“And whereas a plan of a general system of sewerage and drainage, and a disposal plant and outlet, designed to drain and dispose of the sewage of all the aforesaid part of the Borough has been prepared by Clyde Potts, civil engineer, at the instance of the mayor and council, by which the said system and construction thereunder is shown in detail, and the estimated cost of construction of the said disposal plant and the sewers in the streets above named thereunder being given as \$18,566.34, and the said system as planned by the said engineer meeting with the approval of the mayor and the council, and having been duly approved by the State Board of Health.

“Therefore, be it resolved, that the said proposed system of sewerage and drainage, and disposal plant and outlet, be and the same is hereby adopted for the purposes hereof and which, together with the proposed construction of sewers in the aforesaid streets and a disposal plant as a part of such system.

“These referred to the owners of property in the Borough so that written application of the owners of not less than one-fourth in value of the real estate in the borough according to its last assessed valuation as shown by the latest preceding assessment for the purpose of taxation made in the borough, may be presented to the mayor and the council for the said sewerage system and drainage and disposal plant and outlet and the construction of said proposed sewers in conformity therewith; to the end that if such application is made the question may then be submitted to the legal voters of the Borough at a

special or general election, and if affirmatively voted for by a majority of the persons voting at such election that the mayor and council, may by ordinance, formerly adopt such system of sewerage and drainage, and cause such sewerage and disposal plant to be constructed in the manner and form provided by law.

“And it is further resolved that this resolution be published in the Bound Brook newspapers for two
10 weeks, and that said plans of said sewerage system disposal plant and outlet and other data furnished by said engineer be placed in the South Bound Brook postoffice, for public inspection and information, and to which for full and complete details reference is made.

“Upon motion made and seconded the resolution was accepted. The roll call vote was as follows: Baldwin, yes; Brown, yes; Keochlein, yes; Randolph, yes.”

20 Mr. Gebhardt: Now, I suppose we can agree that some six months or so, in the fall of 1914, a vote of the people was had and they voted to build the sewer. It may take less time.

Mr. Katzenbach: Yes, that they voted in accordance with these plans and specifications to build the system of sewage and a sewage disposal plant.

30 Mr. Gebhardt: Yes.

Q. Now, going on to the letter of the action of February 10th, 1915. Just turn to that.

A. February 10th, 1915. “Mayor Baldwin called on” —

Q. Please read it slowly and distinctly so the Court and jury can hear you.

A. (Continuing) “Mr. Bowen, representative for Mr. Potts for a report. Mr. Bowen stated that he had called on the head of the department of right of way of the Pennsylvania Railroad Company in regard to securing a site for the disposal plant of the sewer system, and it would be 10 or 15 days before he could get a decided answer. Mr. Bowen also stated that the canal would open for navigation about March 10th, and that it would be necessary to lay pipes under the canal as soon as possible.

10

“Mayor Baldwin said that the railroad company had asked what would be considered a fair price for the land. The mayor stated that he had communicated with former Mayor La Taurette who considered the land worth about \$200 per acre.

“A communication from Mr. Clyde Potts was read, in which he stated, I think it would be advisable for the council to pass a resolution engaging my services as supervising engineer in accordance with the letter of July 5, 1912.

20

“After a short discussion on this communication the following motion was made:

“Motion made and seconded that the contract of Mr. Clyde Potts dated July 5, 1912, addressed to Mr. W. M. Brown, chairman of the sewer committee, be hereby ratified, providing however that in case for any reason whatsoever the sewer project is abandoned, that no money shall become due Mr. Potts excepting an amount to be agreed upon covering preliminary work done before such abandonment. Carried.

30

“The clerk was ordered to send copy to Mr. Potts, also one to Counsel Anderson.”

Q. Now, turn to the meeting at which the contracts or the bids were offered or accepted in October, 1915.

The Court: What is the purpose of that, Senator?

Mr. Gebhardt: Well, to show that ——

The Court: Can you not state the amount?

Mr. Gebhardt: Well, merely the fact that the bids were not accepted or made for this work until the following October, as this accident occurred in April;
10 that is the purpose of it.

The Court: They will probably agree on that.

Mr. Gebhardt: Will you agree on that?

Mr. Katzenbach: Agree that the contract, the date of the contract was not let until what date?

The Court: Until following the date of the acci-
20 dent, October 14th.

Mr. Katzenbach: I will admit that. Oh, yes, we will admit that, certainly.

Mr. Gebhardt: Cross-examine.

Cross-examination.

By Mr. Katzenbach:

30

Q. Mr. Merlett, have you the minutes of the meeting on or about February 3rd, 1915?

A. February 3rd?

Q. Well, about that date?

A. Held on Wednesday evening, February 3rd, 1915. Yes, sir.

Q. Will you state what that resolution was?

Mr. Gebhardt: Do you want it read?

Mr. Katzenbach: Yes.

A. "Motion made and seconded that the engineer proceed with negotiations with the P. R. R. Co. have the right of way and land for disposal plant, and also that he prepare a specification in proper form to be presented to the bidders. Carried."

Q. Yes, the engineer referred to in that reading of 10 February 3rd, 1915, was Mr. Clyde Potts?

A. Well, there is a motion made and seconded, "That matters as discussed all were in favor of Mr. Potts proceeding with the preliminary work. Carried."

CALVIN REED, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

20

Direct examination.

By Mr. Gebhardt:

Q. Mr. Reed, what have you had to do for the last five years with the Ocean Grove sewer tank?

A. What have I done in it?

Q. What have you had to do with it; what position have you occupied in respect to it?

A. I have had all the work in charge, charge of all 30 the work in connection with it, foremanship.

Q. Do you mean that you are the superintendent; is that the idea?

A. Yes, foremanship of it.

Q. Foreman. Do you have some assistants?

A. Yes, sir.

Q. Helpers?

A. Well, I have anywheres from 1 to 10.

Q. After the sewer and tanks were built there, did Mr. Potts come down to inspect them at any time prior to the 25th of April, 1915?

A. Well, he had been into it several times.

Q. Had been?

A. Yes.

10 Q. How many times; when did you first begin to be the manager or superintendent of the tank?

A. Right after it was completed.

Q. When was it completed?

A. 1909, I think.

Q. How many times from that time on until the 25th of April, 1915, did you go into it?

A. A hundred, more or less.

Q. What?

A. A hundred, more or less.

20 Q. What was the extent of the gas down there when you did go in?

A. Pretty strong, when you first opened it.

Q. Did you go in when it was first opened, or did you have it opened for a while?

A. I always leave it open, average 30 to 45 minutes, when I go in it.

Q. What have you to say with respect to your assistants going down there?

A. With respect to opening the —

Q. What rule did you make?

30 A. Well, I never let them go down until I went first.

Mr. Katzenbach: I object to the rule.

The Court: Yes.

Mr. Gebhardt: He said he never let them go down,

but went down first himself. That is to say, he would never let them go down ahead.

Q. Is that right, Mr. Reed? You went first and they followed?

A. Yes, sir.

Q. After having been opened for 30 minutes to 35 minutes?

The Court: Why was it that you kept it open 30 10
to 45 minutes?

Witness: Let it air out.

The Court: Why?

Witness: Because the gas was strong.

Mr. Gebhardt: Cross-examine.

20

Cross-examination.

By Mr. Katzenbach:

Q. Mr. Reed, you have seen Mr. Potts go down into the Ocean Grove tank immediately after the lid was removed?

A. Yes, sir.

Q. Within how many seconds or minutes after the lid was removed?

30

A. Oh, less than 3 minutes.

Q. And there is not anything in the gas that is in the tank that is dangerous, but merely unpleasant; isn't that all?

A. That is the idea. As far as — I don't know whether it is dangerous or not, but it is very unpleasant.

Q. It is simply unpleasant?

A. That is right.

Q. But you have seen people go down there immediately after the lids were opened?

A. I seen Mr. Potts go down.

Q. You have seen me go down, have you not?

A. Not right away.

Q. Well, within four or five minutes after the opening?

10 A. (No answer.)

Q. How soon?

A. Longer than that.

Q. Well, how long?

A. About 20 minutes or more.

Q. 20 or more. Well, you have seen Mr. Potts go down, you say, within 3 minutes?

A. Yes, sir.

20 Q. And you do not know of any danger that is there from going down immediately after the lid is open, do you?

A. No, sir.

Re-direct examination.

By Mr. Gebhardt:

Q. You heard about the explosion there?

A. Sir?

30 Q. You heard about the explosion on the 25th of April?

A. Yes, I heard about it.

Q. Was that dangerous?

Mr. Katzenbach: Oh, I object to that.

The Court: Yes, I will overrule that.

Mr. Gebhardt: Well, you are asking the man —

The Court: Is there any further question, Senator?

Mr. Gebhardt: That is all.

Mr. Gebhardt: With the exception of one witness, Mr. Ambrose, we rest. I offer the minutes that were read.

10

(Minutes considered as marked P2.)

Mr. Katzenbach: Is that Mr. Ambrose a member of council?

Mr. Gebhardt: Yes, and possibly Mr. Zimmerman, but I do not hardly think I will use him, but I may.

Mr. Katzenbach: I do not know whether your Honor had read the complaint in this case or not, but it seems to me that there is no evidence to substantiate the complaint, and that therefore I should move for a direction of a non-suit.

20

The Court: In what particular, Mr. Katzenbach?

Mr. Katzenbach: Well, now, you see, that the gravamen of the complaint, that is, that the defendant was an expert in the construction of sewage disposal plants, and septic tanks and knew that it was dangerous to go immediately into such tank without allowing sufficient time for the gas to escape therefrom. The evidence in this case is that they immediately entered the Belmar tank. The evidence also is that there is no danger in going into a tank of

30

this kind immediately after the lids had been removed. There is absolutely no danger.

(Mr. Katzenbach reads from complaint.)

Now, the evidence does not substantiate those facts and, of course, this is not, it seems to me, a case where the accident itself speaks —

10 The Court: Why do you say it does not substantiate it, Mr. Katzenbach? In what particular?

Mr. Katzenbach: It does not substantiate, in the first instance, that it was dangerous to immediately go into such tank without allowing a sufficient time for the gas to escape therefrom. The evidence is that the lid was removed at Belmar. They went down into this tank and remained there for 30 minutes, and the testimony of the superintendent of the Ocean
20 Grove tank is that this tank—there is no danger of going in it immediately after the lids have been removed except that it might be unpleasant there for the gas.

The Court: No, but does it not follow that since there was an explosion, evidently the lids were not opened long enough to let the gas out, that that exploded?

30 Mr. Katzenbach: But the gas could not explode —

The Court: It did.

Mr. Katzenbach: Unless there was something there, that is, a flame, with which the defendant is proven to have had no connection; and it cannot be

inferred. Of course, we discussed this matter at the preceding trial at some length, and I do not want to impose my views unwarrantedly upon the Court, but, of course, the evidence in that case was somewhat even different from this.

The Court: I do not think there is any variance in the complaint, Mr. Katzenbach.

Mr. Katzenbach: Well, then, of course, your Honor will grant me an exception? 10

The Court: Yes, I will allow you an exception.

Mr. Katzenbach: I simply want it to preserve the record in its shape, as in the former case.

The Court: Yes.

CLYDE POTTS, called as a witness on behalf of the defendant, being duly sworn, testifies as follows: 20

Direct examination.

By Mr. Katzenbach:

Q. Mr. Potts, you are the defendant in this case?

A. I am.

Q. Where do you reside?

30

A. Morristown.

Q. Will you speak just a little louder? Morristown, in this state?

A. Yes, sir, Morristown, N. J.

Q. And how long have you resided there?

A. Ten years.

Q. And what is your profession?

A. I am a civil engineer.

Q. In the course of your engineering work, have you made and designed sewage disposal plants?

A. I have, yes, sir.

Q. Were you engaged by the borough of South Bound Brook at any time to prepare plans and specifications for a sewer and sewer system and sewage disposal plant at that place?

10 A. Yes, sir, I was.

Q. When were you so employed?

Mr. Gebhardt: Now, if the Court please, I introduced the record of the common council of South Bound Brook for the express purpose of showing just what relation Mr. Potts bore to the common council with respect to this sewer; and it seems to me to go outside of that verbally and have him testify as a matter of law whether he was engaged or
20 not is out of order. I object to it on that ground.

The Court: I understand this is purely relative; is it not?

Mr. Katzenbach: I did not expect to endeavor to prove any such thing as Mr. Gebhardt has stated.

The Court: It is to prove the chronological movement of affairs, as I understand it.

30

Mr. Katzenbach: Yes.

Q. When were you first employed?

A. Why, I was employed in July of 1912, but my employment looked further than your question, Mr. Katzenbach. I was employed, not only to design the

sewage system and disposal works, but also to take charge of the construction of it exactly the same as an architect —

Mr. Gebhardt: I object to that, if the Court please. The record speaks and tells as a matter of law whether he was engaged or not. The reason I am insisting upon this objection, if your Honor please, is that I heard the former trial, and the record was not produced, and the witness was permitted to go on and testify to matters of law that he is not supposed to know anything about. I want him to state the facts and I want the words used. The words like saying employed and engaged, like that, are by Mr. Katzenbach. Say just what occurred between these people and let the Court say whether he was employed or not. 10

The Court: Is there any substantial dispute between you about this at all? 20

Mr. Gebhardt: Oh, yes.

Mr. Katzenbach: I did not know that there was.

Mr. Gebhardt: Oh, yes. If the Court please, the purpose of my questions was to show what Mr. Potts had done and said in the borough of South Bound Brook with reference to the sewage disposal plant. 30

The Court: I do not understand, Senator, that the purpose of this is to contradict the records of the council. Of course, they speak for themselves. But it is simply to show, as I understand Mr. Katzenbach, that Mr. Potts went there, and what he did from time to time, as he went in there.

Mr. Gebhardt: He says that he employs him.

The Court: The record itself is in.

Mr. Gebhardt: Yes, but the jury are listening to what he says, too.

Mr. Katzenbach: Now, if the use of the word employed has disturbed Mr. Gebhardt, I will withdraw
10 the question.

Mr. Gebhardt: Very well.

Mr. Katzenbach: Is there anything more that I can do?

Mr. Gebhardt: Ask him what he did.

Mr. Katzenbach: That is what I propose to do.

20 Mr. Gebhardt: That will be all satisfactory.

Q. What passed between you and the borough of South Bound Brook? What did you do, Mr. Potts?

A. I was invited by Mayor La Tourette to come down to South Bound Brook and to talk to the council in regard to the establishment of a sewage system in the borough, and I attended a council meeting at South Bound Brook, as he had suggested, and we
30 talked the matter over at that time. Later, I think Mr. Brown, who was then chairman of the sewerage committee in South Bound Brook, came to see me, and the upshot of it was that I wrote a letter to Mr. Brown —

The Court: The one that has been offered in evidence?

Witness: The one that has been offered in evidence.

Mr. Katzenbach: Yes.

A. (Continuing) advising him as to what my charges would be for acting as the borough's engineer in the matter of constructing the sewage system and that letter has been read in evidence. I am very sure that the letter which was read in evidence is the letter that I wrote to Mr. Brown. And that letter recited that for the sum of 7 per cent. I would prepare the plans and supervise the construction of the sewerage system that South Bound Brook proposed to build, and when the plans were prepared, and duly approved, there was to be a preliminary payment of \$300 made on account of this 7 per cent. 10

Mr. Gebhardt: The letter speaks for itself, your Honor. It does not say that. 20

A. (Continued) I was informed that this proposal was satisfactory to the borough and I proceeded with the preparations of the plans. They were duly prepared, submitted to the state department of health for approval and approved by them. They were then submitted to the borough council of South Bound Brook and accepted by them, and they paid me the \$300. The matter drifted along for some time, and some time after that, I think Mr. Brown came to me and told me that they were going ahead with the construction of the sewer system and that he was getting up a petition in accordance with the statements and I advised different borough officials as they called me on the telephone, from time to time, and finally the matter was put up to a vote of the 30

people in December of 1914, and as I understand, the people ratified this set of plans and authorized the council to proceed with the construction of the system. Some time after that I think there was a change of administration and that Mayor La Tourette went out of office when Mayor Baldwin came in, or some time prior to that. I am not sure. It was about then there was a change of administration. After that, my dealings in the matter were with Mayor Baldwin.

- 10 After the people had ratified the construction of the system, I think that I attended a council meeting or two in South Bound Brook. In any event the matter of constructing the disposal plant, the site of that came up, and I was instructed by the council to negotiate with the Pennsylvania Railroad Company to secure the property on which to build the plant. We had thought that the property belonged to the Pennsylvania Railroad Company on account of the assessment map of the borough showing it to stand in the name of the Pennsylvania Railroad Company.
- 20 And, in the meantime, we wanted the sewer built during the summer of 1915, and the mayor was very anxious to get the siphon under the canal—I presume the borough council was; it was conveyed to me through the mayor—to get the siphon under the canal constructed before the canal was filled with water. During February, the water had been drawn down on account of the abandonment of navigation, so that one of the first things that I did, under the
- 30 instructions of the borough, was to negotiate with the Raritan Canal Company for the right to lay this siphon under the bed of the canal while the water was out. This was finally gotten, consent to do this, and the syphon was laid the latter part of February, 1915.

Mr. Bowen from my office was detailed as resident engineer to take charge of the construction of the

sewage system in South Bound Brook, and this syphon was laid under his supervision. About this time, we discovered that the property which we had thought belonged to the Pennsylvania Railroad Company did not belong to them. It belonged to the Standard Paint Company. So that all of the negotiations which we had been carrying on with the Pennsylvania Railroad Company were lost, and we then had to take the matter up anew with the Standard Paint Company, and we met considerable delay in acquiring the property on which to build the plant. I might say that when we first took it up with the Pennsylvania Railroad Company, they themselves thought they owned that property, and it was after the deeds were all prepared that they discovered they did not own it. But, anyhow, that caused a considerable delay in the construction of the disposal plant. 10

Q. Mr. Potts, of what college are you a graduate?

A. Cornell University.

Q. And in what year?

A. 1901. 20

Q. Immediately after 1901, did you take up sanitary or civil engineering?

A. I did, yes, sir.

Q. Now, you have referred to Mr. Walter C. Bowen, a resident engineer of South Bound Brook. How long had you known Mr. Bowen before April 25, 1915?

A. Mr. Bowen was a student in Rutgers College, and I think in the summer of 1909 or 1910, during his summer vacation, through a mutual friend, he asked me for employment during his summer vacation while at Rutgers, and he worked for me all three summers while he was in college at Rutgers, and when he graduated, which I think was in 1911, or 1910, I am not sure, somewhere in there, he came to 30

me to work for me continually, and he was working for me in April, 1915.

Q. Then Mr. Bowen had been with you ever since his graduation, and had worked during the summers prior to his graduation?

A. Yes, sir.

Q. Now, did you come to South Bound Brook on the morning of April 25, 1915?

A. I did.

10 Q. What had transpired prior to that which had brought you there on that day?

A. Well, some time about—I can look at these letters, can I?

Q. Yes; those are letters that were written to you or you —

A. Yes, sir; they are letters that relate to this matter which I have here to refresh my memory as to dates.

Q. Yes.

20 A. Some time during the month of February, Mayor Baldwin called me up on the phone, or spoke to me at a conference, I couldn't remember which, stating that some of the members of the council would like to see —

Mr. Gebhardt: Now, if the Court please, while Mayor Baldwin is an official of that town, I do not think you can bind the deceased or any of this committee by anything that Mayor Baldwin may have

30 said to the witness.

The Court: I think it is admissible if it shows how they happened to go there; that is, what took them to Asbury Park.

Mr. Gebhardt: Well, that is not the idea. The point that I am objecting to is—Of course, they went there; it was talked over and all that sort of thing, but what the mayor said in the absence of this committee who really went there cannot bind this committee. The record of the clerk shows that nothing was done in the common council, no official action was taken, with respect to this committee going down there. They were not instructed to go or anything of the sort. It is on that point, the question of who proposed this going, that I object to the testimony. That they did meet, and Mayor Baldwin talked to him about it, I do not object to that, but to put it on Mayor Baldwin's invitation, that I object to. 10

The Court: I will allow the question.

Mr. Gebhardt: Your Honor will allow me an exception? 20

The Court: Yes.

A. (Continuing) In February of 1915, Mayor Baldwin either called me on the telephone or suggested at a conference that the committee —

Mr. Gebhardt: Do you know which?

Witness: One of the other; I do not, because I was in communication with him by phone, and also by conference at the time. 30

A. (Continuing) that it would be a good thing to take this committee down to Ocean Grove and let them see the plant there, and finally, during my absence from the office one day he left word that the

committee would go down on Sunday the 28th day of February, and when I got the message in the office I wrote the letter under date of February 19th, 1915, of which I have a copy in my hand, and in that letter I stated to him; (reading)

“Dear Sir: How about going to Belmar and Ocean Grove on monday, the 22nd, instead of sunday, the 28th? I do not believe we can get into the Grove on a sunday. Will you call me on the tele-
10 phone saturday morning and advise me what you think of this.” I do not recall that I heard from him. In any event, I didn't go to Ocean Grove on the 28th. I understand the committee met at the fire house to go, but when I didn't show up, the trip was, of course, not made. Then the Mayor communicated with me again after that, that the committee wanted to go to Ocean Grove and Belmar, and to fix another date, and finally —

20 Mr. Gebhardt: You say that is what Mayor Baldwin said to you?

Witness: He said they would fix another date.

Mr. Gebhardt: But you said something before that, the committee wanted to go?

Witness: I do not recall, Mr. Gebhardt, whether the mayor said the committee wanted to go or not
30 but I do know that he called me up to fix another date. He took the initiative and called me on the phone, and arranged another meeting to go to Ocean Grove. Now, whether—I could not quote his language exactly as to whether he said the committee wanted to go or what, but that was the purport of his message. He fixed a date as April the 25th, on

Sunday, when we would make the inspection. In accordance with those arrangements I wrote Mr. Calvin Reed, the superintendent of the Ocean Grove Sewage Disposal Works at Ocean Grove, on April 22nd, the date that I heard from Mr. Baldwin that the committee were going. I wrote Mr. Reed a letter, as I say, stating the committee would inspect the sewage disposal plant on Sunday, arriving there about 1 P. M. That, as I recall it, was on Thursday. That would be on Thursday. I did not receive any reply to that letter up to Saturday noon when I left the office. Mr. Reed did reply to that letter, and I found the letter in my office on April, the 26th, the day after the accident, and in that letter — 10

Mr. Gebhardt: It had nothing to do with the going down there at all. What is the use of wasting time over it. I object to it on that ground. I will admit that he refused to let them go in. 20

Q. Just produce the reply you got on April 26th.

A. Yes, sir. Mr. Reed replied to my letter: "Cannot permit inspection on Sunday. Any week day is agreeable. Yours, etc., Calvin H. Reed."

Q. I understand that was not received by you until the day after the accident?

A. No, sir.

Q. Now, Mr. Potts, just relate what transpired on April 25, from the time that you left Morristown, right down to the time that you got to Belmar. 30

A. I left home —

Q. Just briefly.

A. I left home in Morristown sometime early Sunday morning and drove to South Bound Brook and to the fire house. As I recall it, I arrived at the fire house in South Bound Brook sometime about 11

o'clock in the morning. Mr. LaRue, Mr. Stryker, and Mr. Morecraft were there. We picked them up and drove on to New Brunswick, or on to Ocean Grove, and I think they stated that they had arranged to pick up Mr. Bowen, the resident engineer in South Bound Brook, at his home in New Brunswick, and asked me to stop there and get him. I knew that Mr. Bowen was to go with us, because he had told me on Saturday noon, when I left him, also, that the committee had asked him.

Mr. Gebhardt: Wait, wait.

Q. No, do not say what he said. You got Mr. Bowen then at New Brunswick?

A. Yes.

Q. Then, from New Brunswick, where did you go?

A. Then we went on from New Brunswick to Belmar. We went straight to Belmar, and we had a blow-out on the way down, and delayed us somewhat, and we arrived at Belmar about 12.30, and went at once to the Commercial Hotel to get dinner; and I was doing some work in Belmar at the time and I had another assistant engineer, Mr. Bacon, there in Belmar, who was attending to this work, and he was stopping at the Commercial Hotel, so he joined—when we left after dinner, he joined our party. We went to the tanks at Belmar and I do not know what time it was, but I presume somewhere around 2 o'clock.

Q. I beg your pardon?

A. I do not remember the time, but I presume somewhere around 2 o'clock. We arrived at the tanks at Belmar, and Mayor Baldwin had joined us, I think, about the time we left the Commercial House. He was in his own automobile, and had a

party of ladies with him, one of whom was Mrs. Baldwin. He went with us to the Belmar tanks. As soon as we got to the Belmar tanks, Mr. Bowen and Mr. Bacon got out of the car with the rest of the party, and they took off both covers to the Belmar tanks, and as soon as the covers were taken off the party went down into the tanks. I do not recall the order, Mr. Bowen went first, I think, and he was followed, in any event, by the rest of the party. Mayor Baldwin went down into the tanks, but came out very shortly. I had not intended to go down into the Belmar tanks; I had a very bad case of synovitis. 10

Q. We do not know what that is?

A. Water on the knee.

Q. Due to an accident?

A. Due to an accident, yes, sir. It was water on the knee, but the doctor called it synovitis, and I picked up that name from him. I did not intend to go down into the tanks. Mayor Baldwin came up very shortly. I do not suppose he was in there over two or three minutes, or such a matter as that, and he said to me, "You better go down and explain the works of the tank." 20

Q. Speak a little louder, Mr. Potts.

A. Yes. So I went down into the tanks and the party were looking into the different chambers, and when I went down they went and congregated around Mr. Bowen. I had felt that Mr. Bowen, being the resident engineer there was the proper one to go with the party also, and he was explaining the works of the tanks to the members of the party, and as I came up to the party, I heard Mr. Bowen say to someone who had evidently pulled a match box out of his pockets that they were not to make any lights in the tank. 30

Q. You heard all this?

A. I did, yes, sir. We then walked down to the back end of the tank under the north cover.

Q. Who were there at the time that that statement was made by Mr. Bowen, not to make a light?

A. Well, there was Mr. Bacon and Bowen and Morecraft and Stryker and Mr. LaRue, all the party, with the exception of Mayor Baldwin who had come out. And we then walked up under the north cover. The tanks there are almost 60 feet long, the chamber
10 is. It is narrow and long, and there is a cement platform which runs along the middle of it, which gives access to all the valves to open the different compartments of the tanks, and that platform is about 4 feet wide. We walked along that platform until we came under the north manhole where one of the sewers enters the tank, and we stood there about 20 minutes, I should judge, and during that 20 minutes, I explained to the party—they all congregated about me—I explained to them the workings of these
20 bacterial tanks. I went into the matter in great detail.

Q. Well, just state what different subjects you spoke about at the time.

A. Well, I explained to them that it was not a chemical process, that it was a bacterial process; that it was the process of nature, and that the sewage was taken into these tanks, the solid matter being in suspension, and that it was held in these tanks either by falling on the surface or settling to the
30 bottom, and while it was in there it was subject to bacterial decomposition; that is, there are certain bacteria nature which attack the solid matters in sewage and decompose them and in the process of decomposition they give off water and gases; and that the principal gas is methane gas, and that methane gas is colorless and odorless; and I ex-

plained to them the different tanks that I had constructed in different places; and I explained to them the similarity of this tank with those. I explained to them in the early—I explained the Camera septic tank patents, to them, and I explained that in the early Camera septic tank patents, that they had been used, that the gas generated in these tanks had been used for eliminating purposes; and I went into the matter extremely thorough, as one would, in talking about such a subject for 20 minutes, for we were there quite a long time, fully that long. After I had talked the matter over with them, I do recall that some of the members of the committee said they understood this matter very much better than they had ever understood it before. 10

Q. Now, who was farthest away from Mr. Bowen when Mr. Bowen made the remark about not striking the match or making a light?

Mr. Gebhardt: Wait a minute. That is not the 20 testimony.

Mr. Katzenbach: I think it is.

Mr. Gebhardt: No, sir.

Q. What did you hear Mr. Bowen say while you were down there?

Mr. Gebhardt: I withdraw it. 30

Q. As you entered the tank?

A. Well, I heard Mr. Bowen say that they should not make a light in the tanks.

Q. And was that stated so that— How far were you away when Mr. Bowen made that remark, from Mr. Bowen?

A. Well, I don't know. I might have been 12 feet away.

Q. And were Mr. Stryker and Mr. LaRue nearer to Mr. Bowen than you?

A. When I came up to the party?

The Court: When you heard the talking?

Witness: Yes, sir, they were.

10

Q. Was Mr. Bacon there?

A. Yes, sir, Mr. Bacon was there.

Q. Now, after you left the Belmar tank, what did you then do?

20 A. Well, we came up, put the covers on and got in the automobile and drove to Ocean Grove. We drove up through Avon and Bradley Beach, to the main entrance to Ocean Grove, at Main Street, and when we arrived there, we found the gate closed and locked and we got out of the automobiles, at least those who were in my machine got out, and we arranged with Mayor Baldwin to take his machine to the North End Hotel, which is on Wesley Lake, at the north-
erly end of Ocean Grove, and about half a mile north of the disposal plant, to take his machine there and ours and then he was to come through down the boardwalk to the plant at Ocean Grove, which, as I say, is about a half mile from the North End Hotel. It is possibly three-quarters of a mile. We walked
30 down Main Street.

Q. What did you do then? There were how many of you in the party that walked down from the machine to the boardwalk, or to the ocean?

A. Well, Mr. Stryker and Mr. LaRue and I walked ahead, and Mr. Morecraft and Mr. Bacon and Mr. Bowen were walking behind. We were all practi-

cally walking together. We were walking three abreast on the sidewalks and we walked down until we come to the Ocean Boulevard, and when we got to the Ocean Boulevard, we turned south, and the plant is about 500 feet south from Main Street, under, practically under the boardwalk; and as we turned south I noticed that Mr. Reed was not there. He is the superintendent. And about every time that I have ever gone to see the plant, either for the Grove or for any other purpose, he has been there, and when I noticed that he was not there, I stated to the gentlemen who were walking with me, that Mr. Reed, the superintendent, was not there, and I felt that they did not want us to examine the plant, it being on Sunday. When we walked on down to the plant —

Q. Now, speak a little louder. I can just about hear you. Speak louder, Mr. Potts, if you will?

A. Yes, we walked on down to the plant and when we got there, the three of us who were walking together were a little bit ahead, and we stopped and waited for Mr. Morecraft and Mr. Bacon and Mr. Bowen to catch up with us, and when they caught up with us, I said again to the men, that I didn't believe we ought to open the tanks as it was Sunday, open up those tanks on Sunday. So Mr. Morecraft smelt around a little, and he said, "Well," he says, "I have seen enough; I don't believe that it is necessary to open them up," and I think he did ask me if these tanks were like the tanks that they had seen at Belmar, and of course I said that they were substantially the same; they were laid out practically the same, the valve chambers underground, and all is very, very similar, and he stated, well, he didn't care to see them; and he and I started to walk over to the boardwalk. He asked me then where the outlet

was, and I told him that the outlet was an iron pipe laid on the bottom of the ocean and running out over to the boardwalk, because I thought I could see where the sewer came up. You can see those things, because the fresh water in the sewage comes to the surface in the salt water and makes what the men there call a slick. It makes a shiny place on the water, and it is easy to see, especially on a quiet day, and we walked over towards the boardwalk.

- 10 I was going to show him that slick and we walked that way, and we looked back and saw Mr. Bowen and another man that I since learned was Mr. Bacon, taking off the cover to the valve chamber. Then Mr. Morecraft and I walked back and joined the party. By the time we got back, they had the cover off, and we stood around and looked down into the tank for some little time, and I pointed out some of the valves that were visible from the top of the ground. After a few minutes, Mr. Stryker
- 20 said that he had come all that way to see this tank and he was going to take one look, and Mr. Stryker went down into the tank and stood at the foot of the ladder and looked up and I carried on some little conversation with him and finally Mr. LaRue said that he also, that he would go down and take a look. Mr. LaRue went down. And Mr. Bowen and Bacon both moved up to the ladder then and I could see that they were going down. About that time Mr. Morecraft said to me where was the end of the tanks,
- 30 how far did they run up. The tanks laid between Ocean Avenue and the boardwalk. There is a space of about 60 feet there and the tanks are anchored, and he and I started to walk across the tops of the tanks to the other end. I was going to show him a manhole at the far end, and as we walked along, we got about 25 feet away from the party when I felt a

rumbling of the ground, and I looked back to the manhole, and I saw Mr. Bowen come out of the tank and at the same time I saw a great deal of yellow flame shooting out of the tank. I went back immediately to Mr. Bowen. I don't know why; I suppose to help him and to find out. I recall, however, that I asked him where the rest of the party were, and he walked up to me and he looked me in the face and he said, "Is my face much burned?" And I said, "No." It was quite badly burned, but I did 10 not realize then how serious it was.

Q. You said what, it was?

A. I said it was not; I did not realize how seriously it was burned, and I did not want to make him feel bad, and I said it was not badly burned, but his hands were quite badly burned, and he looked at those and said he could see those were burned. He said he can see that, and "I wish you would find me a place to sit down; I feel faint," and I took him over to the boardwalk and sat him on one of the benches 20 that are there for people to sit on. I looked back to the manhole and I saw Mr. Morecraft trying to pull Mr. LaRue out of the manhole. His head and shoulders, about up to his waist, was out, and his feet were below on the ladder, and I went back to help Mr. Morecraft get Mr. LaRue out. Mr. LaRue's clothes were smouldering and he laid down. Somebody said, "Lay down on the ground." By this time a number of people had come up. Somebody said, "Lay down on the ground." And Mr. LaRue laid 30 down on the ground and Mr. Morecraft sort of rolling him on the ground and put out the fire that was smouldering on his clothes. I think that I heard somebody calling for help. I am not sure about that. Anyway, I know that I looked back at the manhole and I saw Mr. Bacon go down into the valve cham-

ber, and I went over to the valve chamber and looked down, and Mr. Bacon was laying on the floor in the valve chamber, and also Mr. Stryker. Mr. Bacon got up and helped Mr. Stryker to his feet, and put his hands on the ladder. Then there was some man, some stranger to me, although he called me by name, came up and he and I assisted Mr. Stryker out of the valve chamber. He came up the ladder and came out. He walked around, and I thought he
10 was very little burned. Then Mr. Bacon came out. We helped him out, and I asked him if he would not get a doctor, and he immediately went off to find a doctor; and by this time, there was quite a congregation of people there. Mr. LaRue had moved. They had carried him, or he had gone over, to another position, and they had put some tar paper over him to keep the sun off him. It was a bright day, and the sun was shining, and they had put some tar paper to shelter him from the sun. I went over to
20 Mr. Bowen to find out how he was, and he asked me if I would not lay him down on the ground, that he felt very faint and he would like to lay down. And we laid him down in the shade of the flag pole, and an elderly lady there had a parasol, and she opened her parasol and stooped down to shield Mr. Bowen from the sun. Mr. Bacon finally came back with the doctor —

Q. That is all that is necessary. That describes the accident. That is, you have described the accident so far as you observed it?
30

A. Yes, sir.

Q. Now, Mr. Potts, you said that you had built or designed this Ocean Grove plant, did you?

A. Yes, sir.

Q. Have you a map of this chamber that you have referred to as the valve chamber?

A. I have, yes, sir.

Q. Will you produce that map and just explain the dimensions of that and the dimensions of the manhole, and so forth, to the jury.

(Witness leaves the stand.)

Q. Mr. Potts, will you just explain how it is built and the dimensions of it?

A. I cannot explain the dimensions from this map, Mr. Katzenbach, but by referring to the blueprint I 10 can.

Q. Can you, by referring to another map that we have had prepared?

A. This section here (indicating) represents the southwest corner of the tank, the valve chamber at Ocean Grove.

Mr. Gebhardt: We cannot see, if the Court please.

The Court: Come over on this side, Mr. Potts. 20

(Witness changes position.)

A. (Continued) This gray line represents the concrete wall, and this gray line represents the concrete wall that separates the valve chamber from the tanks.

The Court: That is the floor plan you are pointing to now? 30

Witness: Yes, sir; this is a floor plan of one corner of the tank.

A. (Continued) This round circle you see here is a 36 inch manhole cover that was set even with the ground, the sidings coming up around it, in near this

corner of the tank; and there is a ladder fastened in the wall right under that manhole, so that a person taking the manhole off can go down the ladder into the tanks. This distance across here (indicating) is 8 feet and this is the valve chamber proper. This chamber was built for the attendant to go into this manhole and open and close these valves leading to the tanks, there being 4 of them, 2 of which are shown here. There are two more that are not shown in this 10 illustration, and the tanks proper are not shown in this. The tanks proper run on up under the park about 120 feet, or 110 feet. Immediately under this manhole cover, which I have referred to before, there is a cement platform, and that cement platform is about 20 feet long and runs from a point right under the manhole 20 feet eastwardly, or towards the ocean. That inlet to the tanks are in this corner as shown, two inlets, one coming from the side and one coming in from the end. They bring 20 the sewage into the tanks. The sewage flows along a concrete tunnel, and under this platform, and into the various tanks, of which the valves are openings. The idea is that an attendant can go down into this ladder and from this cement platform get at either of those two valves. There is a walk leading along over this tunnel to the next platform, there being two platforms, the next cement platform has access to the other two valves, those two platforms giving access to the entire four tanks 30 which make up the disposal plant at Ocean Grove. This chamber is about 8 feet wide and 60 feet long.

Q. Now, will you state the character of the ladder or steps which go in from the manhole, which go from the manhole down to this concrete platform?

A. These steps are made of square iron bars. Originally they were about an inch, I should think,

square, but they rusted considerably since then, so they are not that large. There are about 5 of them that are set in the wall, as this cross section shows. Those steps lead down to the platform. They are about 20 inches long, a square iron bar set in the concrete, or through the form, so that they are fastened to the wall as the concrete was forced. This entire tank or valve chamber, is situated underground. There are two manholes that lead to it, this one and another one on the other end (indicating). 10 Those manholes are kept covered, and the tank is ventilated through the vent pipe. This pipe shown on this diagram is indicated as an 8 inch tile vent, but in actuality it was only built 6 inches. So that there is a 6 inch tile vent leading from that point as shown into a hollow steel mast, which steel mast is used for a flag pole as well as a vent. It is about 115 feet high, I should think, and starts around 20 or 24 inches in diameter at the bottom and runs up to something smaller at the top. It was a flag pole that 20 had been there, and when we built the tank we kept this vent into it. These tanks are covered and underground, and they are always damp. There is a vent on the ceiling, and the walls, with gelatin ooze, and everything in there is covered with slime and ooze. Some of it is a bacterial growth of certain forms of bacteria which grow in damp places. Some of it is fungous growth, like that which inhabits damp places. As a matter of fact, the odor, when you go into there, is of a damp cellar. 30

Q. Mr. Potts, have you indicated in this valve chamber where any sludge is formed?

A. Yes, sir, that blue.

Q. And just state how sludge is formed and what it is composed of.

A. The blue there indicates running water. That

is the tunnel through which the black sewage moves, and the brown is put on to indicate deposits of solids that occur in the tanks. There are two kinds of solids in sewage, those that float and those that are deposited on the bottom; and in fresh sewages, the scum or surface deposits amount to a great deal more than the solids that settle to the bottom. And Ocean Grove is one of the sewages that is very fresh when it reaches the tank, and consequently the scum deposits are very heavy there, and they form near the inlet where this brown is indicated, and also between the two cement platforms, and also at the far end of the tanks under the other manhole. There are three heavy deposits of scum. That scum is sufficiently matted and sufficiently heavy to float a person; that is indicated, as I say, by the brown shading on this map; and the white indicates concrete floors.

10 Q. Mr. Potts, you can just take the witness chair
20 now.

(Witness resumes the stand.)

Q. You have been in this sewage disposal tank since it was built at Ocean Grove how many times?

A. I don't remember the number of times, Mr. Katzenbach, but a great many times.

Q. Is there any danger in entering this plant immediately after the lid had been removed?

A. None whatever, no, sir.

30 Q. Have you entered the Ocean Grove sewage disposal plant immediately after the lid has been removed?

A. I have, yes, sir.

Q. Within what fraction or period of time?

A. Well, as soon as you get the cover off. I have gone down on many occasions as soon as the cover was taken off.

Q. Is there any gas, to your knowledge, in the Ocean Grove plant that would explode without the ignition of flame or otherwise, to your knowledge?

A. No, sir, there is no gas in there that would explode without the flame of a match, or an electric spark of the same temperature.

Q. Have you been in this Ocean Grove plant subsequent to April 25, 1915, when this accident occurred?

A. I have, yes, sir.

10

Q. And how soon after the manhole cover was removed did you go down?

A. Well, immediately.

Q. Well, on this occasion of April 25, 1915, for how long had the manhole cover been removed, prior to the accident?

A. Well, I don't know in minutes; probably—well I should say around 10 minutes. Possibly 15 minutes.

Q. And was there anything that you did by way of 20 any act or anything that you omitted to do that you know of that caused this accident?

A. No, sir, nothing.

Q. How long did Mr. Bowen live, after the accident, to your knowledge?

A. He lived for almost two weeks, I think. I think he died on the second Friday following the accident, or Saturday. I am not sure whether it was Friday or Saturday. I think it was Saturday, the second Saturday following the accident.

30

Q. How far were you from the manhole when you heard this explosion or rumbling?

A. I should think about 25 feet. We were on top of the tanks, walking towards the other end.

Mr. Katzenbach: That is all.

RECESS.

AFTER RECESS.

Cross-examination.

By Mr. Gebhardt:

Q. You stated on your direct examination, Mr. Potts, that Mayor Baldwin had suggested that it
10 would be a good thing to make this inspection at Belmar and Ocean Grove, did you?

A. Words to that effect, yes.

Q. Now, you said you designed this plant at Ocean Grove?

A. Yes, sir.

Q. And Mayor Baldwin did the machinery work, did he not?

A. Not in anything I had anything to do with, no, sir.

20 Q. Did you not so testify in the trial of the Stryker case?

A. I did, yes, sir. Mayor Baldwin had absolutely nothing to do with the Ocean Grove sewage disposal plant.

Q. Did you not testify he furnished the machinery for it?

A. I did not.

Q. Did you not testify that you understood he furnished the machinery for it?

30 A. I did not.

Q. I will read from page 36 of your testimony. "You say that the mayor suggested your going down there instead of your suggesting it." Your answer was, "The initial suggestion came from the mayor." Did you so testify?

A. I said that, yes.

Q. "Q. The initial suggestion came from him? A. The mayor, as I understand it, had furnished the machinery for the Ocean Grove plant and was familiar with the plant there."?

A. No, sir, not the sewage disposal plant. The mayor had nothing whatever to do with the Ocean Grove disposal.

Q. Well, did you so testify?

A. No, sir, I did not.

Q. On the previous trial?

10

A. No, sir, I did not.

Q. Well, is this answer that I have just read to you from the stenographer's notes wrong?

A. No, sir; I don't think that refers to the disposal plant. I think the mayor did furnish some machinery for Ocean Grove, in some of their other electrical machinery, or something of that sort; but he had nothing whatever to do with the sewage disposal plant. Doesn't that say a plant, Mr. Gebhardt?

Q. No, but the first question was, "You say that the mayor suggested your going down there instead of your suggesting it." That was the first question.

A. Yes.

Q. That is, that the mayor suggested your going down to Ocean Grove to look over this plant, and your answer was, "The initial suggestion came from the mayor."

A. Yes.

Q. Is that correct?

A. That is correct. I so stated that today.

30

Q. And you further stated today that the whole talk that you had about going down there, by this sewer committee, was with Mr. Baldwin, did you not?

A. About arranging this trip.

Q. Yes?

A. Yes. And then the further question was put

to you, "The initial suggestion came from him?" Mr. Katzenbach put that question to you just that way. Your answer, "The mayor, as I understand it, had furnished the machinery for the Ocean Grove plant and was familiar with the plant there." Did you not so testify?

A. Can I look at that, please?

Q. Yes, sir, glad to have you do it. Right at the top there. (Handing transcript to witness.)

10

Mr. Katzenbach: What page of the transcript is that?

Mr. Gebhardt: 37 and 38.

Mr. Katzenbach: Who made that?

Mr. Gebhardt: The stenographer.

20 Mr. Katzenbach: I have a complete transcript here.

Witness: Yes, here in this next —

The Court: You will find it probably, under the cross-examination of Mr. Potts, under a different paging.

You did not have all the testimony, did you, Senator?

30

Mr. Gebhardt: I had all of Mr. Potts' testimony.

The Court: That accounts for the different paging.

Mr. Katzenbach: Yes, that accounts for it. I may be able to find it.

The Court: Now, Mr. Potts, you were going to say something.

Witness: Yes. I say, I think that that explains it there. I said here later I had met the mayor for the first time in Ocean Grove, and I recall that Mr. P. J. Preston, who was interested in the Ocean Grove Association, the Camp Meeting Association, introduce me to Mayor Baldwin—he was not mayor of South Bound Brook at that time though—at the manager's office in Ocean Grove. I don't know whether at the time or subsequent to the construction of the Ocean Grove disposal plant. And at that time Mr. Preston was talking with Mayor Baldwin about furnishing some electrical machinery or some sort of machinery for the water and electric light plant in Ocean Grove, and that is what that testimony of mine refers to there. But I had met him. 10

Q. Yes, but what had you to do with any electric light or water plant there? 20

A. None then, except to listen to a conversation between Mr. Preston and Mr. Baldwin.

Q. Now, did you not give the answer that I have just read to you for the purpose of explaining why Mayor Baldwin had tried to make this arrangement with you to go down there, that he was familiar with that plant, because he had furnished the machinery for it?

A. Oh, that is certainly true, Senator Gebhardt, that Mayor Baldwin ——— 30

Q. Did you not testify that way and give that as a reason why he had taken this much interest in it?

A. Yes, and I want to convey that impression at this time, that Mayor Baldwin was interested in the Ocean Grove plant because he was familiar with it, having done work in Ocean Grove.

Q. Yes, but you did not say that here, Mr. Potts.

A. Well, I couldn't say it any plainer, Senator, than I did there.

Q. Well, we will let it go, sir. And further along, "And you had built it?" Now, that did not refer to an electric light; you did not build an electric light plant, did you?

A. No, sir. I had nothing —

Q. Or the water plant?

10 A. No, sir.

Q. The next question is, "And you had built it?"

A. The Ocean Grove plant.

Q. What did that refer to? Your answer was, "I had built it." What did that refer to?

A. To the sewage disposal plant.

Q. Exactly.

A. The only thing I built.

Q. "Q. So you had common ground to talk on?" Your answer, "I had met the mayor for the first time in Ocean Grove." "So you had common ground of conversation?" "A. Yes, sir." Mayor Baldwin was trying to help you through with this thing, was he not?

20

A. No, sir.

Q. He was not?

A. No, sir.

Q. He was not interested in any way whatever?

A. Not in my disposal plant.

Q. Well, now, did he not furnish the machinery
30 for the Ocean Grove plant?

A. There is no machinery in the Ocean Grove disposal plant.

Q. What did you mean when you said so before?

A. I explained what I meant, Senator. He had furnished—at least I understood he had furnished—machinery for the electric light plant or the water plant. I don't know which.

Q. Well then, what did you mean in answering the question, "And you had built it?" And your answer, "I had built it."?

A. Well, I have recited the facts to you, and you will have to explain yourself as to what that means.

Q. I will try to when I have a chance. Now, you stated this trip was postponed on the 28th of February because you did not show up?

A. Because I had written that we couldn't get into the Grove on a Sunday, and having written that I made no effort to go there on Sunday. 10

Q. Well, the trip was not made because you did not go; is that it? That is what you said; now, is that right?

A. Well, I cancelled the engagement. That would be the better way to put it.

Q. But you replied that the trip was not made on the 28th of February because you did not show up. You did not even investigate it, did you?

A. Oh, yes, I read the letter here that I wrote the mayor, this morning. I notified them under date of — 20

Q. Did you not understand that the committee were at the fire house waiting for you?

A. No, sir, I did not, until I heard Mr. Morecraft state so here at the last trial, in Mr. Stryker's case.

Q. Then you knew it?

A. I knew when I heard Mr. Morecraft say he went to the fire house during the previous trial.

Q. And you knew when he testified this morning, that because you did not show up they did not go? 30

A. I knew that this morning.

Q. And you knew it after the last trial, did you not?

A. Yes, after the last trial. I wrote Mayor Baldwin —

Q. Then you do know that was the reason they did not go on February 28th, because you did not show up?

A. Because I cancelled the engagement.

Q. Wait a minute, you do now and did know when you testified this morning, that the committee did not go on the 28th of February, because you did not show up?

A. Well, Senator, that is an impolite way of putting it.

Q. But it is the way you put it this morning?

A. No, I cancelled the engagement. That is the view I take of it. I cancelled the engagement made on the 28th of February.

Q. But the committee did not get the note, did they?

A. I don't know; I didn't know until the last trial. Perhaps some of them did. I do not know that, either. But at the last trial I heard Mr. Morecraft say that he went to the fire house on the 28th.

Q. Now, Mr. Bacon was stopping at the Commercial House in Belmar when you went down there to make that inspection?

A. Yes, sir.

Q. And he was in your employ?

A. He was.

Q. Did he do anything else but work for you?

A. No, sir, not that I know of.

Q. Did you pay his board at the Commercial House, or did you pay him so much a week and did he pay his own board?

A. Whenever he is away from the office for less than two weeks I pay his board; when he is gone more than two weeks he pays his own board. That is a rule I have in the office.

Q. Now, after that day did he put in a bill to you

for the dinners that were furnished this committee at the Commercial Hotel?

A. He did not; but the proprietor did.

Q. But did you pay the proprietor or did you pay Bacon?

A. I paid the proprietor. I didn't know that at the last trial, Senator, and I have since ascertained that the bill which the proprietor—we all stay at that hotel when we are in Belmar, and I ascertained since the last trial that dinners furnished on that Sunday were included in the regular bill. 10

Q. Did you say this morning that you told the men not to light a match?

A. I did not.

Q. What did you say?

A. I said that Mr. Bowen, who had charge of the party, told them not to.

Q. Now, just tell us exactly what Mr. Bowen said.

A. Well, he said that they should not make any lights in the tank. 20

Q. Are those the words that he used?

A. Well, words to that effect, or very nearly those.

Q. Just as near as you can; is that as near as you can?

A. I have told you as near as I remember.

Q. Is that all he said that you can recollect?

A. There was more said.

Q. On that subject, I mean. I do not mean talking about the plant. Is that all you can remember that he said? 30

A. That is all I remember.

Q. You are sure about that?

A. Absolutely.

Q. No doubt whatever in your mind?

A. None whatever.

Q. That that is all he said?

A. Well, I absolutely know that he said that.

Q. How?

A. That he said that.

Q. Yes. And that is all you do recollect?

A. No, I have a very clear recollection of a great many happenings on that day.

Q. But I do not mean the other things. I mean on this one particular point. Now, how far away was you at the time?

A. Well, I don't know. I should judge somewhere
10 around 10 or 12 feet perhaps.

Q. And Mr. Morecraft was right there?

A. Mr. Morecraft was there.

Q. Was right there?

A. Yes, sir.

Q. By Stryker and LaRue?

A. He was with the party.

Q. Yes. Any reason that you know of why he should not have heard it?

A. Not unless he is hard of hearing. He should
20 have heard it if —

Q. He should have heard it?

A. Yes, sir, if he is not hard of hearing.

Q. You stated in your examination at the other trial that you did hear it, did you not, that he was near enough to hear it?

A. Well, I say that now.

Q. Now, is it not a fact, Mr. Potts, that when this explosion occurred that you started to run away first?

A. No, sir, I went —
30

Q. Did you not run around the grove wringing your hands and saying it was awful, and all that sort of thing?

A. I went immediately to Mr. Bowen as soon as I saw him come out of the tank.

Q. What do you mean by saying come out of the tank?

A. When he came out of the tank?

Q. Yes. Was he not blown out of the tank?

A. Well, I don't know whether he was or not, I am sure, Senator. He came out in a very great hurry, whether he was blown or springing out.

Q. Do you mean to tell the Court and jury that you do not know whether he walked up that ladder or was blown up by the force of the explosion?

A. He came out and landed on his feet.

Q. Landed on his feet?

10

A. Yes, sir. Now he could have—the force of the explosion might have assisted him, or he might have come out unassisted; I don't know.

Q. How much above the surface of the ground did he go before he landed on his feet?

A. I couldn't say.

Q. Two feet?

A. I couldn't say.

Q. Three feet?

A. I could not tell you.

20

Q. Ten feet?

A. He may have gone two or three feet.

Q. In the air before he landed on his feet?

A. He came out—he was a very athletic young man. He played on the base ball team at Rutgers; he was an athlete; and he might have jumped out of the tank from the top ladder, and come out in the way in which he did.

Q. How high did this flame go?

A. Well, I don't know, I am sure. I couldn't 30
judge that. It might have gone ——

Q. 10 or 15 feet?

A. Well, it might have gone 10 feet.

Q. You know what 10 feet is, do you not, Mr. Potts?

A. Yes; but a flame bunches up so, Senator, you

can't hardly say just how high it is, and it is higher at times than it is at other times. A flame is a difficult thing to judge the height of. That is why 10 feet would be perhaps a fair guess. It might have been 6 feet.

Q. What impression did you get of the heat of this flame?

A. That it was very hot.

Q. How long after did you see the iron ladder?

10 A. Well, I suppose a few seconds. You know seconds are long times in an emergency like that.

Q. How long did this flame continue to come out of the manhole?

A. I should not think over 10 seconds, perhaps.

Q. Not over 10 seconds?

A. I should not think so; a very short time.

Q. Well, just think a minute Mr. Potts. The first effect of the flame was to either throw Mr. Bowen out or cause him to jump out. That was the first
20 effect, was it not?

A. Well, Mr. Bowen came out early.

Q. Well, I say, either one or the other. Either he jumped out or was thrown out, or if you prefer, we will say that he came out. He came out. That was the first thing.

A. He came out very soon.

Q. Then there was quite considerable trouble to get Mr. LaRue out, was there not?

A. Well, it took some little time.

30 Q. How?

A. It took some little time.

Q. Why?

A. Well, I thought Mr. Morecraft was not strong enough to lift him out, perhaps.

Q. Well, he was kind of wedged fast in there, was he not?

A. No, sir.

Q. What was the matter? You say it was a 36 inch hole. Just show the jury what a 36 inch hole would be.

A. It is an ordinary electric light cover, such as you see around the streets, these large manhole covers on the street.

The Court: As big as that table (indicating)?

Witness: No, not as big as that. It is almost as 10
big as this table the stenographer is writing on.

Q. Now, while Mr. Morecraft was getting him out, the flames were still going, were they not?

A. Well, they had died down some.

Q. Were not they still going?

A. Yes, I think they were.

Q. You say it took some time to get him out?

A. Well, of course —

Q. To get Mr. LaRue out? 20

A. Yes, it took some time.

Q. Then it took a little more time to get Mr. Stryker out?

A. Yes. It took just about as long, Senator, as I explained. I went to Mr. Bowen immediately when he came, and I led him over to a seat on the boardwalk, and he sat down there; and I went back to Mr. Morecraft. Now, the manhole is about 60 feet from the boardwalk. Now, if you can judge how long it would take a person to walk that far with Mr. Bowen 30
and back to the manhole cover, that is about the length of time it took.

Q. But were not the flames coming out when you got back and Mr. Morecraft was trying to help Mr. LaRue out; flames were still going, in fact, burned Mr. Morecraft's face to some degree, and his

mustache partly off, and his eyes somewhat; is not that so?

A. I don't know whether his face was burned or not. His hands were burned, I know that.

Q. His hands were burned?

A. Yes.

Q. Do you not know that his face was burned; do you not know that he went to the hospital afterward?

10 A. I know that he went to the hospital, to the same hospital that Mr. Stryker went to, in Long Branch, and in the evening he came back to Spring Lake Hospital, and his hands were tied up at that time, but I do not recall any bandages or anything on his face.

Q. But you do recall that his mustache was singed?

A. It might have been; I do not recall it.

Q. And that his eye brows were also singed?

A. It might be. I don't recall that.

20 Q. Now, you say to the Court and jury that from the time that Mr. Bowen came out, as you put it, you walked 60 feet away and 60 feet back, then saw Mr. Morecraft helping out Mr. LaRue; that all that took 10 seconds?

A. Well, that is an estimate which I made, yes, and I think perhaps it is about right.

Q. In about 10 seconds?

A. Yes. Of course, under the excitement of the circumstances I didn't make any effort to time it, but

30 I should say 10 seconds, possibly, or possibly 15 seconds.

Q. Now, there was one 6 inch vent to this sewage tank, was there not?

A. Yes, sir.

Q. That is the upper end of it was only 6 inches in width, or in diameter, rather?

A. No, there is a 6 inch tile pipe runs from the

tank, from the valve chamber, from a point near the roof to a steel mast which is set upright, a few feet, possibly 20 feet or 25 feet from the valve chamber. This mast is about 115 feet high, and I think 20 or 24 inches or so at the base. The top, I don't know, because I never saw the top of it.

Q. That is all the vent you provided for that tank, is it not?

A. Yes, sir.

Q. Why did you not provide more of a vent? 10

A. Because that is large enough.

Q. Large enough to let out the gas?

A. That vent is provided for the purpose of ——

Mr. Katzenbach: Please speak a little louder, Mr. Potts. I do not hear you.

A. (Continued) That vent was provided for the purpose of taking up the water pressure due to the rise and fall of the tide in these air-tight tanks. 20

Q. Then the tanks are practically air-tight?

A. The theory of septic tanks is that they should be air-tight, yes, sir.

Q. Is that the way you built this one?

A. No, we put this 6 inch vent in it.

Q. With the exception then, of the 6 inch vent, that was not for the purpose of letting the air in, cleaning out the gas or letting the gas out?

A. For the purpose, as I stated, of taking up the pressure due to the rise and fall of the tide in the tank. 30

Q. Exactly. That was the purpose it was put in for?

A. Yes, sir.

Q. You spoke of making these septic tanks air-tight; what do you mean by that?

A. No, I say the theory of septic tanks is they are air-tight.

Q. Then you go according to theory?

A. Not always.

Q. Not always?

A. No, sir. That was the original theory of septic tanks, that they should be air-tight.

Q. Well, when was there a change in them?

A. Well, I don't know whether there was any
10 change; people did not agree with that.

Q. Did you agree with that; you were one of the experts?

A. I don't think, as far as the purification of sewage goes, that the vents make any difference one way or the other. They do not help, nor they don't hinder.

Q. Would it do any harm to take the gas away by vents, so that gas would go out?

A. No, sir, it would not —

20 Q. How?

A. Not in my judgment; it would do no harm one way or the other.

Q. And if the vents were placed there after the gas did all go out, there would be no danger down there of any kind from lights or anything else, would there?

A. Well, I don't think it is—I do not just get the point.

30 (Question read.)

A. Well, if you had no roofs on them, why, there would be no danger from lights, I suppose.

Q. If the gas was let out, there would be no danger from lights, would there?

A. If it was all let out?

Q. Yes?

A. Why, if there was no gas there, there would be no danger from lights.

Q. It is the gas that makes the danger, is it not; makes it possible to have an explosion?

A. Well, the lights make an explosion.

Q. Yes, but what explodes? It is not the air, is it?

A. No, it is the air and the gas mixed.

Q. Mixed together?

A. Yes.

10

Q. Then, without the gas the explosion could not occur?

A. No, sir.

Q. Exactly. So that if the gas were taken out there would be no danger from lights or anything else?

A. No, sir.

Q. Now, were there any holes in this manhole cover?

A. No, sir.

20

Q. You say this cover had been removed for 10 minutes, possibly 15 minutes. What were you doing all that time after the cover was removed?

A. Well, when the cover was first taken off we stood around and looked down for a little while, and nobody made any move to go down, and then after we looked down a little while Mr. Stryker went down, and he stayed down there alone some little time. And then we talked to him; he talked up and we talked down to him, and then Mr. LaRue went down.

30

Q. Now, you were 25 feet away from the manhole when you heard a rumbling; is that what you said this morning?

A. Yes, sir.

Q. Do you know what that rumbling meant?

A. Well, I knew there was some trouble.

Q. What kind of trouble did you know was there?

A. Well, I looked and found out.

Q. Well, when you first heard the rumbling, what did you think the trouble was?

A. Well, I ——

Q. You knew there was an explosion; that is what you knew, did you not?

A. I knew that there was either an explosion or something had happened. I did not know what. I
10 looked around ——

Q. What else could happen besides an explosion?

A. Well, that is problematical, Mr. Gebhardt. A good many things can happen in this world which you are not looking for.

Q. To cause a rumbling under your feet?

A. Yes, the roof could fall in; any number of things could happen.

Q. Did the roof fall in?

A. No, it did not.

20 Q. You knew it was not the roof then, did you not?

A. Yes, sir.

Q. Did you not take it for granted at once it was an explosion that occurred?

A. I didn't have to take it for granted, because I looked and saw there was fire coming out of the man-hole.

Q. Is it not a fact the only man that you had communicated with with respect to going down to make this inspection on that day was Mr. Baldwin?

30 A. He is the only one I recall.

Q. Now, Mr. Baldwin who brought about this condition was the man who paid the least attention, was he not, to both of these tanks?

A. Well, of course he hadn't gotten to Ocean Grove yet when the accident happened.

Q. That was because he was not so much interested, was it not?

A. He was driving his own automobile, and he couldn't get in the grove with it on Sunday, and he had to take it to the nearest point that he could get into the grove, which was the North End Hotel; and while he was enroute from the North End Hotel the accident happened.

Q. Now, where was Mr. Bacon the last time you saw him before the explosion?

A. He and Mr. Bowen were standing together near the entrance to the valve chamber. 10

Q. How far away from the manhole was that—we are speaking now of Ocean Grove?

A. Yes. They were right by it.

Q. Now, did you help get Mr. Stryker out?

A. I did, yes, sir.

Q. I will read from your testimony on page 21 with respect to that. "Mr. Bacon came up and he jumped down into the tanks to help Mr. Stryker out. When I saw Mr. Bacon go in I thought our troubles had been augmented by another one going down, so I 20 went over to the edge of the manhole, and Mr. Bacon was helping Mr. Stryker on his feet, helping him to get up, and Mr. Stryker came up the ladder, and another gentleman, whose name I do not know helped to get Mr. Stryker out of the tank, and Mr. Bacon then came up and we lifted him out also, and I went back to Mr. Bowen."

Q. Who was this other man; do you remember?

A. I don't know his name, no, sir.

Q. Did you ever try to find out? 30

A. I made effort to find him, yes, sir.

Q. When the clerk wrote you after the action of the common council on the night of February 10th, 1915, did he send you a copy of the motion that was made?

A. After February the 10th?

Q. After February 10th, 1915?

A. I don't recall, Mr. Gebhardt, whether he did or not.

Q. Well, did you understand then from what he wrote you or from their investigation subsequently to the 10th of February, that the council, in its motion ratifying the so-called contract contained in your letter of July 5, 1912, that the council was not to pay you anything in case for any reason whatsoever they abandoned the sewer business?

A. Did I ever have an impression like that?

Q. Did you get that information, either in this letter from the clerk or from any other source?

A. No, I never—

Q. That you were not to be paid anything for your services in case they abandoned it for any reason whatever, except what services were rendered up to that time?

A. Well, I don't recall whether I got a copy of the resolution that was read this morning.

Q. It was not a resolution; it was a motion that was read this morning here in your presence?

A. I do not know, Mr. Gebhardt. But it did not make any difference whether I got it or not. I had a contract with the borough of South Bound Brook which governed my actions.

Q. We will see about that. Will you just produce that contract? You mean your letter of the 5th of July, 1912, Mr. Potts?

A. Yes, sir, which was accepted by them.

Q. What you say in that letter is, "Agreeable to conversation which I had with you today, I beg to make the following proposition."

A. Yes.

Q. Is that what you call a contract?

A. Yes, sir.

Q. That you call a contract?

A. Yes, sir.

Q. You call a proposition a contract?

A. When it was accepted by them, as a professional man I looked upon it.

Q. Will you be kind enough to tell me when and where it was accepted? Show me anything that shows that that proposition of July 5, 1912, was ever accepted by the borough council of South Bound Brook?

10

A. Yes, sir.

Q. All right, let us see where it is?

A. I received instructions to go ahead under that —

Q. I am not asking you to tell it that way. I asked you —

A. I am going to tell you my own —

Q. (Continuing) To produce the acceptance of it?

A. I will tell you, Senator, my own way, if you please.

20

Q. No, I object to that. I want you to tell where the common council accepted it?

A. They paid me the preliminary fee of \$300.

Q. That is true.

A. And they adopted the plans which I —

Q. Yes, but there is something more besides the plans, you were also to have 7 per cent. on the cost price, the contract cost of the work. You were to have that, were you not?

A. Yes, sir.

30

Q. They were not bound to give you that, were they?

A. Yes, sir, I think they were. I was engaged there exactly as an architect is engaged on a percentage building, to make the plans and supervise the work.

Q. Now, just let me know whether you knew this was the action of the common council on February 10th, 1915: "Mayor Baldwin called on Mr. Bowen, representative for Mr. Potts, for a report. Mr. Bowen stated that he had called on the head of the department" —

Mr. Gebhardt: Well that is not —

That merely gives the page. That is it right here,
10 is it not?

Mr. Merlett: Yes, that is it.

Q. (Continuing) "After a short discussion on this communication, the following motion was made. Motion made and seconded that the contract of Mr. Clyde Potts dated July 5, 1912, addressed to Mr. W. M. Brown, chairman of the sewage committee, is hereby ratified, providing, however, that in case for
20 any reason whatsoever the sewer project is abandoned that no money shall become due Mr. Potts excepting an amount to be agreed upon covering preliminary work done before such abandonment." Did you know that was a condition?

A. I probably did, if that was a resolution passed by the common council.

Q. Have you any idea about that? It was not a resolution; it was a motion. Just look it over. I want to know if you knew about it?

30 A. Well, I probably did, Senator.

Q. How?

A. I probably did, if Mr. Bowen was there at the meeting, as you say he was, and very likely —

Q. Do you call that an acceptance of this proposition containing that 7 per cent. in there?

A. No, sir, it was accepted prior to that time by council, before this.

Q. When?

A. Some time after the proposition was made to the borough.

Q. Did you hear the clerk's testimony this morning?

A. Yes, sir.

Q. Did you hear him read from the book?

A. He didn't read all of it; I heard what he read.

Q. I asked him—I told him to read everything concerning this contract or alleged contract with you 10 and everything with respect to the sewer?

A. Yes.

Q. Did he read anything this morning of that kind?

A. I didn't hear it. He read —

Q. Exactly. Then, if he had read it this would have been a repetition of any such thing, would it not?

A. They accepted the plans which I prepared in accordance with — 20

Q. I understand; I understand. But, in passing this motion as they did, they reserved to themselves the right to refuse to pay you for anything except an amount covering the preliminary work; is not that so?

A. Well, that is probably your interpretation of that resolution.

Q. Is it not so?

A. I don't know. I don't know what was in the minds of the gentlemen when they passed that reso- 30 lution.

Q. But you were the other party to this alleged contract, were you not?

A. I was, Senator, and I had —

Q. But your minds had not met on the particular proposition, had they?

A. No.

Q. What your proposition was, to get 7 per cent., was it not, of the construction price, their having reserved to themselves the right to abandon it and not to pay you the 7 per cent., but only to pay you for the preliminary work; is not that so?

A. That may be so. It may be what that means.

Q. Then if it did go on, if the proposition did go on, you were hoping to get a considerable more amount of money, were you not?

10 A. Not a considerable amount, because there was not a considerable amount in the whole work.

Q. Well, we poor fellows think up there two thousand or fifteen hundred dollars is quite an amount of money.

A. If you get it for nothing; but if you have to work pretty hard for it.

Q. It is quite a large amount?

A. It depends on the amount in it.

20 Q. Seven per cent. of twenty-five thousand dollars, less three hundred dollars; how much is that? \$1750 is it not?

A. Yes, about that.

Q. Less \$300 is about \$1450?

A. Yes, sir.

Q. They did not have to pay you all of it if they chose not to pay it?

A. You say not.

Q. Well, what do you think about it?

30 A. I think that those gentlemen would have paid me.

Q. Paid you that whole 7 per cent., whether you supervised the sewer or not?

A. But the sewer would be built some time; it was only a question of time to be built.

Q. That is guess work, is it not?

A. I think not. I think most any progressive town now has sewers.

Q. You knew there was a discussion in the common council about this Skillman sewer that had arose among the members of the common council as to whether your work was satisfactory or not, did you not?

A. I don't know whether I did or not.

Q. You do not know?

A. I might have heard of it.

Q. Did not Mayor Baldwin tell you that?

A. I don't know whether I heard it in the council 10
or some place else.

Q. You did hear it?

A. I heard that.

Q. Yes. And was not that one of the reasons why you took these gentlemen down to Ocean Grove?

A. No, sir.

Q. To satisfy them?

A. No, sir.

Q. That everything was all right?

A. No, sir, not at all.

20

Q. What did you take them there for?

A. I took them there because I was asked to do so. The work in Bound Brook was under way.

Q. Suppose I ask you to buy my dinner this afternoon; will you do that?

A. I will be pleased to have you come down to my office any time, Senator, and I will take you out to dinner.

Q. Thank you, thank you. You took these men down there expecting to clinch the matter and be 30
sure this sewer business would go through so you would get the \$1400 extra, did you not?

A. Not at all.

Q. Nothing to do with it?

A. No, sir.

Q. Never thought of it, did you?

A. No, sir, did not worry me.

Q. Never thought of it?

A. No, sir.

Q. Did not care whether you got that, or another gentleman?

A. I knew the sewer would be built in time, and when it was built I would supervise it.

Q. But they say they would have a right to abandon it and get somebody else?

A. No, it does not say they would get somebody else. If they could not acquire the property —

Q. It might have been abandoned last July?

A. There was very grave doubt in the minds of everybody connected with the sewer proposition, whether or not they could acquire property on which to build a plant.

Q. You did not have no interest in going down there to Ocean Grove, did you?

A. Not in any way that you insinuate, no, sir.

Q. What?

A. Not in any way that you insinuate.

Q. Why did you run your automobile a hundred miles or more and pay out money for the dinners and use up your gas, and your chauffeur, and all that sort of thing to go down there; what did you do it for?

A. Because I was asked to go. These people were friendly with me, and I was friendly with them.

Q. You wanted them to see that tank, did you not?

A. Well, they wanted to see it, and I was not ad-
30 verse.

Q. You were proud of it?

A. I was, and I am.

Q. Yes. And you wanted them to see it because you knew that they would be pleased, did you not?

A. I didn't know whether they would be pleased or not.

Q. You hoped they would be, did you not?

A. I don't see how anybody could help but to be pleased at that, as a proposition of sewage disposal.

Q. Well, you thought they would be pleased?

A. I thought they were pleased anyhow. They were going ahead with that work. They had instructed me to prepare the specifications. They had instructed me to buy the land on which to build the sewage disposal plant, and we had put the syphon in under the canal, and the people had authorized the construction of the entire system. 10

Q. Yes.

A. I have not any reason to believe they were otherwise than pleased.

Q. Did you take them down there for your own benefit, or just to give them a pleasant Sunday ride?

A. Well, I took them down there, Senator, as I have said, because the mayor asked me to take them down.

Q. The contract had not yet been given out for the sewer? 20

A. No.

Q. And was not for about 6 months afterward?

A. No, sir. We hadn't acquired the property at that time, and there was some doubt as to whether we would acquire it or not.

Q. They had a right to abandon?

A. Why, that should mean then it would delay it.

Q. No written contract was even signed between you and the town? 30

A. Nothing more than the original proposition which I made to him, and which I presume was accepted.

Q. You made a proposition, and on February 10th, they passed that motion?

A. Well, it must have been ——

Q. That is all there was to it?

A. There were other motions passed.

Q. The other motion was with respect to the preliminary work of \$300, was it not?

A. Well, the other motion—one motion that was passed when I was at the meeting was the acceptance of the plans which were prepared in accordance with my letter.

Q. Your acceptance of the plans?

10 A. Yes, and then later the people of the borough voted to construct this sewer system in accordance with the plans which I had prepared.

Q. Is it not a fact, Mr. Potts, that that motion that was passed there could easily have subsequently been rescinded?

A. Well, you are more experienced in law than I am, Senator.

Q. Do you know of any reason why it could not?

A. I cannot advise you as a matter of that kind.

20 As a matter of equity, I should say when one was engaged in a professional way by the borough of South Bound Brook, that those gentlemen would not go back on any agreement which they had with me.

Q. Exactly.

A. Yes.

Q. But they had no agreement except to pay you for the preliminary work, and they assert in that motion there —

30 A. Well, that is a legal interpretation on which I would not undertake to pass.

Q. You did in the former case. You said they were obligated to you, and that you had a contract with them?

A. I think I have. I think so yet, but the effect of that resolution I don't understand. I had an agreement with them which was contained in a letter

dated in 1912, and I have faithfully kept their obligation which I undertook at that time.

Q. Now, Mr. Potts, I would like to read from your testimony.

Mr. Gebhardt: On page 32, Mr. Katzenbach.

Q. (Continuing) In the last trial.

Mr. Katzenbach: I cannot follow you with those 10 pages.

The Court: Is that in the direct testimony, Senator?

Mr. Gebhardt: No, I think not. I think this is the cross-examination by Mr. Lindabury.

The Court: Page 32 of the cross-examination?

Mr. Gebhardt: No, page 32 of this. 20

The Court: Does that include the direct examination?

Mr. Gebhardt: Oh, yes, it includes the direct examination.

The Court: Perhaps you can find it that way, Mr. Katzenbach. If you will take your first page of the direct examination and add 32 to it, you may get to it. 30

Mr. Katzenbach: I could not with this.

The Court: What is your direct examination?

Mr. Katzenbach: Well, the direct examination is page 208.

The Court: Now add 32 to that.

Mr. Katzenbach: Yes, but the cross-examination commences on page 234. Well, I will try to find it.

The Court: You said some cross-examination?

10

Mr. Gebhardt: Yes. You asked the question yourself, your Honor.

The Court: Was it on cross-examination, so that Mr. Katzenbach can find it?

Mr. Gebhardt: It must have been, because Mr. Lindabury was asking the questions you did not ask.

20

Q. (Continued) The Court stated "If you did not build it you were to receive less fees than if you did build it? A. If they did not build it, as I recall it, they were to adjust the fees with me."

A. That was for the work I did in connection with getting the rights of way and the property from the Pennsylvania Railroad Company.

Q. Yes?

A. Mr. Lindabury stated, "On a reasonable basis.

30 The witness: Yes. The Court: You were to get more if the plan was accepted? A. Yes, sir. Q. So that it was still within the power of the common council to build the plant or not to build it, making a reasonable compensation to you for what you did, was it not?" And the Court put in, "Up to that time?" Mr. Lindabury repeats the question, "Up

to that time?" Then you answered, "I suppose so. I suppose a council can back out at any time." Did you so testify?

A. I guess I did.

Q. And you were trying to keep them from backing out, were you not?

A. No, sir.

Q. What?

A. No, sir.

Q. Did not care whether they backed out or not? 10

A. Why, Senator, I did not understand them to be backing out at that time. The part of the work was done, and I was employed to get the property from the railroad company on which to build the plant. I don't think anybody had any intention to back out, unless we didn't secure the property on which to build the plant.

Q. Yes, but, Mr. Potts, did you so testify in the other case, just as I have read it to you?

A. Well, now, you have the testimony there, and 20 whatever I said there was true.

Q. "I suppose so. I suppose a council can back out at any time." Did you so testify?

A. I suppose I did, if it is there. But I saw no disposition on anybody's part to back out of anything.

Q. You testified on page 25—the question was asked about a carbon copy of a letter which you wrote to the mayor, as follows: "Hon. George M. Baldwin, 114 Liberty Street, New York: Dear Sir: 30 How about going to Belmar and Ocean Grove on Monday the 22nd instead of Sunday the 28th? I do not believe we can get into the Grove on Sunday. Will you call me on the telephone Saturday morning and advise me what you think of this." You were following it up, were you not, by that letter?

A. I had a telephone call Friday.

Q. Will you please answer my question. You were following it up by this letter, were you not?

A. I was following up a telephone call I had from the mayor.

Q. Yes. Do you remember testifying, on page 42, that you went down there with great reluctance?

A. I don't recall testifying to that; but it is true I went with great reluctance on that particular —

Q. You did not want to go at all?

10 A. No, sir, not on that Sunday, I didn't. I didn't want to go on any Sunday.

Q. You stated this morning that you heard Mr. Bowen make this remark about not making light, did you not?

A. Yes, sir.

Q. He is dead?

A. Yes, sir.

Q. Did it occur to you that you ought to make it?

20 A. Make the remark?

Q. That he made, about not lighting anything, having any lights?

A. Why, as I explained, Mr. Bowen, I felt was in charge of the party; he was the resident engineer; he was living —

Q. Oh, he was in charge of the party?

30 A. Yes, sir, they invited him to go along, and he was the one who did the explaining; he was the one who was in touch with the borough council and sewer committee of South Bound Brook. He was the resident engineer there representing me.

Q. How about Mr. Bacon?

A. Mr. Bacon we picked up in Belmar, because he was engaged in some work in Belmar.

Q. He had made all the arrangements about these dinners before you got there, had he not?

A. Well, the only arrangement there was to make, going to a hotel on Sunday, is to go there.

Q. I know; but he had arranged with the proprietor to have dinner ready for you, had he not?

A. I think he told him to have some extra dinner, that we would be there.

Q. Had you told him to do so?

A. Yes, I think I told him. I think so. If I did not, Mr. Bowen did.

Q. You stated in your testimony in the other case, page 49, that some of these tanks have the roof let off entirely? 10

A. Well, that is true.

Q. What is that for?

A. Well, it saves a little money.

Q. To save the money?

A. That is one of the large reasons.

Q. That is the largest reason?

A. Yes, sir.

Q. Then it is not necessary to keep out the air 20 and light, is it?

A. It is not necessary to exclude or admit. In my judgment they will work as good with a cover or without.

Q. Was that your judgment when you were in Belmar and Ocean Grove on the Sunday in question?

A. That it made no difference in the operation of the plant whether they were covered?

Q. Yes, how much air or light you had in it? 30

A. That has been my idea right along.

Q. And it was so when you built those plants, was it?

A. Yes, sir, the roof being on there for an entirely different reason. The one in Belmar is built under the bed of the street, and the travel is over it, back

and forth. It is under 8 foot and part of it is under the Ocean Boulevard.

Q. Yes.

A. And the one at Ocean Grove is covered because it is at a point where probably twenty thousand people every day pass over it in the summer time.

Q. Notwithstanding, there could have been plenty of vents made on top to permit of the circulation of air to take out the gas without any harm in the operation of the tanks?

A. There is a prejudice against having those open along the seashore; people do not like to have them open, and those things exposed to view. That is the objection in Ocean Grove.

Q. Is that your answer to that question; is that all the answer you have to give?

A. Well, if your question goes to why they are covered, that is my answer.

20

ETHELBERT BACON, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Katzenbach:

30 Q. Mr. Bacon, where do you live?

A. Westfield, N. J.

Q. And what is your business?

A. Civil engineer.

Q. Where were you prepared for that profession?

A. Cornell University.

Q. And are you a graduate of that university?

A. Yes, I am.

Q. How long have you known Mr. Clyde Potts, the defendant in this suit?

A. Since June, 1912.

Q. Did you enter with him as a member of his staff in 1912?

A. Yes, at that time.

Q. Have you been with him continuously ever since? 10

A. I have.

Q. And working on engineering works in which he has been engaged?

A. Yes.

Q. Do you recall the day of April 25, 1915?

A. Yes, I do.

Q. Where were you on that day?

A. I was at Belmar, N. J.

Q. Did you meet any gentlemen on that day at Belmar? 20

A. About half-past 12, a party consisting of Mr. Potts, Mr. Stryker, and Mr. LaRue, and Mr. Morecraft, and Mr. Bowen came in Mr. Potts' automobile with his chauffeur.

Q. To what place?

A. To the Commercial Hotel, where I was staying.

Q. You were staying at that hotel?

A. Yes, I was staying at the Commercial Hotel.

Q. Were you personally acquainted with any of these gentlemen prior to that day, except Mr. Potts? 30

A. Mr. Bowen.

Q. You had known Mr. Bowen?

A. Yes.

Q. How long had you known Mr. Bowen?

A. Two or two and a half years.

Q. Now, on that day, did you go down to the Belmar sewage disposal tanks?

A. Yes, I did.

Q. Were you acquainted with where that tank was?

A. Yes, I was.

Q. When you got down there, what was done with reference to removing the lid in the tank?

A. Mr. Bowen and I —

10

Mr. Gebhardt: This is at Belmar?

Mr. Katzenbach: At Belmar.

A. (Continuing) I think, assisted by Mr. Potts, removed the two covers with spikes which I had with me.

Q. Yes, and then after the covers had been removed, what did you do?

20 A. Mr. Bowen and Mr. Stryker and Mr. LaRue descended through the southerly manhole, and Mr. Morecraft and I followed them, and we were down there a short time. Mayor Baldwin came down, went right out, or very shortly. And right after he went out Mr. Potts came down and Mr. Bowen had been explaining the nature of the plant, and the disposal of sewage, and various matters relating to that, such as the decomposition of these solids in the sewage, the decomposition into liquids and
30 gas and into other organic matters which would not further decompose, and then when Mr. Potts came down he explained further to them.

Q. Now, when you went down there, did you hear any remark made by any one with reference to the making of a light?

A. Yes, I heard Mr. Bowen state that a light

should not be made in the plant. He was addressing it to some one there. I was a short distance from Mr. Bowen at the time.

Q. Who were there in the Belmar plant when that statement was made?

A. This was just at the time that Mr. Potts—just after he had entered, so that Mr. Stryker, Mr. LaRue, Mr. Morecraft, Mr. Bowen and Mr. Potts and myself were in the chamber.

Q. Now, how long were you all together in the Belmar tank, or chamber? 10

A. About a half an hour.

Q. And during that period of time how close were you together?

A. Well, we were all within hearing distance of each other. It is a chamber whereby words spoken can be heard, on account of the nature of construction, and I should say that while Mr. Bowen was explaining, or while Mr. Potts was explaining, we were all within 15 feet of each other. 20

Q. Do you recall Mr. Potts making explanations of what occurred?

A. Oh, yes, yes; after he entered, yes.

Q. Now, after you left the Belmar plant, what did you next do?

A. We went to Ocean Grove. Of course, Mr. Baldwin going in his automobile, and the rest of the party in Mr. Potts' automobile, and we found the gates closed at Ocean Grove, so that the party consisting of Mr. Potts and Mr. Stryker and Mr. LaRue and Mr. Morecraft and Mr. Bowen and myself walked to the side of the Ocean Grove plant while Mr. Potts' chauffeur took his automobile, and Mr. Baldwin took his automobile to the point on the ocean at the entrance to Ocean Grove in Asbury Park. I think it is the North End Hotel. 30

Q. When you approached this plant at Ocean Grove, where did you gather, around what point?

A. We gathered around the—we gathered around the manhole nearest the street.

Q. That is the Ocean Boulevard?

A. Yes, called the Ocean Boulevard.

Q. As you gathered there, what, if anything, was said by any one in the party, that you recall?

10 Mr. Gebhardt: This is at Ocean Grove, now?

Mr. Katzenbach: Ocean Grove.

A. Why, just before we came there Mr. Morecraft and Mr. Bowen and I were walking together, and as we joined the rest of the party, Mr. Potts turned and said to Mr. Morecraft that since it was Sunday he did not believe that they would care to have us enter the plant, and then we went on up, and
20 I heard Mr. Morecraft stating that—I think he asked Mr. Potts if it were similar to Belmar, and then Mr. Potts stating that it was, that the tanks were of similar construction. Mr. Morecraft said that he did not care to enter, and he and Mr. Potts walked over towards the boardwalk, that is, easterly, towards the ocean; and that left Mr. Bowen and Mr. Stryker and Mr. LaRue and myself near the manhole, and we were standing with them and they were asking us questions, and they seemed to ask us questions
30 in relation to this plant, so Mr.—I remember that my feelings were that while we were there it looked as though we were covering something up, so Mr. Bowen and I took off the cover of the Ocean Grove manhole, of the valve chamber nearest the road, and about that time Mr. Potts and Mr. Morecraft walked back and we all stood there talking

probably for 10 minutes, I should say, while Mr. Bowen and Mr. Potts were explaining the plant; and then Mr. Stryker made a remark that as long as I am there I might as well see it, so he descended, and he stood down there for probably 5 minutes talking up to Mr. Potts and the rest of us. He was asking questions of Mr. Potts especially relating to things further back in the valve chamber. Of course, he could see them more distinctly than we could, because he could see things that could not
10
be seen from the surface, and Mr. Potts was explaining these matters to him. Then Mr. Morecraft asked Mr. Potts some other questions about the tank further over, and he and Mr. Potts moved over again towards the ocean, and Mr. Stryker started to walk in away from the manhole; and Mr. LaRue said, "Well, as long as I am here, I might as well go down, too." Mr. Bowen and I had never seen it, so we thought we would go in, and Mr. LaRue went
20
on down and Mr. Bowen and I started to enter the same time, and Mr. Bowen went down ahead of me, and I was just waiting for him to get down when I heard sort of a rumbling, and I knew that something had happened. I didn't know just what it was, but I knew that there was danger of some kind, so I turned and ran toward the street, and it couldn't have been over a few seconds and I looked back, and I saw a man hanging from the manhole and there were two there helping him out. There was sort of a
30
bluish, yellowish flame coming out of this manhole, and they helped him out. I was sort of dazed there for a second. I was watching it. And they helped him out and he ran over towards the ocean probably 15 or 20 feet, and laid down, and they were rolling him over, and I started over to help him also, and as I was passing the manhole I heard

some one calling, "Help," and I looked down, and there was a man whom I later found to be Mr. Stryker, I saw him with his hands on the ladder, and just as I looked he fell back. I jumped, and I helped him up.

Q. You jumped where?

A. Through the manhole. It is a 3-foot manhole. And I helped him up. I don't know whether he was unconscious at the time or not, when I first reached
10 him, but anyway, as soon as I had helped him, started him, he seemed to have this reserved strength and he seemed to be able to pull himself up those steps, and all I had to do was to push him from behind; and at that time, just then, I looked up and I saw some one else at the top of the manhole, two other parties, and they helped Mr. Stryker out by his arms. Then I came on out and I found it was Mr. Potts and some stranger who I did not know. And after that Mr. Potts sent me for a doctor.
20

Q. Mr. Potts sent you for a doctor?

A. Yes, sir.

Q. And I suppose you came back afterward with the doctor?

A. Yes. I found him at his residence.

Cross-examination.

By Mr. Gebhardt:

30

Q. Then it was you and Mr. Potts that helped Mr. Stryker out, was it, or was it a stranger and Mr. Potts?

A. It was I that helped him from beneath; it was a stranger and Mr. Potts that helped him from above.

- Q. Do you know who the stranger was?
A. I do not, no.
Q. Do you know Mr. Morecraft?
A. Yes, I know Mr. Morecraft.
Q. Was it he?
A. No, it was not.
Q. Where was he?
A. Why, he was over—I saw him just before I went for the doctor. He was over with Mr. LaRue.
Q. He did not help Stryker out at all? 10
A. No —
Q. Was not anywhere near him?
A. He was the one that helped me out.
Q. Did he help Stryker out?
A. I think not, because I came up right after Stryker.
Q. You said Mr. Potts and a stranger helped Stryker out; is that so?
A. I thought you asked, helped me out.
Q. No, Mr. Stryker. You said Potts and a 20 stranger helped Stryker out?
A. I think it was the same parties that helped me out that helped Stryker, because I came out immediately after Stryker.
Q. Did you have to be helped out, too?
A. What?
Q. Did you have to be helped out, too?
A. When I came up the ladder, they grabbed my arms.
Q. Well, did you have to be helped out, or could 30 you get out yourself?
A. I could have gotten out myself, but they were there and helped me out.
Q. The explosion was all over, was it not, and the fire, too?
A. Yes, the fire was all over.

Q. Why did you need helping out?

A. They were there; they grabbed me.

Q. You did not see Mr. Morecraft around there at all, did you?

A. Not until after that.

Q. When it was all over?

A. Not until a few seconds after that.

Q. You said you ran to the street when you heard this rumbling under there, did you?

10 A. Yes.

Q. How far away was the street?

A. Oh, probably 20 or 30 feet.

Q. Frightened, were you not?

A. I knew there was some danger of some kind.

Q. How did you know that?

A. Because it was rumbling and shaking.

Q. Was it so terrific as to shake the ground around where you were?

A. Yes.

20 Q. What did you suppose it was?

A. I did not know.

Q. Did you have any opinion about it, being an expert engineer?

A. No. I knew it was a danger of some kind.

Q. You knew it was an explosion, did you not?

A. No, I did not know it was an explosion.

Q. You thought it was, did you not?

A. I knew it was something in that vicinity.

Q. In that vicinity?

30 A. As soon as I turned around I knew it was an explosion, because I saw the flame.

Q. You said, when you turned around, two men were helping this man out, whoever it was. Who was that man?

A. I found out afterwards, Mr. LaRue.

Q. Who were those two men?

A. I do not know.

Q. Was Mr. Morecraft one of them?

A. He might have been.

Q. You knew him, did you not?

A. Yes.

Q. You had not your eyes burned or anything, had you?

A. No.

Q. You could see, could you not?

A. What?

Q. You could see ——

10

A. Yes, I could see.

Q. You could see who it was?

A. No, I could not see who it was.

Q. Why?

A. Why?

Q. Why?

A. Because they were bending over.

Q. You had been with Mr. Morecraft during the early part of the day, had you not?

A. Yes.

20

Q. Knew him, then?

A. Yes.

Q. Could you not tell whether he was the one that helped Mr. LaRue out or not?

A. I would not wish to say that he was.

Q. Why would you not wish to say he was? Do you not want to give him the credit for doing that?

A. I have no recollection on that point.

30

Mr. Katzenbach: That is objected to.

Q. I am asking whether that is the case or not.

A. I do not want to swear to something I don't remember. It might have been.

Q. He was right before your eyes, was he not?

A. I do not remember of recognizing him.

Q. He was right before your eyes?

A. About 20 to 30 feet away.

Q. It was daylight?

A. Yes, it was daylight.

Q. You had been with him just an hour or two before, had you not?

A. Yes. My attention was not directed to who was taking him out, though.

Q. What was it directed to?

10 A. Flame, and the fact that the explosion had occurred.

Q. That was all you thought about?

A. That was all I thought about for the second, yes.

Q. Well, it took them some little time to get Mr. LaRue out, did it not?

A. Well, they must have been taking him out some little time before I turned around and saw it.

20 Q. You only ran 20 feet, you say, to the street, and then turned right around?

A. I did not say I turned around that instant. I said that when I turned around they were taking this man, who I later found to be Mr. LaRue, out.

Q. You only ran 20 feet when you heard the rumbling?

A. Yes.

Q. You ran 20 feet and then turned around and saw the flames?

A. When I turned around, I saw the flames.

30 Q. Did you not immediately turn around to see what the trouble was you were running away from?

A. I suppose I did, in a few seconds, as soon as I thought of it.

Q. As soon as you thought of it?

A. Yes.

Q. It did not take you long to think of it, did it?

A. It only happened a few seconds.

Q. You looked back to see what the danger you were running away from was, did you not, just as soon as you thought it was safe to turn around and look back; did you not?

A. No, the first impression was to get away from the danger.

Q. And when you thought you were a sufficient 10 distance away you turned around immediately to look to see what the trouble was?

A. When I turned around I saw this flame.

Q. Yes. You turned around right away, did you not, as soon as you got this 20 feet?

A. I assume within a few seconds of it.

Q. And by that time there was some man over there helping Mr. LaRue out?

A. Yes.

Q. Mr. LaRue had gone down in. You had seen 20 him go down into the tank, had you not?

A. Oh, yes, yes, yes.

Q. And you had seen Bowen start to go down, too, had you not?

A. Oh, yes, yes.

Q. And Bowen had been gotten out in some way, blown out or helped out, or something?

A. Yes.

Q. And Mr. LaRue had come back and people were on the top helping him out; is that right? 30

A. Yes, that is right.

Q. Now, how long did that take?

A. A few seconds, I think.

Q. How many seconds, two or three?

A. No, I should—I should think it would probably take 15 seconds.

Q. Is that your best estimate?

A. That is my best estimate of it.

Q. Then what next occurred?

A. After what?

Q. After you saw these men helping Mr. LaRue out. They got him out, did they not?

A. Yes, they got him out. I came back to help Mr. LaRue.

Q. You helped Mr. LaRue out, did you?

10 A. No, I did not.

Q. Why?

A. Because, as I passed the manhole, I heard a voice calling for help.

Q. As you passed the hole you heard a man calling for help?

A. I left Mr. LaRue then. He was about 15 or 20 feet beyond the manhole, laying down. They were rolling him over.

Q. They had gotten him out?

20 A. Yes.

Q. 15 or 20 feet from the manhole, and were rolling him, as you got to the manhole, is that right?

A. They didn't get him 15 or 20 feet from the manhole.

Q. He was there, was he not?

A. He got himself over there.

Q. He did that?

A. Yes.

Q. And they were over there rolling him?

30 A. Yes.

Q. And by that time you got to the manhole?

A. Yes.

Q. Did it take you all that time to get to the manhole; did it?

A. Yes.

- Q. How long was that?
A. How long was that?
Q. Yes.
A. Why, a few seconds.
Q. How many seconds?
A. How many seconds?
Q. Yes.
A. From when?
Q. From the time you ran over to the boardwalk
away from this trouble? 10
A. From the time it started?
Q. Yes.
A. Not over half a minute.
Q. Not over half a minute. Now, up in the Bel-
mar tank, you heard Mr. Bowen say to the men
that lights, a light should not be made down there?
A. Yes.
Q. Just what words did he use?
A. That was the purport of what he said.
Q. Is that as near as you can give it? 20
A. As near as I can give it, yes.
Q. And who was there when he said it?
A. We were in the tank, in the valve chamber.
Q. Not in the tank, I did not say that, Mr. Bacon.
Who was there?

The Court: When this was said, who was there?

- Q. Who was there when this was said, that is, to
hear it, I mean? 30
A. Everybody in the tank should have heard it.
Q. Mr. Morecraft?
A. If his hearing had been normal.
Q. Well, you said the last time that he did, that
you had no doubt that he heard it, did you not? Was
not that your testimony before?

A. I think my testimony was that he could have heard it. I have no doubt that he could have heard it, that any one with normal hearing could have heard it, where Mr. Morecraft stood.

Q. Did you testify this way on the former trial, on page 73, the last page of your examination: "Cross-examination. Q. Was Mr. Morecraft around there? A. Yes, Mr. Morecraft was there. Q. He could have heard it, could he? A. Yes, he could have heard it. Q. And Stryker could have heard it if Bowen had said that? A. Yes."?

A. Well, that is what I am testifying to now.

Q. Then Mr. Morecraft—you have no doubt at all that he heard it?

A. If his hearing —

Q. I did not ask you that. You did not say anything about the hearing in the other case. You said that he could have heard it, Mr. Stryker could have heard it. Now, is that so?

20 A. I understood that testimony to mean that, could a man hear it if his hearing was normal.

Q. Was there anything said about his hearing on the other examination, to you?

A. I understood that to refer to position in one

Q. You talked to Mr. Morecraft that day, did you not, different times?

A. I had very little conversation with him; I had some.

30 Q. You had enough conversation to know whether he could have heard these remarks or not, did you not?

A. No, I don't know that I had.

Q. You do not know that you had?

A. I don't remember of speaking to Mr. Morecraft any distance. When you are near Mr. Morecraft —

Q. Mr. Bowen was the man who had charge of the sewer business up at South Bound Brook, was he not?

A. Yes.

Q. And had a slight communication with Mr. Morecraft, did he not?

A. Why, I assume so; I don't know.

Q. He stated this, did he not, for those men to hear; did he not?

A. Oh, yes, yes. 10

Q. That is what he said it for?

A. Yes.

Q. That is what you understood, did you not?

A. That is what I understood?

Q. That he said it for the purpose of letting these men hear it?

A. Oh, certainly.

Q. And there is not any doubt that they did hear it, is there?

A. With the possible exception of Mr. Morecraft. 20

Q. Do you make an exception? Do you say now that he did not hear it?

A. I don't know whether he did or not. I say that he would have heard it if his hearing had been normal.

Q. Well, I will read your testimony on the former trial. The question was, "He could have heard it, could he?"; your answer, "Yes, he could have heard it." 30

A. That is what I say now.

Q. You did not put any conditions on it before, did you?

A. That is what I say now.

Q. Yes. You say that Mr. Morecraft could have heard it just as you said before; is that right?

A. I have only seen Mr. Morecraft on two or three occasions. I notice when he is on the witness stand, though, he has to lean forward and sometimes put his hand behind his ears. I did not know that that day.

Q. Yes. I do that, too, sometimes. But you did not know then that Mr. Morecraft could not hear quite as well as other people when you said positively, "Yes, he could have heard it"?

10 A. Are you speaking of this trial?

Q. Yes.

A. I say now, he was in a position where he should have heard it.

Q. It was said good and loud, was it not?

A. I heard it.

Q. Was it said good and loud, or not?

A. Oh, yes, yes.

Q. Said good and loud?

A. Loud enough for me to hear it.

20 Q. That is not the question. I asked you whether it was said good and loud?

A. Yes, normal voice.

Q. No noise around there, was there?

A. No, no noise.

Q. You were all standing there listening, were you not?

A. Yes, we were all standing there.

Q. Now, at Ocean Grove you stood around 10 minutes before you went down, you said?

30 A. Why, I should—before who went down?

Q. Before anybody went down?

A. Well, I don't know just how long; I know it was a few minutes, say 5 or 10 minutes.

Q. 5 or 10 minutes. You said on your direct examination it was 10 minutes, did you not?

A. Well, I should say—I won't say—an approximation; it is an approximation.

Q. Who took the lid off at Ocean Grove?

A. Mr. Bowen and myself.

Q. You two took that off?

A. Yes.

Q. Expecting these people to go down, did you not?

A. No, we did not expect them to go down.

Q. What did you take it off for then?

A. Let them see.

Q. From the top? 10

A. As I stated, I stated from our conversation it might have appeared that we were trying to cover something up.

Q. Was that before the lid was taken off, that you thought that?

A. Yes, that was before the lid was taken off. That is the reason that we took the lid off.

Q. How soon after you got there did you take the lid off?

A. How soon after we got there? 20

Q. Yes.

A. Why, not over 10 minutes; possibly as low as 5.

Q. You went there for the purpose of seeing this tank, did you not, that is, this crowd, I mean?

A. Oh, yes.

Q. You were taking this sewer committee there for the purpose of inspecting this tank, were you not?

A. Oh, yes, yes. 30

Q. And you took the lid off so that they could go down and inspect it, did you not?

A. No, we did not.

Q. What did you take it out for?

A. So we could see down, so that they would not think we were covering anything up.

Q. Could see down?

A. Yes.

Q. Would not that be inspecting it?

A. Well, you can take it that way.

Q. You went into the Belmar tank, did you not?

A. Yes.

Q. And that was the proper way to see it in order to inspect it, was it not?

A. Yes.

10 Q. You could see very little from the top, could you not?

A. Yes, very little.

Q. In order to inspect it, it was necessary to go down?

A. If you wanted to inspect it as we did the Belmar tank.

Q. If you wanted to inspect it, it was necessary to go down into the tank, was it not?

20 A. To really inspect it, yes; not to see into it, no.

Q. Well, to inspect it then; that is what they went there for, to inspect it?

A. Yes.

Q. They did not go to look at the surface of the land, the top?

A. No, they went to inspect it, yes.

Q. In order to do that you had to go down in?

A. Yes.

Q. That is the reason you took the lid off?

30 A. No, it is not.

Q. It is not? Well, did you expect to prevent their going down?

A. Yes, because —

Q. Do you tell this Court and jury now that you took this lid off so that they could look down without any idea of their going down?

A. That is exactly the truth.

Q. That is the truth?

A. Yes.

Mr. Gebhardt: That is all.

Re-direct examination.

By Mr. Katzenbach:

10

Q. There was no danger that you know of, as an engineer, in entering that tank—you were about ready to go down yourself—so far as you know?

A. Yes, sir, certainly.

Q. And you jumped to go down when Mr. Bowen preceded you?

Mr. Gebhardt: I object to leading questions, if the Court please. This man is an expert; this is his own witness.

20

The Court: It is rather leading.

Q. Were you there prepared to go down or not?

A. Yes, I was, until Mr. Potts made the statement that he thought we had better not go in on Sunday.

Q. But this thought was simply because he thought it better not to go on Sunday?

A. Yes, that is the idea.

Q. Did you know of any reason why you should not have entered the Ocean Grove tank?

A. Absolutely none, no.

Q. And when the tank manhole cover was removed and Mr. Stryker and Mr. LaRue went down, then what did you and Mr. Bowen do, if anything?

A. We started to go down too, right after that.

30

Q. Right after that?

A. After Mr. LaRue, not after Mr. Stryker.

Q. Yes. Well, then, who got there first to go down?

A. Mr. Bowen started ahead of me, or stepped in ahead of me, and I was waiting for him to get far enough for me to go.

10 Mr. Katzenbach: That is all.

ALEXANDER G. ANDERSON, called as a witness on behalf of the defendant, being duly sworn by the Court, testifies as follows:

Direct examination.

By Mr. Katzenbach:

20 Q. Mr. Anderson, you are the county clerk of this county?

A. Yes, sir.

Q. And you recall the case of Raymond R. Stryker vs. Clyde Potts, that was tried here in April of last year, do you not?

A. The last trial?

Q. Yes, the trial in April, of last year.

30 Mr. Gebhardt: What is the purpose of this?

Mr. Katzenbach: I just want to show that he has charge —

The Court: You remember that there was a trial of Stryker against Potts?

Witness: Oh, yes.

Q. Now, at the conclusion of that trial, did you take charge of any exhibits that were offered in that trial?

A. I did.

Q. And where have those exhibits been since that trial to the present time?

A. Down in the safe.

Q. In the safe?

A. In my office, yes, sir.

10

Q. And state whether or not to your knowledge they have been there all that time?

A. They have been ever since.

Q. Now, have you produced them here in court today?

A. I have.

Q. And are these the exhibits?

A. Yes.

20

CALVIN REED, recalled, on behalf of the defendant, testifies as follows:

Direct examination.

By Mr. Katzenbach:

Q. Mr. Reed, when did you first learn of this explosion at Ocean Grove?

A. On the Sunday afternoon of the day of the explosion, about 4 o'clock.

30

Q. Did you go down there to the tank on that day?

A. Yes, sir.

Q. What did you do with reference to the manhole cover?

A. Just covered it up, put the cover on.

Q. Did you enter the tanks on that day?

A. No, sir.

Q. When did you first go into the tank?

A. About 8 o'clock Monday morning.

Q. Who were with you when you went down there to the tank?

A. My assistant, John Van Cleve, and Officer Westervelt.

10 Q. When you went down to the tank, on the morning—that would be Monday, September 26th?

A. Yes, sir.

Q. Who was the first one to enter?

A. I was.

Q. When you went into that tank did you walk, or not, down the platform?

A. Yes, sir.

Q. When you got down on the concrete platform was there anybody else to enter the tank?

A. Mr. Van Cleve followed me right down.

20 Q. Mr. Van Cleve. He is your assistant?

A. Yes, sir.

Q. And where was Officer Westervelt?

A. He was standing up on top.

Q. He was on top. How near the manhole?

A. Right close to it, so he could look down.

Q. Right near the manhole so he could look down.

Now, on the concrete floor there, what did you find?

A. I found a match box, had one good match into it, and one partly burned match on the platform, and

30 a part of a burned cigar.

Q. Now, you say that this match box had one match in it?

A. One match in it.

Q. That was not lighted?

A. Not lighted.

Q. And you say that there was one match on the floor that was lighted?

A. Yes, sir.

Q. And there was a part of a burnt cigar?

A. Yes, sir.

Q. Now, were they produced here in court last April in the suit brought by Mr. Stryker against Mr. Potts?

A. Yes, sir.

Q. And state whether or not to your knowledge 10 they were left in court. Were they?

A. They were, to the best of my knowledge, left right here in court.

Q. Will you examine this match box and state whether, in your opinion, that is the match box that you found there? (Handing box to witness.)

A. It looks like the very box.

The Court: Those are the things just produced by Mr. Anderson, are they? 20

Mr. Katzenbach: Yes.

Q. And this is the cigar and this is the lighted match?

A. Yes, sir.

Q. And to whom did you hand those on that day?

A. How is that?

Q. To whom did you give those on that day?

A. Officer Westervelt. 30

Q. Officer Westervelt is an official of the Ocean Grove Camp Meeting Association?

A. One of the police officers.

Q. A police officer there?

A. Yes.

Q. State just on what position on the platform you

found these articles, and how far they were from one another.

A. They were found right near the entrance to No. 2 chamber. That is the far end of the platform.

Q. The far end of the platform?

A. From the manhole.

Q. About how much distance from the manhole?

A. Why, it is about 10 feet.

Q. About 10 feet from the manhole?

10 A. Yes, the platform is 13 feet.

Q. 13 feet. And you found them about 10 feet from the manhole?

A. Yes, back into the platform.

Q. That is the far end?

A. Yes, that is right at the entrance of No. 2 chamber.

Q. You say at the entrance of No. 2 chamber?

A. Yes, sir.

20 Q. Now, so that there is no mistake, how far away from the manhole did you find these?

A. About 10 feet.

Q. About 10 feet. Are the rounds of the ladder that you go down damp or dry?

A. All wet.

Q. And what is the condition as to dampness of the concrete chamber itself?

A. All, the inside; it is all covered with a wet slime.

Q. All covered with wet slime?

30 A. Everything that is in there under the cover.

Cross-examination.

By Mr. Gebhardt:

Q. Just one question. Are they in exactly the condition now that they were when you found them?

A. Well, no, they have been handled two or three times. They partly fell apart. When we found them the box was more together than what it is now, but handling the box it has come apart.

Q. Was the box intact, that is, folded?

A. No, the box had been burned, partly burned.

Q. What I mean is, was this folded together and this lower part pushed inside of it just as it was there (indicating)?

A. No, kind of broken apart. 10

Q. To what extent?

A. So that it would not stay together.

Q. Show the Court and jury, now, just how it was.

A. Like that. The top of the box was broken so that this was partly out like that; you couldn't keep it together (illustrating).

Q. The inside match there was exposed, was it?

A. Yes.

Q. When you found it? 20

A. Just as it is now in the box, the same as that.

The Court: Mr. Reed, show the jury. Some of the jury did not see.

By Mr. Katzenbach:

Q. Mr. Reed, Judge Silzer says some of the jury did not see, so you show them.

A. See, now, here is more of the box (indicating). 30

By Mr. Gebhardt:

Q. When did that get broke?

A. You know, these boxes are only tinder, anyhow, and they were held together, paste, somehow.

I think that was about the condition the box was picked up in. It was partly open like that (illustrating).

The Court: Was the burned match right by the box?

Witness: The burnt match was right here, and a good match inside of it.

10

Mr. Gebhardt: Just take a good look at that, gentlemen. You will have a right to take these things out with you when you are considering your verdict.

JOHN VAN CLEVE, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

20

Direct examination.

By Mr. Katzenbach:

Q. Mr. Van Cleve, where do you live?

A. Ocean Grove, sir.

Q. You are not deaf, are you?

A. No, sir.

Q. How long have you lived in Ocean Grove?

A. I worked for the Ocean Grove Association for about 35 year.

30 Q. And is one of your duties to assist Mr. Reed in caring for the sewage disposal plant?

A. Yes, sir.

Q. Do you recall the morning of April 26, 1915?

A. I do.

Q. Did you go with Mr. Reed and Officer Westervelt to the tank that morning?

A. Yes, sir.

Q. Did you go into the tank immediately after Mr. Reed went in?

A. I did.

Q. Did you walk along the platform?

A. Right along the platform, sir.

Q. And did you see anything on the platform?

A. I saw Mr. Reed pick up a match box and a butt of a cigar and a burnt match.

Q. And a burnt match?

A. Yes, sir.

10

Q. Did you afterward examine the match box?

A. I looked at that before I went out and then handed them to Westervelt outside.

Q. You handed them?

A. Mr. Reed passed them.

Q. Did you look at the match box?

A. Yes, sir.

Q. What did it have in it?

A. It had one good match.

Q. Now, you recall coming here with Mr. Reed in the case instituted by Mr. Stryker against Mr. Potts?

A. Yes, sir.

Q. And testifying. Now, will you take a look at this match box and state whether or not, in your opinion, that is the match box that was found there on that morning?

A. I believe it is the very match box.

Q. And, in your opinion, does that look like the burnt match?

A. Yes, sir.

30

Q. And the cigar that you have in front of you?

A. Yes.

Q. Does that appear like the cigar?

A. Yes, sir.

Q. And you say you saw Mr. Reed hand these to Mr. Westervelt on that morning?

A. Yes, sir.

Cross-examination.

By Mr. Gebhardt:

Q. Were they in the same condition they are now?

A. No, it has been handled up a little, handled so much.

Q. Was the match box open when Mr. —

10 A. Well, partly; just a short distance, so you could see the match.

Q. And just as it is there?

A. Well, the box is ruffled up some.

Q. No, but just look.

A. Handing so much.

Q. Just lean over and look at it, and see if that match on the inside is just as it is now?

A. I could not say whether it is, just as it is now.

Q. As near as you can tell?

20 A. I believe it is, as near as I can tell. The match may have changed a little, you know, since I saw it last April.

GEORGE D. WESTERVELT, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

30 Direct examination.

By Mr. Katzenbach:

Q. Mr. Westervelt, you are an official of the Ocean Grove Association, are you not?

A. Yes, sir.

- Q. And you were such in April, 1915?
A. Yes, sir.
- Q. Do you recall the morning of April 26, 1915?
A. Yes, sir.
- Q. Did you go to the sewage disposal plant at Ocean Grove on that morning, with anybody?
A. I did.
- Q. With whom?
A. With Mr. Reed and Mr. Van Cleve.
- Q. Did you see anybody descend into the tank? 10
A. Yes, sir.
- Q. Who did descend there?
A. Mr. Reed, and Mr. Van Cleve followed him immediately.
- Q. After they had been there, did they hand you anything, after they had gone down?
A. Yes, sir, they handed me a match box and a cigar and also a burnt match.
- Q. Yes. Did you see what the match box had in it; did you inspect it? 20
A. One match.
- Q. One match?
A. Yes, sir.
- Q. You recall testifying here in the case instituted by Mr. Stryker against Mr. Potts, do you not?
A. Yes, sir.
- Q. And you produced that—you kept it, did you not; that is, the Ocean Grove Association kept it?
A. Yes, sir.
- Q. And you brought it here to court? 30
A. Yes, sir.
- Q. Now, will you state your opinion whether this is the match box which was handed to you on that day?
A. Yes, sir, that is the box.
- Q. And will you state what your opinion is as to whether that is the match or not?

A. That looks like the cigar, yes.

Q. And you say there was one burnt match. Did it look like that (indicating)?

A. That looks like it, yes, sir.

Q. And there was one good match in the box?

A. One good match, yes.

Cross-examination.

10

By Mr. Gebhardt:

Q. Burnt matches look about alike, do they not, Mr. Westervelt?

The Court: There is no doubt about this, is there, Senator?

20 Mr. Gebhardt: I just thought I would have a little fun, that is all.

The Court: Let us get along. We will have a little fun later.

Mr. Katzenbach: The defendant rests.

Mr. Gebhardt: I would like to ask Mr. Potts a question that I overlooked.

30

CLYDE POTTS, recalled, testifies as follows:

By Mr. Gebhardt:

Q. Mr. Potts, you have stated that a flame introduced into a mixture of methane gas and air is likely

to cause a violent explosion, have you not? Now, I would like you to explain to the jury just how that would occur.

A. Why, if you have methane gas —

Mr. Katzenbach: Speak a little louder, Mr. Potts.

A. (Continuing) — with a mixture of methane gas and air of the right proportions, it makes an explosive mixture, which, if ignited with a sufficient heat, as, for example, a match, it will explode. If confined, there would be an explosion, and if partly confined, there would be less of an explosion; but it would explode. That is my understanding of it, Senator. 10

Q. Maybe the jury does not know, but I am not clear—I am not a scientific man—I am not clear myself. When the explosion occurs, what then occurs?

A. Well —

Q. Does it instantly break forth in flame? 20

A. I should say so.

Q. Yes.

A. I should think that anybody could understand the explosion of a gas. Explosive engines are very common in automobiles, and pretty much everybody understands how they work.

Q. They explode entirely by sparks, do they not, electric sparks?

A. Electric spark.

Q. How? 30

A. An electric spark, and if you have had experience with an automobile, you will find sometimes that spark is not hot enough.

Q. I have had lots of experience, but do not know anything about them, sir. Now, this sewer system in Ocean Grove took in the village or association, or whatever you call it, of Ocean Grove?

A. Well, Ocean Grove is a camp meeting association.

Q. Yes, but it is a considerable village, too?

A. It is a part of Neptune Township, yes, sir.

Q. It took care of the sewage of what population?

A. Well, the population varies there. In the winter time it is much less, of course, than it is in the summer. In the summer there is a very large population there, and there are a large number of excursions in there. I would not want to say what the population of Ocean Grove was. It may vary from 3,000 to 30,000.

Q. And the garages there empty into this sewer?

A. No, sir, none that I know of.

Q. What becomes of their sewage?

A. Well, Mr. Reed is here, Senator Gebhardt, and he has charge of the sewer, and I suggest you ask him those questions.

Q. Of course, you do not know anything about that?

A. I don't know. I would prefer to have him say.

Q. When you struck a match, you say that would be sufficient to cause this explosion, the explosion occurs instantly, does it not?

A. Why, I presume so.

Q. And the flames occur instantly?

A. I think the flame, of course, is the explosion. The flame —

Q. The flame is the explosion?

A. Yes.

Q. And the explosion is the flame; is that it?

A. The explosion is the quick combustion of certain gases which are inflammable.

Q. Well, they are both the same, are they not; both instantaneous, are they not?

A. In this case, do you mean?

Q. In any case where there is an explosion of methane gas with air?

A. Well, I presume in this case the explosion began immediately when the match was ignited.

Q. Immediately?

A. And there was an explosion, and then all the gas there burned out through the manhole.

Q. And that was immediately?

A. I should say so, yes, because it was all over in a very few seconds. 10

Q. When the match was started, the explosion occurred; is that the idea?

A. I should think so, yes, sir.

The Court: Is there any rebuttal?

Mr. Gebhardt: Yes.

The Court: You had some point in reserve, too.

Mr. Gebhardt: I am going to use him now, on rebuttal, if your Honor please. 20

HELENA B. LARUE, recalled by the plaintiff, in rebuttal, testifies as follows:

Direct examination.

By Mr. Gebhardt:

Q. How long did you live with your husband?

A. Ten years.

Q. In April, or for some months prior to April 25, 1915, did your husband smoke? 30

A. No.

Mr. Gebhardt: That is all.

Mr. Katzenbach: No questions.

RICHARD AMBROSE, called as a witness on behalf of the plaintiff, in rebuttal, testifies as follows:

Direct examination.

By Mr. Gebhardt:

Q. Were you a member of the common council in South Bound Brook in 1915?

10 A. I was.

Q. Did you know Mr. LaRue?

A. I did.

Q. How intimately did you know him?

A. Well, just at the time that he was a member of the council, 1915. I knew of him, but not as a man intimately —

Q. During that period, did you know him intimately?

A. Not until he became a member of the council.

20 Q. That is what I mean?

A. After he became a member of the council.

Q. Then you knew him intimately?

A. Intimately, yes.

Q. Do you know whether he smoked or not in April, 1915?

A. Not to my knowledge.

Q. Did you attend all of the meetings of the council in 1915?

A. I think I did; I do not think I have ever missed
30 a meeting.

Q. Did you ever know of any resolution or motion or request of any kind, that Mr. Potts should take the sewer committee down to Ocean Grove?

A. I did.

Q. How?

A. I did that; I notified the sewer committee.

Q. How?

A. I was the one that notified the sewer committee to go down.

Q. No. Did you ever know of any request on behalf of the common council—did the council, in other words, ever ask Mr. Potts to take them down there?

A. No, never.

Mr. Katzenbach: No cross-examination.

10

By Mr. Gebhardt:

Q. Where did you get that information to notify the sewer committee?

A. I was up in the borough clerk's house on the 21st —

Q. You need not tell it; that is sufficient.

The Court: Is there anything further, Senator?

20

Mr. Gebhardt: That is all.

The Court: Both sides rest then?

Mr. Gebhardt: Both sides rest.

Mr. Katzenbach: I move for a direction of a verdict in favor of the defendant on the ground that the evidence shows no act of omission or commission on the part of the defendant which would render him liable, and also on the ground that there is no evidence, of course, of negligence in the testimony offered by the plaintiff, and also renew my motion to non-suit.

30

The Court: You can hardly renew a motion to non-suit after you get in it. Do you mean on the same grounds that you had for a motion for non-suit?

Mr. Katzenbach: Yes, the same motions.

The Court: I will deny the motion.

10 Mr. Katzenbach: And I will ask for an exception.

The Court: Yes.

Mr. Katzenbach: I desire to offer in evidence a letter written by Mr. Clyde Potts to Mr. Alvin Reed on April 22, 1915, and the answer received by Mr. Clyde Potts on April 26th, 1915.

The Court: They will be admitted.

20

(Letter of April 22, 1915, marked D1.)

(Letter of April 26, 1915, marked D2.)

Mr. Katzenbach: And the match box with the unlighted match and the lighted match and the cigar.

The Court: Yes. They will all be admitted.

30 (The envelope containing the match box with the unlighted match and the lighted match and cigar was marked D3.)

(Mr. Katzenbach sums up the case to the jury.)

(Mr. Gebhardt sums up the case to the jury.)

(The Court charged the jury as follows):

(The charge to the jury will be found on page 11.)

RULE TO SHOW CAUSE.

SOMERSET COUNTY CIRCUIT COURT.

HELENA B. LARUE, Admin-
istratrix of KARSNER D.
LARUE, Deceased,
Plaintiff,

vs.

CLYDE POTTS,
Defendant.

ACTION AT LAW. 10

RULE TO SHOW CAUSE

A verdict having been rendered in favor of the plaintiff in the above-entitled cause, and application having been made in due course by the defendant for a rule to show cause why the verdict should not be set aside and a new trial granted; it is thereupon, on this fifteenth day of January, 1917, on motion of Frank S. Katzenbach, Jr., attorney for the defendant, 20

Ordered that the plaintiff, Helena B. LaRue, administratrix, &c., show cause before this court at the Chancery Chambers in the city of Jersey City, N. J., on the third day of February next, at ten o'clock in the forenoon, why the verdict should not be set aside and a new trial be granted. 30

And it is further ordered that this rule shall be granted saving all exceptions.

Let this rule be entered on the minutes.

GEO. S. SILZER,
Judge.

PLAINTIFF'S ACCEPTANCE.

SOMERSET COUNTY CIRCUIT COURT.

10	HELENA B. LARUE, Admin- istratrix of KARSNER D. LARUE, Deceased, <i>Plaintiff,</i>	}	ON RULE TO SHOW
	vs.		CAUSE.
	CLYDE POTTS, <i>Defendant.</i>	}	

20 The Court in the above-stated cause having decided that a new trial shall be ordered unless the plaintiff will accept ten thousand dollars (\$10,000) in lieu of the sum of fifteen thousand dollars (\$15,000) awarded by the jury, the said plaintiff hereby elects to accept the said sum of ten thousand dollars (\$10,000).

WM. C. GEBHARDT,
Attorney of Plaintiff.

Dated April 14th, 1917.

RULE FOR JUDGMENT.

(Filed January 13, 1917)

SOMERSET COUNTY CIRCUIT COURT.

HELENA B. LARUE, Ad-
ministratrix of KARSNER
D. LARUE, Deceased,
Plaintiff,

vs.

CLYDE POTTS,
Defendant.

10

ACTION AT LAW.

This cause being regularly on the list for trial at 20
the December Term, 1916, of this court and having
been regularly referred by Supreme Court Justice
to the Circuit Court Judge for trial, and being called,
and both parties appearing, and the cause being
moved by the plaintiff and the jury empanelled and
sworn and the evidence by the parties submitted, and
the respective parties by their counsel being heard,
and the Judge having charged the jury, and the jury
having retired to consider of their verdict, come
again into court and say they find in favor of the 30
plaintiff and against the said defendant, and assess
the plaintiff's damage at fifteen thousand dollars.

It is, therefore, on this twelfth day of January,
1917, ordered, that judgment final be entered in favor
of Helena B. LaRue, administratrix of Karsner D.
LaRue, deceased, the said plaintiff, against Clyde

Potts, the said defendant, for the sum of fifteen thousand dollars, besides costs of suit to be taxed.

Rule actually entered this thirteenth day of January, nineteen hundred and seventeen.

On motion of

WM. C. GEBHARDT,
Attorney for Plaintiff.

10

ACKNOWLEDGMENT OF SERVICE.

(Filed January 25, 1917)

SOMERSET COUNTY CIRCUIT COURT.

20	HELENA B. LARUE, Ad- ministratrix of KARSNER D. LARUE, Deceased, <i>Plaintiff,</i>	}	ACTION AT LAW.
	vs.		
	CLYDE POTTS, <i>Defendant.</i>	}	

30

Service of a copy of the rule to show cause why a new trial should not be granted in the above-entitled cause allowed on January 15th, 1917, is hereby acknowledged this 22nd day of January, 1917.

WM. C. GEBHARDT,
Attorney for Plaintiff.

MEMORANDUM.

SOMERSET COUNTY CIRCUIT COURT.

HELENA B. LARUE, Ad- ministratrix of KARSNER D. LARUE, Deceased, <i>Plaintiff,</i>	}	ON RULE TO SHOW CAUSE.	10
vs.			
CLYDE POTTS, <i>Defendant.</i>			

MR. FRANK S. KATZENBACH, JR.
 MR. EDWARD L. KATZENBACH, for the rule.
 MR. WILLIAM C. GEBHARDT, opposed.

20

MEMORANDUM.

The trial of this case resulted in a verdict for the plaintiff, and the defendant is here on a rule to show cause why a new trial should not be granted. Three grounds are assigned:

1. That the verdict is contrary to the evidence and the charge of the Court. 30
2. That there was an insufficiency of evidence.
3. That the damages awarded are excessive.

I am satisfied from a careful review of the evidence, that there was not only sufficient evidence upon which to base the verdict, but that the plaintiff sustained the burden. The case was typically one for the determination of a jury on disputed questions of fact, and one which I do not think I should disturb.

The argument, that the damages awarded are excessive gives me more trouble, in view of the fact
10 that all the available evidence was not presented.

The deceased resided at Bound Brook, N. J., and worked in New York as an accountant, receiving an annual salary of \$1500. He was 31 years of age at the time of his death, and left a wife aged 28, and a son of 7 years.

There was very little evidence before the jury to show how the deceased disposed of his earnings.

Mrs. LaRue testified that the money was turned over to her and that she handled it, giving him \$5
20 a week for his personal use, but this was merely an estimate. With the money received she "tried to pay for a home, and around the house," she returned money to her husband for clothes, commutation ticket, lunches, &c. The home was mortgaged, and they paid every six months on the principal, and there were "sidewalks and improvements all the time." She did not know "what proportion of it was used on yourself and boy." The home was in her name.

30 It was apparent on the trial that the testimony was meagre, and when the Court called attention to the fact that the jury should have more definite information, Mrs. LaRue thought this could be had if she had a chance during the evening recess to look over her affairs and give the matter further thought. On the resumption of the trial next day, however, she did not take the stand.

It becomes necessary therefore to dispose of the case without the additional facts.

I am inclined to accept Mr. Katzenbach's figures as showing approximately what deceased did with his money. It is not likely that after Mr. LaRue met those expenses incident to a man in his station in life, his wife and son would receive more than 50 per cent. of his gross salary, or \$750 clear. It might well be, that the verdict could have been sustained for the amount awarded, but it cannot be done on 10 the testimony adduced.

If the plaintiff will accept \$10,000 the verdict may stand, otherwise a new trial will be awarded.

GEORGE S. SILZER,
Judge.

A true copy.

A. G. ANDERSON,
(Seal) *Clerk.*

STATE OF NEW JERSEY, }
COUNTY OF SOMERSET, } *ss.* 20

I, A. G. Anderson, clerk of the Somerset County Circuit Court, in compliance with a notice of appeal duly filed, do hereby certify the foregoing to be true and correct copies of the complaint, answer, reply, rule for judgment, rule to show cause, acknowledgment of service of rule, Judge's memorandum on rule to show cause, acceptance and notice of appeal in the case of Helena B. LaRue, administratrix of Karsner D. LaRue, deceased, as the same are on 30 file in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court (Seal) this eighteenth day of July, nineteen hundred and seventeen.

A. G. ANDERSON,
Clerk.

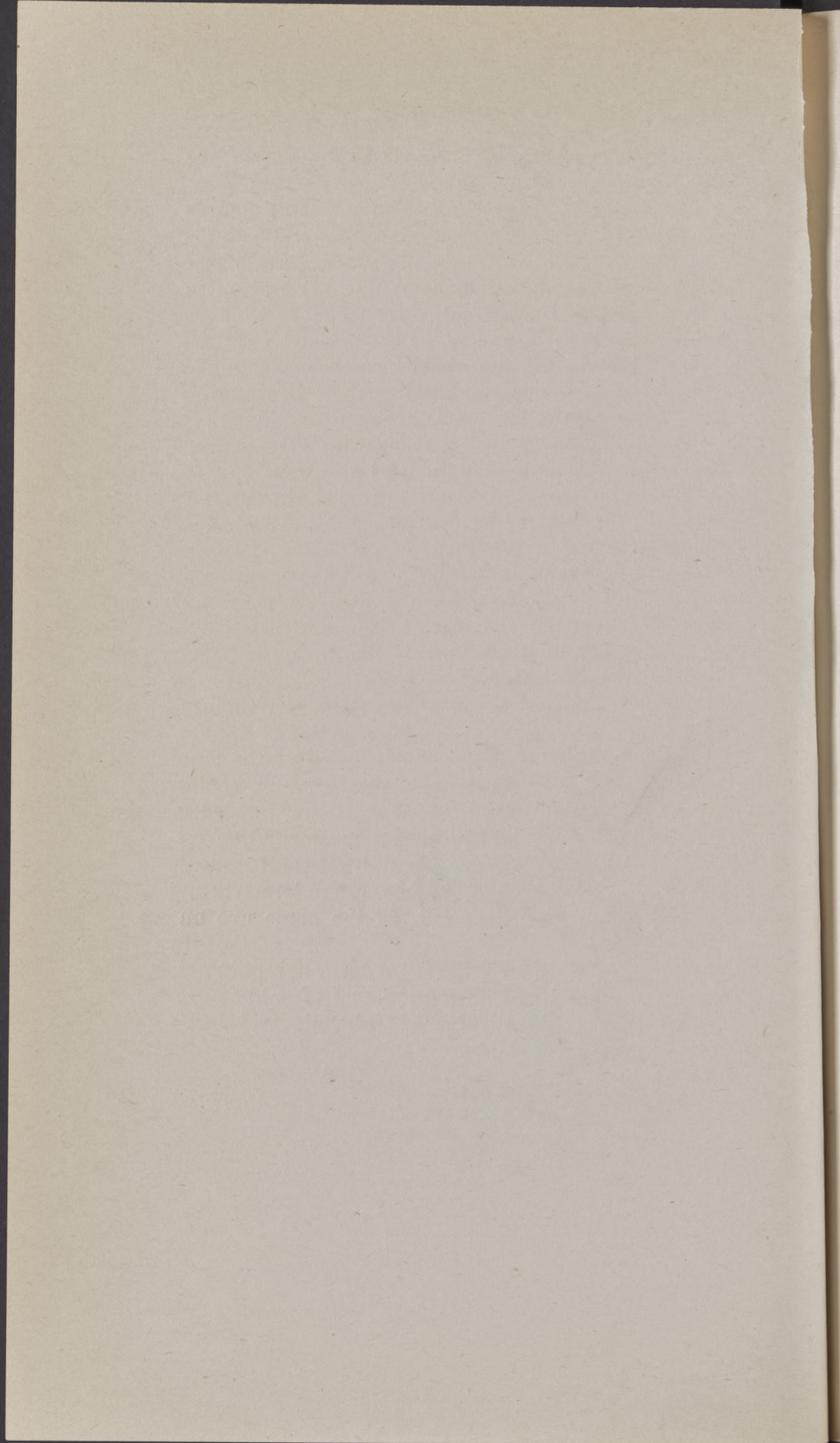


EXHIBIT P1.

June 11th, 1912.

Mayor and Borough Council,
South Bound Brook, N. J.

Gentlemen:—

Agreeable to the conference which Mr. Caldwell, representing this office had with your honorable body, I beg to make the following proposition: 10

I will make all needed surveys and investigations and prepare complete plans and specifications for sewerage and sewage disposal works for the Borough; the plans and specifications to be approved by the State Board of Health. The plans and specifications will be accompanied by the necessary forms of contract and bond, etc., necessary to advertise for and receive bids to put the work under contract. Will also retain a resident engineer in South Bound Brook during the construction of the work, who will give his attention to setting the grades and inspecting the materials. 20

On the completion of the work will prepare a report, together with a map showing the Y branches, manholes and other appurtenances. All of this work to be done for the sum equal to seven percent of the contract cost of the work. A preliminary payment of \$300.00 (three hundred dollars) will become due when the plans, specifications and forms of contract and bond, approved by the State Board of Health are submitted to your honorable body. 30

Yours very truly,

(signed) Clyde Potts.

NEW JERSEY
Court of Errors and Appeals.

HELENA B. LARUE, Administratrix
of KARSNER D. LARUE, Deceased,
Plaintiff-Appellee,

vs.

CLYDE POTTS,
Defendant-Appellant.

Action at Law.

On Appeal.

PLAINTIFF'S BRIEF.

The deceased, Karsner D. Larue, a member of the Sewage Committee of the Common Council of the Borough of South Bound Brook, was invited by the defendant to go with him to inspect two sewage disposal plants, one at Belmar and the other at Ocean Grove, designed by and constructed under the supervision of the defendant, Clyde Potts, who was an expert engineer in the designing and construction of such plants. At the time the invitation was given, and at the time the trip was made, the defendant was endeavoring to secure a contract from the said Common Council to superintend, or supervise, the construction of a sewer system and sewage disposal plant for the said borough.

What had really been done in the way of making a contract between the Common Council and Mr. Potts is shown by Exhibit P 1, page 211, which is a mere letter from Mr. Potts to the Common Council containing a proposition to prepare the plans for a specified sum and then to supervise the construction of the plant at the rate of 7% of the cost of the construction of the plant *in case the plant was actu-*

ally built. This letter is dated July 5th, 1912. The contract for the construction of the plant was not given out until three and a half years after that time, and was not given out until more than six months after the accident. The answer to the proposition contained in this letter will be found on page 101 and is in the following words: "Motion made and seconded that the contract of Mr. Potts, dated July 5th, 1912, addressed to Mr. W. M. Brown, Chairman of Sewer Committee, be hereby ratified, *provided, however, that in case for any reason whatsoever the sewer project is abandoned that no money shall become due to Mr. Potts excepting the amount to be agreed upon governing preliminary work done before such abandonment.* Carried. The clerk was ordered to send copy to Mr. Potts, also one to Counsel Anderson."

The letter referred to above and the quotation from the written record of the Borough Council of Bound Brook show clearly that Mr. Potts, the defendant, had not yet closed up the contract with the Common Council and that he was still making efforts to make sure that the Common Council would go ahead with the construction of the sewer plant and for this reason he gave the invitation to the Sewer Committee to go with him and look over these two other plants *that he had designed* and no statement of his that he had already secured the contract can serve to contradict the written record. It was only by inducing the Common Council to go ahead with the construction of the plant that he could hope to receive the seven per cent. of the construction cost for his services, so that the defendant was financially interested in giving the invitation for the visit to Belmar and Ocean Grove to an amount of from \$1,500 to \$1,800.

On page 35, lines 20-30, witness Raymond D.

Stryker: Some time prior to April the 25th. In 1915, Mayor Baldwin said at a meeting of the Common Council that Mr. Potts had arranged to take the Sewer Committee to Ocean Grove and examine a septic tank. On page 36, lines 1-10, same witness testified:

Q. Now, as a member of that committee did you express to Mr. Baldwin or to Mr. Potts or to anybody else a desire to go to Belmar or Ocean Grove to examine tanks there? A. I did not.

Q. Was any action ever taken by the Common Council instructing or directing the committee to go and inspect the tanks at Belmar or Ocean Grove? A. There was not.

Same page at the bottom:

Q. Did you ever ask Mr. Potts to take you there? A. I did not.

On page 37:

Q. Before going to Ocean Grove and Belmar had the Common Council taken any action at any of its meetings, either instructing or directing the Sewer Committee to go to these tanks and examine them or inspect them? A. They did not.

On page 40, lines 1-10, the Court:

Q. Was any action taken by the board at any meeting at which you were present—I understand you were present at all—instructing or inviting the Sewer Committee to go to the tanks in question? That is the point. You may answer.

Witness—There was no action taken by the council.

On page 41, lines 10-20:

Q. Then what did you do? A. We had dinner at the Commercial Hotel.

Q. Who paid for the dinner? A. Mr. Potts.

Wm. T. Morecraft testified on page 76, lines 10-30, as follows:

Q. Please state whether or not you asked Mr. Potts to take you on that trip? A. I never did.

Q. Please state whether you were ever instructed by the Common Council to take the trip. A. I was.

Q. In what way? A. The first was that at a meeting of the Council Mayor Baldwin said that Mr. Potts had invited us to go to Ocean Grove and Belmar to inspect the sewer tanks. We thought the matter over then, if we would like to go, and they all said they would like to see, and then they appointed—no, it was left to Mr. Baldwin to see Mr. Potts what day he would be ready. They thought they could all go better on a Sunday than any other time, most of them did.

Top of page 77:

Q. Now, please state whether or not you asked Mr. Potts to take you? A. I never did.

Q. Who paid for the dinner? A. I presume Mr. Potts did.

Q. Well, did you? A. I did not.

Top of page 87, Mr. Morecraft says: "Then, after the next meeting I think it was Mr. Baldwin said that he had an invitation from Mr. Potts for the Sewer Committee to go down to inspect that tank, to look over it, and that is the way, I think, the invitation came."

Q. That is, you wanted, the Council wanted to see some work that Mr. Potts had done? A. After he had given the invitation we thought it would be a good thing to go down, without expense, and all that, yes.

Richard Ambrose, on page 200, testified as follows:

Q. Were you a member of the Common Council in South Bound Brook in 1915? A. I was.

Q. Did you attend all the meetings of the council in 1915? A. I think I did.

At the top of page 201:

Q. No. Did you ever know of any request on behalf of the Common Council—did the Council, in other words, ever ask Mr. Potts to take them down there?

A. No, never.

Defendant Invited and Urged Deceased to Enter the Tank:

A. (Continued).

Raymond D. Stryker, on page 64, lines 1-10:

A. Mr. Potts said this was more similar to the one to be installed at South Bound Brook and wanted us to see it.

On page 66, lines 10-20 :

Q. Now, then, let me ask you what was done at Ocean Grove?

A. Mr. Morecraft said he believed he would not go in the tank if it was similar to the one at Belmar. Mr. Potts said that this tank was more similar to the one to be installed at South Bound Brook and he wanted us to see it.

Q. So that Mr. Potts said he wanted to see it, or wanted you to see it?

A. Wanted us to see it.

Q. Wanted us to see it?

A. Wanted us to see it.

On page 75:

Q. Now, you have stated that Mr. Potts said to you that this tank at Ocean Grove was more similar to the one to be built at South Bound Brook and

that he wanted you to go in. Please state whether or not that was said in the presence of Mr. Larue.

A. It was.

Q. And it was said to one of you or all of you?

A. It was said to all of us.

No Warning was Given:

An invitation to enter upon the premises exists where the benefit accrues or is supposed to accrue to the one who extends the invitation. *Northwestern El. R. Co. vs. O'Malley*, 107 Ill. App. 599. 29 Cyc., 454.

One who is not an owner or in control of the premises is liable if he has invited another to use the property. *McIntyre vs. Pfaudler Vacuum Fermentation Co.*, 138 Mich., 552.

The manufacturer or vendor who deals with an article eminently dangerous in kind owes to the public a positive and active duty of employing care, skill and diligence to limit that danger. The liability arises from a duty not to expose the public to danger. 29 Cyc., 480. *Favo vs. Remington Arms Co.*, 67 N. Y. App. Div., 414.

If the concurrent negligence of two or more persons combined together results in an injury to a third person, he may recover from either or all. *Muller vs. Hale*, 138 Cal., 163. *MacGregor vs. Reid*, 178 Ill., 464. *Chicago & Railroad Co. vs. Skates*, 90 Ill., 586. *Siegel vs. Treka*, 218 Ill., 559. *Donk Brothers Coal Co. vs. Leavitt*, 109 Ill. App., 385. *Southbend Manufacturing Co. vs. Liphart*, 12th Ind. App., 185. *Whiteman McNamara Tobacco vs. Warren*, 23 Ky. L. Rep., 2120. *Ouligan vs. Butler*, 189 Mass., 287. *Hawkesworth vs. Thompson*, 98 Mass., 77. *Richard vs. Detroit & Railroad Co.*, 129 Mich., 458. *Cain vs. Chicago & R. Co.*, 77 Minn., 104. *Rainey vs. Lachance*, 96

Missouri App., 479. *Shevica vs. Brooklyn Heights Railroad Co.*, 89 *N. Y. App. Div.*, 340. *Quill v. New York Central Railroad Co.*, 126 *N. Y.*, 629. *Covington Transfer Co. vs. Kelly*, 36 *Ohio St.*, 86.

Where defendant knows, or has reasonable means of knowing that consequences *not usually resulting from the act are likely to intervene*, so as to occasion damage, he is liable although it be not an ordinary and natural consequence of the negligence. *Steward vs. Ripon*, 38 *Wis.*, 584. 29 *Cyc.*, 495.

Negligence to render a person liable need not be the sole cause of an injury. 29 *Cyc.*, 497. Where two causes combine to produce injuries a person is not relieved from liability because he is responsible for only one of them. 29 *Cyc.*, 497, and many cases cited. *Kankakee &c. Railroad Co. vs. Dloran*, 131 *Ill.*, 288. *Boone Co. vs. Mutchler*, 137 *Ind.*, 140. *Home vs. Meekin*, 115 *Mass.*, 326. *Greek vs. Fleckenstein*, 14 *Minn.*, 81. *Dixon vs. Brooklyn City Railroad Co.*, 100 *N. Y.*, 170. *Ohio Torpedo Co. vs. Fishburn*, 61 *Ohio St.*, 608.

If, in this case some other person assisted in causing the explosion by lighting a match, this act, to be an intervening cause, must have been a negligent act. The striking of a match by a person in the tank in question in the absence of any knowledge that injury might result therefrom, would not be a negligent act. An intervening act must be a negligent act in order to excuse the person whose negligence partly or wholly caused the injury.

Raymond D. Stryker, with respect to the warning before going into the Belmar tank, testified on page 43 as follows:

Q. Now, either before you went into the tank or after you got in the tank, please tell the Court and jury whether any warning of any kind was given to

you or Mr. Larue or anybody? A. There was not.

Q. Were you so close to Mr. Larue all the time that if any warning had been given to him you could have heard it? A. Yes, sir.

At the bottom of page 50:

Q. Were you with Mr. Larue all the time before you went down into this tank or not? A. Yes, sir.

At the top of page 51:

Q. Before going down into this tank was any warning of any kind given? A. There was not.

Wm. T. Morecraft, at the bottom of page 77 and top of page 78, testified as follows:

Q. Now, please state whether or not at any time there before you went into the tank or after you got into the tank, any warning was given by Mr. Potts or his assistant with respect to the danger of explosion? A. There was not.

Q. Now, please state when you arrived at Belmar and before you went into the tank were you with Mr. Stryker or Mr. Larue all the time? A. With them all the time they were in the tank.

Q. I mean after you arrived at the tank? A. When we went down; all the time by them.

Q. Yes? A. I was.

Q. Please state whether there was anything said about having a light down there. A. No, sir.

Both of these witnesses were disinterested and the testimony is contradicted only by the defendant who is, of course, greatly interested in the result of the case, and by Mr. Bacon, his employee. On this point the weight of the evidence is clearly with the plaintiff and even if it were not it would still be a question of fact for the jury.

The defendant's alleged warning will be found at

the bottom of page 121, and top of page 122, as follows: "I heard Mr. Bowen (who was killed in the explosion) say to some one who had evidently pulled a match-box out of his pocket that they were not to make any lights in the tank."

Q. You heard all this? A. I did, yes, sir. We then walked through the back end of the tank under the north cover.

Q. You were there at the time the statement was made by Mr. Bowen not to make a light? A. Well, there was Mr. Bacon, Mr. Bowen, Mr. Morecraft and Mr. Stryker and Mr. Larue.

Also at the bottom of page 123: "Well, I heard Mr. Bowen say that they should not make a light in the tank."

Now, this alleged warning was given *after the men had all gotten in the Belmar tank*. To have been effective even for that tank the warning should have been given before they went into the tank and not after they were in the danger itself.

And even assuming that the defendant's warning is correct, it would have still have been a question for the jury to say whether or not such a statement would have adequately apprised these men, ignorant of the effect of so doing, of the danger involved in the *striking of a match* or making a light. There might have been many reasons other than the danger of an explosion that the defendant might have given for warning them not to *have a match* or light struck in the tank.

"To be sufficient, a warning or instruction must be so plain and explicit that the person to be warned will understand and appreciate the danger and know how to avoid it by the exercise of due care, and where extraordinary dangers may be encountered the person so warned should be warned

of their character and extent as far as possible." 26 Cyc., 1169. Shearman and Redfield on Negligence, Vol. 1, Sec. 203.

All possible excuse for the failure of the defendant to warn the deceased of the danger of making a light or striking a match in the tank is completely taken away by the fact that according to Mr. Potts' own testimony he says, "I heard Mr. Bowen say to someone *who had evidently pulled a matchbox out of his pocket* that they were not to make any lights in the tank." This should have fully put Mr. Potts on guard or notice that the men were likely to do this very thing. If his story is to be believed this is all the more reason, not only why a warning should have been given, but is a particular reason why the warning should have been full and explicit. The alleged warning should at least have been not only that they *were not to make any lights in the tank*, but there should at least have been added to these words "because doing so *might result in a dangerous explosion which might injure or kill them.*"

A notice or warning must be sufficient to apprise the person notified of the danger. 29 Cyc., 475; *Jackson vs. Schmidt*, 14 La. Ann., 806; *Coxhead vs. Johnson*, 182 N. Y., 640.

A warning or notice is effective to exempt from liability for injuries *only in respect of those dangers which it would lead the party warned or notified to expect and avoid.* 29 Cyc., 475; *Clark vs. Rhode Island Electric Light Co.*, 16 R. I., 463; 17 Atl., 59.

Case Fully Tried on Both Sides on Question of Warning.

The whole case was fully tried on both sides upon the question of lack of warning although the charge

was not as specific in the complaint as it might have been. See evidence of Raymond D. Stryker, page 43, and Wm. T. Morecraft at the bottom of page 77 and top of page 78, and no objection whatever was interposed to the testimony and the defendant put in fully his defense to the charge of lack of warning. See testimony of defendant, Potts, at the bottom of page 121 and top of page 122.

That there was great danger of an explosion of gas in such tanks under certain circumstances is admitted.

It is also admitted that only an expert, or one of unusual knowledge or experience in such matters, would know of such danger.

That the defendant knew of the danger is also admitted (pages 24 to 28 inclusive).

The negligence complained of was the failure to warn the deceased of the danger of such explosion.

The defendant admits the duty to have given such warning at one moment, but insists that he did warn. The next moment he insists that it was not his duty to give the warning. Now, the defendant cannot keep his cake and eat it too. He cannot say that he was under no duty to warn and then the next moment acknowledge such duty and insist that he did warn. In fact, practically his whole defense is that the very warning that we insist it was his duty to give was actually given, and that is the principal point in dispute.

No Time Left for Gas to Escape.

The second charge against the defendant is the failure to see that the place was made reasonably safe before urging the deceased to go down into the tank.

Mr. Morecraft, on page 79:

Q. How long was that after the lid was taken off? A. Oh, I don't think it was more than 2 or 3 minutes, as I remember it, more than 2 or 3 minutes. Mr. Potts and Mr. Bowen I think it was, they had some sort of an instrument like a knife-blade—I do not know what it was—that they ran around the edge to loosen the tank, to loosen the cap on the manhole.

It is clear from the testimony that if the cover had been removed from the manhole, thus allowing the gas to escape for a reasonable length of time, there would not have been an explosion, and consequently, no danger.

Calvin Reed, the Superintendent of the Ocean Grove plant, testified as follows on pages 104 and 105:

Q. What was the extent of the gas down there when you did go in? A. Pretty strong when you first opened it.

Q. Did you go in when it was first opened, or did you have it open for awhile? A. I always leave it open, average 30 to 45 minutes, when I go in.

This answer is repeated at top of page 105.

The Court—Why was it that you kept it open 30 to 45 minutes?

Witness—Let it air out.

The Court—Why?

Witness—Because the gas was strong.

At top of page 106:

Q. Have you seen people go down there immediately after the lids were open? A. Not right away.

Q. Well, within 4 or 5 minutes after the opening?

No answer.

Q. How soon? A. Longer than that.

Q. Well, how long? A. About 20 minutes or more.

For the above reasons the judgment should be affirmed.

WM. C. GEBHARDT,
Attorney for and Counsel with
Respondent-Plaintiff below.

**NEW JERSEY COURT OF ERRORS AND AP-
PEALS.**

HELENA B. LARUE, AD-
MINISTRATRIX OF KARSNER
D. LARUE, DECEASED,
Plaintiff,

VS.

CLYDE POTTS,
Defendant.

ON APPEAL.

BRIEF FOR DEFENDANT.

FACTS.

The plaintiff's intestate, Karsner D. LaRue, was a member of the common council of South Bound Brook and a member of the sewer committee. The defendant, Clyde Potts, is a civil and sanitary engineer and was engaged prior to April 25th, 1915, as the engineer for the construction of a sewage disposal tank at South Bound Brook. At the request of the mayor of South Bound Brook, on April 25th, 1915, Mr. Potts took the members of the sewer committee, Messrs. LaRue, Stryker and Morecraft, to Belmar and Ocean Grove to examine sewage disposal tanks which had been constructed under the supervision of Mr. Potts. After spending an hour in the

tank at Belmar, the party composed of the defendant, two assistant engineers, Messrs. Bowen and Bacon (Bowen being the resident engineer at South Bound Brook) and the committee, Messrs. LaRue, Stryker and Morecraft, went to a similar sewage disposal tank at Ocean Grove, which is located under ground between the Boardwalk and the Ocean Driveway. Mr. Potts says that upon arriving at the tank he stated that he felt that they (the Ocean Grove Camp Meeting Association) did not want them to examine the plant, it being Sunday. Mr. Morecraft said he was satisfied with his inspection of the Belmar tank and walked with Mr. Potts toward the ocean. Afterwards the lid of the tank was removed by Messrs. Bowen and Bacon and Mr. Stryker descended to the concrete chamber followed by Mr. LaRue. Mr. Bowen was just descending the manhole when an explosion occurred and a flame ascended through the manhole. Messrs. Bowen and LaRue died from the burns they received. Mr. Stryker was badly burned.

The complaint charges that the defendant, Potts, invited LaRue to inspect the tank and that Potts as **an** expert knew it was dangerous to go into said tank without allowing sufficient time for the gas to escape, and directed LaRue to descend into said tank, and as soon as LaRue arrived at the bottom of the tank an explosion occurred and he received burns causing his death. As a suit instituted by Stryker against Potts had shortly before this case been tried before Judge Silzer, at the opening of the present case it was admitted that methane gas is produced in sewage disposal tanks; that when mixed with a proper proportion of air, it becomes explosive when it comes in contact with a flame having a degree of heat of 1346 degrees Fahrenheit; that Potts knew of

this and had designed and constructed at least 100 sewage disposal tanks.

The plaintiff's theory of the case, acquiesced in by the trial Judge, was that it was only necessary to prove an explosion in order to hold Potts liable for the effects of the explosion, that is, the death of LaRue from burns. There was no evidence offered to show that the explosion was caused by any flame or spark. Potts was not in the tank at the time of the explosion and had not been in the tank. Mr. Bowen, his assistant, was just entering the tank when the explosion occurred.

The defendant's theory was that a match had been struck in the tank by Stryker, who was a cigar salesman and a smoker, in order to light a cigar. LaRue was not a smoker (p. 199). Mr. Bowen, who died, had told the committee at Belmar, as testified to by Potts and Bacon, not to strike a match while in the tank. This was denied by Stryker and Morecraft. Stryker positively testified that neither he nor LaRue did anything in the Ocean Grove tank to create a spark or flame (p. 46, l. 25). A burnt match, cigar and match box were found in the tank the next morning, but there is no evidence as to how they got there, nor any evidence which identified them as the property of Stryker or LaRue. The burnt match, cigar and match box were offered in evidence by the defendant. The evidence showed that there was no danger in entering such a tank immediately after the lid was removed, provided no flame or spark was made by which the gas, otherwise harmless, could be exploded. The tank after the removal of the lid was light so that a person could see (record p. 70, l. 3), so a light was not needed to see around the chamber of the tank.

The plaintiff, after the admissions above referred

to were made, proved by Messrs. Stryker and Morecraft that an explosion occurred. There was no proof offered as to the cause of the explosion or in what manner the defendant Potts was connected with it. Potts was not in the tank at the time, being at least twelve feet from the manhole talking with Mr. Morecraft. Messrs. Stryker and LaRue were the only ones in the tank. A motion to non-suit was made at the conclusion of the plaintiff's case. It was denied and an exception allowed. The defendant, as has been stated, proved that on the following morning a burnt match, match box and cigar were found in the tank. There was no evidence as to how they got there or to whom they belonged. They might have been there before the accident or placed there afterwards. The defendant was in no way connected with them.

A motion to direct a verdict for the defendant was made at the conclusion of the defendant's evidence on the ground, amongst others, that there was no evidence of the defendant's negligence. This was denied and an exception allowed.

POINT ONE.

THE TRIAL COURT ERRED IN (1) REFUSING TO NON-SUIT THE PLAINTIFF, AND (2) REFUSING TO DIRECT A VERDICT IN FAVOR OF THE DEFENDANT.

The motion to non-suit and the motion to direct a verdict in favor of the defendant were based (1st) upon the fact that the complaint alleged that the negligence of the defendant was that it was danger-

ous to go immediately into said tank without sufficient time for the gas to escape therefrom and that the evidence showed and stipulation admitted that it was not dangerous to enter the tank immediately after the lid was removed and for that reason the plaintiff had not made a case against the defendant; (2nd) upon the fact that there was no proof which connected the defendant with the explosion; (3rd) upon the fact that the gas in the tank was not the proximate cause of the explosion, as the gas was harmless unless ignited by flame or spark.

The Court in its refusal to non-suit placed itself squarely on these propositions: (1st) there was evidence which substantiated the complaint; (2nd) that the gas in the tank was the proximate cause of the explosion, and (3rd) that because there was gas in the tank which did explode, the defendant was responsible for the explosion, or at least the doctrine of "*res ipsa loquitur*" applied. (See colloquy between Court and defendant's counsel, pages 107 to 109).

Upon the first position it is unnecessary to say more than that an examination of the complaint will reveal that the charge is as stated above, that the negligence of the defendant was that it was dangerous to go into said tank without allowing sufficient time for the gas to escape therefrom and that the defendant invited and directed the plaintiff's intestate to descend into said tank and immediately after the deceased arrived at the bottom of said tank the gas exploded (pp. 5 and 6). It was admitted that the gas was harmless unless ignited by flame or spark (p. 25). There was no danger in going immediately into the tank after removal of the lid (p. 105). See also p. 133, l. 27, *et seq.* There was no evidence of any spark or flame being created, and

hence no evidence which connected the defendant with any spark or flame. The defendant was not in the tank. Neither of his assistants were there. The only living witness who was in the tank when the explosion occurred was Stryker, who positively swears he did nothing and the deceased, LaRue, did nothing while they were in the tank in the way of lighting a match or creating a flame or spark (p. 46). There was therefore no evidence which substantiated the complaint and no evidence of the negligence of the defendant.

The Court also held that the presence of gas in the tank was the proximate cause of the accident. The admission is that this gas was harmless unless mixed with air, when it would explode if it came in contact with flame or spark having an intensity of heat of 1346 degrees Fahrenheit (p. 25, l. 31). From the stipulation it follows that there must have been an intervening agency, namely, a spark or flame which caused the explosion. The spark or flame was the proximate cause for the reason that the gas mixed with air was harmless unless it came in contact with spark or flame. The following cases on this subject are in point:

Schaum vs. Equitable Gas Light Co., Sup. 44 N. Y. 284, 15 App. Div. 74, in which it was held that negligence of defendant gas company is not shown to have been the proximate cause of an explosion merely by evidence that an employe went into a cellar with a candle to fix the pipes; that soon afterwards gas began to escape in large quantities, and some men went into the cellar to rescue the workman who had become unconscious; that as they were about to pick him up "a big flash of fire came around us, and scattered us all over the floor"—there being no evidence that the workman had lighted the candle, or

had any other light with him, and no evidence as to the cause of the explosion.

Stone vs. Boston & A. R. Co., 171 Mass. 536; 51 N. E. 1, in which the facts were as follows: Defendant's railway station, freight house, and a platform used mostly for storing oil till the consignees for whom the railroad had brought it should remove it, were situated across the street from plaintiff's buildings. The platform had become saturated with oil leaking from the barrels. A teamster not connected with defendant brought goods to be shipped by it, and, in lighting his pipe, threw on the ground a match, which spread to barrels of oil standing on the platform, and soon destroyed plaintiff's buildings. All this oil had been on the platform for a longer time than 48 hours, which was prohibited by statute. Plaintiff's buildings would probably not have been burned if this oil had not been on the platform. Held, that the starting of the fire could not be deemed a natural and probable consequence of the defendant's negligent act in leaving the barrels of oil upon the platform, and, therefore, plaintiff could not recover.

Ross vs. Western Union Telegraph Co., 81 Fed. Rep. 676, in which it was held that the delay of a telegraph company in delivering a message warning the person to whom it is addressed that armed men are pursuing him is not the proximate cause of his death at the hands of his pursuers.

In this case the Court said:

“Assuming that there was negligence on the part of the company in the matter of non-delivery of the message, was that the cause of the death of Ross in such a way as to give his legal representatives a cause of action? If another and independent force intervened to bring about the death of Ross, it will be the responsible

cause, even conceding the failure of the telegraph company to deliver him the message in time for it to serve as a warning. The new and independent force would be, in law, the proximate cause; and, if the company's neglect could be said to be a cause at all, it would be remote and ineffective. This is not the case of one cause setting another cause in motion, and thereby the original cause, by an unbroken sequence, producing a result; but it is the situation recognized in all the authorities, where an entirely new and independent cause intervenes to bring about a result. Continuing to assume the strongest case against the company, what it did would not itself have killed Ross, nor would anything it set in motion.

"Much authority might be cited on this line, but so unusual are the facts of this case that it must be controlled by recognized principles, rather than by direct authority on anything like similar facts."

In *Malmberg vs. Bartos*, 83 Ill. App. 481, it was held a father was not guilty of negligence justifying a recovery, where, after he had left a sharp ice pick on a sidewalk in front of his store, while he carried ice in the store, his four year old son seized the pick and cut off plaintiff's finger.

"Damages caused by negligence to be recoverable, must be not only its natural, but also its proximate consequence. And 'proximate,' as here used means closeness of casual connection, and not nearness in time or distance, and is intended to qualify the generality of the idea expressed by the word 'natural.'"

Kuhn vs. Jewett, 32 N. J. Eq. 647;

Dela. etc. R. Co. vs. Salmon, 39 N. J. L. 299.

The burden of proof was upon the plaintiff to establish by a preponderance of evidence the cause of the explosion in the Ocean Grove sewage disposal tank. At the conclusion of the plaintiff's case when the motion to non-suit was made, the evidence, as has been stated above, was merely to the effect that gas, formed in sewage disposal tanks, when mixed with air, would explode if it came in contact with a spark or flame of 1346 degrees Fahrenheit intensity of heat, otherwise the gas and air were harmless. The evidence of the plaintiff failed to show what caused the explosion. Stryker, who was the only survivor of those in the tank, testified that neither he nor the deceased, LaRue, had struck a match or caused a flame in the tank. Mr. Potts was not in the tank and had not been in the tank on the day of the accident. His assistant, Mr. Bowen, was just descending the ladder so there was no evidence that he had done anything to create a spark or flame. Therefore, the plaintiff's case was wholly without evidence connecting the defendant, Potts, with the one thing indispensable to create an explosion, namely, spark or flame. The premises were not the premises of Mr. Potts.

The Court took the position that the explosion was the evidence of the negligence of Potts. This decision proceeded upon the theory that the explosion indicated negligence under the doctrine of *res ipsa loquitur*. It has been distinctly held in New Jersey that a mere explosion does not indicate negligence upon the doctrine of *res ipsa loquitur*. The last of these cases is *Levandusky vs. Empire Rubber Mfg. Co.*, 84 N. J. L. 698.

There being no proof offered whatsoever as to the cause of the explosion, the motion to non-suit should have been granted.

At this point probably there should be discussed the question as to whether the defect in the evidence at the time of the motion to non-suit, was subsequently supplied, for if so, it is conceded that under the authority of *Perth Amboy Mfg. Co. vs. Condit*, 1 Zab. 659, and *D. L. & W. R. R. Co. vs. Dailey*, 8 Vroom, 526, the judgment will not be reversed.

The only negligence alleged in the complaint, namely, that the defendant, Potts, knowing that it was dangerous for persons to go into a sewage disposal tank immediately after the lids were removed, directed the plaintiff's intestate to go into the tank at Ocean Grove, thereby causing the death of the plaintiff's intestate, was not proved at the time the non-suit was refused and was never proved. To the contrary, it was proved that methane gas is not dangerous in itself and that there is absolutely no danger in going into a sewage disposal tank filled with methane gas. Not one witness produced by plaintiff or defendant testified otherwise. There was no question, therefore, for the jury on this point. This being the only negligence alleged in the complaint, and the complaint not having been amended at the trial, it is impossible for us to see how the trial Judge could submit the case to the jury.

Although this failure of the plaintiff to prove negligence on the part of the defendant was called to the attention of the trial Judge in the motion to non-suit, he refused to grant a non-suit. He did this on the ground that Potts was an expert and an explosion occurred, apparently applying the doctrine of *res ipsa loquitur*. But the complaint in this case does not seek to connect the defendant with the explosion. It does not allege negligence on the part of the defendant in connection with the explosion. The cause of the explosion was not in issue.

By applying the doctrine of *res ipsa loquitur*, the trial Court forced the defendant into a position where it became necessary for him to seek to prove that Stryker or LaRue had created a flame or spark which caused the accident, after having been warned by Mr. Bowen of the danger of so doing. But the defendant had no evidence which could connect LaRue or Stryker with the creation of the flame or spark. The only thing he showed was that some 18 hours after the explosion there was a burnt match discovered in the tank. The pleadings of the plaintiff distinctly deny the striking of a match or creation of a flame by Stryker or LaRue, so it would seem clear, taken in connection with the testimony of Stryker that neither he nor Mr. LaRue struck a match or created a flame, that the verdict in this case could not be sustained upon the ground that something was done, which the pleadings and evidence of plaintiff prove was not done, to wit, that a match was struck or a spark or flame created by either Stryker or LaRue. The burnt match and cigar which were found in the tank may have been in the tank before the explosion, they may have been dropped in the tank by some one of the many bystanders who immediately appeared after the accident occurred. These articles were not identified as the property of Stryker, LaRue, or any one else. There was no evidence that they were in the tank at the time of or immediately after the explosion.

It is, therefore, urged that no evidence introduced by the defendant remedied the defect in plaintiff's case as to the cause of the explosion, assuming the cause of the explosion to be a fact in issue. The ruling of the trial Court should be reversed on this ground and a new trial granted.

See *Schaum vs. Equitable Gas Light Co.*,
supra.

POINT II.

THERE WAS NO EVIDENCE THAT MR. POTTS, THE DEFENDANT, HAD INVITED PLAINTIFF'S INTESTATE AND THE OTHERS TO INSPECT THE TANK AT OCEAN GROVE; BUT THERE WAS UNCONTRADICTED EVIDENCE TO THE EFFECT THAT HE DID NOT INVITE THEM TO INSPECT SAID TANK.

The question as to whether an invitation was extended by the defendant and the other points hereinafter discussed need not be considered unless this Court should decide against the defendant on the contention that there was no evidence of the negligence alleged in the complaint.

“The refusal of a motion for non-suit is an inferential holding, as a matter of law, that the essentials of plaintiff's cause of action were shown.”

Weisner vs. Hansen, 81 N. J. L. 601.

One of the essentials in plaintiff's case was the giving of an invitation by defendant to the members of the sewer committee of South Bound Brook to inspect the tank at Ocean Grove. If such an invitation were not given, defendant was under no duty to warn the committee of the fact that methane gas when mixed with air would explode if it came in contact with a flame, his duty being merely to do nothing to injure the members of the committee, who would then occupy a position analogous to that of licensees.

The defendant's position is (1st) that he did not

invite the sewer committee to make the trip for the inspection of the tanks, and (2nd) that he advised the committee that the Ocean Grove authorities did not want the Ocean Grove tank visited on Sunday and therefore they had better not go into the tank where the explosion occurred.

The only evidence offered by the plaintiff to show invitation by defendant is the testimony of Mr. Morecraft, one of the members of the sewer committee, who stated (p. 76), "The first was that at a meeting of the council, Mayor Baldwin said that Mr. Potts had invited us to go to Ocean Grove and Belmar to inspect the sewer tanks." This, of course, could not bind the defendant in the absence of proof that Mayor Baldwin had been constituted the agent of Mr. Potts for the purpose of extending this invitation. No relation of agency was proved. Therefore, no evidence of an invitation proceeding from Potts was offered by the plaintiff.

On the other hand, Mr. Potts testified that Mayor Baldwin had asked him to take the committee to Ocean Grove and Belmar to make an inspection of tanks, stating that they wanted to see them (p. 116, l. 25).

The burden of proving an invitation by the defendant was upon the plaintiff. The plaintiff did not produce as a witness Mayor Baldwin, though the Mayor was in the court room at the time the plaintiff's evidence was being offered (p. 39, l. 19).

Therefore, there being no evidence of invitation and consequently no duty upon the defendant to warn, and no proof of wilful injury inflicted by Potts upon plaintiff's intestate, the trial Judge erred in not granting (1st) defendant's motion to non-suit and (2nd) defendant's motion to direct a verdict.

Even had Mr. Potts invited the party to take the

trip, what he said to them before they went into the Ocean Grove tank, which was, "I said again to the men that I didn't believe we ought to open the tanks as it was Sunday," (p. 125, l. 28), also corroborated by Bacon (p. 170, l. 16), constituted a withdrawal of his invitation, and those going into the tank afterwards went in on their own initiative and responsibility, and were nothing more than licensees, if not trespassers. This statement of Mr. Potts, corroborated by Mr. Bacon, was not contradicted. Plaintiff did not call to the witness stand any of those who were with Potts before LaRue and Stryker went into the Ocean Grove tank to rebut this testimony.

Upon this evidence it is urged that no question arises for the consideration of the jury. Therefore, the motion for a direction in favor of defendant should have been granted on this point.

POINT III.

THE TRIAL JUDGE'S REFUSAL TO DIRECT A VERDICT FOR DEFENDANT INFERENTIALLY HOLDS THAT SMOKING IN THE SEWAGE DISPOSAL TANK WAS WITHIN THE PURPOSES EMBRACED IN THE INVITATION TO INSPECT THE TANK, WHICH RULING IS ERRONEOUS.

The sewer committee, if invited into the tank at Ocean Grove at all, were invited to make merely an examination thereof. Nothing Potts said or did invited the committee to use the concrete chamber as a smoking room. They were certainly not invited to smoke while in the tank.

As has been stated above, the evidence shows that

if a match was struck by either Stryker or LaRue, it was struck for the purpose of lighting a cigar. Smoking was clearly not embraced in the invitation alleged to have been extended by defendant.

“The owner of premises (surely Potts’ duty can be no greater than if he owned the tank), who by invitation induces a person to come thereon, is under a duty to exercise ordinary care to render the premises *reasonably safe for the purposes embraced in the invitation.*”

Smith vs. Jackson, 56 Atl. Rep. 118, 70 N. J. L. 183.

“Where a butcher asked plaintiff, who owned a cat, to deliver it to him on his premises, and, when she did so, on her stating that it would run away unless it was put in a closet, opened a door sufficiently wide to allow the cat to be put in, and plaintiff, thinking it was a closet, walked in and fell down the cellar stairs, she could not recover for the injuries received; her invitation to enter on the premises extending only to the use of the premises sufficient to put the cat through the open door.”

Ryerson vs. Bathgate, 67 N. J. L. 337.

If the plaintiff in the above case exceeded her invitation, it is perfectly clear that Mr. LaRue and his associate would have exceeded their invitation had they smoked while in the disposal tank.

“Where a person going to an elevator passes onto an elevated platform used as a passage-way to the office, and on his way over the platform stops to talk with men in the street, and leans against a railing of the platform, and it gives way, and he is injured, as he was not us-

ing the platform for the purposes intended he cannot recover for the injuries received.”

Kinney vs. Onsted, 71 N. W. 482, 113 Mich. 96.

Stryker and LaRue were not using the tank for “the purposes intended” if they smoked while in the same.

“Plaintiff while in the employ of a city as a ‘lineman,’ climbed a telephone pole to work on wires of the city fire department, which were carried by the topmost three crossbars. The other two crossbars carried wires of defendant telephone company. When plaintiff descended the pole, he took hold of one of the latter crossbars, which gave way and he fell. Held, that defendant is not liable, since the sole object of the crossbars is to carry wires, and not to support line-men.”

N. Y., etc., Tel. Co. vs. Speicher, 59 N. J. L. 23, 39 Atl. Rep. 661.

In the present case, the “sole object” of the committee was to inspect the tank.

It is respectfully submitted that a verdict should have been directed for defendant, because he was under no duty to warn against the danger of smoking in the tank, as it was not within the purposes for which the invitation was given.

POINT IV.

THE TRIAL COURT ERRED IN REFUSING TO CHARGE THE 8TH REQUEST OF THE DEFENDANT THAT "IF THE EXPLOSION OF THE GAS IN THE SEWAGE DISPOSAL TANK AT OCEAN GROVE WAS CAUSED BY THE STRIKING OF A MATCH BY STRYKER, AND STRYKER KNEW OF THE DANGER OF STRIKING A MATCH, BUT LARUE DID NOT, THEN THE ACT OF SAID STRYKER IN STRIKING SAID MATCH WAS THE PROXIMATE CAUSE OF THE DEATH OF SAID LARUE AND A VERDICT SHOULD BE RENDERED FOR THE DEFENDANT."

An exception to the Court's refusal to charge this request was taken (p. 23, l. 4).

This request to charge is an accurate statement of the law involved. If Stryker struck a match in the tank, knowing of the danger of so doing, this was the proximate and indeed the only cause of the injury to deceased which caused his death. Nothing Potts had done or neglected to do could have caused the explosion and the resulting injury. Assuming that Potts was under the duty of warning LaRue of the danger of striking a match in the tank, and that LaRue had not heard the warning but Stryker had, the only result of the failure to warn LaRue specifically was to send him into a place with Stryker, where Stryker, if he wished to do so, could harm or kill him. Could Mr. Potts be called upon to foresee that a man going into a place where striking a match would cause a disastrous explosion, with

knowledge of such danger, would deliberately or negligently strike a match? If so, the law imposes upon a man a responsibility for accidents beyond the range of man's ability to foresee.

In *Cuff vs. Newark, etc., R. Co.*, 35 N. J. L. 17, the Court said:

“Damages cannot be recovered in an action for personal injuries, where an independent act of a third person intervenes between the negligence of defendant complained of and the injury sustained, and but for which the injury would not have occurred.”

See also

Ross vs. Western Union Tel. Co., *supra*;

Malmberg vs. Bartos, *supra*;

Stone vs. Boston & A. R. Co., *supra*.

This rule of law is so well known and so well established that no further citation of authorities is necessary.

The act of Stryker as stated above was an independent act (without which the accident would not have occurred), intervening between defendant's negligence (if any there was) and the injury, which independent act was not set in motion by, and had no connection with, any omission of defendant.

It is urged on behalf of the defendant that this error of the trial Judge was harmful. The only evidence as to the cause of the explosion was the presence of the burnt match and cigar in the tank on the day following the explosion. To connect this with the accident the jury would have been compelled to find that either LaRue or Stryker struck the match while in the tank. LaRue did not smoke. Stryker was a smoker. The fact that the tank was

light and required no artificial illumination to enable one to see about it, and the presence of the cigar with the match, clearly show that if a match was struck it was struck for the purpose of lighting a cigar, and was therefore lighted by Stryker.

The other fact involved in this request to charge is the giving of warning. The position of the parties at the time the warning is stated to have been given and the different statements by the witnesses of plaintiff and defendant were all before the jury for consideration. In fact, the charge of the Court clearly indicated that the jury would be justified in finding that LaRue heard the warning and Stryker did not, or that Stryker heard the warning and LaRue did not. In other words, whether either or both heard the warning was left to the jury.

With these circumstances before them, it is submitted that the jury would have been justified in finding that Stryker struck the match with knowledge of the danger. Therefore, the refusal of the trial Court to charge the eighth request of the defendant was harmful error. For this reason the ruling of the learned trial Judge should be reversed and a new trial granted.

POINT V.

THE TRIAL COURT SHOULD HAVE CHARGED THE 12TH REQUEST OF DEFENDANT, WHICH IS AS FOLLOWS: "THE EXPLOSION IN SAID SEWAGE DISPOSAL TANK, WHICH CAUSED THE DEATH OF PLAINTIFF'S INTESTATE, WAS NOT THE PROBABLE AND NATURAL RESULT OF THE ACT OF THE DEFENDANT IN PERMITTING PLAINTIFF'S INTESTATE TO GO INTO SAID TANK WITHOUT WARNING HIM OF THE DANGER OF IGNITING SAID GASES."

This refusal is based upon the following views of the evidence by the trial Judge: (1) that the jury could infer from the evidence that no warning was given; (2) that the jury could infer from the evidence that LaRue struck a match causing the explosion; and upon the legal proposition that if the jury did make the two inferences mentioned the failure to give warning was the probable and natural cause of the striking of the match, and, therefore, the probable and natural cause of the death of plaintiff's intestate.

The jury could not infer that LaRue struck the match from the evidence before it, as is shown in discussing the refusal of the Court to charge defendant's eighth request. There was absolutely no evidence to connect the striking of a match with LaRue. He did not smoke, and the match, if struck at all, was struck for the purpose of lighting a cigar. For this reason alone the ruling of the trial Judge should be reversed and a new trial granted.

As to the proposition of law involved in refusing to charge this request two questions present themselves: (1) Were the deceased and Stryker expressly or impliedly invited to smoke in the tank? (2) Was Potts under the duty of foreseeing that persons going into a strange and unusual place for a short time would be likely to smoke while there?

We feel that the first of these questions has been fully discussed heretofore, so the Court is respectfully referred to what has already been said. If defendant's contention regarding the exceeding of the invitation by smoking is sound, we have an additional reason why the refusal of the trial Judge to charge the twelfth request should be reversed and a new trial granted.

The third reason for reversing the refusal of the trial Court to charge this request is that the second question mentioned above must be answered in the negative. Mr. Potts was under no duty to foresee that the committee would smoke while in the disposal tank.

The case of *Stone vs. Boston & A. R. Co., supra*, is directly in point on this question.

The refusal to charge the twelfth request of plaintiff also involved the finding by the trial Judge that no independent act of a third person intervened between the alleged negligence of defendant and the injury to plaintiff's intestate.

As nothing which Mr. Potts did or omitted could in itself have injured the deceased, it naturally follows that he did or omitted nothing which constituted the proximate cause of the explosion. What did cause the explosion (if anything in the record is evidence of the cause thereof) was the independent act of a third party, Stryker, and even if no warning of the danger of striking matches in the

tank had been given to any one, the act of Stryker was the proximate cause of the explosion and the resultant injury.

Ross vs. Western Union Tel. Co., supra;
Cuff vs. Newark, etc., T. Co., supra.

There cannot be two proximate causes. Stryker's act (if there was anything done by him to cause the explosion) was the proximate cause; Potts' alleged negligence was therefore the remote cause, and the ruling of the trial Court should be reversed and a new trial granted for this reason.

Respectfully submitted,
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Below.*



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