

NEW JERSEY  
Court of Errors and Appeals.

JANE CUFF, ADM'X OF MICHAEL CUFF,  
Deceased,  
Plff. in Error,

vs.

THE NEWARK & NEW YORK RAILROAD  
COMPANY AND CLINTON H. SAGE AND  
JOHN J. FLANAGAN,  
Defts. in Error.

Writ of Error to Supreme  
Court of New Jersey.

S. B. RANSOM, Atty. of Plff. in Error.

B. WILLIAMSON & SON, Att'ys of Deft. in Error,  
N. & N. Y. R. R. Co.

STONE & JACKSON, Atty's of Deft's in Error, Sage  
and Flanagan.

CASE.

This was an action of trespass on the case commenced in the Supreme  
Court of New Jersey, by summons issued November 24th, 1868. Return- 10  
able, December 16th, 1868.

The declaration contains three counts :

*1st Count.*—The first count charges that, on November 25th, 1867,  
Michael Cuff, deceased, was on the premises of defendants, in the city of  
Bergen, at a blacksmith shop there, where they had stored large quanti-  
ties of nitro-glycerine, used by them in blasting in their railroad cut ;  
that defendants caused a can of said glycerine to be taken to said black-  
smith shop, where it was so carelessly and unskillfully handled that it 20  
exploded and killed said Michael Cuff.

*2d Count.*—This count charges the defendants with keeping on their  
premises large quantities of nitro-glycerine, which required the utmost  
skill and care in handling, to prevent explosions ; that knowing this,  
they so carelessly and negligently handled the same that it exploded and  
killed the plaintiff's intestate.

*3d Count.*—This count charges defendants with building a magazine 30  
on their premises in Bergen, and storing in it large quantities of gly-  
cerine, highly explosive and dangerous, which required the utmost care,  
skill and diligence in using ; that it was their duty to employ none but  
the most skillful, careful, sober and experienced agents, servants, work-  
men and laborers, to have charge of the said magazine and to handle  
and use the said nitro-glycerine ; that they disregarded their duty and  
entrusted the care of the magazine and the handling of the glycerine to

one Thomas Burns, who was intemperate, inexperienced, unskillful, careless, negligent and unfit to have charge of a so highly explosive and dangerous material; that said Burns, while in a state of intoxication, took a can of the said nitro-glycerine to the blacksmith shop, where plaintiff's intestate was, and carelessly exploded the same and killed the plaintiff's intestate.

Damages are laid at \$10,000.

To this declaration all the defendants have pleaded not guilty.

10 The case was tried in the Hudson Circuit Court on the 12th day of May, 1870, before his Honor, Joseph D. Bedle, Associate Justice of Supreme Court, and a Jury, at which trial a verdict was rendered in favor of the defendants.

On the trial of this case the following bills of exception were allowed and sealed :

# Supreme Court,

HUDSON COUNTY, May 10, 1869.

BEFORE JUSTICE BEDLE.

JANE CUFF, ADM'X OF MICHAEL CUFF,  
Deceased,

vs.

NEWARK & NEW YORK RAILROAD Co.,  
et al.

Mr. S. B. Ramson Attorney for  
Plaintiff.

B. Williamson and Stone &  
Jackson for Defendants.

This is an action on the case to recover damages for the death of plaintiff's husband, under the act of March 3d, 1848. The testimony was as follows:

JOHN SCANLON, sworn and examined by plaintiff's counsel.

Q. What is your business? A. Laborer at that time, sir. Q. At what time? A. At the time of the explosion. Q. For whom? A. For Sage & Flanagan. Q. When was that explosion? A. 25th of November, 1867. Q. How long had you worked for them? A. From the 11th of April until that day. Q. What were Sage & Flanagan doing? A. They had the contract of the road, I believe. Q. What road? A. 10 Newark and New York. Q. Railroad? A. Railroad. Q. What were they doing? A. They were working on the road. Q. What kind of work? A. They were taking out rock dirt. Q. Was there any blasting going on there? A. Yes, sir. Q. What did they use to blast with? Q. Nitro-glycerine oil, sir. Q. When did the oil first come there? A. It came there about two months before the explosion, I believe. Q. How was it brought there? A. It was first: glycerine oil was fetched there in the buggy wagon. Q. How many cans? A. Three or four, I could not say which. Q. What is the size of these cans? A. I suppose they are about 13 inches square. Q. What are they made of? A. 20 Tin. Q. How much do they hold? A. I can't say. Q. About? A. I could not say; I heard say that they held— [Objected to.] Q. Have not you seen them? A. Yes. Q. Do you think they weighed 50 lbs.? A. I can't say. Q. Do you mean 15 inches each way? A. Yes. Q. 15 inches cube? A. Square, every way.

*Court*—Did he say how much they would hold?

*Plaintiff's Council*—He did not know. [To witness.] What was done with these three or four cans of oil?

*Witness*—They were carried to where they dug a hole, between three and four feet deep? Q. By whose orders were they carried? A. Mr. 30 Sage's. Q. The partner of Flanagan? A. Yes, sir. Q. Who had control, or under whose direction was this hole dug? A. Mr. Sage's. Q. Was he there? A. Yes, he accompanied the men to the place. Q. Where this magazine was put, to whom did the ground belong? A. I can't say— [Objected to—objection overruled.] I can't say who it belonged to. I believe it belonged to Captain Martin.

*The Court*—The question is only competent as showing in whose possession it was. You don't know in whose possession it was? A. No, sir.

- Plaintiff's Counsel*—Enclosed piece of land, or not? A. No, sir, it was not enclosed. Q. How near the cut of the railroad was it? A. Some 25 or 30 feet, I guess. Q. From the cut of the railroad? A. Yes, from the edge. Q. How long did it remain there? A. Somewheres about between a week and two weeks, I think. Q. Where was it taken then? A. It was taken then to where this magazine was built for the purpose of keeping it. Q. The permanent magazine? A. Yes.
- 10 Q. Under whose direction was that magazine built? A. It was built under the directions of Shaffner, I believe. Q. Who is the Engineer of the Newark and New York Railroad? A. Mr. Lehlbach. Q. Was he present when the magazine was being built? A. No, sir, not when the magazine was built. Q. Was he present when the place was chosen where the magazine was to be built? A. I saw him there the day they commenced to build it. Q. What did you see him do? A. I saw him stand in front of where it was built; I did not see him do anything particular. Q. Who had control of the oil while they were blasting? A. McNab, at first. Q. Who afterwards? A. Thomas Burns.
- 20 *The Court*—Who do you say had control of it at first in blasting? A. McNab, sir; Charles McNab. Q. In blasting? A. Yes, sir. Q. Burns afterwards? A. Yes, sir.

- Plaintiff's Counsel*—How long before the accident did Burns take control of the oil? A. About a month, I think. Q. What was he doing before he took charge of the oil? A. He came there on the road and worked at drilling for some two or three weeks; worked on the rock. Q. Where did Burns board? A. He boarded with me at the time of the explosion. Q. How long had he boarded with you? A. About six weeks, I believe. Q. What were his habits while he boarded
- 30 with you, as to temperance; his habits? A. He drank frequently. Q. How many times was he drunk? [Overruled, as leading.] Q. When he drank did he drink much? A. I saw him three times that he was very drunk. Q. How many times was he drunk? A. I could not say how many times. There were three times he was as drunk as any man could be. Q. Did you see him on Sunday the 24th of November, 1867? A. Yes, sir. Q. At what time in the day did you see him? A. About three o'clock, I think. Q. What was his condition then? A. Drunk. Q. Did you see Col. Shaffner that day? A. Yes, sir. Q. What was Col. Shaffner doing when you saw him? A. He passed by my door
- 40 where I lived, and went towards the magazine. Q. Do you know whether he saw Burns that day? A. Yes, sir. Q. What time that day?
- Court*—What do you know? Do you know whether he saw him or not? A. Yes, sir.

- Plaintiff's Counsel*—What time of day did he see him? A. Saw him about that time. Q. Who was Col. Shaffner that you have spoken of? A. He was one in the employ of Sage & Flanagan. Q. Do you know what Burns did, after meeting Col. Shaffner that day? A. He came into my house after parting with Col. Shaffner. Q. Do you know whether he did anything for Mr. Shaffner; if so, what? A. He told
- 50 me— [Objected to and overruled.] Q. Did you see him with Shaffner or in Shaffner's company? A. He went towards the magazine with Mr. Shaffner.

*The Court*—Who did? A. Mr. Burns.

*Plaintiff's Counsel*—When Burns went with Shaffner could he walk straight? A. Well, I did not notice him very much, when he was going there. Q. When he came back, what was his condition? A. His condition was that his knees were muddy, his coat sleeves and elbows

muddy; he looked as if he had fallen down. Q. Was he sober or drunk? A. He was drunk, sir.

*Court*—Could walk alone? A. Yes, sir.

*Plaintiff's Counsel*—When he came back alone could he walk straight then? A. Not very, sir.

*Court*—How long was that after you saw him with Col. Shaffner? A. It might have been twenty minutes or half an hour.

*Plaintiff's Counsel*—What became of Burns after that? A. When he came into my house he sat down and said he wanted something to eat; I called my wife, she was lying down, to get him some dinner; and when she came out he said he disturbed her, and she said she was often disturbed, and so he— [Conversation objected to and overruled.] Q. What did he do? A. He said if he disturbed her that— Q. Did he eat his dinner? A. No, sir, he got akind of angry and went out. Q. When did he come back? A. He did not until the dusk of the evening. Q. What was his condition then? A. He was very drunk. Q. Where did he go after that? A. He did not go anywhere after that.

*Court*—What became of him after he eat some supper? A. He went to bed.

*Plaintiff's Counsel*—That Sunday evening, did he, or not, order the men out to work? A. Yes, after he eat his supper, he ordered the men to go out working. Q. Where did he sleep that night? A. He slept in my house. [The Court remarked Counsel's questions were too leading.] Q. State what took place at the supper table? A. He sat to supper among a dozen men and myself, and he used his plate for a saucer. [Objected to as a kind of makeway to prejudice the case. Objection overruled.] Q. State all that took place at the supper table as briefly as you can, between Burns and his men?

Defendant's Counsel objected. Court ruled "If you want to prove 30 the man was drunk, it is not necessary to prove everything he said or did;" and overruled the question. Plaintiff's Counsel excepted to ruling.

Q. When did you see him the next morning, what time? A. I saw him at breakfast. Q. What was his condition then? A. Well, he was pretty sober, sleeping at night. Q. What time in the morning was that? A. It was before 7 o'clock. Q. When did you see him next? A. I saw him all along that forenoon. Q. What was his condition during that forenoon? A. His condition was drunk, about 9 o'clock. Q. When did you see him next after 9 o'clock? A. I saw him all along until noon; 40 I was along by him. Q. What was his condition then, at noon? A. He was very drunk. Q. When did you see him next, after noon? A. I saw him at one o'clock; he was out to work again. Q. What was his condition then? A. He was pretty drunk. Q. When did you last see him? A. The last I saw of him was about two o'clock. Q. What was his condition then? A. He was still drunk. Q. What was he doing when you last saw him? A. He was in charge of his men, stayed round the works there, backwards and forwards. Q. At what hour did the explosion occur? A. About half past four, I believe. Q. Where were you then? A. I was coming up the road—the railroad. Q. State 50 what you saw? A. I saw the whole effects of the explosion in the elements. Q. Where did the explosion occur? A. It occurred by the blacksmith's shop. Q. Where was the blacksmith's shop? A. In Bergen. Q. Can't you come a little nearer; whereabouts in Bergen, one of the streets? A. I suppose it is seventy-five or one hundred yards from Bergen Avenue. Q. Whose blacksmith shop was it? A. Supposed to be Flanagan and Sage's. Q. Who was in possession of the property—

the real estate upon which the shop stood, about the shop? A. The Railroad Company.

[Deed from Wm. Clarke and H. Ege to the Newark and New York Railroad Co., Liber. 147 of Deeds for Hudson Co., page 179, map of 1838, dated Nov. 5, 1866, put in evidence.]

Q. Will you look at that map and tell us where that blacksmith shop was situated, near which this explosion took place? A. The distances I don't know. Q. Describe it without reference to the map? A. I suppose the blacksmith's shop stood about one hundred feet or more below the corner of Mr. Newkirk's fence. Q. From which corner of his fence? A. From the bottom corner. Q. North, south, east or west from that corner? A. South corner, I suppose it is. Q. Did the blacksmith's shop stand north or east or west from that corner? A. Southwest rather. Q. Which way from Bergen Avenue? A. South of Bergen Avenue, I believe. It stands very near to the proposed road. Q. On the side towards the railroad or the other side? A. On the side towards the railroad. Q. How many feet from Bergen Avenue? A. I should suppose it was three hundred feet, may be.

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20 *Court*—You say the blacksmith's shop was south of Bergen Avenue? A. Yes Sir; I think it was southwest.

*Plaintiff's Counsel*—Were there any other buildings upon that proposed street? A. There were, sir. Q. How were they situated with regard to the proposed street? A. They were supposed to be close to the proposed street. Q. On the side towards the railroad, or the other? A. On the side towards the railroad. Q. Where was this permanent magazine that was spoken of—the second one? A. It was close by the railroad, on the lower part of this piece of ground of the Company's. Q. What piece of ground? A. About four acres on the map. [Map explained to the jury.] Q. About how many feet from the centre line of the railroad? A. I could not say, sir. Q. How many would you suppose, or about how many was it. Was it a quarter of a mile? A. It was, I believe, between fifty and seventy-five feet. Q. About how far from the rear line was it? A. Of the four-acre lot.

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*Court*—Do you know the rear line of the four acre lot? A. No Sir, I don't; it is the bottom line I suppose.

*Plaintiff's Counsel*—Bergen Avenue is one end of it, and the lane on the other end? A. It is on the lane on the other end. Q. How far was the magazine from that lane? A. I can't say. Q. About as near as you can? A. It may be twenty feet or so, one way or the other; I can't say exactly. Q. On which side of the lane, toward Bergen Avenue, or the other way from the lane? A. I can't say, sir. Q. How did you travel from the magazine to the blacksmith's shop? A. Which direction do you mean? Q. From the magazine to the blacksmith's shop? A. You travel towards Bergen Avenue. Q. Was there a path leading from one to the other? A. Yes. Q. Was that path along the bank of the railroad? [Overruled as too leading.] Q. Describe the path? A. The path was on the side of the proposed street towards the railroad bank; there was some dirt there thrown up, and the path was between that and the proposed street. Q. At this point was there any excavation by the railroad?

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*Court*—Which point?

*Plaintiff's Counsel*—Where this magazine was, and where the blacksmith's shop was—from the magazine to Bergen Avenue—was the railroad graded? A. No sir. Q. Was there any excavation cut or dug? A. Yes, sir. Q. How deep was that cut? A. It was supposed to be fourteen or sixteen feet. Q. At the time of this explosion, Nov. 25, 1867, where were they blasting? A. Can I recall that last question? Q. Yes.

A. The railroad was open to Bergen Avenue. Q. On November 25th? A. It was partly opened, but not to a regular width or depth, the same as the rest was. Q. Were they blasting anywhere along there at that time—the railroad—if so, tell where? A. They were blasting between the magazine and Bergen Avenue.

*Court*—Who were? A. Mr. Burns was blasting at this time, using this oil. Q. The question was, were the railroad blasting. Do you mean to say the railroad were or they were blasting? A. They were blasting on the railroad.

*Plaintiff's Counsel*—Did Burns pay his board at your house? A. 10  
No, sir. Q. Who did? A. It was paid by Messrs. Sage & Flanagan's clerk. Q. State how it was paid? A. I made out the bill of my boarders and handed it in, and got paid for all together. Q. What other boarders do you refer to? A. I had some ten or eleven at that time along with him. Q. How were you paid? A. I was paid my wages, board and all paid together. Q. Who employed you? A. Mr. Sage & Flanagan. Q. At the time of Burn's death was he in debt to you to any amount, if so to what amount? A. He was in debt to me \$82. Q. Was that ever paid you? A. Yes, sir, I put it in with his board bill. Q. Who paid it? A. Messrs. Sage & Flanagan's clerk, making a dis- 20  
tinction between the debt and the board. Q. How often did you see Mr. Lehlbach there? A. He was there most every day; sometimes three or four days of the week, there pretty regular. Q. State, if you please, when he came there, what he did, and when he went away? A. He laid out the work there and took the estimates, as far as I could see what he did. Q. Was Colonel Shaffner ever there? A. Yes, sir, he was always there; very seldom absent. Q. Did you ever see Col. Shaffner there; if so, how often? A. Yes sir, he was there most every day. Q. State, if you please, what Sage was doing when you saw him there? A. He superintended his contract, I suppose. Q. What did you see him 30  
do; what did he actually do? A. He did not do anything, in fact, any more than walk backward and forward and talk to his foreman; he done no work himself. Q. What was the name of the foreman that you saw him talking to? A. Thos. Nicholls. Q. What was Shaffner doing when you saw him? A. He was there using the oil. Q. What else? A. He superintended his part of it, I suppose. Q. How was this oil used? A. In regard to blasting? Q. Yes. A. They first drill their holes; when they drill their holes and put the oil in, sometimes they explode it by fuse and powder; more times they explode it by a gal-  
vanic battery. Q. How many holes would they charge and explode at 40  
one time? A. When they used the powder they would explode a dozen, sometimes eight, and sometimes only four. Q. What was this magazine—the last one spoken of—made of; what were the materials? A. It was made of hemlock boards and hemlock plank on top, two course of three inch hemlock plank on top of it. Q. What was the size of it? A. It is about twelve or fourteen foot square, I believe. Q. How did you get into it? A. There was a door on one side—a door and window on one side—the rest of it was partly in the bank. Q. Had the door a lock on or not? A. Sometimes I believe they used to lock it at night. Q. In the day time how was it? A. In the day time it was generally 50  
open. Q. In what condition was the window that you spoke of? A. The window was open, except a couple of slats nailed across. Q. Was there any one left in the magazine in charge of the oil? A. Mr. Burns was in charge of it. Q. Was he in the magazine all the time! A. No, sir. Q. How much of the time was he in the magazine? A. Only when he wanted oil, or went after some material to use towards blasting. Q. How was the oil taken from the magazine to the place where

- it was exploded? A. They took it sometimes in a half-gallon measure like, tin measure; sometimes they took it in a larger one, and sometimes in a smaller one. Q. What would they do with it when they got it to the holes they were about to charge? A. They would put some of it in the holes. Q. What did you say they would do? A. They would pour some of it into a hole, and then fix their other materials, and then charge the next one, and so on; they would charge until they got done charging. Q. Where would this oil be placed while they were preparing to charge a second hole? A. Placed close by where they charged
- 10 the last one. Q. At the time that this oil would be there, where would the men be; at the time this oil was waiting to be poured in the second hole, where would the men be? [Defendant's Counsel objected to the proof of matters by a person not an expert. Objection overruled.] Q. Did you state where you were when the explosion occurred; if not, state where you were? A. I was coming up the railroad, about one hundred and fifty yards from the explosion. Q. What did you do? A. I was sitting on a car, and I was sitting in that way, and I happened to be looking up when I saw the whole effects of it; I jumped off and ran towards the explosion. Q. What did you see when you got there,
- 20 or what did you do? A. When I got there I made for the door of where I lived, and it was blockaded with boards, irons, bricks and everything that was round the blacksmith's shop, or part of it round there, and in trying to get in I heard my wife scream a little ways from the door, and then I turned the other way. Q. Where did you go? A. I went to my wife, where she was lying. Q. What persons did you see then there? A. I was about the first that got there myself; there was no persons there, except them that were killed and her. Q. Who were they? A. Patrick Keily, Hugh McKenna, John Hicks, the two Mr. Millers and Mr. Cuff; the others I did not see, except a woman carrying
- 30 a child in her arms. Q. Where was Burns? A. Burns was all blowed to pieces, so that nobody could find where he was. Q. Which ones of these that you have named were dead, and which living when you got there? A. The only man that I saw living was one of the Mr. Millers and Hicks. Q. And the others? A. The others were dead; Keily was not yet dead when I saw him. Q. The others were dead? A. Yes. Q. Describe, if you please, the appearance of the blacksmith's shop at that time? A. The blacksmith's shop was all blowed away except one fire place and a couple of pieces of posts; one post I guess was whole, and one of the anvils laid on Hicks' breast. Q. Where was Michael Cuff?
- 40 A. He laid close by the blacksmith's shop. Q. Inside of where the blacksmith's shop was? A. No, sir, outside. Q. State the position that Michael Cuff laid with reference to where the blacksmith's shop stood? A. I think he laid about twenty or thirty feet from the end of the blacksmith shop. Q. In which direction? A. Toward the proposed street, about twenty feet. Q. Was there any buildings between your house and the shop? A. Yes, sir, there was a small shanty. Q. How was that affected by the explosion? A. One side was blown in, and the earth fell down into it. Q. How far was that from the place where the explosion occurred? A. About sixty or seventy feet. Q. How did the
- 50 explosion affect your house? A. It drove the studding in about three inches from their place. Q. And how far was your house from the blacksmith's shop where the explosion took place? A. About eighty feet, I guess. Q. Do you know how much of this nitro-glycerine was in the magazine at this time? A. There was from ten to sixteen cans, I guess; between ten and sixteen, I think; some had been used; I guess there was ten cans full? Q. You spoke of the position of Michael Cuff. How long did Michael Cuff remain in that position? A. I could not

say, sir, about an hour, or an hour and a half may be. Q. Who moved him from that position? A. I don't know who moved him. Q. When and where did you next see him? A. I saw him in the stable built by Mr. Otis.

*Court*—Dead, I suppose? A. Yes, sir.

*Plaintiff's Counsel*—State as near as you can how Michael Cuff was injured? A. There was about half of one side of his head blown off, with several gashes and holes through him, all shattered like. Q. Do you know what became of him after that, Mr. Scanlon? A. There were two of the men washed him and put the pieces of his head together again, and he lay there until next day. Q. What occurred in the meanwhile between those times? A. Nothing occurred, I believe. Q. Did any one take charge of him? A. Yes, his brother, after the Coroner's inquest? Q. When was the Coroner's inquest? A. The next day, I believe. Q. Did you see the Coroner there that evening or not? A. No, sir, I don't think I did. Q. What Coroner? A. Mr. Warren, I think his name was. Q. After the Coroner's inquest what became of Mr. Cuff—the body of Mr. Michael Cuff? A. His brother took him away. Q. What day was it, do you remember; what time of day? A. It was about one o'clock in the day, I think, twelve or one o'clock, somewhere about in the middle of the day.

*Cross-examined by Defendant's Counsel*—What is your business at the present time? A. At the present time I drive a horse and car. Q. For yourself or in the employ of some one. A. I own the horse and car, myself; in the employ of Mr. Robertson. Q. Are you working on the railroad now? A. No, sir. Q. When did you leave it? A. I left it about the middle of September last. Q. You kept a boarding house about the time of this accident, did you? A. Yes, sir. Q. And did work besides; what kind of work? A. At the time of the explosion I took the loaded cars out of the pit and sent them down the hill. Q. By horse power? A. No, sir, by leverage. Q. You had charge of moving the cars that were filled with rock and dirt? A. Yes, sir. Q. You were not near the place where the blasting was going on, very much; you were moving back and forth part of the time? A. Yes, sir. Q. How far did you move? A. Three hundred yards, I guess; it was down the hill. Q. Down towards Newark Bay? A. Yes, sir. Q. Then you dumped your cars and came back again? A. I stopped the cars at the bottom of the grade, and they took them on towards the bay. Q. How took them, on? A. By horse-power. Q. Then your business was going from that place where the rock and dirt was put in the cars, backwards and forwards, all the time? A. Yes. Q. How did you move the cars? A. We start them by horse-power, and then they run themselves on the hill. Q. Take more than one man, or could you manage one car by yourself? A. Sometimes I had a man with me, according to how many cars I had. Q. Who employed you; who hired you? A. Mr. Nicholls hired me; in Sage & Flanagan's employ. Q. How do you know he is in Sage & Flanagan's employ? A. Well, he is their foreman. Q. This path you speak of that ran along side, how did that run; along the railroad? A. No, sir. Q. How did it run? A. It ran from alongside of this bank of dirt taken out of the cut; then the path was on the side, towards the proposed street, of this bank of dirt; there was a very large bank of dirt between that and the railroad line. Q. Near to your place? A. Yes, sir, right behind where I live. Q. You kept boarders there and worked on the railroad, did you? A. Yes, sir. Q. Then there was a blacksmith shop on the spot; any other buildings besides that? A. There were some shanties. Q. Occupied by the men? A. Yes, sir. Q. No public buildings there at

- all, belonging to outside people? A. No, sir, not there. Q. The only street open there was Bergen avenue; the only public street there? A. Yes, that was the only public street. Q. How do you know about this being a proposed street; did you ever see it staked out? A. I was there when Mr. Sage gave the carpenters orders to build those shanties, and he told them there was a street to run there, and to build them nearly on the line of it. Q. That is all you know of it; that Mr. Sage ordered some buildings on that line? A. Yes, sir. Q. But the buildings were those shanties you speak of; were not they? A. Yes, sir.
- 10 Q. Mr. Burns took charge of the blasting about this time? A. Not at the time the shanties were built. Q. At the time of the accident? A. Yes, sir. Q. Did you sell any liquor at your house? A. No, sir. Q. Have any there at all? A. No, sir. Q. None there at the time you speak of, before this accident occurred? A. No, sir; not to my knowledge. Q. You say that Flanagan & Sage had a contract with the Railroad Company; how do you know that; did they ever tell you so? A. He never did. [Plaintiff's Counsel objected. Court said the question was disposed of.] *Witness*—It was supposed by everybody. Q. And you supposed the same thing? A. They worked there as contractors. Q.
- 20 You don't know they had the contract or not? A. I never saw their contract. Q. All you know is, it was supposed they had the contract? A. Yes, sir. Q. You say the same thing about Mr. Shaffner; how do you know who employed him? A. I heard Mr. Sage say he was to have a man come there to blast that rock with nitro-glycerine oil. Q. Heard him say he was to have a man come there? A. Yes, sir. Q. Did he say who the man was? A. By the name of Shaffner & Smith. Smith was in partnership when they first came there, and they dissolved. Q. Did you ever see their contract? A. No, sir. Q. Do you know whether they had a contract or not? A. No, sir. Q. Who was this first
- 30 magazine built by, the first one that was put up there? A. The first oil come there was put in a hole in the ground. Q. That is not answering my question. You said there were two magazines put there. Who built the first magazine? A. It was not built at all; it was a hole in the ground.

*Court*—The second was called a permanent magazine; the first he spoke of was a hole in the ground.

- Defendant's Counsel*—There was only one magazine built? A. Only one, sir. Q. The oil was brought in a buggy, you say? A. Yes, sir. Q. By whom? A. By one of the men that worked on the rail-
- 40 road; his name I disremember now. Q. More than one can? A. Three or four; I can't say which. Q. The man worked on the railroad you say; did you ever see him work on the railroad before? A. I saw him work there. Q. Are you sure, as many as three cans? A. Yes, sir. Q. Is that man working there now? A. No, sir. Q. Where is he gone? A. I don't know, sir. Q. When did you see him last? A. I met him last in New York; I don't know how long ago it was; nor do I remember his name. Q. Were those larger sized cans? A. I can't say whether they were the same size of the others or not. Q. Did you examine at all? A. No, sir. Q. Where were you standing when they came? A. I
- 50 was standing in the pit; saw a man carry them. Q. How far was this hole from the pit? A. It was about twenty or thirty feet from the edge of the bank, I think. Q. Have you ever been engaged yourself in blasting? A. No, sir, not by oil. Q. Ever engaged in drilling? A. Yes, sir. Q. Where were they blasting at the time this oil was brought in this buggy—what part of the road? A. They were blasting between where the magazine stood and Bergen Avenue. Q. And you were working at that time in pit, were you? A. I was, sometimes. Q. At the

time the oil was brought in you say they carried it to the hole and put it there, and you were working then at the pit; how far off was the hole from where you were working? A. There was quite a slope to the railroad bank; it would make some difference from the bottom of the cut to the top. Q. Give us the rest of it? A. It might be forty to fifty feet away from it.

*Court*—That is the hole? A. Yes sir.

*Defendant's Counsel*—How far was the hole where the stuff was put from the face of the rock where they were blasting? A. It was very nearly opposite where they were blasting. Q. How far off? A. 10 About fifty feet or so. Q. Quite sure of that? A. I am not sure of any measurement at all; I only suppose it. Q. Was it as far as across this court room? A. Yes sir, I think it was. Q. Further? A. I don't know that it was much further. Q. How long had you known Burns? A. I knew him about two months; I was acquainted with him. Q. Did you know him before he came to work there? A. No, sir; never saw him until I saw him there. Q. Did he board at your place while he was there? A. No, sir. Q. How long before the accident did he come to board at your place? A. About six weeks. Q. Where did he board before that? A. He boarded with Mr. Hicks, one of the men that 20 was killed. Q. Did Mr. Hicks have a place on the same road there? A. Yes, sir. Q. Hicks also worked on the road? A. He was a blacksmith, sir; done blacksmithing for the road. Q. What was Burns indebted to you for to the amount of \$82? A. Money I loaned him, sir. Q. Loaned one time, or were you in the habit of loaning to him? A. I loaned it to him in three different sums. Q. You say you presented your bills to the clerk; did you? A. Yes, sir. Q. What is the clerk's name? A. Mr. Hinckley. Q. Did he ever refuse payment of these bills on any occasion? A. No, sir. Q. How do you make out your bills? A. I put down the man's name; put down his amount of board; what 30 his board come to. Q. Get it certified by any one, or just pass it to the clerk? A. Just pass it to the clerk. Q. Who told you to go to the clerk to get those bills paid? A. When I first went on the road, I inquired for who would be responsible for those men's boards, and I was told by Mr. Gomersall to make out my bills in this way, and hand them in, and they would be paid, the money would be deducted from the men's wages.

*Plaintiff's Counsel*—Who told you this? A. Mr. Gomersall; he kept a store at the time.

*Defendant's Counsel*—How did you know what men to take in as 40 boarders? A. I took men that I saw working on the road. Q. You saw them working on the road, and then took them as boarders? A. Yes. Q. It did not make any difference what kind of work they did? A. No, sir. Q. Was Mr. Gomersall working on the road at that time? A. No, sir, he kept the store. Q. What store was it? A. It was called the Newark and New York Railroad Store. Q. That is the reason you took Burns in, was it? A. Yes, sir. Q. You don't know how Burns came to work there, do you; do you know who hired him? A. He was first hired— Q. Were you present at the time? A. No, sir. Q. You don't know except by hearsay? A. That is all. 50

*Re-examined by Mr. Ransom, of Plaintiff's Counsel*—How many shanties were built on the four-acre lot? A. Six, sir. Q. Were they all occupied? A. No, sir; there was one that was not occupied at the time. Q. Five were occupied? A. Yes, sir; one that was blown in was not occupied. Q. Occupied by families? A. Yes, sir. Q. Was this four-acre lot fenced in at all, or all open to the street? A. It was fenced on one side. Q. Which side? A. On the north side of the proposed

street. Q. Where these shanties stood was it fenced in front of the shanties? A. No, sir; it was quite an open field there, and the fence was some two hundred feet from the shanties; somewhere about that.

Q. Which way was the fence, toward the railroad from the shanties?

A. It was beyond the shanties from the railroad. Q. So that there was a space of how many feet between these shanties and the fence you speak of?

A. I think it is close on two hundred feet, from the shanties to the fence in front. Q. From the shanties to Bergen Avenue, was there any fence between them and Bergen Avenue, or was it open. A. It was

10 open from Mr. Newkirk's fence to a house that stands on the railroad premises. Q. It was all open from the shanties to the Avenue? A. Yes, sir. Q. Were these shanties occupied by the workmen on the railroad? A. Yes, sir.

*Defendant's Counsel*—Only a fence on one side? A. Yes, sir.

*Plaintiff's Counsel*—The fence is on the northeast side of the proposed

street. Who built that store there? A. I don't know, sir; it was built before I came there. Q. Did the workmen trade at that store principally?

A. Yes, sir. Q. Were the bills made at that store taken out of their wages? A. Yes, sir. Q. This blacksmith's shop blown up, was

20 that the shop Hick's worked in? A. Yes, sir, the same shop. Q. Who built that shop? A. The shop was built before I come there, sir. Q.

You say it was called the railroad office, the shop blown in? A. The work of the railroad was done in it—shoeing horses, &c. Q. Was there

any other work done in it? A. All the blacksmith work needed was done there. Q. Needed about the railroad? A. Yes. Q. Any work

outside of the railroad work done in the shop? A. No, sir; I don't think there was. Q. Do you know who employed Hicks, who worked

in the shop? A. I could not say who employed him. Q. Was there

more than one blacksmith working in the shop? A. Yes, sir. Q. Who

30 was the other? A. Mr. Simmons and Patrick Keily. Q. Keily was killed? A. Yes, sir.

*Court*—Simmons, Keily and Hicks worked in the shop? A. Yes sir.

*Plaintiff's Counsel*—Was Simmons in the shop at the time of the explosion? A. Yes, sir. Q. Was he killed? A. No, sir. Q. Where is

he now? A. I don't know, sir, where he is. Q. Do you know who

employed him? A. No, sir. Q. When you speak of Sage & Flanagan

having a contract, do you know anything about their having a contract,

to your own knowledge? A. Nothing more than to see them on the

works. Q. You merely supposed they had a contract? A. Yes. Q.

40 You don't know of the arrangements they made with the company, do you, or whether they made any? A. No, sir. Q. You speak of the

Engineer being there on an average two or three times a week, what

would he do about the work, when he was there, give any directions?

A. He staked out the work. Q. Did he give any directions as to how

it was to be done? A. I can't say.

*Re-cross*—Explain how this shop was constructed just before this accident took place; was there more than one apartment there? A. There

was an addition built to it before this explosion. Q. How large? A.

Some twelve or sixteen feet, thereabouts; may be eighteen feet. Q.

50 Eighteen feet square? A. Yes, a space, it is about that. Q. The whole

thing was destroyed? A. Yes, sir. Q. Were you able to tell where the

explosion originated in the old part?

*Court*—That is not coming out of their examination.

*Defendant's Counsel*—Who built the addition you speak of? A. I

don't know, sir, who built it. Q. You don't know who built it? A.

No, sir; I could not say, it is about like the contract.

*Court*—Mr. Scanlon, do you know where Mr. Cuff was employed? A.

No, sir. Q. What kind was the blacksmith's shop? A. The blacksmith's shop was all enclosed together, and all one inside single room. Q. There was an addition built to it? A. Yes, sir. Q. Any partition between the old and new house? A. No, sir. Q. Which part did Burns work in? A. Burns did not work in any part.

JOHANNA SCANLON, sworn and examined by plaintiff's counsel :

Q. Are you the wife of Mr. Scanlon, who has just testified? A. Yes, sir. Q. Living with him, keeping boarders as described by Mr. Scanlon? A. Yes, sir. Q. Do you remember this man, Thos. Burns? A. Yes, sir. Q. Did he board with you? A. Yes, sir. Q. State what you 10 know about Thomas Burns having been drunk on any occasion previous to this accident, within six weeks thereafter, if you know anything? A. I saw him, Thos. Burns, drunk three times, the same as my husband did; I saw him drunk the Sunday before the explosion. Q. Do you mean two other times besides that Sunday? A. Yes, sir; I only remember once besides that Sunday and the day of the explosion. Q. You called one time one, Sunday two, and day of explosion three? A. Yes, sir. Q. When did you first see Thos. Burns on Sunday, 25th of November. A. I think it was about 3 o'clock; dinner was all over, and I was lying down, and I was called out to wait on him. Q. What was his condition 20 then? A. He seemed to be in a bad temper; he got angry with me and went right out. Q. State as to his condition, as to being under the influence of liquor? A. He was under the influence of liquor. Q. Do you mean to say that he was drunk, then? A. Yes, sir. Q. Did you see Col. Shaffner about the grounds that afternoon on Sunday? A. No, sir, I did not; I had not been out doors much that afternoon. Q. What was the condition of Burns at 6 o'clock on that Sunday afternoon; A. He had his little supper, that is not much, and after his supper was over he wanted the men to get ready and go out to work—[This evidence was overruled]—he was very stupid; at the supper he poured his tea 30 out on his plate, for a saucer. Q. Was he drunk at supper time? A. Yes, sir; I was very glad to see him away from the table. Q. Do you know about what time he went to bed on Sunday night? A. I could not say, sir; it was soon after that, though. Q. What time do you have supper on Sunday. A. Generally about 6 o'clock. Q. What time did you see Mr. Burns on Monday morning? A. He had his breakfast. Q. What time was that? About 6 o'clock, for the men to be to work at 7; before 6 sometimes. Q. What was his condition then? A. He was quite sober, I expect; I did not take much notice; he slept all night I suppose. Q. What other times did you notice Mr. Burns in the forenoon 40 of that day? A. I don't remember to notice him until dinner time, he was drunk again. Q. At dinner time drunk again? A. Yes. Q. What time was dinner? A. After 12 o'clock. Q. When did you see him again after dinner? A. He came in about 3 o'clock, I should think it was; I suppose it to be, and he told me he would go and lay down for an hour; he told me to call him in an hour's time; he was hardly able to go up stairs; then I did not call him in an hour's time. Q. That was about 3 o'clock? A. Yes, sir; it may be before 3. Q. He was then hardly able to go up stairs? A. Yes, because he was so stupidly drunk; he was hardly able to speak. Q. Did you call him? A. No, sir, I did 50 not. Q. State what else you know? A. I went and looked at his watch; he left it on the table, and it was an hour and ten minutes expired then, he had been lying down; I went to my work and Mr. Nicholls came in in a few minutes. Q. Who is Mr. Nicholls? A. Mr. Sage's foreman. Q. He was the one your husband spoke of? A. Yes, sir, and he had an order— Q. He came in; what did he have? A. An order for the oil; an order for oil from another man that was after oil.

*Court*—What do you mean by he had an order? A. A written order from Mr. Shaffner, as I heard by another man.

*Plaintiff's Counsel*—He had some written order; what did he want? What did he say to you? A. He asked me if Burns was in, and I said yes, he was lying down, and he told me to call him, and I said he had not better call him, that he was drunk, and he said he would have to be there, that there was a man outside—

*Defendants Counsel*—Nicholls asked if Burns was in? A. Yes, I told him he was; I said he had better not to wake him, that he was drunk; 10 he said he would have to come, to get up: that there was a man outside for some oil, and that he would have nothing to do with it himself.

*Plaintiff's Counsel*—What else happened? A. Then I went up stairs and looked at Burns; he seemed to be so sound asleep I did not want to call him; I came back again, and Mr. Nicholls went up himself and called him; he woke him up and he came down, Burns did, both Nicholls and Burns, and I got him some water to wash him; then when he was done washing, he turned round and asked me how did he look; I told him, just as I thought, that he looked very bad and drowsy; then he told me that he was going to fill that oil, and he knew that he was 20 going in danger of his life—[Defendant's counsel objected to evidence of conversation—objection overruled. Q. Go on Mrs. Scanlon? A. I told him if he thought so he was very foolish to do so, if he thought he had too much liquor taken; I told him he was foolish to have anything to do with it if he had any liquor taken. Q. What did he say before that? A. He said if he was in his sober senses it was dangerous.

*Defendant's Counsel*—Did he say that or not? A. He said it.

*Plaintiff's Counsel*—Go on, Mrs. Scanlon? A. That is the last I seen of him; then he went out. Q. How long after that time before you heard the explosion? A. It could not be more than fifteen or twenty 30 minutes; I am not sure how long. Q. Just state in a few words what you know of the results of that explosion; you did not see Burns at the time the explosion took place or immediately before it? A. That was the last time I had seen him. Q. Tell what you know of the explosion? A. All I know about the explosion, that I was knocked senseless myself and my leg nearly cut off; I could not tell much what I had seen, for I don't remember anything I had seen. Q. Where were you at this time? A. I was just entering my own door. Q. Were you on the side of your house away from or towards the blacksmith's shop? A. Towards the 40 side of the blacksmith's shop. Q. You speak about having been knocked senseless; when you came to yourself where did you find yourself? A. I was on my own door; the first knock I got, when my leg was cut, I fell right down and did not know what happened, and then I seen a man run, and I thought I should run after him, and I stood up and I ran a few steps from the door, and then I was knocked down again, and did not know where I was for a few minutes; did not know night from day; it could not be but a few minutes when I come to myself.

*Court*—What do you mean by your leg nearly cut off? A. I had my leg very badly cut; I was under the doctor's care all winter. Q. Do you 50 know whether anything hit you or not, on the leg? A. I know something hit me, but I don't know what? Q. When you ran and fell the second time? A. I was hit on the back when I fell. Q. This was the second time? A. I thought I was killed, cut in two halves, and my head was hit.

*Cross-examined by Defendant's Counsel*—How long did Nicholls stay at your house, Mrs. Scanlon, at the time he came there? A. Not long, while he was handing the note to Burns. Q. How long did the other

man stay; was there another man with Nicholls? A. No, sir, he did not come into my house with Nicholls; he was outside. Q. The other man? A. I did not see the other man, but I understood he was outside. Q. Did not look at him; you would not know him if you should see him again? A. No, I did not see him. Q. Was this man outside a stranger, the man after the oil? A. I don't know, sir, whether he is a stranger there or not. Q. Nicholls said he would not have anything to do with him? A. Yes, sir. Q. Why not, did he give any reason? A. No, sir, I did not ask him. Q. Give his language as near as you can when he first came to the place? A. He asked me if Burns was in; I told him he was. Q. What did he say he wanted to see him for? A. He said there was a man outside wanted some oil, and he should get it and measure it. Q. Did he say what the man wanted oil for? A. No, sir, he did not. Q. Then Nicholls went away after that? A. He went away after he called Burns up. Q. He talked with Burns some? A. Not much; I did not understand anything he said to Burns, whether he talked to him or not. Q. You did not see where the man outside went to, I suppose? A. No, sir. Q. Nicholls was Sage's foreman, I think you said? A. Yes, sir, so I heard. Q. Have you brought any claim for your injuries against the company; have you made a claim against them for your injuries? A. Yes, sir, I think I did.

*Plaintiff's Counsel*—You have not brought any suit? A. No.

MICHAEL SCANLON, sworn and examined by plaintiff's counsel:

Q. Are you a brother of the first witness? A. Yes, sir. Q. Have you ever been employed at the place spoken of in Bergen? A. Yes, sir. Q. What was your business? A. I was driving horses. Q. Who were you employed by? A. Mr. McLaughlin, foreman, was the first that employed me; he was supposed to be employed by Messrs. Flanagan & Sage. Q. Did you know Thos. Burns? A. Yes, sir. Q. State whether or not you ever knew of his being drunk previous to the 24th of November, 1864—that was Sunday. A. Yes, sir, on the 23d me and him went to New York. Q. I asked if previously to Sunday, which was the 24th of November, you ever knew of this man Thos. Burns being drunk? A. Yes, sir. Q. State what you know? A. He was drunk; me and him came from Hudson City; we came along Bergen Avenue, on the 24th. Q. If previous to that Sunday you ever knew of his being drunk? A. No, sir. Q. State what you know, if anything, of Mr. Thos. Burns, or being drunk, Sunday 24th of November? A. Yes, sir; he was drunk on the 24th of November. Q. State what you know about it? A. He and I came from Hudson City along Bergen Avenue; he fell down a number of times. Q. What time did you leave Hudson City? A. About 2 o'clock. Q. Had you been drinking in Hudson City? A. Yes, sir; he fell down numbers of times coming home from Hudson City to Bergen, two or three times. Q. What time did you get to Bergen? A. Between three and four o'clock. Q. Did you have anything to drink on the way? A. No, sir. Q. When you got to Bergen did you see Col. Shaffner, there? A. We passed by the glycerine place; we passed by a little ways, and he drove up with a horse. Q. Passed by the glycerine magazine, you mean? A. Col. Shaffner drove up in a light wagon and one horse; he asked Burns for the keys; at least Burns told me so. [Overruled.] Q. You saw Shaffner talking with Burns? A. Yes, sir. Q. Did you see them near the magazine? A. Not near the magazine; near the place where they kept fuse and such as that.

*Court*—Where were they talking? A. Near the place where they kept fuse into it and steel and hammers.

*Plaintiff's Counsel*—About what time was that on Sunday afternoon? A. About three or four o'clock. Q. Was Burns drunk then? A. He

- was drunk then. Q. Did you see Burns again that afternoon or evening? A. No sir, I went in and got the keys and handed them to Burns.
- Q. You went where? A. To my brother, and got the keys of this barn, or whatever it was. Q. You mean the magazine? A. The place they kept steel in; I gave them to Burns; they went into the barn awhile.
- Q. What did he do with them? A. He gave them to Mr. Shaffner. Q. Had he any other keys besides these? A. I could not say was it two or three or one keys on the ring; there was one, I am certain of that; I can't say how many more, or whether any more. Q. Where did you see Burns and Shaffner together on that day? A. I saw them no more that day. Q. Did you see Burns again that day? A. I could not recollect; I sat down in the chair and got asleep, and when I woke up Burns was in bed. Q. Did you see Burns next morning? A. I saw him next day. Q. What time? A. I saw him go to work at 7 o'clock, and saw him all day long. Q. Did you see him about the magazine on that day? A. I passed by the magazine and Burns was round there, and he hallooed after me. This must be between ten and eleven o'clock, I think it was. Q. It was on Monday? A. Yes, sir. Q. You passed by the magazine, and he hallooed at you; what happened? A. I went in there, and I took a drink of whiskey along with him. Q. Who furnished the whiskey? A. I could not say, sir. Q. Who offered it to you, I mean? A. Mr. Burns. Q. You did not offer it to him; where was that? A. In the magazine house where the glycerine was. Q. I understand you to say, he asked you in to have a drink? A. He hallooed at me, and I came back, and he brought out a bottle of whiskey, a quart bottle, perhaps half full; he dug it out of the sand.
- Court*—He brought a bottle of whiskey out of the sand? A. Yes, sir. Q. Whereabouts? A. In the magazine house; he handed to me to take a drink out of it. Q. State how he got it out of the sand? A. He put down his arms in the sand; he knew right well where it was. Q. Covered up was it? A. Yes, sir.
- Plaintiff's Counsel*—What time was this, did you say? A. Between ten and eleven o'clock in the forenoon. Q. Did Burns drink himself? A. I could not say whether he drank himself at that time. Q. Did you see him again on this Monday? A. Yes, sir; I saw him standing out; I saw him all along until afternoon, when he went in to sleep. Q. What would you say of his condition in the afternoon when you saw him? A. I thought every minute that I would see him fall down from the top of the ledge; he was rocking up and down like a cradle when I saw him. Q. At the time of the explosion, did you see that? A. I was coming up on the car along with my brother, me and him I suppose was the two first there. Q. Did you see these men dead, your brother has testified? A. Yes, sir, I saw them lying there, but I could not tell one from the other; they looked all black to me, like colored men. Q. How far off were you from the explosion when you saw it? A. It was between one hundred and fifty and two hundred feet, perhaps more, I could not say exactly. Q. How much you say? A. Between one hundred and fifty and two hundred feet. Q. You were not where you could see Burns at the time of the explosion? A. I was down in the hole; the bank was up over me, between that and the blacksmith's shop. Q. Are you able to fix the location of the magazine you have spoken of? A. I don't know, sir, as I am. Q. On which side of the railroad was it, about the magazine? A. It laid north of the railroad. Q. How far from the railroad? A. I think about seventy-five feet. Q. Which way from Bergen? A. West. Q. Was it between the railroad and Bergen Avenue or beyond the line of the railroad. Do you know what has been spoken of as the proposed street? A. I don't know anything about that. Q. Do you

know where the line of shanties is? A. Yes. Q. Was it between the line of shanties and the line of the railroad? A. This magazine it laid a kind of west of those shanties. Q. About how far was it from the blacksmith's shop spoken of? A. About three hundred feet. Q. Was the blacksmith's shop and magazine on the same side of the railroad? A. Yes, sir. Q. How near did I understand you, to the railroad, was this magazine? A. About seventy-five feet. Q. How near to the railroad was the blacksmith's shop? A. That might be one hundred feet; there was a kind of hill of dirt there. Q. How far from the blacksmith's shop was the nearest shanty? A. It might be fifty feet, or it might not be so much. Q. These shanties, do I understand are they in a line? A. There were some in a line, one in the rear and one further down again. Q. Were you there when the blacksmith's shop was built? A. I was, when they repaired this shop Mr. Shaffner is supposed to have put up; I was not there when the other one was put up. Q. This blacksmith's shop, were you ever in it after it was completed? A. Yes, sir. Q. Was the inside like one shop? A. Yes, sir, there were two fires in it. Q. Was there any line of fence along Bergen Avenue, at this point, or was it open between Bergen Avenue and these shanties which you have spoken of? A. There was no fence between Bergen Avenue and those shanties. Q. Anything to prevent a person from walking up from Bergen Avenue to the shanties? A. No, sir, there is no fence or wall there. Q. Here is a map, supposed to be of the property; here is Bergen Avenue and here is the line of the railroad. Locate as near as you can where the magazine was? A. The magazine was further down this way. Q. Do you know anything about digging a hole for depositing some of this oil? A. Yes, sir. Q. Tell what you know? A. I helped to dig this hole. Q. State what did you do, and under whose directions? A. Mr. Sage came and called two or three of us to bring the oil from the office; it laid out along by the office, I think in front of the office door, if I am not mistaken; he came and called us to carry it down and he came along with us. Q. Down where? A. Down this row; along by a row of apple trees. Q. To the hole? A. Yes, sir. Q. Was the hole dug then? A. No, sir, we dug it afterwards. Q. To a place where he directed you to stop? A. Yes, sir. Q. Now tell what happened? A. We laid down the oil; we dug the hole, and placed in the oil; I think we put some rails and brush over this hole. Q. Mr. Sage remaining there all the time? A. Yes, sir. Q. Who else was there, if anybody? A. These men who carried down the cans. Q. How many cans you carried down? A. I am not certain whether two or three. Q. It was in cans? A. Yes, sir. Q. What was the size of the cans? A. I could not say how much they contained. Q. Were they as high as these? A. I should suppose they were as high as that. Q. Making a can about that size (18 inch cube)? A. Yes. Q. What were they made of? A. Tin. Q. How were they in the top—tin cover? A. I don't know how the cover was on. Q. Was it all closed up like a sardine box? A. I could not say. Q. Were these pretty heavy? A. Yes. Q. How much do you think one of them weighed? A. I can't say. Q. Did you carry the load? A. I did part of the ways, and Mr. Sage told another man to help me with it, and be careful not to hit our feet against it. Q. Did Mr. Sage say why you should not hit your feet against it? A. He said no more. Q. How did you carry this, Mr. Scanlon? A. Carried it in the hand. Q. There was a handle to it on each side? A. Yes. Q. You took one side and the other man the other? A. Yes. Q. Do you know about how long that oil remained in the hole? A. I don't sir. Q. Do you know anything about the other magazine, the digging of it, or how directed to be made, or anything?

- A. No, sir. Q. Do you know that such a magazine was dug? A. I saw it digging there; saw a man working at it; I don't know whose orders it was worked by, or anything else about it. Q. Did you ever see the engineer of the railroad company there? A. Yes. Q. While digging the magazine? A. I don't know as I saw him there this time; I saw him there sometimes. Q. You say you saw the engineer at the magazine, was it while digging or after it was dug? A. I saw him round there several times, but I don't know that I saw him the same day this was built. Q. What was he doing round there? A. I could not say, sir. Q. Who did you see round there? A. He had a man to carry poles with him, named Pat, I believe, and he is always travelling with him. Q. How deep was the second magazine below the surface of the ground? A. It was level in the front where the door was; I think it was about level, and it was into a bank the back part of it. Q. About how square was it? A. I could not say. Q. Was it as wide as from me to you? A. Yes, sir, it might be wider than that, I think. Q. What was Mr. Burns generally doing round the work? A. He was general foreman over those men, and blasting with this oil; first he came there as a rockman.
- 20 *Defendant's Counsel*—You say he was foreman of the men at the time of the blasting? A. Yes, at the time of the explosion.  
*Plaintiff's Counsel*—How long did he work as a quarryman? A. I don't know whether he might have worked a week or two weeks. Q. How long did he work as a foreman? A. He might have worked as much as two months, until he got killed; I could not say how long. Q. Did you see Col. Shaffner round the works? A. Yes. Q. What was he doing? A. I could not say what he was doing; he was ordering about the rock, about the oil; he was ordering his foreman whatever he wanted to do.
- 30 *Defendant's Counsel*—Whom do you mean, Burns? A. Yes, sir.  
*Court*—Ordering Burns to do what? A. Putting in the oil, one thing or the other.  
*Plaintiff's Counsel*—Used he call Burns his foreman? Do you know he is foreman except what was told you? A. Nothing except what he himself says; he said he was employed by Shaffner. Q. Col. Shaffner, how often was he there? A. He might sometimes be away three days, and sometimes around every day, or two or three days. Q. Did you see Mr. Sage? A. Yes, sir. Q. How often was he there? A. He used to be generally always there. Q. What was Mr. Sage doing? A. He was walking round, walking boss. Q. What do you mean by that? A. Walking round, ordering the men whatever he wanted done; I don't know whether he had anything to do with the rock or not. Q. Did you see this man I. I. Flanagan? A. I saw him there, yes sir. Q. What was he doing there? A. He was just the same as Mr. Sage, I suppose. Q. Was he walking round the same? A. Yes, he used not be there as often as Mr. Sage. Q. Did you see the engineer, Mr. Lehlbach? A. Yes, sir, that is him with the paper. Q. What was he doing? A. I don't know, sir. Q. What did you see him doing? A. He used to have poles, or stakes, one thing or another; I could not say what he was doing, surveyor, I suppose. Q. He was there about the works, often? A. Sometimes pretty often, and sometimes he would not be there for a day or two. Q. Was he as often as three or four times a week? A. Yes, or sometimes not twice a week. Q. Where were you paid for your labor? A. Paid in the office. Q. You have heard your brother describe where he was paid by Burns for board? A. Yes. Q. Were you paid in the same place? A. Yes. Q. Do you know about this store that has been spoken of? A. Yes, sir. Q. Did you ever buy articles there?

A. Yes, sir. Q. What was the practice in regard to your paying for those articles? A. You could get whatever you wanted there; the contractor is responsible for them. Q. Tell me how you paid for it. Did you give them any money? A. I never paid them at all. Q. It was deducted from your pay? A. Yes, so much they stopped—whatever the value you get. Q. Did you board with your brother? A. Yes, sir. Q. How was your board paid? A. He went and got the board; I never paid him anything. Q. Who was the man who did this paying? A. Mr. Hinckley.

*Cross-examined by Defendant's Counsel*—What was that place there where they kept the fuse and steel—the same place as the blacksmith's shop? A. It was between Newkirk's fence and the blacksmith's shop. Q. How far from the shop? A. It might be forty feet. Q. Then you say there were some workmen on that part of the blacksmith's shop which Mr. Shaffner put up; what were they doing—what kind of building was that? A. The blacksmith's shop. Q. Where they kept the fuse and steel? A. It was put up for the use of a barn. Q. Keep any powder there? A. I could not say whether they kept powder there or not. Q. One story? A. No, sir; there was a floor up stairs, a kind of loft. Q. Was that destroyed the time of the explosion? A. There was one side pretty well stove in, I believe. Q. What were those men doing on Col. Shaffner's part of the blacksmith's shop—did not you say Col. Shaffner had part of the blacksmith shop? A. Yes, sir. Q. Were not some men at work there? A. He had a blacksmith and a helper. Q. Who had? A. Mr. Shaffner; supposed it was him to have them. [Objected to. Objection overruled.] Q. Did not you say they were repairing the shop which Mr. Shaffner put up? A. No, sir, I said nothing about that; they were putting an addition to it. Q. How large an addition? A. It might be eighteen by twenty or twenty by fifteen. Q. Do you know who built that addition? A. It was supposed Mr. Shaffner built it; I could not say exactly. Q. Did you see him round there at the time? A. No, sir; I never saw him round there at the time, as I know of. Q. This hole where you buried the first cans you carried down, how far off is that from the place where the magazine was afterwards built? A. It was right over across the railroad; it was not straight across; it was a kind of west across the railroad, on the other side of the cut.

*Court*—The opposite side from the magazine—the hole? A. Yes, sir.

*Defendant's Counsel*—Which side was that? A. It lay a kind of north-west. Q. The magazine was on the north side? A. This was built a kind of cornered across the railroad. Q. The magazine was on the north side of the cut, and the hole on the south side? A. Yes, sir, the first hole. Q. Did you see the buggy that brought up these cans to the spot? A. No, sir, I did not see it. Q. You say that Burns had whiskey that afternoon. I suppose both had been drinking some on the 24th, Sunday? A. Yes, I had been drinking some, but nothing stronger than ale; I did not drink no liquor; I drank ale, cider, and such as that. Q. You noticed Burns' condition? A. Yes, sir. Q. Did his breath smell? A. I don't know, but his knees was kind of out of shape. Q. How were your knees? A. They are always as good as they are now. Q. You drank whiskey next morning, did not you? A. Yes, sir.

EDWARD FOSTER, sworn and examined by plaintiff's counsel:

Q. What is your name? A. Edward P. Foster. Q. Do you know about this accident we have been examining about? A. Yes, sir. Q. You were to work at this place, Bergen Cut? A. Yes, sir. Q. What used you do there? A. Carry drills, sir. Q. At what time that year, during the month of November were you there? A. It was my brother

was employed to do that, but he was sick that day, and I was in his place, the 25th. Q. Had you done work before? A. Yes, sir. Q. Who had you done work for? A. Flanagan & Sage. Q. Who had hired you; was it Mr. McMellan? A. No, sir; it was Patrick McLaughlin. Q. What were you doing on the 25th? A. I was carrying drills. Q. You say your business was to carry drills; from where to where? A. From the pit to the blacksmith's shop. Q. The blacksmith's shop spoken of? A. Yes. Q. What was to be done with those drills? A. They were to be sharpened. Q. You have seen them sharpening drills  
 10 at that blacksmith's shop? A. Yes, sir. Q. What else done there? A. Sharpening picks, shoeing horses, something like that. Q. You have reason to know something about the explosion; what time was it? A. About half past four in the afternoon. Q. Had you been at work that forenoon? A. Yes, sir. Q. Did you see Thomas Burns during that day. A. Yes, sir, mostly all the day. Q. What time did you first see him? A. When I come to work in the morning. Q. Have any conversation with him at that time? A. No, sir; he told me to carry the tools and get them sharpened. Q. State anything that happened between you and him during that day? A. Nothing happened in the morning of  
 20 any consequence; in the afternoon he told me he had to lie down awhile, and if anybody called to call him. Q. I call your attention to an earlier part of the day; state whether or not you got any liquor for Burns. A. Not that morning. Q. Did you ever get liquor for him, and when? A. Yes, twice before that. Q. Tell us about buying liquor for Burns at any time? A. I don't exactly remember the day, but it was two or three days before the explosion. Q. Where did he send you? A. He sent me to a lager beer saloon.

*Court*—For what kind of liquor? A. Bourbon.

*Plaintiff's Counsel*.—You bought it for him? A. Yes. Q. And gave  
 30 it to him? A. Yes, I fetched it up to one of the shanties. Q. You spoke about seeing Burns in the afternoon, somewhere about three o'clock; where did you see him? A. He went to bed about that time to lie down, and then there was about half past three, or along there, a man came to buy some glycerine. Q. Do you know he came to buy some glycerine? A. Yes. Q. How do you know? A. I saw him there. Q. Who did he come to buy it of? A. From Burns; he come there, and I was just going from the hole with drills to the blacksmith's shop. Q. How do you know he came there to buy oil? A. Burns told  
 40 me there was a man to buy some oil. Q. That is the only thing you know about it? A. Yes, and I saw the man there. Q. You need not tell what Burns told you.

*Court*—I don't think it is incompetent. The Court have admitted the declarations of Mr. Burns altogether.

*Plaintiff's Counsel*.—We have no objections to it if it all goes in; a portion of it was ruled out.

*Court*—What Burns said the night before was ruled out; what he said at the time of the occurrence at the house, was admitted.

*Plaintiff's Counsel*.—Where was the conversation you had with Burns—in the blacksmith's shop? A. At the door of the blacksmith's shop.  
 50 Q. Was it inside or outside? A. Just outside. Q. Why did you go there? A. I went there with the drills, waiting for them to get sharpened. Q. State what you saw Burns doing there? A. He got two cans of oil, and he sat on top of one of them, and he got a piece of iron about the thickness of my finger, and then he drove it into the can, and then he kind of hurt his finger with the iron, and he gave it to me; I took the piece of iron; there was some of the frozen glycerine on the iron, and I knocked it off on the wheel of my wheelbarrow; then I

threw the iron into the field away off from us; I went away from him then; one of the Mr. Millers had a dog with him, and a couple of more boys were playing with the dog, while the drills were cooling; Mr. Miller told us not to play any more with the dog, for fear he might bite us; then I left the dog alone, and I was picking up some pieces of scrap iron that they had cut off the drills— Q. Where were you standing at that time? A. About five feet from the shop; then the explosion occurred. Q. What happened to you? A. I had my foot smashed, two fingers broken, and my arm broken in two places. Q. Did you know Michael Cuff? A. Yes, sir. Q. Did you see him at his place before the time of the explosion? A. Yes, sir, he was there for about half an hour or so. Q. Was you so that you saw his body after the explosion? A. No, sir. Q. Where did you say you saw him standing? A. He was leaning against the door. Q. Which door? A. The door of the blacksmith's shop. Q. You was not looking at Burns at the time the explosion occurred? A. No, sir. Q. How many cans were there? A. Two. Q. Where was it? A. Just outside the door of the blacksmith's shop. Q. Do you know how it got there? A. Burns carried it up on his shoulder from the magazine. Q. Did you see him do that? A. Yes, I saw him carry the cans; the other he had up before I see him. Q. You heard what was said about the size of the can? A. Yes. Q. Did you notice what Burns did with this oil after he gave you the iron? A. No, sir, I did not notice. Q. Do you know what he was trying to do? A. He was trying to melt the glycerine.

*Court*—With what, trying to melt the glycerine? A. He was in the habit of taking a piece of railroad iron, and have it red hot, and he would put it into a tub full of water, and heat the water and the can of glycerine too; he would take the iron and heat the water.

*Plaintiff's Counsel*—Do you know whether these cans were full at this time or not? A. One was full, the one he sat on.

*Court*—You say he was trying to melt the glycerine; how do you know that? A. I seen him. Q. What did you see him do? A. Take a piece of red hot iron; he put the glycerine in the tub of water, and stirred the iron round to heat the water. Q. You saw him do that, did you? A. Yes, sir; before he took this piece of iron to drive into the tub. Q. Before he took the piece of iron to drive in? A. Yes, sir. Q. That is to drive in the can? A. Yes, sir. Q. How long before was that; about how long? A. About five minutes or so. Q. Did you see him do that after you threw away the iron? A. No, sir, before that.

*Plaintiff's Counsel*—You say he was sitting on his can? A. He was sitting on top of it.

*Court*—You mean when he did that with the hot iron? A. No, sir, after that at the time of the explosion. Q. Do you say he was sitting on the can at the time of the explosion? A. Yes, sir. Q. Did you see him? A. Yes, sir. Q. How long before the explosion? A. It was not ten minutes before.

*Plaintiff's Counsel*—Were you looking at him at the time of the explosion? A. Not at the exact time. Q. At the exact time of the explosion, you don't know? A. How he was situated at the time. Q. Were you conscious after the explosion? A. Yes, sir. Q. Do you know where you were; what became of you? A. I was about one hundred feet from the shop.

*Court*—These cans, how near to the blacksmith's shop were they, when Burns had them there? A. Within two feet. Q. Side or front? A. On the side, facing Bergen road. Q. Who was in this blacksmith's shop? A. Eight or nine people—Patrick Kelly, Michael Cuff, Mr. Simmons, Hicks, Edwards, Robert Foster, Young, McConnell. Q. Who

else; were they in or out of the blacksmith's shop? A. They were all in but the two boys, Edwards and Foster. Q. The Millers, have you spoken of them? A. The two Millers were on the top of the roof of the small shop. Q. Was Mr. Nicholls anywhere about there? A. No, sir, I believe he was in the pit at the time. Q. How many blacksmiths were employed in this shop? A. Two blacksmiths and two helpers. Q. What were the names of the blacksmiths? A. One was Simmons and one was Keily, and the helpers were Hicks and McConnell.

- Cross-examined by Defendant's Counsel*—Who were the two boys with  
 10 you? A. Benton Edwards and Robert Foster. Q. Were they killed? A. Yes. Q. Were they at hire there? A. No, sir. Q. Came there to play? A. Yes, sir; Benton Edwards was going for cows, and Foster was there playing. Q. Where did Edwards go for his cows? A. He was going down below the big shanty. [Objected to; objection overruled.] Q. Who hired you first to do work? A. Mr. McLaughlin? Q. Did you work on two occasions, or stayed there? A. I worked two occasions. Q. Did he hire you both times? A. No, sir; he hired me once, and Mr. Edwards hired me for to drive a horse. Q. Who were you carrying the drills for? A. I was taking my brother's place there,  
 20 carrying for Mr. Shaffner. Q. Carrying drills for your brother who was hired by Mr. Shaffner. The regular work you got to do is after horse? A. Yes, sir. Q. What had you to do about the horses, driving? A. Yes. Q. Where was your brother? A. He was sick. Q. Was anybody with Burns when he said that some one had come to buy glycerine? A. No, sir, not at that time. Q. He was alone, was he? A. Yes. Q. He brought two cans, did he? A. Yes. Q. Did he bring them up alone? A. Yes. Q. Were they heavy? A. I don't know what was the weight of them. Q. Did he carry them both at the same time? A. No, sir; one at a time. Q. Did you see him put either of these cans  
 30 into hot water? A. Yes. Q. One, or how many? A. One. Q. And the other one standing outside? A. Yes. Q. Was it outside the shop? A. Yes. Q. Where was the hot water; outside? A. In a kind of firkin. Q. How large was this firkin? A. About one foot broad. Q. Who put the water in? A. Burns. Q. Did he appear to know what he was about? He did; but he seemed to attend to his business. Q. I did not quite understand you, whether or not he had opened the can? A. He took the cork out of it; a kind of little tube. Q. He took the cork out before he put in the water? A. Yes, sir. Q. What was the shape of the top of this can? A. Square. Q. Did he have a common  
 40 cork in that kind of can? A. Yes, sir. Q. How does glycerine look when frozen? A. It is like castor oil. Q. Appears different when frozen? A. It is hard, like ice. Q. Is it as hard as ice? A. Yes; it is ice. Q. He first took out the cork and put the whole thing into hot water? A. He put one of the cans in.

*Court*—Did he put the can in the water that he took the cork out of? A. Yes, sir. Q. He did not put the can under the water? A. No, sir. Q. Did he hold it with his hand? A. No, sir. Q. What kept the can from going to the bottom of the firkin? A. It touched the bottom; the firkin was not quite full, and the can went to the bottom before it  
 50 got over the top, about three-fourths in the water.

*Defendant's Counsel*—Did you see any frozen glycerine round the can? A. I did not. Q. You saw some on a piece of iron? A. Yes. Q. How much? A. Some lumps. Q. How large lumps? A. Not very large. Q. You did not see any at all on the tin can? A. No, sir. Q. Where did the irons come from? A. In the blacksmith's shop.

*Court*—Did you see him fetch it out? A. Yes, sir, with the hammer in his hand.

*Defendant's Counsel*—I don't suppose you know what caused the explosion, do you? A. No, sir. Q. Was there any difference between the can he sat on and the one he put in the water? A. The one he sat on was full, and the other was not quite full. Q. How can you tell that? A. The one he set in the water was used some of it before. Q. The one he set on had not been opened before? A. No, sir. Q. Did you see him stirring the hot iron in the water? A. Not at this time, but before he used the piece of iron.

*Plaintiff's Counsel*—Are you asking him whether he saw the hot iron after the punching? 10

*Court*—He saw him stir the hot iron in the water before the punching, before he used the other iron.

*Defendant's Counsel*—How many times did he stir the water with the hot iron? A. Only once. Q. And the can was in the water? A. Yes. Q. And he had taken the cork out? A. Yes. Q. That is all he did with the iron, just stir the water round? A. Yes. Q. Did you see this thing done before? A. Yes. Q. Do you know whether any gas comes out of the can when they melt the glycerine? A. I never seen any when it is melted. Q. Why do they take the can out, before he puts the can in the water? A. I don't know, sir. 20  
Did he put in the piece of iron, cold or hot, in that can? A. Cold iron, hammering it in with the hammer to break the glycerine. Q. How long a piece was it? A. About ten inches. Q. He hammered that in, did he? A. Yes. Q. Hard blows? A. Purty hard. Q. How far did it go in? A. He drove it in quite a distance; I could not exactly tell how far. Q. Half way? A. Not quite half way. Q. Was this before or after the can was put in the water? A. After. Q. Before or after he used the hot iron to stir the water? A. After he used the hot iron. Q. You said that two people named Miller were working in the shop; what were they doing? A. They were roofing it. 30  
What part of the shop were they on? Q. On the last part built. Q. Was that the same part where Burns was? A. Yes, sir.

*Plaintiff's Counsel*—When was it that you saw this operation performed before? A. I seen him mostly every time he used it while I was there. Q. That is with the hot iron? A. Yes. Q. Stirring the water? A. That I saw there round the place. Q. Did you ever see Col. Schaffner there? A. Yes, sir. Q. Did you see him there at any time while Burns was going through this operation? A. Yes. While he was charging the holes. Q. Did you ever see him while he was stirring the water with the iron? A. Not that I remember.

*Court*—You saw him while Burns was charging the holes? A. Yes. 40  
Q. Not while stirring the water with the iron? A. No, sir. Q. Do you know Col. Sage? A. Yes, sir. Q. Did you ever see him there? A. Yes, sir. Q. Did you ever see him there while Burns was stirring the water with the hot iron? A. Not in the blacksmith shop; he was in the pit. Q. How many times before the explosion had you seen Burns stir the water in that way with a can of glycerine in it? A. I used to see him most every day. Q. Stir the water in that way? A. Yes, sir. Q. Whereabouts? A. In the blacksmith shop.

*Plaintiff's Counsel*—At the time he stirred the water with the hot iron with the glycerine in the water, before the time of the explosion was the cork out of the cans, as it was at the time of the explosion? A. Yes, sir. 50  
Q. Did you ever see him drive irons in before that? A. No, sir.

*Defendant's Counsel*—Do you know why Mr. Burns drove the iron in the can? A. I don't know unless he wanted to try and break the ice. Q. Did you see him do that before? A. No, sir. Q. That is the first time you ever saw him do that? A. Yes, sir. Q. He did this some-

time before the explosion? A. Yes, sir; it was about ten minutes before the explosion.

*Court*—You don't know where Mr. Burns was, between that time, and the time of the explosion, do you, of your own knowledge? A. He was with the oil. Q. How much of the time, or what time? A. All the time. Q. Did you see him there? A. Yes sir. Q. What did you say about trying to melt it? A. He was trying to melt the oil. Q. I mean from the time that he drove the iron in the can to the explosion; did you see him try to melt the oil after that? A. Yes, sir. Q. With  
10 what? A. I don't know what it was he used though.

*Defendant's Counsel*—Was the cold iron taken out before the can was put into the water? A. This was after he had used the water he had used the iron.

*Plaintiff's Counsel*—After he took the can out of the water he used the iron?

*Court*—When he used the cold iron was the can in or out of the water? A. Out of the water. Q. Was it before or after he had put it into the water? A. After.

*Plaintiff's Counsel*—How many times did he put it into the water?  
20 A. He left it in a little while trying to melt it, and he took it out and was trying to break it with the iron. Q. In the first place did he put it in the water? A. Yes. Q. Then he could not melt it that way and he took it out? A. Yes. Q. Then he drove this piece of iron in? A. Yes. Q. What did you see next? A. Nothing; I went away. Q. How far away? A. Five feet from him. Q. You know he was there? A. Yes, but did not notice him. Q. After he drove the iron in, ten minutes elapsed before the explosion took place? A. I don't know exactly how long it was. Q. You played around? A. Yes. Q. And you suppose it was about ten minutes? A. About that time; I don't know  
30 exactly how long it was. Q. You can't tell what Burns did after you saw him drive the iron in? A. No, sir.

*Court*—Did you mean to say or not, that after he tried to drive the cold iron in, he tried to melt it? A. He was trying to melt it all the time. Q. I understood you to say that he took an iron and stirred round the water, and the can in the water, and then he took the can out of the water, and he tried to drive the iron in it, and you took that iron and threw it away; now after that time, did you see him try to melt the oil? A. I don't know what he did after that; he was there with the oil.

40 *Defendant's Counsel*—You threw one piece of iron away; what piece was that? A. The piece he drove into the can. Q. That was not the same piece he had heated? A. No. Q. How large a piece was the piece he drove in? A. About the thickness of my little finger.

MAY 12, 1869.

*Plaintiff's Counsel* offered in evidence letters of administration granted by Surrogate O'Neill, to Jane Cuff, Administratrix of Michael Cuff, dated Nov. 24, 1868.

Also Charter of the Company in the Acts of 1866.

50 PATRICK MALONE was then sworn and examined by *Plaintiff's Counsel*. Q. Were you acquainted with Michael Cuff? A. Yes, sir. Q. How long had you known him? A. About three years. Q. What is your business, Mr. Malone? A. Blacksmith. Q. What was Mr. Cuff's business? A. Blacksmith, I understand. Q. Did Mr. Cuff ever work with you? A. He did, sir. Q. Was he ever a partner of yours? A. He was, sir. Q. Was he working for you in November, 1867? A. He was, sir. Q. What wages did you pay him? A. I paid him \$2 a day

when he was working for me. Q. What did he earn when he was your partner? A. I could not exactly tell; I never kept a memorandum of it; I calculated he earned \$4 or \$5 a day while he was partner; we divided the money as we went along. Q. What kind of workman was he? A. A pretty good workman, I believe. Q. What kind of man was he as to health and strength? A. I thought he was a sound man for all I know of; a good, hard, strong working man. Q. Do you know about what his age was? A. No, sir. Q. Was he at work for you on the morning of Nov. 25, 1867. A. I could not say he was to work; but I heard people say he was to work; I dare say he was to work, but I could not prove that; I worked in another shop. Q. He was at work for you on the Saturday previous? A. He was. Q. How long had you been acquainted with Michael Cuff? A. Something about three years. Q. How long have you been a blacksmith? A. I could not exactly tell you; I have been since 1845; I went to learn my trade at that time. Q. How old should you judge Mr. Cuff to have been from appearance—take him to be about thirty, more or less? A. I don't know.

*Cross-examined by Defendant's Counsel*—Cuff was working for you about that time, was he? A. Yes, sir. Q. Where was your shop? A. In West Hoboken and Hudson; he worked part of the time in each. Q. You had two shops? A. I had two, sir. Q. Where was Michael working on Saturday? A. He was working for me in West Hoboken; he worked a part of Saturday for me in the other shop. Q. He worked at both places? A. He used generally work in both places every day; not quite every day, but most of the time. Q. When were you in partnership with him; how long ago? A. I dis-remember; I never kept a memorandum book. Q. Was it as much as a year before Michael died? A. I dare say it was something thereabouts. Q. Something about a year? A. Not quite a year; I could not exactly tell, in fact. Q. How long have you been in business in Hoboken and Hudson City yourself? A. Eight or nine years. Q. Was Michael partner with you in both the shops? A. He was. Q. How long did you remain partners? A. I don't know; can't exactly tell. Q. Afterwards you hired him, did you? A. Yes. Q. What did you separate for? A. He was a day absent. Q. Was Michael at all given to drinking? A. I never seen him in liquor only once. Q. How long was that before he died? A. Quite a time; I could not exactly tell. Q. Was it as much as one month? A. I dare say it was more. Q. A little more than that? A. Yes. Q. Was that the only reason you separated, because he was away one day? A. That is the only reason. Q. Did you see him on this Saturday before the explosion? A. Yes. Q. Did you see him on Sunday? A. Yes. Q. Did you see him on Monday; where were you on Monday? A. Working at Hudson City. Q. Was he at the same place? A. No, sir, he was in West Hoboken, working at the other shop, sharpening tools. Q. How did he come to the place where the explosion occurred? A. I don't know. Q. You saw him at Hoboken in the morning, or what time? A. Noon time, Sunday I mean. Q. On Monday? A. I have not seen him on Monday. Q. When was the last you saw him before his death? A. Sunday before. Q. At what time? A. Noontime, or thereabouts. Q. Who was he working for, at the railroad there; do you know who he was working for? A. I don't know.

*Court*—Was he at work for you on the Saturday before he died? A. Yes, as I hear; the man he was working with said he was working on Monday forenoon, at the same time; but I could not swear, as I did not see him myself. Q. You were not working for the railroad company at all, were you? A. No, sir. Q. You don't know of your own knowledge whether Michael did any work on Monday? A. He was working

on Monday; the man at my shop told me so; but I could not exactly swear to it, as I did not see him. Q. Which shop did you know of his working at? A. West Hoboken. Q. You think that Michael was about thirty, do you? A. I think thereabouts, somewhere. Q. You have no way of judging except by appearance? A. That is all, sir.

SIMON CUFF, sworn and examined by plaintiff's counsel:

- Q. Did you know Michael Cuff, deceased? A. Yes, sir. Q. What relative are you to him? A. I am a brother. Q. What is your business, Mr. Cuff? A. Blacksmith. Q. What is his business? A. Blacksmith. Q. Did you ever work with him? A. Yes, sir. Q. What kind of workman was he? A. He was middling at some work, and pretty good at others. Q. How old was he when he died? A. I believe he was about thirty. Q. Older than you? A. Yes, sir. Q. Do you know what wages he used to earn? A. I believe he received 20s. from Mr. Malone. Q. Do you know of any other cases where he earned? A. No, sir. Q. Did he always work at his trade or not? A. Sometimes he worked at helping, when he could not get fire to work at. Q. When did you last see Michael Cuff alive? A. The Sunday before the accident he was at my house. Q. Sunday, Nov. 24th? A. Yes, sir. Q. When did you next see him? A. Next seen him up where the explosion occurred, on the 26th, on Tuesday. Q. Dead? A. Yes, sir. Q. Where was his body? A. Lying in a shanty, alongside another person. Q. What happened there, and what did you do with the body? A. I arrived up there about ten o'clock in the morning, and I delayed there until the coroner held the inquest, about one or half past one, and the coroner told me I could take the body, and I took it home. Q. Had an inquest among other bodies, on the body of your brother, Michael Cuff? A. Yes, sir. Q. Did Michael Cuff leave any children? A. He left three. Q. What are their names, beginning with the oldest? A. James, 30 John and Michael. Q. Give their ages? A. James is something about ten years old, I think; John is nearly five years old; Michael is about two and a half, I think. Q. What was the general health of your brother? A. Never knowed him to be a day sick, sir. Q. Did he work steadily all the time. [Overruled as too leading.] Q. What were his habits as to working? A. He worked pretty steady; sometimes he would lose a day or two in the month, from absence or other matters. Q. Did he leave a wife? A. Yes, sir. Q. This lady (pointing to plaintiff)? A. Yes, sir. Q. Do you know the age of Mrs. Cuff? A. I don't sir. Q. What did you do with the body of your brother after you got 40 it from the coroner? A. I took it home to his own house. Q. Was he buried from there? A. Yes, the next day after.

- Cross-examined*—What wages do your helpers receive compared with those which the blacksmiths themselves receive? A. They receive different wages; where I worked on the Erie Railroad they pay from \$1.40 to \$1.80 or 90; I don't exactly know. Q. At the Erie Railroad shop? A. Yes, sir. Q. About the same time, then, the blacksmiths would be getting about 20s.? A. They pay from 20s., something under that, up to \$3; may be one or two over that; some work for less and some more. Q. How much less? A. I know some work for \$2.20: may be one or 50 two over \$3. Q. How do you judge that Michael was about thirty years old? A. From hearing my parents say so. Q. Parents living? A. Yes, sir. Q. Where do they live? A. They live at 292 Newark Avenue, I think the number is. Q. Jersey City? A. Yes, sir. Q. Was not Michael sometimes given to drinking? A. Sometimes he would take some; sometimes he was temperate; it was very seldom I ever seen him what I call drunk. Q. Those days when he was absent from his work, were days he was taking something? A. I can't say anything about that.

Q. How long had he been in this country? A. I think he was here nineteen years, nineteen or twenty. Q. Do you know how old he was when he came here? A. I believe he was about eleven, eleven or twelve. Q. Did he have any property at his death? A. No, sir. Q. How long had he been married? A. About eleven years, I think. Q. Had he other children? A. Yes, sir, he had one little girl; she died. Q. Older than either of those others? A. No, sir, younger than the oldest; between the oldest and the second oldest. Q. Younger than James? A. Yes, sir.

*Re-examined by Plaintiff's Counsel*—Did Mr. Cuff, your brother, furnish 10  
good support to his family? A. I believe he did, as far as I know; I never heard any complaints of their being in want. Q. Do you know whether she made any part of the living or not? A. I don't know, sir; I believe not; not that I know of.

*Re-cross*—Did not she ever do any work at all, washing or going out to work? A. I can't say; I don't believe she did; I have not heard, and I don't know from my own knowledge. Q. What was James doing? A. Going to school, I believe. Q. Do you know anything about it, at all? A. I know he went there frequently; I don't know whether he went there every day in the month or not. 20

[Offered in evidence, articles of agreement between Flanagan & Sage, and the Newark and New York Railroad Company, dated October 25, 1866.]

This closed the plaintiff's case.

*Defendant's Counsel*—Plaintiff's Counsel have asked a paper from defendant and have got it—the contract between Shaffner, and Sage & Flanagan.

*Court*—Have you got a copy of the notice in this case? [Notice handed in and read, asking for contract.] 30

*Mr. Ransom*—The contract between the Railroad Company and Sage & Flanagan, is the one I called for.

*Court*—The only point in this case was to the status of it. I shall hold to the English rule, which I have always looked upon as the better doctrine, and the tendency of our courts is to adhere to the English rule, unless it appears in some way that it is not well founded. There seems to be an embarrassment here as regards the status of the thing. I should want to be well satisfied that the paper was called for by the notice. That appears to be the case. I also want to be well satisfied that the paper was passed over to the other side understandingly, and 40  
that the paper was understandingly inspected by the other side in obedience to that notice. If that is so I should hold the paper should come in.

*Mr. Ransom*—I called for the contract between the Company and Flanagan & Sage; I said I wanted the other contract. Judge Randolph said, you look at this while I look at the other.

*Court*—When the paper was handed to you, did you know what it was?

*Mr. Ransom*—I did, because I had seen it before, months ago. Q. Did you take it? A. I did, sir. Q. Did you read it? A. Yes, sir, every word of it, having read it once before. 50

*Court*—I guess we will have to hold to the rule.

*Judge Randolph*—I understood the counsel as calling for the contracts. I had them both in my hands; I handed him the one I had read; he took it without making any objection; read it, handing it to his associate counsel, and I think he read it; that is my understanding.

*Court*—Let the ruling stand (to Mr. Ransom). The Court say you are obliged to read it. [Mr. Ransom excepted to the ruling of the

Court, on the ground that the document was not competent evidence in the case for either party; and that the plaintiff does not offer it in evidence. He protests against its being read or used in evidence.]

*Court*—And the Court say that the Counsel is obliged to read it. The reading had better be dispensed with now. [Exception to ruling of court allowed. Notice by plaintiff's counsel for production of contract then offered in evidence.] The case for the defendant was then closed.

Defendant's counsel then asked for a nonsuit.

- 10 *Court*—I conclude to deny this motion without any expression of opinion now upon the subject. My views will be developed at the close of the case. [Exception to refusal to nonsuit taken.]

TALIEFERRO O. SHAFFNER, sworn and examined by defendant's counsel:

- Q. What is your present occupation? A. I am President of the U. S. Blasting Oil Company and the Nitro-glycerine Company—lessee of the U. S. Blasting Oil Company, the latter being lessee of the former.
- Q. You, of course, have had a large experience with glycerine? A. Probably as large as any other man living, sir; I have been acquainted
- 20 with it since 1854, when I manipulated with it in Russia. Q. Have you been concerned in the construction of railroads? A. Considerably, sir, in different parts of the world. Q. You were acquainted with Messrs. Flanagan & Sage? A. I am acquainted with Messrs. Flanagan & Sage.
- Q. And you know the officers of the railroad company? A. I don't, sir, except the engineer. Q. What is his name? A. Lehlbach. Q. Do you know the President of the road, Mr. McGregor, or Mr. McCan, Director? A. I don't sir; I have seen several directors on that work; they were introduced to me as such, but I don't know them. Q. Have
- 30 you had any business with them? A. None, sir. Q. Did you know this person who was killed in this case, Michael Cuff, the person who was killed? A. I did not, sir. Q. Did you know this Thomas Burns? A. Yes, sir. Q. Where did you first see Thomas Burns? A. On my works, sir, at Bergen, Newark and New York Railway, which I was working under a contract with Flanagan & Sage. Q. What work were you engaged in at that time? A. I was conducting a blasting contract for Flanagan & Sage on that road. Q. Was that the contract spoken of here this morning? A. I did not hear it read, sir. Q. Look at this contract, and see whether that is your signature and these are the parties?
- 40 A. That is the contract, sir, and that is my signature; signed in quintuple or triplicate certificates. Q. What work was Burns doing at that time when you first saw him at your work? A. I don't exactly remember his position; he was working under my foreman; he was rather assisting McNab; I had two works going on on that road, one on the east end of the hill and one on the west end. Q. Were they both blasting works? A. Both blasting; I believe it runs east and west. Q. Both on the Newark and New York Railroad? A. Yes, sir. Q. How long was this before this accident occurred when you first saw Burns—how long did you know him? A. I don't remember, sir; not knowing that I was going to be a witness here until the very moment, I have not
- 50 had time to investigate. Q. As much as three months? A. No, sir; the contract was signed on the 17th of September, and the accident occurred on the 24th or 25th of November, and I think I had discharged McNab some two or three weeks. McNab was my foreman and Burns was his assistant until I discharged McNab; then I made Burns foreman of the west end; I am on hand myself, however, all day. Q. What led you to make Burns foreman? A. Because I saw he was about the best rockman and manager, and arranging for drilling that I ever saw. Q.

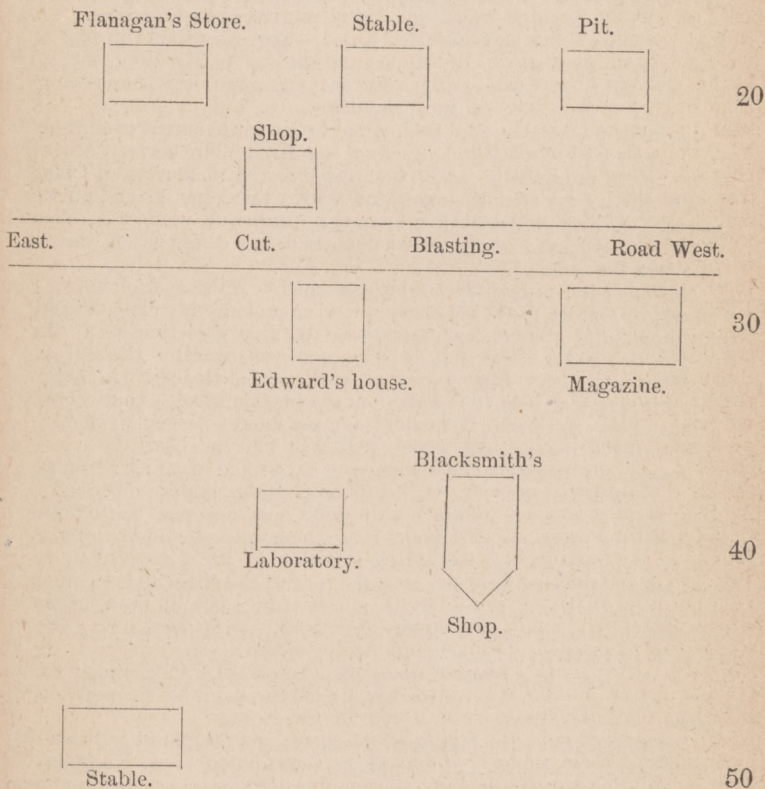
Did you see him work yourself? A. Certainly, I was there nearly all the time myself. Q. What kind of work did you see him do yourself? A. I seen him hold a drill, hold sledge and hammers, and direct where the holes should be put and conduct the blasting; I tried his skill and knowledge under all these different branches, also quarrying, working out rock, which was my place to break the rock out and deliver it to Flanagan & Sage, who were to carry it away; it is in the contract to that effect. Q. What were Burns' habits? A. I thought, sir, it was very abstemious; I never knew him to be under the influence of liquor; never heard of it until after this accident had occurred and I took some pains to investigate. Q. Did you ever hear any notice or complaint from Michael or Mrs. Scanlon or anybody, in regard to his habits? A. No one, sir. Q. Was there any other of your workmen round? A. None at all, sir; no intimation; on the contrary, I asked him to take a drink of beer with me several times and he always refused. Q. What was your object? A. To try him; sometimes we have to use a little strategy with men, and we have different ways of doing these things. Q. He refused? A. Always refused; I discharged one man for drinking, before him. Q. You discharged him? A. I discharged McNab because I heard he was under the influence of liquor; I refused to let him do the blasting—Bustenhinder, because I understood he was under the influence of liquor. Q. Bustenhinder? A. Bustenhinder I found there, and I refused to let him blast for me at all. Q. How soon after the contract was signed did you go to work? A. I suppose constructively we worked immediately; I sent a man on from Baltimore, McNab, on the following Monday; he left on Sunday night and arrived on Monday morning. Q. What agency did you use in blasting? A. Nitro-glycerine, and I think sometimes powder, but I am not sure; I gave orders that certain kind of rock, which it was calculated might be thrown on the houses, should be blasted with powder, what you call blockbolting. Q. What are the advantages of nitro-glycerine as a blasting agency over powder? A. That is a long story, sir. Q. How much more powerful is nitro-glycerine than powder? A. That is difficult, too; I will try and answer your questions; do what you want, I think; the use of nitro-glycerine in water bearing rock is enormously superior to powder, because you don't have to puddle, and don't have the difficulties of tamping, with nitro-glycerine, that you would with powder; if the hole leaks we have to put clay in it, so as to prevent the water coming in to wet the powder, and then again we have to tamp powder, to confine the powder inside of the hole; in the case of nitro-glycerine we have only to pour the oil into the hole and leave the water remain there, the oil is six-tenths heavier, and that slight tamping of the water is sufficient to hold it there in order to produce the explosion; you can't explode the nitro-glycerine unless it is confined; powder will explode confined or unconfined; it is immaterial. Q. How much of this nitro-glycerine was taken to the works before the occasion of Burns' death for the purpose of your contract? A. I think nine hundred pounds from time to time; first two hundred pounds, and then again two hundred, and then five hundred. Q. Was this for the use of your contract? A. Yes, sir; all that was sent there, with the exception of possibly ten pounds, which was not my contract. Q. What were those ten pounds for? A. That was brought there on some previous occasion, as an experiment. Q. Those nine hundred pounds, how many cans would that fill? A. Divide it by sixty; sixty pounds in a can; fifteen cans; there might have been some fifty pound cans; sixty pounds is the usual amount; there may have been some fifty pound cans. Q. Please describe the cans? A. Ask some other question, and allow Mr. Deveau

- to go across the street, and I will bring you one. Q. You say nine hundred pounds were brought under your contract? A. Yes, sir, about that; I may be mistaken; I have not looked at the book over a year, but somewheres about that. Q. Do you know of any other nitro-glycerine being on these premises, independent of your contract? A. Only that ten pounds brought there; Flanagan & Sage had ordered a couple or cans to be brought there; it arrived there, but before it arrived my contract was signed and it came under my contract; I think those two cans were brought in a buggy. Q. Was there any oil there which is
- 10 not for the use of the railroad? A. There was some of the United States Blasting Company's oil brought there a few days prior to this accident, a short time prior. Q. How much. A. I don't remember now, but I think some thirty cans; I may be one or two or three cans out of the way, however. Q. About the same style of cans you have spoken of? A. Yes, sir, the same style. Q. Where were those put? A. In my magazine, sir. Q. Were they kept separate from the others? A. Yes, sir. Q. In what way? A. My nitro-glycerine was put in a pit dug at one end of the magazine. Q. And where was theirs put? A. On a shelf; the company's oil, the blasting oil was put on a shelf. Q.
- 20 Is that a sixty pound can [can produced]? A. That will hold more than sixty pounds; that will hold about seventy; but we never fill the cans; we put the sixty in, and then we put some water on top of that. We have reasons for all this. Q. How are they stopped? A. Cork, covered with gut, bladder. Q. Is that can larger than the others? A. The same size; we have had cans of different sizes; some to hold fifty and thirty; we now make them forty; we had to reduce the size so as to hold only forty; it is more convenient, and less heavy than sixty; we are adopting the forty system now. Q. Where is this oil manufactured? A. I am now manufacturing it about five miles at this side of
- 30 Hackensack; I have works there capable of manufacturing five hundred pounds a day. Q. Where was it manufactured at this time? A. On the Passaic, beyond Paterson. Q. How do you transfer them? A. According to act of Congress, which provides they shall be put in metal cases, surrounded by Plaster of Paris, and in wooden boxes; that is how we transfer it. Q. When it is kept for use how is it kept? A. By preference upwards, the cork is out. Q. Why do you have the corks out? A. To prevent the confinement or expansion or rarification of the air that might be in there. Q. How much water is put on the oil? A. We put there about a pint or a half, not very particular.
- 40 Q. How is the magazine constructed? A. Dug into the banks of the railroad and constructed with spring boards. Q. How covered? A. Two layers of 2-inch or 2½ inch boards, and earth thrown on the top; I am not sure whether it was all earth at one end. Q. Who was there when constructed? A. I was on the work nearly every day, during the whole time I had it; I don't suppose I was absent three days during the whole time; when I was not there my son was there superintending. Q. As a person familiar with glycerine, I desire to ask whether you consider that magazine a safe construction for the storage of that article? A. The construction of the magazine is according to the most approved
- 50 plans, because the more open you make a magazine the less dangerous it is; or in other words, the more you confine explosive substance, the more dangerous it is.

*Court*—State the effect of confinement upon it? A. By illustration, it is utterly impossible to explode nitro glycerine at all, unless it is confined, and that is the invention that I have for nitro-glycerine; we are not the inventors of nitro-glycerine, only we have discovered that by confining it we could explode it, and when it is confined and then ex-

ploded, of course the gases evolved are confined, and allowed to act, atom upon atom, one atom with another atom.

*Defendant's Counsel*—When confined it is more dangerous? A. The more confined the more dangerous; you can't explode a pound of powder, all of it, when it is open, lying on a board; it is only possible to explode thirty-two hundredths of any charge of powder; if you have powder loose on a table, and if you put a light to it and explode it, you will find only a small part exploded and the balance thrown away; but if that quantity of powder is confined, the greater the confinement the greater the explosion. In artillery practice, it is established by the French, English and Belgian Engineers, only thirty-two hundredths of any charge can be exploded. Q. Did you prepare these diagrams? A. Yes, sir, roughly; there is a better one there by Mr. Lehlbach, and more correct, probably; I understand mine the best. Diagram of Mr. Lehlbach produced, and explained.



Q. How far from the magazine to Bergen Avenue? A. 250 yards altogether; 150 yards from the blacksmith's shop to the magazine. Q. As nearly as you can judge, how far from the magazine to Bergen Avenue? A. I should judge from that it was 260 or 270 yards. Q. Is there any other public street along those premises, but Bergen Avenue? A. None, sir; there's a fence here comes across; there's no thorough-

fare through here at all. Q. The store you have spoken of is in Bergen Avenue, is it not? A. Yes, sir. Q. What is this shop used for? A. Old materials, trowels.

*Court*—What shop is that? A. The shop on the other side of the railroad, near Bergen Avenue, on the south side of the railroad, the opposite side from the explosion.

*Defendant's Counsel*—What is it used for? A. It was used as a kind of Carpenter's shop; I believe there is a stable in it too; I don't know that I was ever in it; Flanagan & Sage's shop that was entirely. Q. 10 What was the blacksmith's shop, when this explosion occurred, used for? A. Here is the blacksmith's shop, and this is Flanagan & Sage's part of it. Q. And whose is the other part of it? A. Mine. Q. Give the sizes? A. 20 by 15 Flanagan's, and mine 15 by 15. I took off one end of his shop and extended mine out 15 feet, put my forge there, and Flanagan's was here; here is my door, and there is his. Q. What did you want a shop for? A. Sharpening my drills; there is no partition at all; I tore down that partition; that was the end of the shop; I tore that partition down and extended it out. There is where the explosion took place, that door. Q. At whose door? A. My door, sir; that 20 represents the appearance of it after the explosion; earth was scooped out two feet deep, and in that proportion.

*Plaintiff's Counsel*—That is intended to mark the extent of that hole? A. Yes, sir; Mr. Lehlbach's drawing is a little more correct probably than mine; my scale is made according to the measurement I made; two or three days after the explosion I went there and staked off these places. Q. Explain from that map, the Engineer's map? A. That is about the same, sir; I only get my house here in a different position from his; just the same.

*Court*—Is the magazine marked on that? A. Yes, sir; that is my 30 laboratory, where I did my electric works, prepare my fuses, electrical machines, and storage for cartridges. Q. Any glycerine kept there? A. No, sir; never allowed it to be kept anywhere but in the magazine. Q. That was about 260 yards from the public avenue? A. I should think it was, sir; it is 150 yards from the blacksmith's shop to the magazine; it was more than 260 from the magazine to Bergen Avenue.

*Plaintiff's Counsel*—200 yards, or feet? A. Yards, sir.

*Defendant's Counsel*—260 yards, you said? A. Yes, sir; 260 yards from Bergen Avenue. Q. At the time of this explosion, or shortly before that, how much of the oil of this Company—the United States 40 Blasting Company—was deposited in the magazine, and how much of the oil, which you use, for blasting purposes? A. I expect, sir, there was about 150 pounds of my oil there, but at the time of the explosion it was nearly all out, nearly all used. Q. How much of the Company's oil was there—Blasting Oil Company. A. I have forgotten, sir; I think it is 12 or 14 cans; 18 cans.

*Court*—Your impression now is 12 or 14 or 18? A. Yes, sir; I have not looked at the books or any memorandum about it, since the occurrence.

*Defendant's Counsel*—Did you see Burns on the Sunday before the 50 explosion? A. I did, sir. Q. What time of day? A. Early in the afternoon. Q. What was his condition at that time; was he intoxicated or not? A. I did not consider him to be under the influence of liquor at all. Q. Did you talk to him? A. Yes, sir; he worked with me in the laboratory; I was there with him an hour. Q. He was about an hour with you, was he? A. Yes, sir. Q. Does glycerine affect the nerves of people? A. Yes, he told me had got some on his hands, and he had a severe headache; I suffered from it very much when I got it

on my hands, and I felt for him at the time. Q. What is the effect of it; does it cause a person to suffer? A. It affects me differently; sometimes it strikes in the posterior of the head, the upper portion of the spine; it seems as if it was going to get out; sometimes it takes me in the frontal bone as if the top of the head was coming off. Q. Does it give a headache? A. An intense headache, sir, and causes me to vomit; nitro-glycerine is a poison, and every time I get it on me I get poisoned; others, again, it does not affect at all. Q. You saw Burns on Sunday? A. I did, sir. Q. When did you see him next—did you ever see him alive again? A. Never alive after that, sir; I gave him directions what to do the next day. Q. Do you know of anybody else giving Burns directions, Lehlbach, Flanagan or Sage, in connection with the work of blasting? A. No, sir, I would not allow it; I attend to my business myself; I did not allow anybody else to meddle with it. Q. What arrangements did you have for the paying of the men? A. I made arrangements with Sage to pay according to the roll of my foremen, McNab and Burns; I called him my foreman on the works; my son was manager in my business, and I was there myself directing. Q. Burns kept the pay-roll; he passed it in to Sage & Flanagan and their clerk? A. Burns kept the pay-roll under my inspection every day, or my son's inspection; and at the end of the week was handed in to Flanagan & Sage's office, to be paid according to that roll.

*Court*—I would like to know here—something has been said, in regard to an order of some kind brought by Nicholls to Burns; do you know anything about that? A. Yes, sir; I saw it. Q. Where is the order? A. I think I had it sir; but I don't know what I did with it, sir. Q. Who made it out? A. Mr. Deveau wrote the order directed to my son. Q. Who is Mr. Deveau. A. James Deveau was then a director in the company. Q. What company? A. U. S. Blasting Oil Company. Q. Directed to your son? A. Directed to my son. Q. State the contents, as near as you can, of that order? A. I don't know whether I can or not. Q. Are you going home to-night? A. Yes. Q. Then look for it to-night. A. And any other data you want let me know, and I will hunt it up to night, bring our books if you want them. Q. You were present when that was written? A. No, sir, I was not present when it was written. Q. Where did you see it? A. Mr. Merritt showed it to me the next day, delivered it to me. Q. Which day? A. The day after the explosion. Q. Do you know who got those two cans, or do you know whom those two cans were for? A. What two cans do you refer to? Q. The two cans spoken of as being brought out by Burns, from the magazine; there was one can that was filled, I presume the other can was empty? A. I will give you my opinion about it, sir. Q. What knowledge had you as to whom those cans were for? A. I know a can belonged to the company; that was the one that probably exploded, for I never saw it again. Q. How do you know it belonged to the company? A. Because the number in the magazine is one less, and none of my oil had been missed.

THURSDAY, May 13, 1869.

COL. SHAFFNER, re-called and examined by defendant's counsel: 50

*Witness*—If the court please, I would like to make a correction as to what I said yesterday. The amount of oil that belonged to the company and brought to that magazine was twenty or twenty-one cans.

*Defendant's Counsel*—Do you mean the Blasting Oil Co.? A. Yes; it might have been twenty, but my opinion is twenty-one.

*Court*—In the magazine on the morning of the day? A. No, sir, brought to the magazine about the 12th of November; in the mean-

time about five cans were disposed of, leaving sixteen cans in the magazine on the 24th or 25th of November, which was the day of the explosion, one of which was exploded, the other fifteen remaining, and subsequently taken away by me and buried in the marshes. Q. That is on the day of the explosion, you mean, one exploded? A. Yes, sir, producing this accident. Q. And the others? A. Fifteen were subsequently taken by me and buried in the marshes near the canal.

*Defendant's Counsel*—You say one of them was exploded? A. One was exploded and producing this accident, one of the sixteen; there 10 was only a fractional can there of my own oil. Q. At what time? A. On the day of the explosion; on the Sunday before. Q. You were there the Sunday before? A. Yes, sir, and examined every can, as it was my habit to do every day. Q. Were you there soon after the explosion also? A. No, sir, next day.

*Court*—On the day of the explosion then, do you mean to say there was only a fractional can? A. Of oil there belonging to me as contractor of the work. Q. What do you mean by a fractional can? A. Ten or twelve pounds. Q. A can of the same size as the others? A. The same size. Q. Then one can of the company's oil was missing after 20 the explosion? A. Yes, sir. Q. It was testified that Burns had two cans near the blacksmith's shop; do you know where the other can came from? A. There were empty cans in the magazine. Q. Did you keep any account of the empty cans? A. Certainly, I can give my opinion.

*Plaintiff's Counsel*—We don't want your opinion, sir. A. I don't know whether I am here a witness to fact or an expert, or both.

*Court*—That depends upon the examination.

*Defendant's Counsel*—How many empty cans in the magazine on the Sunday before the explosion? A. The usual quantity, six that had been 30 used.

*Court*—Of empty cans? A. Yes. Q. Do you know the number? A. Yesterday I said, I think, that there were nine cans; but upon making an account of my expenditures I can only account for seven, which would make six empty cans and one fractional can in the magazine; yesterday I thought, as contractor, I had purchased nine cans; but on examining my expenditures I can only account for seven cans, of which six were then empty and one fractional can which I have spoken of a few moments ago.

*Defendant's Counsel*—Six empty and one with about ten pounds? A. 40 Yes, sir, I felt it on Sunday to see how much there were, that I might make arrangements for the purchasing of more oil from the company, as I desired to purchase the whole of the lot there. Q. Do you know whether Flanagan & Sage or the officers of the railroad company had any knowledge of this oil, belonging to the blasting company being stored there? A. No, sir, they did not, sir. [Objected to.] Q. I ask the witness whether he gave the information or whether he knew any other person gave information? [Objected to. Objection overruled.] A. The information was not given out, and I know they did not know it, because I did not intend they should know it; I kept my business to 50 myself; it was not my intention to keep it there as company oil, but to purchase it myself; that is the reason why I got it. Q. You say you kept the information to yourself? A. Always did, sir.

*Court*—It was not your intention to keep it as company oil? A. Yes, sir, but to purchase it myself, because the company did not intend to manufacture any more that season.

*Defendant's Counsel*—Have you found that order which you spoke of last evening? A. I have not, sir; I have looked through my papers,

and have not found it. Q. I propose to prove the contents of that order.

*Court*—You may examine with reference to the search for it.

*Defendant's Counsel*—What search did you make to find that? A. I looked through my private papers in the office. Q. Have you examined all the places? A. Every place where I could reasonably expect it, sir.

*Court*—Did you have the paper in your possession? A. I had it in my possession at one time, sir, about the time of the coroner's inquest. Q. Were you the proper custodian of the paper? A. No, sir, the company should properly have been the custodian of it, because it emanated 10 from one of the officers; it is our practice that no one should give orders for oil belonging to the company to be delivered or sold to any other person except the Secretary and Treasurer; although I was President of the company and was Director or Trustee, I nor any one else, except in those positions, ever gave orders for oil, hence as it was supposed to have emanated from the company, the proper custodian of it should have been the company; on the inability to supply the oil, another order was given Mr. Merritt by Mr. Church, in my presence, in the factory in Paterson for thirty pounds, after the explosion.

*Court*—The order was in your custody or not; did you have it? A. 20 I had it at one time, sir. Q. What did you do with it? A. I don't know whether I gave it to Mr. Church, or took it to the office, or what I did; I supposed that I had kept it; but it is possible I gave it to Church, as I was always particular to keep the company's business in the line of the Secretary. Q. Previously you gave it to Church? A. Yes.

*Defendant's Counsel*—Where is Mr. Church? A. Syracuse, N. Y.; he was Secretary at that time, but the order was not written by him.

*Defendant's Counsel*—I suppose it is competent now to produce notice of the contents of the order, the Secretary being out of the State.

*Court*—I don't think it is sufficient yet. Where are the papers of the 30 company kept? A. New York, 78 and 80 Broadway; it is one house, room 35. Q. Did you look through the papers of the company to find this order? A. Yes, sir, I have looked; all that I had the time to.

*Court*—Where did you search last night? A. I searched through some of my papers, and I was there this morning a little after six, hunting again for them. Q. Where at? A. In the office in New York; I called immediately from here to the office to hunt for it; I don't know how long I was there. Q. If you gave that paper to Church, and Church left, where would the paper properly be if it was in existence? A. If it was in existence, properly it should be in the company's office. 40 Q. What is the extent of your search there? A. I have been through the papers to the fullest extent, and where I should suppose it would be; Mr. Church was not a very good man to keep papers. Q. Was there any place about the office where it would likely be that you have not searched? A. There is no place about the office where it is likely to be that I have not searched. Q. Been able to find it? A. I have not been able to find it at all, sir; I was there this morning a little after six, hunting up to the last moment, and I had to run to get here; engaged in hunting for this.

*Defendant's Counsel*—How long after this did Mr. Church leave—after 50 the time of the explosion? A. He was Secretary only a few weeks, and left almost immediately. Q. After what? A. After the explosion, say within four or five days.

*Court*—Have you seen the paper since he left? A. No, sir. Q. Where was it when you saw it last? A. It was at Bergen City, where there is some drug store. Q. Who had it? A. Three of us had it; Merritt, in whose favor the order was drawn, Church and myself; and I

had it for a while, that is after the explosion. Q. Who next had it? A. I don't remember; I don't know how it got from my possession, but I presume I gave it to Mr. Church; I would not say positive that I did.

*Defendant's Counsel*—Where was the inquest held? A. Down where the accident occurred. Q. In the same neighborhood? A. On the corner of the Junction of the Plank road street, and the street that runs to the blasting place. The Plank Road and Newark avenue is not it? Q. Bergen Avenue. A. Bergen Avenue, I suppose; there is where we did our business. Q. Do you remember who took the paper last? A.

- 10 Upon reflection I think it was given to Church; because he substituted another order for it; I wrote the order for him, and he signed it in the factory near Paterson. Q. Would there be any use in keeping that first order? A. No use, except my rule is to keep everything in writing; no particular use of it.

*Court*—Where is Mr. Church? Do you say Syracuse, N. Y? A. He resides there. Q. Have you any knowledge of the transaction itself in regard to that order. You need not say what you know about it. You may answer in a monosyllable? A. I know the order existed. Q. Were you present when it was sent? A. The first order, or the second

- 20 order. Q. I don't mean the order at Passaic? A. The first order was written; I was not there and never knew anything of it until after the explosion.

*Court*—I will hear the other side.

- Plaintiff's Counsel*—You say Church left two or three days after the explosion, who succeeded him? A. Mr. Deveau; Mr. Church resided all the time at Syacuse, N. Y. Q. Who succeeded Mr. Church? A. James Deveau. Q. Is he still Secretary of the Company? A. Secretary and Treasurer. Q. Has been ever since? A. Yes. Q. Has the custody of the papers of the Company? A. He and I together. Q. Who arranges
- 30 and files them? A. Both of us. Q. Where is he now? A. He is in New York; He will be here to-day. Q. Where did you look in your office for this paper? A. I looked among the office papers in my possession. Q. In what place in the office? A. In the desk; in the pigeon holes. Q. Have you pigeon holes for filing different kinds of papers, or are they all filed promiscuously? A. We generally assort them, so that we can find them out. Q. Have you a place to file orders by themselves, that have been given and filed and given back? A. Not in that way. I have places for filing orders from customers, but our own orders we generally cancel there. Q. When they come in? A. When they return from the factory. Q. What is done with them, then? A. They
- 40 are generally destroyed, because they are only memorandums. Q. Was this order cancelled? A. I can't say that it was, sir, because this accident occurring, it unsettled everything with us. Q. You say you examined all you had time to examine, have you had time to go through all the papers of the office? A. I presume so sufficiently, but I can't say positively. Q. Did you go through all the papers of the office? A. No, sir. Q. Half of them? A. I went through possibly more than half; a great many more than half; in every place where these would naturally be. Q. Did you go through three-fourths of the papers? A.
- 50 I could not tell sir, but possibly more. Q. Every place where these would likely be; what places would these likely be in? A. It might be in my desk, or it might be in Mr. Deveau's desk. Q. What places you examined in for papers this morning? A. Partly in Mr. Deveau's desk, and all in mine. Q. Mr. Deveau with you? A. He was not there, sir; he came in as I was going to go. Q. Those are the only two places you examined in the office? A. Yes, sir. Q. Examined any other places? A. Felt in the pigeon holes in my desk; there are pigeon

holes in Mr. Deveau's desk, and in some of them they never kept such things. Q. Pigeon holes only in Mr. Deveau's and your own desk? A. Yes, and in the common large desk, which I went through.

Plaintiff's Counsel submitted Mr. Deveau was the proper man to make the search.

*Court*—Would not have the contents of the paper be proved at present, as the case stood.

*Defendant's Counsel*—How soon after the explosion did you see Mr. Merritt? A. The next day about noon.

*Court*—Who was Mr. Merritt?

*Witness*—He was the gentleman holding the order for the thirty pounds of nitro-glycerine. Q. Where did you see him? A. Before the inquest; it was on the grounds where the accident occurred. Q. Did he have any business there? A. He was waiting to get the thirty pounds of oil. Q. Are you speaking from your actual knowledge? A. Yes, sir; I was with him. Q. On the ground before the accident? A. No, sir; on the day after; he was waiting to get the oil.

*Defendant's Counsel*—Where did he get the supposed order? A. He got it that same afternoon. Q. The day after the explosion? A. The day after the explosion, and it was written in that drug store. Q. Written by you and signed by Deveau? A. By Church. Q. That was the order drawn on Paterson? A. Yes, sir; on the factory near Paterson. A. How long did Mr. Merritt remain there? A. He remained there all that day. Q. Was he a witness at the inquest? A. And come back the next day. Q. Was he a witness at the inquest? A. He was. Q. Where is he now? A. I don't know, sir, where he is now. Q. Where did he live? A. He lived in Orange County, I think, N. J., if there is such a County.

*Court*—No, there is not; there is Orange.

*Witness*—It is Orange, sir.

*Defendant's Counsel*—Did he carry away any of the nitro-glycerine? A. Not from that place he did not. Q. Was he, or was he not, employed by the Railroad Company, or Flanagan & Sage or by yourself, Merritt I mean? A. No, sir; I never saw him before, or since, since the inquest. Q. What work was Sage & Flanagan engaged in; what was their part of the job at the time of the explosion; what were their men doing? A. He was a General Contractor.

*Court*—Who? A. Flanagan & Sage.

*Defendant's Counsel*—Just explain the nature of the work they were performing; what was the actual work they were engaged in doing? A. I was going to say they were doing various kinds of work, such as taking the dirt off the track, building culverts and bridges, filling up, and taking the rock away, that was broken up, blasted by me.

*Court*—Yours, as I understand, was a blasting contract? A. Mine was for drilling and blasting.

*Defendant's Counsel*—Who was the foreman of Flanagan & Sage at that time and that place? A. I don't remember, sir.

*Court*—From whom did you get consent to build that magazine there? A. I suppose I got consent from Mr. Lehlbach; he went with me to select a place, which was the least dangerous. Q. What did you tell him you wanted to build a magazine for? A. For my nitro-glycerine. Q. Did you say what glycerine? A. No, sir, as a magazine for my nitro-glycerine, under the contract; I don't suppose I used any explanation at all; I only simply asked him to show me where I could build a magazine for the storage of my nitro-glycerine, that would be the least dangerous and the most out of the way. Q. Did he know what purposes you used it for? A. He knew I was keeping my nitro-glycerine there.

Q. How soon was this after you got the contract from Flanagan & Sage?  
A. It may have been some 8 or 10 days. Q. Did you ever speak to Mr. Lehlbach about bringing nitro-glycerine there, belonging to the Blasting Oil Company? No, sir.

*Defendant's Counsel*—I think you said that Burns kept your pay-roll; did he? A. Burns kept the pay-roll under the inspection of myself and my son? Q. How often do you suppose you saw the pay-roll which he kept? A. Every day, or nearly every day. Q. How many men did Burns have under him; you say he was foreman? A. Yes, sir; he was  
10 foreman; he was not full foreman; I was "full" myself; and my son was acting under my orders there in the pit. Q. Did he command the men? A. He commanded the men. Q. How many men were there engaged in that branch of business? A. I suppose from 10 to 15, sir.

*Court*—Who commanded the men, did you say? A. I was superintendent, myself and son, nearly all the time, and Burns was subject to our orders.

*Defendant's Counsel*—You gave orders through Burns to the men? A. Through Burns, sir; ten to fifteen men on the work. Q. This glycerine, has it been used in other places for the blasting of rocks? A. Been  
20 extensively used. Q. In this country? A. In different parts of this country, and mention may be made of the Hoosac Tunnel. Q. Any other places? A. Maryland and various parts of the country, sir. Q. Is it used in other countries? A. Yes, sir, extensively. You asked me yesterday about the advantages of it; I did not give you fully then; am I at liberty now to do it? Q. You stated the advantages were, you avoid puddling, or clay working; what are the advantages of it? A. I may illustrate the operations at the Hoosac Tunnel, by which that tunnel will be driven through, as calculated, about four years earlier than it would with powder, and at a saving of two million of dollars,  
30 and my report upon the subject is in this book, a copy of my official report to the Governor of Massachusetts.

*Court*—Are you employed on the Hoosac Tunnel? A. I was, sir, at that time, for that express purpose.

*Defendant's Counsel*—That is one advantage, what are the other advantages? A. A matter of economy solely; and I have stated that as an illustration, Hoosac Tunnel. Q. More economical in time and expense? A. In time and expense. Q. Does it require as much drilling of rock as powder does? A. Nothing like it, sir; with 1,680 feet of drilling at the Hoosac Tunnel, I did the same work with nitro-glycerine which  
40 would require 9,712 feet for powder.

*Court*—What is the difference in proportion about, in round numbers? A. We estimate in hard rock, such as slate, quartz, &c., about from 75c. to \$1 per foot.

*Defendant's Counsel*—What is the most expensive part of the blasting work? A. Drilling.

*Cross-examined by Plaintiff's Counsel*—You reside in New York? A. I am supposed to reside in the State of Kentucky. Q. That is your native State? A. Virginia is my native State, but I have lived in Kentucky thirty odd years; my temporary residence is in New York; my  
50 factory in New Jersey. Q. How long have you been connected with this company in New York, the Blasting Oil Company, and its predecessor, the Nitro-glycerine Company? A. I think I became a trustee of the U. S. Blasting Oil Company in October or November, 1866; and in the winter of 1866 or the early part of 1867 was made President. Q. Of the Blasting Oil Company? A. Yes, sir.

*Court*—You were one trustee, or the trustees? A. I was one of seven or nine. Q. You were one of seven or nine of the U. S. Company? A.

Yes, sir. Q. From what time to what time? A. In October or November, I suppose. Q. 1866? A. 1866. Q. Up to when? A. And I think in February or March, or about that time in 1867, I was made President. Q. President of that company at the time of the accident? A. I was and have been so ever since.

*Plaintiff's Counsel*—There were nine trustees? A. At that time. Q. Where is the office of that company now? A. 78 and 80 Broadway, New York. Q. The same place where the other Company have their office? A. Yes. Q. Is that company still in existence? A. It is, sir, the U. S. Blasting Oil Company. Q. What business are they engaged in now? A. Keeping up a corporate existence for the reciprocity of a royalty for their patents. Q. They have patents relating to this nitro-glycerine? A. Yes. Q. And they are engaged in no business except in collecting the royalty for the use of these patents? A. That is all, sir. Q. When was the Nitro-glycerine Company formed? A. It comes from a lesseeship. Q. Where was it organized? A. No such company organized; it is only nominal. Q. How do you mean by nominal? A. I am carrying on the business for the lessee of the company in that name. Q. You are that company, yourself? A. No, sir. Q. Who compose the Nitro-glycerine Company? A. Mr. Joseph B. Stuart is the lessee of the Nitro-glycerine Company for the U. S. Blasting Company. Q. Is the lessee of which company? A. Of the United States Blasting Oil Company. Q. What is it that you call the Nitro-glycerine Company? A. The business is now carried on in behalf of the lessee, in the name of the Nitro-glycerine Company. Q. It is not an incorporated company? A. It is not, sir. Q. Who are the partners in that concern? A. No partners at all. Q. Mr. Stuart, what interest has he? A. He is the lessee, and it is carried on in the name of the Nitro-glycerine Company by me. Q. Under a lease from the United States Blasting Oil Company to Mr. Stuart? A. Yes, sir. Q. What are the relations existing between you and Stuart? A. We are old acquaintances and associates in my patents. Q. What interest has he in the concern which you are carrying on in the name of the company? A. He is interested in my patents, and my patents bear upon this business; we are trying to build the business up so as to make all these things valuable. Q. The manufactory is going on near Hackensack? A. Yes. Q. And you are carrying that on? A. Yes. Q. Who furnishes the capital to carry it on? A. That is my business, not yours; excuse me; this has nothing to do with the case.

*Court*—You decline to answer, and the Court shall determine whether you shall or not.

*Plaintiff's Counsel*—Who furnishes the capital to manufacture this nitro-glycerine, to carry on the works at Hackensack. [Question objected to. Objection overruled. Exception taken.] Q. Who furnishes the capital?

*Witness*—If the Court please I would ask for some little protection here.

*Court*—Answer; the Court say you will answer.

*Plaintiff's Counsel*—Who furnishes the capital to carry on the works at Hackensack?

*Court*—To manufacture this nitro-glycerine. Answer that question?

*Defendant's Counsel*—I think the oil has been testified to belong to the U. S. Company. There has been no connection at all shown between this oil and the Nitro-glycerine Company.

*Court*—The counsel are desiring to show by this witness that instead of the oil being that of the U. S. Company, it was the oil of Col. Shaffner. They will have liberty to do it.

*Plaintiff's Counsel*—Who furnished the capital for that establishment at the time when this accident took place? A. There was no such establishment and no such company at that time.

*Court*—That is at Hackensack? A. Yes, sir; no nitro-glycerine company at that time, or no factory at Hackensack; no objection to answering that. Q. You say there was no such establishment at Hackensack at the time of the explosion, and there was no such company as the Nitro-glycerine Company? A. Yes, sir, that is what I say.

*Plaintiff's Counsel*—Where was the manufactory at that time? A. 10 On the Passaic, about two or three miles from Paterson. Q. When was it removed from there to the neighborhood of Hackensack? A. It never was removed; it was sold out. Q. By whom? A. Sold out to pay a debt. Q. Do you know to whom? A. Mr. Rennie.

*Court*—From Lodi? A. Yes.

*Plaintiff's Counsel*—Mr. Rennie bought it, did he? A. He bought it, sir. Q. What did he do with it? A. He sold it again a year afterwards. Q. To whom? A. I don't know, sir; I think by the name of Miller. Q. Was it sold by the sheriff, first? A. No, sir; some of the fixtures was sold by the sheriff, but the factory and ground and build- 20 ings were not. Q. Sold by you, as President of the company? A. Sold by authority of the company. Q. That is the U. S. Blasting Oil Company—sold by their authority? A. Yes. Q. Who composed the U. S. Blasting Oil Company at that time of the explosion? A. You want a full list. Q. I want to know who were the parties interested in that company at that time? A. It is a long list of shareholders; I can give you all I can remember. Q. Name the trustees? A. Izrael Hall, (I am not sure whether all these were trustees at that time) Julius R. Pomeroy, Edward F. Waite, James Deveau, Wm. H. White, Tal. Shaff- 30 ner, Jacob Clarke, Martin Still, T. T. Church; but some changes might have been made since. Q. At the time of the sale of the works at Passaic, had the company any oil on hand? A. At Passaic. Q. At the time of the sale of the works there, had the U. S. Blasting Oil Company any oil on hand anywhere? A. Yes, sir. Q. Where? A. Wheeling, Virginia. Q. How much? A. About twenty-two or twenty-three hundred pounds. Q. Had they any other place? A. In the magazine, and I believe one can at the factory. Q. What magazine do you speak of? A. My magazine. Q. Here on the railroad grounds? A. Yes, sir. Q. How long after this explosion were the works at Hackensack started? A. Half a year or so. Q. What became of the glycerine of the company 40 that was stored in the magazine here after you buried it in the marshes, the fifteen cans? A. Twelve cans of it were sold to Mr. Sullivan, up on Seventh Avenue. Q. When was that delivered to him? A. Soon after. Q. About how soon after? A. Within a week after the explosion. Q. Then there would be three more, what became of them? A. Three more remained there for eight or nine months buried; we had hard work to find them, and we finally sold them to a contractor, Laurence Meyers. Q. When did you first commence delivering oil from the Hackensack works? A. About October or November. Q. Of what year? A. The year after. Q. 1868? A. Yes. Q. Last October or 50 November? A. Yes, sir. Q. I understood you to say that you gave Mr. Merritt a substituted order, for the order he brought to Burns on the day after the explosion on your works, at Hackensack? A. At Passaic. Q. How was the U. S. Blasting Oil Company organized; under what law? A. The general law of the State of New York. Q. What was the amount of capital of that company? A. \$1,000,000. Q. How much was paid in? A. It was all paid in. Q. \$1,000,000 was paid in? A. Yes. Q. How was it paid in? A. By the purchase of patents and subscriptions in money. Q. How much money was put in?

*Court*—How much stock did you nominally have? A. I think I had nominally on the books; about \$15,000 on the books were paid me, but I don't think at that time I had more than \$5,000 of stock.

*Plaintiff's Counsel*—Who put in the patents? A. Alfred Nobel. Q. What were they put in at?

*Court*—I think I will overrule that. There is not enough in it to take up the time.

*Plaintiff's Counsel*—Had you any other interest in the company except the \$15,000 which stood in your name? A. No other interest in the world, except the little interest I speak about; not \$15,000, for I have transferred that off. Q. Had you any interest in the patents? A. None in the patents of Nobel, had a number of patents myself. Q. Were they not as capital? A. No, sir. Q. Were they used by the company? A. They were, without any compensation at all. Q. Who put in the \$15,000 in money; did you put it in? A. It was paid to me for my expenditures and services in Washington City and other places on behalf of the Nitro-glycerine Company. Q. You took that amount of stock in payment of services? A. Yes, and money expended, about \$1,700. Q. And for the patents you asked about \$15,000? A. I answered how I got that; I never stated it was made up of patents. Q. What was the rest of the capital made up of—the rest of the \$1,000,000 above the \$15,000 which you got for services and money expended? A. I had nothing to do with the corporation until some months after it was formed, and Nobel paid me in the way I told you. Q. I asked your knowledge as to how the balance of the \$1,000,000 was made up, over and above the \$15,000 issued? A. The \$15,000 was paid to me by Nobel. Q. How was the balance of the million of capital made up; that is a plain question? A. You don't put it right, sir.

*Court*—You understand it? A. Yes, the \$15,000 I had had nothing to do with the company; the million capital was made up before I went into it; the amount of capital cash paid in I can tell you if it is necessary; I have no objection to tell that. Q. Were you managing man of the U. S. Company? A. No, sir. Q. Had you interest in that company under cover? A. None, sir.

*Plaintiff's Counsel*—Were you interested in the stock held in the name of other people of the company? A. None, sir; nor even to this day. Q. Was there any capital paid in? A. Yes, sir. Q. How much? A. The capital was paid in in this way. Q. How much capital of actual money was there in? A. Oh! Yes, sir. Q. How much? A. I want to explain it. Q. Answer in round numbers? A. \$50,000 were paid in in money; the works at Paterson cost from \$13,000 to \$15,000.

*Court*—Was that paid in by stock? A. Paid in by this forming the company. Q. How were you employed by the company? A. I was President without compensation or salary. Q. Why did not you get compensation? A. They did appropriate some, at one time, to pay my expenses, but as to salary—

*Plaintiff's Counsel*—What was your interest in the stock of the company; did you have any? A. I had no interest in the world in that company, directly or indirectly, except the nominal amount of shares standing in my name, which was about \$15,000, and which I think I held at that time \$5,000 of my own; the other \$10,000 I paid away for nominal sums. Q. Now this oil was brought from the works at Passaic, as I understand you, to be stored there; this twenty-one cans, was it all brought at one time? A. Brought the same day, sir; I am not sure whether it was all in one wagon or not. Q. Can you fix the date when it was brought? A. On or about the 10th or 12th of November? Q. Who brought it? A. You mean the wagoner, or who ordered it. Q.

- Who brought it on the ground? A. I don't know, but I think it was Van Houten's wagon, but I am not sure. Q. In Paterson? A. Yes. Q. Who sent the glycerine there from the works? A. Mr. Church and myself. Q. Were you at the works at the time it was loaded to come? A. I was not, sir. Q. Were you at the magazine at the time it was deposited there? A. No, sir, my son was. Q. Did it come night or day time? A. Day time, I think; I am not sure. Q. What time of day did it leave Paterson? A. I don't know that, sir. Q. You said you knew that the engineer of the railroad, nor Sage & Flanagan knew it was stored there? A. I said they did not know it belonged to the United States Blasting Oil Company. Q. Did your work require that amount of glycerine there? A. It would require ten times that amount. Q. I understand you had it sent there with the intention of buying of the company? A. I consented it to be brought there because I desired to buy it myself. Q. Had not you power to sell glycerine for the company, as President? A. It was never our practice or habits to do it. Q. Had not you power to sell that glycerine as President of the company? A. I suppose it is a question of law whether I would or not. Q. Did not you understand you had that power as President? A. No, sir, I never did. Q. Who did exercise the power to sell the glycerine? A. The Secretary and Treasurer, acting as one person. Q. It took the two to sell? A. The two offices were filled by one person. Q. They were one office? A. Yes. Q. Filled by Mr.—? A. Church, at that time. Q. Did you apprise Mr. Church that you wanted to buy that oil? A. I don't remember, sir. Q. When did you make up your mind that you would buy it? A. Before it came there. Q. Then you had it, allowed it to come there because you intended to buy it for your own use? A. Yes, sir. Q. On that work? A. Yes, sir. Q. Who first spoke of sending it there? A. Mr. Church. Q. When and where? A. At the factory near Paterson. Q. What was his object for sending it? A. Mr. Rennie told us he was going to attach the property, which we had no objection to, and we took the oil away, to keep it from being held up under embarrassment of any law suit. Q. You got all your oil for blasting on this work from that place? A. Yes, sir. Q. Were you not manufacturing it there principally for this work? A. No, sir, manufacturing it for all parts of the country. Q. Was this all the oil there was at the works? A. There was about one can left—it had been taken away, part by Mr. Merritt and the balance of it I don't know how it got away; it was understood between Rennie and myself that the oil was to be all taken away. Q. Mr. Merritt got his thirty pounds out of that can? A. He got it out of the demijohn; when we say a can, we mean the quantity that would fill a can. Q. I understand you to say—you don't mean to say that the engineer of the company and Sage & Flanagan did not know this oil had been stored there? A. I don't mean to say they did not know the oil was stored there; I mean to say they did not know the oil belonged to this company, the U. S. Blasting Oil Company. Q. Do you know who received it and put it in the magazine? A. My son. Q. Burns assisted him? A. I don't know, sir; my son had charge, had arrangements with the company. Q. Had any of it been sold and delivered before Merritt came there on that day, with that order? A. About five cans, sir. Q. Who was that sold to? A. Sullivan & Company. Q. When was that delivered; was it on or before the explosion? A. Before the explosion, of course. Q. How long before? A. Within a few days before, because it was only there ten or twelve days. Q. Was it delivered on Sunday? A. I don't know, sir; I don't remember, now. Q. Did not you go there to deliver that oil on the day before the explosion, that five or six cans? A. No, sir, there

might have been one can. Q. That you took upon Sunday? A. Yes, sir. Q. You took some oil away on Sunday? A. I am not sure whether it was a can or my electrical apparatus; I took something; I was there in the laboratory, going over the works to examine it, because I was not to be there the next morning. Q. Did not you take some oil from that magazine to deliver in New York the next morning? A. It is possible I did, either take one can or my machine, one thing or the other; one can or my electrical machine. Q. Were not you in charge of work in New York, Sullivan was engaged in, the day of the explosion? A. I was there on Monday. Q. And they were using this oil there? A. Yes, sir. Q. Blasting? A. Yes, sir.

*Court*—You were where? A. 142d street and Seventh Avenue; there the five cans were taken to at different times.

*Plaintiff's Counsel*—Did not Lehlbach, Sage & Flanagan, see you delivering that oil, taking it away during this time? A. That I don't know, sir. Q. Done in open day? A. Open day, sir; I think so; I presume it was in open day. Q. You stated yesterday in your examination that one of the cans which Burns took out on the day of the explosion, was empty; how do you arrive at that conclusion? A. Because on Sunday I felt what cans that were there of mine, and I found there 20 was a fractional can there; and then after the explosion I found that fractional can there; I therefore took it for granted that one of the cans, if he had two there, must have been empty. Q. Why would he take out an empty can? A. Because it is our practice, in melting nitroglycerine, as fast as we melt it to pour it into another vessel, and then go on and melt and pour off. Q. So you think he took this other can to pour the oil in? A. Yes. Q. Are you sure now, there was not more oil in the one he took out, that they were all entirely empty except the one you found there on Tuesday? A. I am sure it was entirely empty.

*Court*—That is those you have designated as yours? A. Yes, with 30 the exception of one, a fractional can, laid off one side.

*Plaintiff's Counsel*—With regard to your oil, you stated, I believe, a number of matters you took there altogether; do I understand you, in the first place, before you made your contract you sent down some for experiment, did you not? A. Before I made my contract, Flanagan & Sage got, I think, ten pounds for experiment; then was ordered two cans, which arrived there the day I signed my contract. Q. Were you there at those experiments with the oil? A. Not the ten pounds, sir. Q. Were you there with any experiments made from the two cans? A. Yes, sir; the two cans exploded under my contract. Q. In the presence 40 of the officers of the company? A. I did not know any officers of the company were there; Flanagan & Sage were there. Q. Did not the President and Attorney of the company come from Newark to witness the experiments? A. I don't know that I ever saw the President in my life, and did not know that they had an Attorney; I knew nothing about the company. Q. When were those experiments made? A. The experiments with the ten pounds were made some days before my contract was signed.

*Court*—Were you present? A. I was not present.

*Plaintiff's Counsel*—The other experiments, when were they made? 50 A. They were not experiments; it was in the regular work. Q. Sage & Flanagan were there to witness the operations? A. I was not there; the ten pounds I had nothing to do with it. Q. The two cans first bought by Sage & Flanagan turned to you? A. At the same time they became my property, because the contract was signed that day. Q. Did Sage & Flanagan pay for them? A. No, sir. Q. You took them off their hands? A. Yes, sir. Q. Who paid the company for them? A.

- I owe the company for them yet. Q. You owe the company for all the oil you got there? A. Yes, sir. Q. Never paid them for any of it? A. No, sir; it is charged to me, the whole of it. Q. Had you known Burns at all, before you made this contract? A. No, sir. Q. Was he upon the works at the time you made the contract? A. I don't think he was, sir. Q. Who hired him at first? A. I don't know, but I suppose McNab did. Q. How long was he your foreman; was he in your employ before he came on the works? A. Yes, sir, in Maryland. Q. How long had he been in your employ? A. Two or three months.
- 10 Was he acquainted with this business? A. Very well, sir. Q. Why did you discharge him? A. Because I heard that he had been drunk the night before. Q. How did you hear that? A. A report among the men. Q. You never heard Burns had been drunk? A. No, sir; I thought, my son with me, that McNab called the roll extraordinarily high, so that it could be heard up the road. Q. Did you consider him an incompetent man to have charge of glycerine? A. Any drunken man is incompetent; hence I discharged him. Q. Why is such a man incompetent? A. A drunken man is incapable of doing anything, according to my experience. Q. Don't this require peculiar management, require
- 20 extraordinary care to take care of it? A. No, sir; it only required ordinary care, not so much care as gunpowder. Q. Do you consider it safer than gunpowder? A. Very much safer, sir. Q. Does it not sometimes explode? A. That is what it is made for. Q. Without applying means for that purpose? A. It may be exploded by accident. Q. What causes it to explode? A. A heavy concussion; a heavy blow.
- Court*—On what? A. For instance, if you put it on an anvil and hammer on it, the part under the hammer will explode. Q. You mean the oil, itself? A. Yes.
- 30 *Plaintiff's Counsel*—In cans will a heavy blow explode it? A. Not unless it was under conditions of confinement; Mr. Doremus' letter explains that.
- Court*—You say in cans it may explode; by what? A. By a heavy blow on it, if it is under stated pressure or confinement.
- Plaintiff's Counsel*—When corked up in the cans, the aperture closed in any way, is it then in a state of confinement to cause it to explode by a blow? A. That confinement must be pressure. Q. How do you account for the explosion when Burns was trying to thaw out it? A. I understand that the oil was frozen; it was filled about four-fifths full; when it is thus frozen, and he applies heat at the base of the can,
- 40 sufficient to give the nitro-glycerine confined below by the frozen oil above—if the heat applied thus at the bottom is sufficient to produce 360 degrees Fahr., the confinement by the frozen oil above is sufficient to occasion explosion. The application, then, of the red hot iron, which in day time is at least 1,000 degrees—that red hot iron will make heat enough to the middle of the can to effect the 360 degrees of heat upon the nitro-glycerine; I believe I have explained it, sir. Q. If I understand you, you think the explosion was caused by his applying heat to the bottom of the can, while the top remained frozen? A. Yes, that is sufficient. Q. That the heat caused the explosion below, as there could
- 50 be no escape by reason of the frozen glycerine? A. Yes, sir, that is the hypothesis. Q. At what temperature does it congeal? A. Between 42 and 45; we consider 43. Q. Had you given Burns instructions how to thaw it? A. Very clear instructions. Q. What were they? A. To get a tub and place it down in the field, below all the houses, and to get warm water; about blood heat, 98 degrees or about as hot as he could stand his hand in; I suggested to use soap-suds; that might be got from the shanties already warmed; I gave him our books; pointed him

to parts which instructed him never to employ hot irons in warming the water, nor was he to take the oil to any of the shanties. Q. Was your instructions for him to place it in hot water and leave it there until thawed? A. To leave it thaw. Q. Keep renewing the hot iron? A. That is a matter of consequence; if one water is not sufficient, I guess it is to be followed up; I also gave him little details as to instructions how to pour the water on, and what parts, so as to keep it thawed all round. Q. Had you seen him thaw any of it under those directions? A. Never did, sir. Q. But you knew that he was in the habit of taking it to the blacksmith's shop to thaw? A. Never did, sir. Q. Do you know whether there had been any blasting before the explosion, on the Monday? A. I don't know; when I saw him on Sunday, it was understood there was none to be; that is as it was understood on Sunday; I directed him where to put the next holes. Q. What hour in the day, as near as you can get it, that you saw Burns on that Sunday?

*Court*—Was there any blasting on that Monday? A. I don't know now, sir, whether there was or not.

*Plaintiff's Counsel*—What hour on Sunday did you first see Burns? A. I suppose somewhere about eleven or one; somewhere in that neighborhood. Q. Where was he when you first saw him? A. Sitting near the blacksmith's shop. Q. Anybody with him? A. No one that I can remember of now, sir. Q. Did he go in, or send in and get the keys, to the place where you kept your laboratory? A. I don't remember, sir. Q. He had the keys of that place? A. We had duplicate keys; my son had one set and he had a set. Q. Had you a set? A. No, sir, I never carried them; my son did. Q. You were in with Burns? A. Yes. Q. Did you go and get the keys to let you in, or did your son come with his keys? A. My son was not there. Q. You went in with Burns' keys? A. With Burns' keys, sir.

*Court*—Did Burns have the key of the magazine? A. He always had a duplicate key of the laboratory and the magazine.

*Plaintiff's Counsel*—And your son carried another? A. My son carried another. Q. Do you know Michael Scanlon, brother of John? A. I know the two Scanlons, but I don't know their first names. Q. Michael is the younger one? A. I have heard of him and I have seen him; and I suppose I saw him before, but do not know. Q. Did you see him on that Sunday? A. I don't remember, sir. Q. You don't know whether he was with Burns that Sunday or not? A. I don't, sir. Q. What did you do in the laboratory at that hour you were with him there? A. We were sitting there talking, and I was arranging my electric fuses and things, little details, minutiae. Q. Had you any glycerine there? A. No, sir; never kept it there as a rule. Q. Did you go to the magazine with Burns? A. Yes, sir. Q. Before or after you were in the laboratory? A. I think during the time. Q. What did you go for? A. Went there to inspect the oil, and then went on the works. Q. You inspected the oil; do you remember which end of it? A. No, sir. Q. How did Burns get it on his hands? A. I don't know. Q. Did he get it on his hands in your presence? A. He handled the cans to see whether there was any in them; it makes my head ache very much, and did make his generally; I generally avoid handling it as much as I can. Q. You stated yesterday he got some on his hands? A. I think so. Q. How? A. Because he complained of having a headache. Q. How would he get it on his hands by merely handling the cans? A. They have got some about the nozzles; if I handle an empty can about the nozzle it is sure to get on. Q. Why handle the nozzle? A. We accidentally do these things, or it may be in some other part of the can. Q. After examining the cans did you go back in the labora-

- tory? A. I was there some time, going back and forth. Q. From the laboratory to the magazine, you mean? A. On the works. Q. Were you on the magazine more than once with Burns on that day? A. I don't remember; I know we went there. Q. How long were you in the laboratory together? A. I suppose an hour. Q. How long on the works with him? A. I don't know; I was walking about. Q. Were you there another hour? A. I guess I was there, sir, a couple of hours or more. Q. A couple of hours with Burns altogether, that afternoon? A. I should think so; it might have been a little more or less, Sunday
- 10 afternoon. Q. Can't you tell a little nearer than from eleven to one o'clock, you first met him? A. No, sir; I don't think I can. Q. Could not you fix the time a little nearer than from eleven to one? A. No, I can not, sir. Q. When did you first notice that Burns talked a little different than usual, and appeared a little different? A. When he came up to me. Q. What did you notice then? A. He spoke a little different than usual. Q. Had you not some suspicion then that he had been drinking? A. No, sir; I asked him what was the matter; he said he had a headache, and his mouth had a cold split, and I told him it looked a little swelled, and I told him to get some plaster. Q. You did
- 20 not suspect he had been drinking? A. Not at that time. Q. Did not you notice his clothes were dirty? A. No, sir, I don't think they were; I would have noticed it if it had been so. Q. Did not you go the next morning where he had been employed and inquire whether he had drank? A. Yes, sir.

*Court*—Where did you go? A. To Seventh Avenue, New York.

- Plaintiff's Counsel*—To what place did you go? A. To Sullivan's. Q. Burns had been working there before he came here? A. Yes. Q. Burns had been working there? A. Yes. Q. Did you inquire about his habits? A. Yes. Q. What induced you to make that inquiry? A.
- 30 My son told me he worked there. Q. Is it what you saw of him on Sunday that caused you to ask on the work there? A. Partly; I wanted to find out his character, generally. Q. If what you saw on Sunday induced you to make this inquiry, had not you suspicion he had been drinking? A. It caused me to desire an investigation; I was close to him and did not smell his breath; he said he had a headache; he walked well enough; could not say he was under the influence of liquor; he spoke a little thick, but I could not tell whether it was on account of his lip or not; I wanted to satisfy myself, and I proceeded to investigate; I spoke to my son about it. Q. Did not you learn up
- 40 there he had been in liquor occasionally? A. I heard up there that they had heard he had been in liquor. Q. Did not somebody tell you that he had seen him in liquor? A. I don't remember now; probably Mr. Hedge may have told me they had seen him in liquor. Q. He spoke a little thick; did he speak like a drunken man? A. No, sir; he spoke as though his lip was swelled or his tongue was swelled. Q. That is the way a man who gets a little drunk talks sometimes; you have some men that way; I have had experience that way; it affects men differently? A. I don't think it would affect me that way. Q. You went up to make inquiries about Burns; what else did you go up for?
- 50 A. Electric blasting. Q. Did not you go up to take some of this oil? A. I went up for electric blasting. Q. What is that? A. Scientific blasting; an invention of mine. Q. You went to practice it? A. Yes, sir. Q. Did not you use nitro-glycerine in using it? A. Nitro-glycerine, gunpowder or any explosive. Q. Exploded the blast by electricity? A. Yes, sir. Q. Was it used that day? A. I think so, sir. Q. How long was you up there—all day? A. Most of the day, sir. Q. You did not come to the work here again? A. No, sir, not that day; I went to

Lodi in the afternoon; I went to Lodi from that work. Q. On Sunday when you were with Burns, did you tell him an order would come the next day for glycerine and he should deliver it? A. I have no recollection of anything of that kind, sir. Q. Did not you tell him there would an order come for glycerine? A. I have no recollection of telling him so. Q. Did not you know there was an order coming for this glycerine? A. No, sir. Q. From Mr. Merritt, you did not know it? A. No, sir. Q. When did you first hear Mr. Merritt had an order? A. The day after the explosion. Q. Had you given Burns any order to deliver oil upon the order of Mr. Church? A. No, sir. Q. Had you given your son such orders? A. My son was authorized by the company; he had arrangements with the company to do that business; it was in his charge; he had a special arrangement, not myself; I refused to do it, but let him do it so that he might get a little pay if he wanted it. 10

*Court*—Special arrangements to do what? A. To fill the orders of the company, whatever it may be in regard to that oil. Q. In regard to Burns, was Burns to act for him in doing it, or was Burns to do it? A. The actual filling the oil; my son had that. Q. Was he paid for the actual labor of it, or Burns? A. It is under his charge; I suppose if he called on any one to help him he would have done it. Q. Was there anybody there to deliver it except Burns? A. My son was not there that day. Q. Monday you refer to? A. Monday, sir. Q. Had he been there, was there anybody to actually deliver the thing but Burns? A. My son had not been there that day. Q. When he was there, and the orders came, was there anybody to actually deliver the thing, but Burns? A. If he had been there he would have delivered it himself personally, for he is in the habit of handling the oil. Q. Would he have thawed it out himself? A. I suppose so; he has done it himself, blasting himself, and handles the oil, and fills the hole and such things as that. 20

*Plaintiff's Counsel*—Did you say Burns had no authority from you to fill any orders the Blasting Oil Company sent there? A. At one time I thought I had given him permission to do so; but on consultation with Mr. Church who was present at the time I instructed him about the thawing, he says I did not. Q. You thought you had and Mr. Church said you had not? A. Yes. Q. That is since the explosion? A. Yes. Q. When was that? A. About that time; months afterward probably; can't tell, from time to time we talked the matter over. Q. You were satisfied you had given him such instructions until the conversation with Church? A. I thought I had, sir; until Church satisfied me I had not. Q. Given instructions to Burns to fill the orders? 30

*Court*—To deliver the orders? A. Of the Company; he satisfied me that I had not, because I had never exercised such authority over the Company's oil. Q. Why then did you think you had given him such orders? A. I just thought so, because I had a conversation with him about thawing the oil.

*Plaintiff's Counsel*—And then you afterward, on conversing with Mr. Church, you came to the conclusion that you had not given such orders because you had nothing to do with the delivering of it, is that it? A. On reasoning with myself I remember that I had never exercised any authority over the Company's oil, never gave any orders. Q. You exercised authority over the storing of it, did not you? A. I gave permission for to be stored in my magazine; Mr. Church ordered it there with my consent. 50

*Court*—You knew the Company's orders were being filled there; did you not? A. Yes, sir. Q. Was Mr. Deveau connected with the office in New York at the time the order was given to Merritt? A. He was

connected as a trustee only. Q. He was not the Secretary then? A. No, sir.

- Plaintiff's Counsel*—Did he deliver the order to Mr. Merritt? A. I can only know what he told me. Q. Did not you write a letter to Sage & Flanagan in February, 1868, in which you said that Mr. Deveau delivered the order to Mr. Merritt—Mr. Deveau, Secretary of the Company. [Objected to. Objection overruled] Q. Did not you write a letter to Sage & Flanagan in February, 1868, stating that Mr. Deveau Secretary of the Company, delivered this order to Mr. Merritt? A. Possibly I did, sir; but if I did write that, stating that Mr. Deveau was the Secretary of the Company, at the time, then I wrote an error. Q. It was a mistake if you did write so? A. I wrote a letter to Sage or Flanagan, I don't know who. Q. Don't you remember informing Sage & Flanagan in February, 1868, that you had instructed Burns to deliver oil under the orders of Blasting Oil Company, and given instructions how to thaw it? A. Possibly I did sir; that is because of the conversation with Church and myself; Mr. Deveau has been Secretary and Treasurer nearly all the time, but I might have written that. Q. When you went to Sullivan's in New York, and learned Burns had been seen drunk, why did not you send word immediately to have him discharged? A. Well, it was in the afternoon; he may have been seen drunk at one time, that is not enough to discharge a man. Q. It was enough to discharge McNab? A. He was drunk on the work, or under the influence of liquor on the work, and I did not hear Mr. Burns ever was drunk on the work. Q. Did you make any inquiry about the work whether Burns had been seen drunk or not? A. No, sir. Q. Sure of that? A. Quite sure of it. Q. Did not you state in your examination before the Coroner that when you saw Burns on Sunday you had your suspicion raised, or something to that effect, and that you went to make inquiry; that you were not satisfied with the inquiries you made here and that you went to New York to make further inquiries? A. I don't remember I stated I made inquiries on the works, I don't think I did; he must have me erroneously reported. Q. Did not you say, on Monday morning you were still not convinced with regard to Burns, and you went to New York to make inquiries? A. I was not convinced or satisfied as to his character. Q. Now you say McNab was discharged because he had been seen drunk on the work, was not you told by some one that they had overheard him say he had been drunk the night before; was not that the information you got with regard to McNab? A. I got that too, that he had been drunk the night before, and my son reported he hallooed out loud on the works, and I put all these things together; I took him out to drink; I did not act on one thing alone. Q. He drank with you? A. Yes, sir. Q. Did you ever know Burns kept a bottle of liquor in the magazine? A. No, sir, until after the explosion. Q. You did hear of it after the explosion? A. Yes, sir. Q. You referred yesterday to some act of Congress, with regard to transportation of this material, when was that act passed? A. It was approved the 3d of July 1866, I think, sir. Q. Did you transfer your magazine from your works, here in accordance with that act. [Objected to. Question overruled.] Q. Now, sir, were you there when the first two cans were buried in the hole on the south side of the railroad? A. Yes. Q. Who was present when that hole was dug? A. I selected the place with Col. Sage. Q. That is the first hole? A. The first hole. Q. How deep was it? A. Told him the size and the depth. Q. How deep? A. He got some men and had it done. Q. What was the size of that hole, and its depth? A. If I remember correctly it was three feet, possibly a little less than that. Q. Deep? A. About twenty inches deep.

Q. How far below the surface did the top of your cans come? A. Six or seven inches. Q. How long did they remain in that position? A. The two cans remained there buried; I don't remember, sir; probably ten or twelve days. Q. Were you during that time engaged in making the magazine? A. No, sir; I was in Maryland, went to settle my accounts; when I came back I had the magazine built immediately. Q. Was Mr. Lehlbach, the Engineer, present at the digging of the hole, when the two cans were put down? A. I don't remember seeing him there; I should think not, though. Q. He went with you to select the place for the magazine, did he? A. Yes, sir. Q. That was upon the 10  
lands of the Company, was it? A. I don't know, sir; it is on my diagram there; I don't know as to the rights of property there. Q. How far from the bank of the railroad was it? A. Sixty or seventy feet. Q. Of the edge of the cut? A. Of the cut proper; there are two edges there, one is a bank edge, and then there was a rock cut. Q. The magazine was in the dump of the cut? A. Yes, the earth that had been taken out of the pathway of the railway had been piled, and it extended out some sixty or seventy or eighty feet, and some two or three hundred feet long, and from ten to fifteen feet high; this I remember is the lower end of the dump (pointing to map), and it was in that lower end 20  
of the dump the magazine was set. Q. Mr. Lehlbach staked it out for you? A. No, sir; he did not stake it out, he reconulted as to the safest place, and where I might be permitted to put it. Q. You put it there with his permission? A. Not that way, sir. Q. Was he there while you were building the magazine? A. He was passing continually, but he had nothing to do with it, never said a word to me about the magazine afterwards. Q. What time of the day was it, when you left the works on Sunday, the day before the explosion? A. It is uncertain with me, exactly what time I left it; but I was there I should think a couple of hours, I am not sure. Q. You think you left as early as four 30  
o'clock? A. I left I think before that. Q. As early as three? A. If I got there at eleven, I left at one; I have tried to fix my mind at the time I took lunch. Q. If you got there at two, you left about four? A. Yes. Q. What time on Monday morning did you get up to Sullivan's place? A. Very early, sir; possibly about daylight. Q. It was not daylight; what time did you leave there? A. I suppose I left there about two o'clock. It must have been about two for me to have met the Hackensack train at four. Q. What time did you leave there? A. I don't know whether I went to the office that day or not; if I did not go to the office I must have left about two so as to have met the Hackensack 40  
train at four; I know I went to Lodi that night. Q. When you went up there on Monday morning, Sullivan's place, before daylight, who did you see? A. Don't remember, sir. Q. Did you see Mr. Sullivan—who did you inquire of about Burns? A. Mr. Hedge. Q. Who is he? A. Walking Boss. Q. Of Sullivan's? Yes, sir. Q. When did you first see him on Monday? A. I don't remember, sir; I suppose immediately after I got there. Q. Did you make inquiry immediately after you got there? A. During the day, sir; but possibly I did. Q. Did you make up your mind to discharge him? A. I don't know; I would have made a further investigation before I discharged him. Q. Did you make a further 50  
investigation that day? A. Not there. Q. What further investigation did you propose to make? A. On the works; on my own works. Q. If I understood you rightly, you said when Lehlbach went with you to select a place for a magazine, you asked him to select a place where it would be least dangerous for a magazine; what danger was there particularly? A. Throwing of rock. A. Would throwing of rock into that magazine have exploded the glycerine? A. No, sir, be-

cause I had it buried, but I did not want my timbers disturbed. Q. I understood you to say, it was what is called a non-resisting magazine? A. Yes, that is to say, if an explosion took place, it is not confined, it is free. Q. The planking, &c., were light? A. Yes, sir; very frail. Q. Would not a big rock crush through it? A. No, sir. Q. Strong enough to resist the falling of a big rock? A. Yes, sir; any rock thrown that distance. Q. How far was it from the blasting? A. About one hundred feet probably; I can't tell; if I had the drawing I could tell nearly. Q. Any blasting, heavy blasting; is not it thrown sixty or one hundred feet? A. Yes, sir; but rock not to go that distance; I did not blast to throw rocks that distance; that is another part of our science, to blast rock without throwing it.

*Court*—When the water surrounding the oil had attained a heat of 360 degrees, how soon would the explosion of the oil, with the can in the condition you have stated, likely occur? A. Water boils at 212, and at 360 the expansion of it alone would have been sufficient to burst the can. Q. Can you give us any reliable idea as to the length of time it would take to make any explosion, after the water had attained that heat of 360? A. My opinion is that after water is brought to that degree of steam that the expansion and the heat together would have been sufficient to explode nitro-glycerine; the expansion produced by the conversion of the water into steam, the gases evolved would be of sufficient heat to produce an explosion; but you might boil water on top of glycerine without producing an explosion. Q. Was it possible by a heated iron to attain 360 degrees in that water? A. The water being placed on top of the nitro-glycerine, and uncovered, I should think it would have been impossible to have done so; it would be very difficult indeed to bring water to boiling, thus situated. Q. You mean out of the water? A. The water on top; we put water on top of the glycerine. Q. They put water into this firkin; the can is put in the firkin and water round it; is it possible, by the use of hot iron, for that water to attain 360 degrees? A. No, sir. Q. How, then, do you explain the effect of 360 degrees of heat, or the operation of it, rather; how is that attained on the oil? A. The red hot iron is red at 700 degrees; in day light, red hot, it is about 1,000 to 900 and some odd degrees; this is day light, and it seemed to be red, as I am informed by the evidence here; the application of that red hot iron 1,000 degrees against the tin can— Q. Your idea is it touched the can? A. I say it could not explode unless it did touch the can.

40 *Plaintiff's Counsel*—Did not you learn when you went to Sullivan's place in New York, that Burns had been discharged from the work up there on account of drunkenness? A. No, sir, he was discharged on account of not getting there in time in the morning. Q. You ascertained that at that time? A. It may not have been at that time? Q. You were not informed on that Monday that he was discharged for drunkenness? A. I can't remember, sir.

*Defendant's Counsel*—What degree does tin melt? A. 445 degrees, about. Q. Can you raise water higher than 212 degrees, when unconfined? A. No, sir; it boils then and passes off into vapor. Q. You 50 stated in the cross-examination that you were there on Sunday about two hours, and Counsel then said if you got there at two you left at four; what is your impression as to the latest hour you were there? A. My impression as to the latest hour is about one o'clock. Q. On Sunday? A. On Sunday. Q. And what was the latest hour at which you were at Sullivan's on Monday? A. It could not have been later than two o'clock.

*A Juror*—You say you never authorized Burns to fulfill any orders?

A. I explained that to the Counsel, that I was under the impression at one time that I had, but upon reflection as to my own power on the matter, and consultation with Mr. Church, who was present at the time that I supposed I had, I find that I had not authorized them. Q. Why would he go and take this stuff out of the magazine and bring it there without any authority? A. That I don't know, sir. Q. Where did you get the order after the explosion? A. I got the order from Mr. Merritt.

*Plaintiff's Counsel*—Do you know whether that order was ever delivered to Burns? A. I should suppose not; I don't sir. Q. Do you know where it was found after the explosion? A. It was in Mr. Merritt's 10 pocket, I suppose, because he showed it to me. Q. Do you know whether Burns ever saw it? A. I don't, sir. Q. You say in regard to the matter of your having authorized Burns to deliver this oil, that you first were of opinion that you did authorize him, and you so stated in the letter written to Sage & Flanagan, on February 11th, six months after the accident. Now, then, you say that since then, after thinking of the power you had, and after hearing the argument of Mr. Church on the matter, that you are uncertain as to all that? A. If I had to swear positively now, one way or the other, I should say I had not instructed him; but when I had this conversation with him, or at the time I supposed I said something about it, upon which I based my remarks in that 20 letter, Mr. Church was present. Q. When was the time you had this conversation with Burns, at which you so ordered? A. I don't remember, sir; while the oil was there of course. Q. In the cross-examination, you said it was at the time at which you gave him instructions as to warming it? A. Yes. Q. When did you first give him instructions as to warming the oil? A. That I don't remember, sir, the exact day. Q. Was it before there was any company's oil there? A. No, sir, it was while the oil was there. Q. Where was the place? A. At the magazine, sir. Q. Was Mr. Church there? A. Mr. Church was present. Q. 30 At the time? A. Yes. Q. The company's oil was there at the time? A. Yes. Q. Church was Secretary of the company? A. Secretary of the company. Q. Can you say now whether anything was said then, and Burns was there; Burns, you and the Secretary were at this magazine together, after this oil was there which you called the company's oil? A. Ask that question again. Q. You, Church and Burns were at the magazine, after the twenty-one cans of oil were delivered there, together; you three were there; no one else with you? A. None, sir. Q. What took place at that time? A. I described to him—a little cold snap occurred—the first conversing after the oil was sent there, and it 40 was at that time that I explained to him how to thaw the oil, in case it should be frozen; he attended to blasting in the absence of my son and myself; he never did much blasting. Q. What else took place? A. Nothing else that I can remember. Q. Did you say it was your impression up to February 11th, that at that time you gave Burns authority to deliver the oil on the company's order? A. I was under that impression when I made that statement; I don't remember the letter now; it has been a long time since it was written, and I hardly remember what I did say. Q. At the time you wrote that letter you were of that opinion? A. I was under that impression, I had given general instructions. Q. When did Church cease to be Secretary of the company? 50 A. Soon after. Q. Where was he resident at that time? A. Syracuse. Q. When did you have this conversation with Church? A. We talked about it many times. Q. Mention one time? A. We have been together so much I cannot tell. Q. Mention any time before, February 11, 1868? A. I can't mention any time, we have been so much together. Q. Have you been together since the accident? A. Many times. Q.

Up to February 11, 1868? A. Yes; he spent nearly one-third of his time in New York. Q. Did Mr. Church know of your writing this letter? A. No one knew it. Q. Was your conversation subsequently or precedent to this letter? A. Subsequently, sir. Q. How were you accustomed—you have told how you took this oil which was in a can?

*Court*—Does counsel propose to re-examine? It is not regular, if there is any isolated fact.

*Plaintiff's Counsel*—I wish to ask one question more distinctly. You have no knowledge that Burns ever saw that order that has been spoken of? A. No, sir; except what was told me; that is all; I was not there to see it. Q. Did you give Burns a copy of this book? A. Oh! Yes, scattered them broadcast everywhere. Q. In your book I read—"We also pack our blasting oil with a mixture rendering it entirely non-explosive, but which resumes its properties immediately upon the introduction of water?" A. That has never been carried out, sir. Q. Was that true? A. You can do it so. Q. But you never have? A. The company has done up some before I became President or Trustee, but I never favored that system; it is a question of science; this oil was not that way.

20 *Court*—What would be the effect of hammering iron on frozen glycerine? A. If you hammer an iron on frozen glycerine, if you can hit the point of contact sufficiently hard as to produce 360 degrees of heat, it will explode. A case occurred in Silesia in Europe, where a man was cutting with an axe some nitro-glycerine, and in the cutting of it he heated it, of course, and melted the nitro-glycerine, and his axe coming in contact with the melting oil upon rock, produced an explosion; heat and gases were evolved sufficient to explode the frozen part. You must have heat enough by the concussion to produce that degree of heat. Q. Did you hear the description of the iron by that boy? A. Yes, sir. Q. 30 Was it possible by hammering to produce heat enough? A. It would be difficult to produce heat in that way; I know what he put the iron in for, to feel it, to see whether it was melting; they always put a stick in to feel it and see how it was thawing; that is our practice; being of iron it might explode by hammering it, but of wood it would not explode; it would be exploded in that way; and he might have put it in the fire and it would not have exploded.

*Plaintiff's Counsel*—If in tin—? A. If the concussion is sufficient to produce it, it would explode. Q. If you strike glycerine in a can with a hammer, go on? A. I have exploded cartridges in the body of 40 glycerine, and not been able to explode it unless confined.

*Court*—In regard to the order of which you have spoken, in whose possession was it when you first saw it? A. Mr. Merritt's. Q. And that was what day? A. The day after the explosion. Q. And he handed it to whom? A. He handed it to me. Q. And you think you handed it to Church? A. And I think I handed it to Church, because I got Church to give me another order. Q. As to the liability of this glycerine when stored, to spontaneous combustion, I would like to ask you that question? A. It is impossible for to explode by spontaneous combustion under any circumstances. Q. What is the immediate means 50 of the explosion—the immediate agent—I don't mean the mode, but the immediate agent that produces the explosion? A. Nitro-glycerine contains a large proportion of nitre. The fact that it contains so much nitre in the cubic inch gives it the distinction alone, between that and gunpowder. The localizing of a large quantity of nitre makes it more susceptible of explosion by concussion. The subjecting of an atom of nitre to a blow will produce explosion of that atom of nitre, whether in the form of a liquid powder, such as used in percussion caps. Q.

The object of leaving the can uncorked? A. Is to keep up an equilibrium of the temperature of the air. Q. Suppose they are left corked, what would be the risks then? A. None, except when you pull the cork out suddenly; if the air is compressed or rarified, when the cork is suddenly pulled some of the nitro-glycerine will fall out with it; that is all. Q. Danger occurs any way? A. No danger at all, sir; it is only the waste of the spoonful of nitro-glycerine; perhaps a couple of spoonful. Q. In using it for blasting what are the modes of exploding it, when the holes are charged? A. When the holes are charged by nitro-glycerine, which is simply by pouring nitro-glycerine into the hole, it being heavier than water, as illustrated in this vial, [vial of water and glycerine produced] it sinks to the bottom of the hole; in order to explode that nitro-glycerine it is necessary to submerge in it, at the top or near the top, a charge or cartridge of gunpowder or a heavy percussion cap or a charge of gun cotton, and that is to be exploded in the nitro-glycerine; that explosion of the gunpowder in the nitro-glycerine will explode the nitro-glycerine if the confinement is sufficient. In a case of this class it would not be sufficient; the confinement is not strong enough to withhold the gases in the nitro-glycerine that may be evolved by the explosion of the gunpowder; the walls of the drill being strong, and there being a weight of timber, of sand, or water above, as in this case, the explosion of the gunpowder then, down in the nitro-glycerine, will explode the nitro-glycerine; if the gunpowder is put at the bottom of the hole there will be not sufficient confinement; it would shoot the nitro-glycerine out unexploded; it must be exploded in the body of the liquid and near the top, so as by that explosion there is a compression or a pressure or a concussion, or a confinement of the nitro-glycerine in its place, to be acted upon by the heat evolved by the explosion of the gunpowder. Q. Are you a professional man? A. I was a graduate at the bar, sir, twenty-seven years ago. Q. Your chemical status, what is that? A. About '48 I ran into the science of electricity, and from that into explosive substances; I have been engaged in explosive matters in four wars. Q. What ones? A. In Russia, in the Crimea, in the Danish war, the Italian war, and with General Grant. Q. What position there? A. In every instance as artillery miner and engineer. Q. Did you hold a commission under the government? A. No, sir, I had not time; I just went right to work; I was in the Swedish and Norwegian services, engaged in torpedoes and mines and nitro-glycerine. Q. Was nitro-glycerine used in the United States military operations, in any way? A. Only so far as the government has a gift of it from me; I gave it to the government for the benefit of the service. Q. To what extent is it used? A. It is not used. Q. It has not been used in the service? A. No, sir; it is recommended by General Grant, and there has been no necessity for it.

*Defendant's Counsel*—Any danger of the nitro-glycerine in the magazine exploding? A. No, sir, it is impossible to explode.

*Plaintiff's Counsel*—You have heard of explosions without any apparent cause, have not you? A. I know the cause of nearly every explosion that has occurred. Q. What was the cause of the explosion in a street of New York, years ago? A. The saw-dust was on fire surrounding the nitro-glycerine, which was under conditions of confinement. Q. How did it take fire? A. By a segar, I suppose; it was lying near the stuff, in a public room. Q. What was the cause of the explosion at the Isthmus? A. We have no one left to tell us, but it is supposed from the fall, or handling of the boxes. Q. San Francisco? A. That was produced by the driving of a chisel in the box, to open a box in which glycerine had been stored; the saw-dust around being saturated with it,

and the box leaking, the driving of a chisel with a hammer coming in contact with iron, would produce the required heat for exploding it. Q. There has been an explosion in this country recently; what was the cause of that? A. The nitro-glycerine which had been probably poured from the can in cold weather, had frozen on the sides of it, or the can partially leaked, so that some nitro-glycerine sank to the bottom of a barrel, in which it had been warmed, thawed; the letting fall of a drill to the bottom of the tub or barrel as it was, with nitro-glycerine there in that condition of confinement, would explode it. I should suppose 10 half a pound exploded on that occasion. That was in a barrel full of water, and it exploded in the barrel. Q. What was the drill put in for? A. Warming the water for the purpose of thawing it. Q. Was the can in the water? A. No, sir.

JAMES DEVEAU, sworn and examined by Defendant's Counsel.

Q. Are you the gentleman spoken of as Secretary and Treasurer of the United States Blasting Oil Company? A. Yes, sir. Q. How long have you occupied that position? A. I occupied it from the commencement of the Company until Mr. Church succeeded me. Q. When did he succeed you. About what time? A. Some time in November, during the 20 year of the explosion, '66 or '67.

*Court*—Before or after the explosion? A. I occupied before the explosion. Q. Who was Secretary at the time of the explosion? A. Mr. T. T. Church. Q. You occupied what, before the explosion? A. Secretary and Treasurer.

*Defendant's Counsel*—Church was Secretary and Treasurer at the time of the explosion.

*Court*—Did you become Secretary and Treasurer before or after the explosion? A. Before the explosion.

*Defendant's Counsel*—How long did Mr. Church remain Secretary? A. 30 I think some two or three months. Q. Up to what time? A. Mr. Church remained Secretary two or three months altogether. Q. Who succeeded Mr. Church? A. I did, sir.

*Court*—You mean to say Mr. Church was not Secretary and Treasurer at the time of the explosion? A. I mean that he was; there was a change made in our Company previous to this, and Church was the Secretary and Treasurer, and afterward our Board re-elected me, and I hold that position still. Q. Who was Secretary and Treasurer at the time of the explosion? A. T. T. Church, sir.

*Defendant's Counsel*—And you stated you are Secretary at the present 40 time? A. I do. Q. Did you have any office in this Company at the time of the explosion? A. I was a Director, sir, or a Trustee. Q. You know a man named Merritt? A. Yes, sir. Q. Did you see him about the time of the explosion? A. Yes, sir; just previous to it. Q. Where did you see him? A. In our office. Q. What did he come there for? A. He came to buy some oil; nitro-glycerine. Q. What day was that; how long before the explosion? A. I think it was the same day; I don't remember exactly. Q. Did you give him any order or direction in regard to the matter? A. I gave him an order. Q. Did he carry it away with him? A. Yes, sir. Q. Have you ever seen that 50 since? A. No, sir. Q. Have you looked for it? A. I have; I can't find it. Q. Where did you look? A. Among all my papers in the office. Q. Lately? A. Yes, sir. Q. When? A. Yesterday. Q. Is it a paper which likely would be preserved, or a temporary paper? A. It is only a temporary matter; we draw orders on our factory, &c., and sometimes fill them and sometimes do not. Q. Did you look at the place where such papers are usually kept? A. Yes, sir; we seldom preserved those orders after getting our accounts from the factory or where-

ever our property is stored. Q. Do you know of any place where the paper might be at the present time, where you have not looked? A. No, sir.

*Court*—You drew the order, did you? A. Yes, sir.

*Defendant's Counsel*—I submit there is sufficient to ask for the admission of that testimony.

*Court*—You may show what it was.

*Defendant's Counsel*—State to the court and jury, as near as you can remember, the precise terms of that order? [Mr. Ransom, of plaintiff's counsel, objected to the question.]

*Court*—You say you drew the order? A. Yes, in the absence of Mr. Church. I signed it "T. T. Church, per J. Deveau," on Mr. W. M. Shaffner.

*Defendant's Counsel*—What name did you put at the bottom of it? A. "To W. M. Shaffner," Mr. Shaffner's son.

*Court*—Did you see that afterwards? A. No, sir. Q. Were you in Bergen when it was there? A. No, sir. Q. After it was signed to whom did you give it? A. Mr. Merritt.

*Defendant's Counsel*—You signed it T. T. Church, Secretary. A. Yes, per my own name. It was an order on Mr. Shaffner's son, who had charge of the oil at the magazine. Q. What is his name? A. Wm. M. Q. State what the order was? [Plaintiff's counsel objected to stating the contents of the order in evidence. Exception entered.]

*Court*—You say it was an order on Col. Shaffner's son, for what? A. Thirty pounds of nitro-glycerine. Q. To let—? A. Mr. Merritt have, for Mr. Merritt. Q. Did he state what it was for? A. Yes, sir, blasting purposes; I think he purchased some of us before. Q. Where was he blasting at the time? A. Somewhere in New Jersey; I don't remember what the place was; I think he had purchased of us several times before, once or twice.

*Defendant's Counsel*—Was the order drawn with ink or lead pencil? A. I don't remember. Q. Do you know anything about filling that order afterwards, personally, I mean? A. No, sir.

*Cross-examined by Plaintiff's Counsel*—Had you ever given any similar orders before? A. On the works, on the magazine. Q. Yes, sir? A. I can't remember whether I did or did not; I may or may not. Q. Had you ever given any orders on Paterson? A. Yes, sir, often. Q. Sign them the same way? A. The same way; that is not for Mr. Church, but when I was Secretary I drew my orders— Q. I mean sign them for Church? A. No, sir. Q. That was the only order you ever gave for him? A. I think that was the only one. Q. Did you have any special authority? A. I supposed I had, in his absence; he was out of the city and I was in the office. Q. But you hold no office from the company except being a Director? A. No, sir. Q. Was this nitro-glycerine paid for? A. It was paid for at the time; at the time I gave the order to Mr. Merritt. Q. You think it was the same day? A. I think it was the same day—sometime since; I can't remember exactly. Q. Did you make any entry of it in your book? A. Yes, sir. Q. Did you know of any by-law of the company which made any special provision in regard to the orders for nitro-glycerine, by whom such orders shall be signed? A. There is a provision that it shall be signed by the Secretary; all orders drawn shall be signed by the Secretary. Q. What time did you arrive at the court house this morning? A. A little after eleven. Q. Did you hear Shaffner's testimony in regard to this order? A. No, sir.

*Defendant's Counsel*—Mr. Church was out of town at this time? A. He was absent at the time; I think he had gone to Syracuse to see his family.

COL. SHAFFNER re-called and examined.

*Defendant's Counsel*—You saw Mr. Merritt immediately after the explosion? A. The next day, sir. Q. Before the coroner's inquest or afterwards? A. The bodies had been viewed, I think. Q. Was this order produced at that time—at the time you saw Merritt? A. Yes, sir. Q. Who was with you; state the circumstances? A. Mr. Church. Q. Mr. Church was the Secretary of the company? A. Yes, sir; he came down, I think that night from Syracuse. Q. Who produced the papers spoken of—Church or Merritt? A. Merritt. Q. What did this paper  
10 purport to be? [Objected to—exception taken.] A. It was an order directed to my son to deliver to Mr. Merritt thirty pounds of nitro-glycerine. Q. Whose name was at the bottom of it? A. I know Mr. Deveau's name was to it; but I don't remember that it was signed T. T. Church, or Mr. Deveau, but I know Mr. Deveau's name was to it; and it was in his handwriting. Q. You know the handwriting of Mr. Deveau? A. Very well, sir. Q. Who requested Merritt to show this paper to you and Church? A. I can't say; I supposed voluntarily; we were together some time; he wanted his oil. Q. What were you conversing on? A. He explained to me all about his knowledge—[Object-  
20 ed to.]

*Plaintiff's Counsel*—You say you did not know Church's name was to the paper? A. I don't remember that his name was signed to it, as Mr. Deveau says, although I knew Mr. Deveau's name was to it, and it is in his hand writing. Q. Did you say this morning that the order you saw was drawn by Church the Secretary, and he only had power to do it? A. No, sir; I did not say so; I say the second order was signed by Mr. Church.

*Court*—I think I understood you to say this morning that the thirty pounds were delivered from the Passaic factory afterward? A. Yes, sir.

30 GUSTAVUS LEHLBACH, sworn and examined by Defendant's Counsel. Q. Where is your residence? A. Newark, N. J. Q. What is your profession? A. Engineer. Q. In whose employ are you now? A. Newark and New York Railroad Company. Q. Were you in their employ in November, 1867? A. Yes, sir. Q. In what capacity at that time? A. Resident Engineer of the Newark and New York Railroad. Q. Were you frequently on this spot spoken of, where the explosion occurred? A. Yes, sir. Q. What was your business there? A. It was in charge of the work, representing the Engineer department of the Com-  
40 pany. Q. Did you have any man under your employ there? A. Only such as belonged to the Engineer department. Q. What work did they do? A. Assisted me in surveys. Q. Did you do any of the blasting? A. No, sir. Any of the excavation of earth? A. No, sir; that was beyond my duty. Q. State fully what was the nature of the work you did there? A. My duties as Engineer of the Company, on that work, was to give the lines and gradings of the road, and to make necessary estimates, and to see that the work was done in a proper manner. Q. What do you mean by a proper manner? A. Such works as masonry, or anything of that sort, which required to be done in a certain manner,  
50 performed according to the specification and the contract. Q. Did you employ any of the men who were under the charge of Flanagan & Sage or Col. Schaffner? A. No, sir. Q. Did you pay them? A. No, sir. Q. Did you discharge any of them? A. No, sir. Q. Did you give any directions to them? A. Not direct; no, sir; all my directions were given through the contractors. Q. What was the nature of the directions which you gave to the contractors; tell what your business was? A. I must state here, that as regards directions, I might have

given directions to the foreman if they were digging too low or too high, in a certain embankment, or a rock, too wide. Q. Determined where they were going too high or too low? A. Levels that were taken with the instrument. Q. Did you have specifications? A. No, the grades and lines were not specified in the contract. These were left with the Engineer, and we were to see what they were and give the contractors data to work by. Q. Did you ever see this man, Burns, on the spot? A. Yes, sir. Q. In whose employ was he; what was he engaged in? A. In blasting rock. Q. How often did you see him? A. Well, I saw him very nearly every day I was there, as long as he was on the 10 work. Q. Did you ever see him drunk? A. No, sir.

*Court*—Did you ever see him under the influence of liquor? A. No, sir. Q. Did you ever see him drunk? A. No, sir.

*Defendant's Counsel*—Q. Did you hear of his being drunk before this accident? A. I did not. Q. What kind of workman should you judge him to be? A. My impression was, at the time, that he was a first-class rockman. Q. Who was superintending the work in which Burns was engaged? A. Col. Shaffner's work. Q. In regard to this magazine erected there please state to the Court and Jury, what connection you had with that magazine, if any at all? A. I remember Col. Shaffner, after 20 taking a contract, as I understood, from Flanagan & Sage, to do the blasting—I remember him coming to me, and wanting to know whether the company had any land upon which he might erect the magazine for the storing of his glycerine. I don't remember whether on the same day, or, I rather think, I put him off a day or two; I know I remember of his speaking to me several times in regard to that, and finally I went with him and showed him a piece upon the north side of the cut where he might erect a magazine. Q. For what purpose did he desire to erect a magazine? A. To store his glycerine used in blasting the rocks. Q. Did you receive any knowledge any time that this Blasting Co. or any 30 other person had such large quantities of glycerine stored in that magazine? A. I did not know at any time what amount of glycerine was stored in the magazine; that is, not previous to the time of the explosion. Q. Did Shaffner pay any rent for those premises he occupied, or was it a matter of friendship, or what? A. It was a matter of accommodation; contractors generally, on the work, use all the lands belonging to the company that are not actually needed by them. It is a sort of accommodation that companies give to contractors. Q. Is this the map you prepared of the premises? A. Yes, sir; that is the sketch I made. [Map shown, and explained.] Q. How far from the magazine to the black- 40 smith shop? A. About 420 feet; I think I scaled it off.

*Court*—And how far to Bergen Avenue? A. That would be very nearly the same distance; it may be a little less. The blacksmith shop is between the Avenue and the magazine. Q. I mean from the magazine to the Avenue? A. Near 700 or 800 feet.

*Defendant's Counsel*—You drew that map? A. Yes, sir; this map is made from data collected as regards to location of the buildings and the railroad line, and it is drawn according to scale. Q. Burns was Shaffner's foreman? A. Yes, sir.

*Cross Examined by Plaintiff's Counsel*—How long had you known 50 Burns at the time of the explosion? A. I think I have seen him about the work, either in charge of Col Shaffner's rock gang, or at work, in his gang, working in the pit. I think it must have been perhaps a month or so; I could not say exactly; not a very long time previous to the explosion. Q. You knew Burns had charge of the magazine? A. I knew that it was under Col Shaffner's control; I did not know the details of his arrangements at all; how he arranged it. Q. Don't you know

that Burns when foreman of the gang, was also in charge of the keys of the magazine? A. I did not know whether there were keys to the magazine, or how it was arranged. Q. Did you ever look in the magazine after it was built? A. I don't think I did, unless I passed looking in the window. Q. Did you ever notice the quantities stored there? A. Never. Q. Never troubled yourself to ascertain how much was stored, or whether there was more than necessary stored. Did Col. Shaffner say how much he wanted, when he built the magazine, to store? A. No, sir. Q. Had you any idea how much it would take to perform the labor of blasting? A. No, I might have an idea how much it would take, but at that time that never occurred to me. Q. It did not occur to you at that time the quantity required to store there? A. I might have known, seeing the number of charges that were used day by day. I might have formed an idea, although I did not, how much might be required; that was beyond my sphere. I did not trouble myself with the details of the work. Q. You watched the men as they progressed with the working; saw that they were doing it according to your plans? A. I saw that they were doing work according to the specifications—that is all. Q. And if they were doing anything different from the specifications, you stopped them, did you not? A. There was not much supervision in regard to the excavation of rock or earth; that is it required no engineer; I was there pretty permanently on account of the surveys and measurements that had to be taken to complete the arrangements of the work. Since then I have not been there months at a time, although the same amount of rock blasting is going on all the time.

*Court*—You remained there pretty permanently? A. To complete the land surveys and take levels; to arrange the plans of the work. Q. You marked the lines to which they were to excavate, did you not? A. Yes sir. Q. And you made it your business to see that they did not excavate beyond that? A. Certainly. Q. Did you draw the contract between Sage & Flannagan and the Company? A. I think I filled out the blank, I did not draw out the form of the contract which you saw printed. Q. Do you know whether Burns ever worked for Flannagan & Sage? A. That I cannot say. Q. Have you got marked on this map the surrounding buildings? A. Yes, sir; all the buildings in the immediate vicinity of the explosion. Q. A building here? A. Newkirk's; a dwelling house. Q. How far is that from the blacksmith shop? A. That would be in the neighborhood of 300 or 400 feet, perhaps nearer 400. Q. Nearer the blacksmith's shop than the magazine? A. Yes, sir. Q. Were there any other houses along Bergen Avenue? A. I think Mr. Newkirk had a barn on the rear of his lot. Q. Were there any other along here? A. Here, on this end of our lot they built a railroad store—the large house occupied by Mr. Edwards, in which floor I had two rooms.

*Court*—Were there any houses except on the Company's land, nearer than Newkirk's, to the magazine? A. There was a house here; the difference would be so slight, it would be hard to decide which was the nearest. Q. Whose house is that? A. Mr. Titcomb lived in a portion of the house, and kept boarders for the railroad company; that is kept men that worked for the railroad company. Q. Were there any houses nearer than those two except what were on the Company's land? A. No, sir. Q. Any houses nearer to the magazine? A. Any houses that did not belong or were on the lands of the Company. Q. Of houses not on the lands of the Company, there were none nearer than those two houses? A. That is correct, I believe.

*Plaintiff's Counsel*—What work where those men engaged at that

boarded with Mr. Titcomb? A. I think at the time of the accident, if I remember correctly, Mr. Nichols boarded there. Q. Who was he? A. A foreman for Flanagan & Sage.

*Court*—Did you say anything to any of the officers of the Company about building that magazine there? A. No, sir; not to my knowledge. Q. Do you remember the first experiment that was made on the works with some glycerine, some ten pounds got for the purpose? A. I really cannot recall any special experiment that was made there; I remember I think some trials or experiments that were made; but whether you might call it experiment, I don't know—Col. Burstenbinder, who was there with some of this glycerine—and I don't think I would regard it in the light of an experiment; my impression at the time was, that he was blasting; he was there for, perhaps one or two weeks, and using the oil. 10

*Plaintiff's Counsel*—That is before Col. Shaffner came? A. Yes. Q. Did you see the first blast Col. Shaffner made after he came there? A. I could not tell. Q. Do you remember the officers of the Company coming down to witness the experiments with nitro-glycerine? A. No, sir; I was in company of some of the officers of the company at one time, when they had come over the line to look at the whole line, and we happened to be at the east end where the charge exploded in the rock; 20 we witnessed that with some of the officers of the company. Q. Who were they? A. I think it was the Chief Engineer, and I guess Mr. McGregor, the President, was with us. Q. Mr. Rennie, the Attorney? A. That I don't remember. Q. Was that Col. Shaffner's operation? A. I think that was during the time Col. Shaffner had taken charge. Q. Just after he had taken charge? A. It might have been as regards the time. Q. Was it before or after the magazine was built? A. That I could not say.

*Court*—Before the accident occurred? A. Oh, yes; there was no glycerine used after the accident occurring. Q. Is there a Chief Engineer of that Company or was there besides yourself? A. Yes, sir. Q. What was his name? A. Well, at that time, the time of the explosion, it was Col. Moore; he was the Chief Engineer of the road, at least that is my impression that he had been already appointed. Q. Who was acting Engineer at that time? A. If he was Chief Engineer, there was no one acting; I had been there; I was there at the time; I am quite sure he had been already appointed Chief Engineer of the road; I was there as resident Engineer of the road. 30

*Plaintiff's Counsel*—How many Engineers were employed on the road? A. There were Col. Moore at that time; he was the Chief Engineer, and myself as resident Engineer, and then there was an assistant, a Mr. Thomas Moore. Q. Who had charge of this particular part of the road, as Engineer, at that time? A. Directly, I represented the Engineer department at that portion of the road, or on the whole of the work.

*Court*—At that portion of the work; what did you say about the whole of the work? A. I was resident Engineer of the road; that is I was continually on the work, Col. Moore being Chief Engineer.

*Plaintiff's Counsel*—Where did he reside? A. Elizabeth. Q. In his absence then from the work, it was under your charge and control? A. Yes, sir. Q. Before Col. Moore was appointed Chief Engineer, who had charge of the Engineer department? A. There was a time between—I think it was sometime in September—that the first Chief Engineer, a Major A. T. Seers, resigned his position, and during the brief interval that existed between that time and the appointment of Col. Moore, I acted as Engineer of the Company. Q. What time in September did you begin to act? A. It must have been earlier; it may have been some time in August; at any rate it was in the latter part of sum- 50

- mer or beginning of the fall; the exact time I can't exactly recall now.
- Q. Can you tell as about the time Col. Moore was elected, as near as you can? A. I can't tell you very positively, as regards the day, but this gives me the impression, and I know that he was Chief Engineer at the time of the explosion from this fact, that his son Thomas Moore, who was assistant, was already with me, and I knew that he was not put on the work until after Col. Moore took charge of the work.
- Q. How long had he been with you, at the time of the explosion? A. It may have been a month or two months; I don't remember now, it is so long ago.
- 10 Q. Do you know whether on the day of the explosion there had been any blasting in the cut? A. I don't remember of any; but I could not say positively whether there had or had not been.
- Q. Do you know anything about the quantity of glycerine required for the blasting? A. No, sir; I have never used it, only from witnessing the operations, and I did not give any special attention at that time.
- Q. At the time of the explosion, were you upon the grounds? A. Yes, sir; I was in the neighborhood.
- Q. Had been there all day? A. In the vicinity of the work.
- Q. You don't remember of their being a very heavy cut in the blast that day? A. No, sir.
- 20 *Re-examined by Defendant's Counsel*—Who did that store building, which you call the Railway Store, belong to? A. I think Flanagan & Gomersall.
- Q. What kind of store was it? A. A supply store, provision store, grocery store.
- Q. Fronting on Bergen Avenue? A. Yes, sir.
- Q. You say you looked through the window of the magazine once? A. There was an opening in the boarding of the magazine, and in passing from my way up and down the work, it is my impression I looked in there occasionally, without stopping particularly to do so.
- Q. Did Col. Shaffner or anybody inform you that other glycerine was stored there beyond what was used for blasting purposes? A. No, sir.
- 30 *Plaintiff's Counsel*—Had the company an office upon the ground there? A. Yes, I had an office there.
- Q. Did the company pay the contractors for their work there, or where did they draw their pay? A. They drew their pay in Newark, at the headquarters of the company.
- Q. You had nothing to do with paying the contractors? A. No, sir.
- Court*—When Col. Shaffner was there; when he came there, did you understand that he came as a contractor or not? A. I understood that he had a sub-contract from Flanagan & Sage.
- Plaintiff's Counsel*—Who did you understand that from? A. That was my impression; I received it very likely from conversation with the contractors.
- 40 Q. With Col. Shaffner? A. No, I should think it must have been from either Mr. Flanagan or Sage, with whom I had more intercourse.
- Q. You think you heard it from one of them, that is the only knowledge you had of it? A. That is all; I don't know but what I might have seen it, and I should have to think of it a little while.
- Q. Did you make any objection to Col. Shaffner working there? A. No, sir.
- Defendant's Counsel*—Did not Mr. McGregor see him working there? A. Yes, we were all acquainted with the existence of a sub-contract.
- Court*—I would like to know a little more about the situation of this country around there; you say there were no houses nearer than those
- 50 houses of Newkirk's and Titcomb; Bergen Avenue runs which way? A. It runs in a north-easterly direction; I can tell you in a moment.
- Q. Speaking generally, what is the nearest distance of any house off the company's land to the west or south of the magazine, or the north? A. I should say eight hundred feet.
- Q. How many houses are there within that distance of the magazine, not including the Newkirk and Titcomb house, or this house on the company's land? A. Well, there would be

a succession here of one or two small houses, adjoining this; there is one house here, about three or four hundred feet, and then there is another house, and here there is a house adjoining, and I think either one or two on Bergen Avenue, and there are a few houses on the other side of the road, of Bergen Avenue, in the immediate neighborhood. Q. To the west? A. There are no houses. Q. For what distance? A. For the distance of 1,200 feet. Q. How is it to the north and south? A. This lies between a large block of land, Bergen Avenue—back lanes; the difference between the two roads is nearly 2,000 feet, and there are no houses on this strip of land, between this avenue and the other avenue or road, only such as exist on the road, between 200 feet from the front of this lot; therefore it is all vacant; there is a space of perhaps 1,500 or 1,600 feet from house to house used for farming purposes; there are no houses on the east side of Back Lane; it is about 2,000 feet from Bergen Avenue to Back Lane, and there was at that time only one house used on the south side of the line of our road; then there were no houses within perhaps 400 and 500 and 600 feet, perhaps more on one side of the railroad, there was none on this; there were a few houses 600 or 700 feet north of the road; on this there are two or three little houses. Q. To the north, west, or south of the magazine were there any houses within 1,200 feet of the magazine, except those on Bergen Avenue or the land of the company? A. No, sir; the distance between Back Lane and the avenue is 2,000 feet; it may be 50 feet, more or less; and the magazine stands 800 feet from Bergen Avenue; there are no houses on this side of Back Lane, on the east side of Back Lane; there was at that time; that I am quite positive of; there was a house here which was moved since the surveys were made or during the progress of the work, moved directly to the opposite side of Back Lane, making, perhaps, a difference of about 150 feet from its former location; whether the house had been moved at the time of the explosion I really cannot recall; I think it still stood on the other side of the road. Q. Does the road run through farm land? A. Yes, sir, but very few houses; there were at that time very few houses scattered along here; it was used for market gardening and grazing; the lots here to the north were not used at all; they were fenced in; but this is for grazing purposes I think at the time of the construction of the road.

*Plaintiff's Counsel*—Is not there a street opposite the store you speak of, here, from Bergen Avenue, running easterly from the Hudson River? A. As near as I can remember, that is Grove street. Q. Are there not several buildings upon that Street, near Bergen Avenue? A. There were a few buildings on the easterly side of the Avenue. Q. At that time there were none in Grove street within 250 or 300 feet of Bergen avenue? A. There was a house here, the Kaiser house; there was a house here belonged to a widow lady and there was a store here.

*Defendant's Counsel*—How far was the Back Lane from the magazine? A. After you take the balance of that, about 1,200 feet.

*Court*—Did you ever see Burns getting glycerine out of the cans? A. I believe not; not out of these large cans.

*Defendant's Counsel*—You say you were there in the vicinity about the time of the explosion? A. Yes, sir. Q. Did you get to the spot very soon? A. Directly. Q. How much had it affected the shanties in the neighborhood? A. They were not so much injured; I think only one shanty was damaged at all to any extent, and I don't know how much that was; it was very slight; the shanties were less injured than buildings which were situated on the hill, a little higher; there were no shanties injured except that; I don't know whether it was used for a shantie or shop—next to Scanlon's house; the front of that was torn down, I

think. Q. The building still stood? A. Yes. Q. Is that the Scanlon shanty? A. No, that was next to it; it was between the Scanlon shanty and the blacksmith shop.

*Plaintiff's Counsel*—Was not one side of Scanlon's shanty moved in? A. I don't think it was, sir.

Mr. NICHOLLS, sworn and examined by Defendant's Counsel.

- Q. Where do you live? A. Bergen Avenue, opposite the railroad. Q. Are you at work there, now? A. With Mr. Chatham. Q. What is his business? A. Contractor. Q. Were you at work for Flanagan & Sage? A. Yes, sir. Q. At the time of this explosion? A. Yes, sir. Q. What were you? A. I was foreman. Q. What was your department? A. I was carting away some dirt out of the cut, the rock, with the men that were carting the dirt away from the pit. Q. Who was doing the blasting at that time? A. I used to see Mr. Shaffner blasting there sometimes. Q. Do you know a man named Burns? A. I had seen him round there; I never was much acquainted with him. Q. What was he engaged in? A. I could not tell you what he did do; I was never round the pit enough to know what he was doing. Q. Did you notice him every day? A. I saw him amongst the rest of the men once in a while. Do you remember on the day of the explosion of another man coming to you after him, anything about it. Did you see Burns on the day of the explosion? A. Yes, sir. Q. Where did you see him? A. I saw him in the pit in the forenoon. Q. Where did you next see him? A. I next seen him in the afternoon. Q. What time? A. I could not say as to the time exactly; I was thinking it must be somewhere in the neighborhood of three or four o'clock. Q. Where was this? A. I woke him up out of Scanlon's. Q. What purpose? A. I was going to the blacksmith shop to see about some tools that I had there, and the man came there and handed me a piece of paper—I looked at it, and he said he wanted Mr. Shaffner; I told him I was not Mr. Shaffner; he asked me if I knowed where he was. [Objected to. Objection overruled.]—He asked me if Mr Shaffner was there, and I told him "Not that I knowed," and he asked me if anybody else was there, and I told him Mr. Burns was round somewhere, that he was Mr. Shaffner's foreman, and he said he would like to see him; I went into the blacksmith's shop, and he was not there; I stepped into Mrs. Scanlon's shanty, and asked her if Burns was there; she said he was; I told her there was a man outside wanted to see him, and she said he was up stairs, and I ran up stairs and waked him up; he came right down and this man and him went off together: I went back in the pit to my work. Q. You first went back to your work? A. Yes, sir. Q. Where were you when the explosion occurred? A. I was standing in the pit. Q. How far from the blacksmith's shop? A. I should think about 200 feet. Q. Did the man say why he wanted to see Shaffner or Burns? A. No, sir.

*Court*—Did you know the man? A. No, sir. Q. How soon did the explosion take place after you left the man and Burns? A. It was not a good deal. Q. About? A. I could not exactly tell. Q. About? A. It was not over half an hour, I should judge.

- Cross-examined by Plaintiff's Counsel*—Where did you find Burns when you went out? A. I believe I found a piece of some man, they thought it was him. Q. Who was you working for? A. Sage & Flanagan. Q. How long had you been working for him? A. I commenced working for them two years ago last fall. Q. Were you living on the works? A. I was boarding with Mr. Titcomb. Q. When did you first know Mr. Burns or see him? A. I didn't know the man any more than I heard say, was the man. Q. When did you first see him? A. I saw him round the work, and some one said it was Burns. Q. When was

it? A. Probably two or three weeks before. Q. You went to the blacksmith's shop after Burns? A. No, sir, I was after some tools of my own and was in the shop; I went to the blacksmith's shop for tools, and this man went along with me, and I asked if Burns was there, asked Keily. Q. State where you were when you met this man? A. I was probably 100 feet away from where they were getting out rock. Q. You were 100? A. Maybe a little more; I had some carts working backwards and forwards. Q. How far were you from the blacksmith's shop? A. I could not say exactly what distance; there was a place across, the dump. Q. You were 100 feet from the blacksmith's shop? A. More 10 than 100. Q. Did this man come up to you and speak to you? A. He came up to me and spoke to me. Q. What did he ask you? A. If Mr. Shaffner was there; I told him I did not know. Q. What did he say next? A. He asked if Mr. Burns was there.

*Court*—Did the man ask you if Burns was there—the stranger? A. Yes, sir. Q. What did you say next? A. I told him I did not know where he was.

*Plaintiff's Counsel*—What did he say next? A. I don't remember now what he did say; I was going to the blacksmith's shop, and he went along with me; I don't know what he did say going along. Q. Why 20 did you go to the blacksmith's shop? A. I had some tools. Q. Why did he go? A. Because I was going. Q. What did you do at the blacksmith's shop? A. To receive my tools. Q. How long were you at the blacksmith's shop? A. Half a minute. Q. Did he remain with you? A. He was outside. Q. You came out of the blacksmith's shop; did you inquire for Burns there? A. Yes, sir. Q. What did you say to the man when you came out? A. I said he was not in there; that he must be in the shanty. Q. Did they tell you he must be in the shanty? A. No, sir. Q. Why did you think he must be in the shanty? A. That was the place to find him, if he was not on the work. Q. 30 What time was this? A. Between three and four o'clock. Q. Had you been looking for Burns on the work? A. No, sir. Q. What made you think he was not on the work? A. I don't know what made me think so. Q. Why did you go into the house to look for Burns before you looked for him on the work? A. The man looked for him on the work. Q. Was the man looking for him on the work? A. He was round there; and we could see he was not there. Q. Did the man tell you he was not on the work? A. No, sir. Q. Did you look for Burns on the work? A. I looked there, and did not see him among his men. Q. 40 Could you see into the pit from the blacksmith's shop? A. No, sir, but I could see from mine to his pit. Q. You looked? A. And I saw he was not there. Q. Did you tell the man he was not there? A. I told the man he was not in the blacksmith's shop. Q. Did you tell him he was not in the pit? A. Yes, sir. Q. When you came out of the shop you said he was not there; what next? A. I went to the shanty and woke him up; asked Mrs. Scanlon and she told me he was up stairs. Q. You went to the shanty; does that door open right into a room in the shanty? A. Certainly. Q. Is there a hall? A. No, sir. Q. Opens right into a room? A. Yes, sir. Q. You went into that room? A. I opened and stood at the door; I asked if Burns had been there. Q. 50 What did she say? A. That he was up stairs to bed. Q. What happened then? A. I woke him up. Q. What other conversations did you have with Mrs. Scanlon? A. I don't know any conversation with Mrs. Scanlon. Q. How many rooms on the lower floor? A. Only one, I believe. Q. How many on the upper floor? A. There were two on the lower floor. Q. How many on the upper floor? A. I don't know, sir. Q. Where were the stairs? A. Pretty close to the door. Q. You went

up stairs? A. I got my head up, so that I could see on top. Q. What did you see on top? A. I hallooed to Burns, and he got up. Q. Did you see Burns? A. I saw him come down. Q. Did you see him up there? A. Yes, sir. Q. Where was he then? A. He was lying on the bed. Q. How many times did you call him? A. Only once. Q. What did you say to him? A. I hallooed to him, and told him some one wanted to see him. Q. What did Burns say? A. He got up and came down stairs, and I went off and left him. Q. Did you see the man again? A. I saw him at the coroner's inquest. Q. Where was the man  
10 when you were calling Burns? A. He stood outside, somewhere. Q. Was not he outside when you came down? A. He was outside the door. Q. You did see him again? A. I saw him out, sure, but not after I walked from him. Q. What did you say to him? A. Nothing, sir. Q. What was the appearance of Burns at this time? A. I did not look at him to know. Q. Was he on the bed? A. Yes. Q. Was he asleep? A. I spoke to him and he jumped right up. Q. You talked to this man that was inquiring for Burns, did he show you any paper that he had? A. He had a piece of paper in his hands. Q. Did you take it? A. No, sir; he said he had an order for something, but did not tell  
20 me what. Q. Did he tell you what it was an order for? A. No, sir. [Congressional act of '65 and '66 offered in evidence.]

COL. SHAFFNER, recalled and examined.

*Court*—About how much oil, with the ordinary run of your blasting, would be used a day? A. From twenty to thirty pounds. Q. Was that the quantity you did use about, a day when you were at work? A. Yes, some days less, and some more.

*Defendant's Counsel*—Did you do blasting every day? A. It depends on how often they get the rock from us.

*Court*—What do you mean by some days more? A. Some days I  
30 would have very heavy blasting. Q. The heaviest? A. As high as forty pounds.

*Plaintiff's Counsel*—Had not you some blasts as high as 60, 70, 90 pounds? A. Not there, sir. Q. Highest is forty. How many blasts a day, electrical blasts? A. I would not have more than one of those a day.

*Court*—My question was, as to how much you use a day in the ordinary course of your work, blasting? A. I understand that, and I mean I would use on an average from twenty to thirty pounds a day. Q. Some is less, and some more, and the highest would go up to forty? A. I  
40 should think so.

*Plaintiff's Counsel*—I understand forty pounds for a single blast.

WM. H. GOMERSALL, sworn and examined by Defendant's Counsel.

Q. You are the person spoken of as having an interest in the store on Bergen Avenue? A. Yes, sir. Q. What was that store? A. Flour and feed, grocery and meat. Q. Did you know this man Burns, who was at work on this place? A. Yes, sir. Q. Where did you see him? A. I think I saw him the day after the explosion; I seen him almost every day. Q. What was his business when you saw him? A. He was foreman for Mr. Shaffner in rock blasting. Q. Did you ever see him  
50 intoxicated? A. Never. Q. Did you ever hear of his being intoxicated before this accident? A. No, sir. Q. Did he ever deal at your store or come to the store? A. I think he did. Q. Are these men paid at your store? A. No, sir. Q. Do you know where they were paid? A. In the office of Flanagan & Sage. Q. Were you ever present when paying went on? A. Yes. Q. What was the mode? A. I generally rendered my accounts to Flanagan & Sage, and they deducted my accounts against the men; that was the understanding with the men, that I had,

when I trusted them. Q. Did you board men in the same way? A. Yes, I boarded some men, two shanties. Q. The men who kept the shanties, did you see them collect their bills? A. Yes, sir; all the boarding bosses. Q. How many boarding houses were there? A. I had two, and I think there was four others. Q. Six altogether. You say there was an understanding with the men that your accounts against them should be collected in this way? A. Yes, sir.

*Cross-examined by Plaintiff's Counsel*—How long had you known Burns before this explosion? A. Well, I knew him by sight, for some time; I did not know all the men on the work. Q. How did you first get acquainted with him by sight? A. Coming into the store. Q. How often did you see him in the store? A. That I could not say; probably he might come once a week, or every day for tobacco. Q. Can't you tell, once a week or every day? A. No. Q. Had he a family? A. No. Q. Did you keep liquor in the store? A. I keep it for my own use; not for them. Q. What time in the day would he usually come in the store? A. Seldom ever, only at meal times, noon or after work. Q. Did you see him on the day of the explosion? A. I don't remember as I did; I was not on the work on Sunday. Q. Did you see him on Saturday before the explosion? A. I might have. Q. You never saw him intoxicated? A. No, sir. Q. Might he not have been intoxicated without your knowing it? A. He might. Q. Ever see him anywhere away from the works? A. No, sir. Q. Was the store your store, or had you a partner? A. I had two partners, Garret Vreeland and John I. Flanagan. Q. Mr. Flanagan was interested in the store? A. Yes, sir. Q. The men that worked in the blasting, did they trade in the same way as the others? A. I don't think I had much to do with Mr. Shaffner's men, only men belonging to Flanagan & Sage; I might have trusted some of them; if I did I had an understanding how I was to get my pay. Q. Did you sell to Burns in that way? A. We sold to a good many for cash, and some of the men we trusted.

*Re-examined by Defendant's Counsel*—Mr. Sage had no interest in this store? A. Not a particle. Q. Did you see anything of this order which was spoken of in this case? A. I did and read it. Q. Where did you see it? A. Mr. Merritt met me, either in the front of, or in the store, and inquired for Shaffner or some of his men, and he handed me the order and I wrote it. Q. What was the order? [Plaintiff's Counsel objected.] A. It was an order addressed to Mr. Shaffner's son, for some glycerine, the quantity I don't remember; and I directed him, myself, down on the work, and told him I thought he could either find Mr. Shaffner or his son, or Mr. Burns, his foreman. Q. What time of day was this? A. Between three and four o'clock. Q. Day of the explosion? A. Yes, sir. Q. You directed him to where? A. Where he could find Mr. Shaffner's son, or Mr. Burns, Mr. Shaffner's foreman. Q. How did the man come there, wagon or walked? A. I think he came up there on foot—in the horse car; he was walking towards the store when I first saw him; I think I was standing on the stoop. Q. Did you accompany the man? A. No, sir, I merely pointed to him down on the work where he could find parties he wanted to see. Q. Did he go that way? A. Yes, sir, he went right down that way. Q. Were you at the scene of the explosion shortly after? A. Yes, I was in the office of Flanagan & Sage when the explosion took place; I was there immediately afterwards. Q. What destruction had been done to those shanties by the explosion? A. One had, I think, the roof blown off and some of the side of it. Q. The blacksmith's shop? A. Blown to atoms. Q. What were the names to the order you saw? A. I don't

remember; I merely saw it; it was an order for some glycerine, directed to Mr. Shaffner.

JOHN S. EDWARDS, sworn and examined by Defendant's Counsel :

- Q. Where do you live now? A. West Antioke, Pennsylvania. Q. Were you near the explosion at the time it occurred? A. I was, sir. Q. What was your business there? A. Overseeing a boarding house and the stable. Q. In whose employ were you? A. Flanagan & Sage. Q. Did you know this man Burns? A. I frequently see a man they called Burns. Q. Was he the man that was killed? A. I suppose he was, sir. 10 Q. Did you ever see him afterwards? A. No, sir. Q. How often did you see him? A. Well, I could not say that I did see him every day, but if my memory serves me I seen him as often as three or four times a week. Q. Did you ever see him intoxicated? A. Never did, sir. Q. Did you ever hear of his being intoxicated before the accident? A. I never heard a great deal about him, sir.

*Court*—Did you ever hear of his being intoxicated before the accident? A. I never did, sir.

- Defendant's Counsel*—Did he board at your place? A. He did not, sir. Q. Who boarded at your place? A. The clerks, one Engineer and 20 some of the Mechanics. Q. Was this the house which had part of the addition torn away? A. No, sir; the house was the Company's house—Flanagan & Gomersall—it belonged to the party, I was hired to oversee that and the stable. Q. That house called Edward's house; is that the one you had? A. Yes. Q. Were you the nearest the Bergen Avenue on the north side of this cut? A. That is my house, [pointed out on the map.] Q. Was your house affected? A. The house I was overseeing was very much affected; the window was torn in; the walls were partially broke to pieces. Q. The house still stood? A. Yes, sir. Q. How many feet is this from the blacksmith shop? A. I should sup- 30 pose say 100 feet, 120 or something like that.

- Court*—Where were you at the time of the explosion? A. I had just stepped into the kitchen, sir. Q. Your son was killed there; was he not? A. Yes, sir. Q. Where was he standing when he was killed? Q. I just come to see where he was; as I stepped into the house I saw him passing over the hill; I supposed it was him; I stepped in and called to one of the servant girls for a basin of water to wash my hands, and just as I dipped my hands in I heard a mighty rush and something like sand and gravel pouring on the roof; I then stepped out to hunt the rest of the family; I found them all stepping out of the house, standing in the 40 yard. Q. Your son was not in the house? A. My son has not stirred into the house before I saw him go over the bank. Q. As you stepped into the house was that before or after the explosion? A. Before the explosion I saw him walking over the bank.

*Defendant's Counsel*—Was he walking over the bank? A. Yes. Q. How far off from the blacksmith's shop? A. It was almost opposite from the south side. Q. How many feet? A. I should think it was about probably 40 feet from the shop. Q. You can't tell where he was at the time he was killed? A. Can't tell anything about it, sir.

- [Witness was not cross-examined. Defendant's Counsel offered Flana- 50 gan as a witness. Objected to. Objection sustained.]

MR. EDWARDS re called :

*Plaintiff's Counsel*—Were you about your place on the day of the explosion? A. Yes, sir. Q. Do you know whether there was a blast discharged that day in the pit before this explosion? A. I was very much confused at the time; there might have been; I can't remember there was one, but yet there might have been, and I might have forgot it; if my memory don't serve me there was no one that day.

Mr. GOMERSALL *recalled*.

*Court*—After the explosion occurred, did you see Mr. Merritt again? A. I did. Q. Did he have this order in his possession at that time? A. He did. Q. Did he produce it to you? A. Yes, sir; I took it and read it, copied it and got his address. Q. Did you ever see it again after that? A. No, sir. Q. Have you got that copy? A. No, sir. Q. Where is it? A. I mislaid it somewhere; I kept it a long time to produce it before the Coroner's Jury, but I never was called there; I took it for that purpose, thinking, probably, I might be called before the Jury, and it would be an important matter.

(Maps of Col. Shaffner and engineer offered in evidence, also the contracts.)

Plaintiff's Counsel objected to Shaffner's map.

*Court*—The Jury will take it for what it is worth.

HENRY G. NEWKIRK, sworn on the part of the plaintiff, said: I now reside in Bergen Avenue, Jersey City, near the Newark and New York Railroad; I lived in the same place at the time of the nitro-glycerine explosion on the land of the Newark and New York Railroad Company, on the 25th day of November, 1867; I own the house I live in; my house is about three hundred feet from the blacksmith shop, where the accident happened; the explosion broke about eighty-four panes of glass in the windows of my house; it took all the lights clean out of the windows, each window having four panes; it broke the panels out of two doors, so that I had to get new doors, these doors were inside doors; the outside doors were blown open and every lock bent; one rafter was broken in the garret; the ceiling and side walls were cracked in a dozen different places; the glass from the windows cut the cloth shades all to pieces; my barn was about one hundred feet nearer the explosion than my house; the back part of my barn was blown down, and all laid down by the foundation; the back part of my carriage house also was blown down; my house and barn are on the westerly side of Bergen Avenue.

SEBASTIAN GOCHNAR, sworn for plaintiff, said: At the time of the explosion of the nitro-glycerine on the land of the Newark and New York Railroad Company, on the 25th day of November, 1867, I lived with my family on the easterly side of Bergen Avenue, near the Newark and New York Railroad Company; my house was directly opposite Mr. Henry G. Newkirk's, and was about four hundred feet from the blacksmith shop, where the explosion took place; I owned the house; the explosion blew out all the large windows in the front of my house and some panes of glass in the side; it cracked the plastering in all the rooms; it broke some panes of glass in my rear building and knocked some bricks from off the chimneys; this rear building was nearly six hundred feet from the blacksmith shop; the plastering was also cracked in the rear building, and some of it fell down.

BENJAMIN A. KEYSER, sworn for plaintiff, said: I now live on the easterly side of Bergen Avenue, in Jersey City; I own the house I live in; I lived in this same house with my family at the time of the nitro-glycerine explosion on the land of the Newark and New York Railroad Company, on the 25th day of November, 1867; my house was between four and five hundred feet from the blacksmith shop, near which the explosion took place; the explosion burst open my doors and broke a piece from one of them; it broke about twenty-five panes of glass from my windows; it opened the seams in the corners of my two front rooms, and cracked the wall in several places.

JOHN G. WANTERS, sworn for plaintiff, said : I live on the easterly side of Bergen Avenue, in Jersey City ; my wife owns the house ; we lived with our family in the same house at the time of the explosion of nitro-glycerine on the lands of the Newark and New York Railroad Company ; on the 25th day of November, 1867 ; my house was about six hundred feet from the blacksmith shop, near which the explosion took place ; the explosion burst open my doors, broke the locks off from some of them, broke the glass and sashes out of my parlor windows, bent and broke the bolts on the shutters of my windows ; it blew the bricks off my chimneys ;  
10 it cracked the walls and ceilings in different parts of the house.

JOHN HILLDEBRAN, sworn for plaintiff, said : I live on Linden street, in Jersey City ; I am a florist ; my greenhouse, the nearest one, is about seven hundred feet from the blacksmith shop, near which the nitro-glycerine explosion took place on the lands of the Newark and New York Railroad Company, on the 25th day of November, 1867 ; that explosion broke out about three hundred panes of glass in this greenhouse ; it knocked down the middle stand and the flowers which were in this greenhouse, and broke the pots and plants.

20 The evidence on both sides being closed, the Court charged the Jury, and directed them to find a verdict in favor of the defendants, to which charge of the Court the plaintiff, by her counsel, excepted, and prayed that this her bill of exceptions might be sealed, and it is sealed accordingly.

J. D. BEDLE, Justice Sup. Ct.

NEW JERSEY COURT OF ERRORS AND APPEALS.

NOVEMBER TERM, 1870.

30 JANE CUFF, ADM'X OF MICHAEL CUFF, )  
Deceased, )  
Plff. in Error, )  
*vs.* )  
THE NEWARK AND NEW YORK RAILROAD ) Assignment of Errors.  
COMPANY AND CLINTON H. SAGE AND )  
JOHN J. FLANAGAN, )  
Defts. in Error. )

40 Afterwards, that is to say, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy, before the Court of Errors and Appeals, in the last resort in all causes, comes the said Jane Cuff, administratrix of Michael Cuff, deceased, by Stephen B. Ransom, her attorney, and says, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, that on the trial of the said cause in the Circuit Court of the County of Hudson, the Justice before whom said cause was tried, charged the Jury and directed them to find a verdict in favor of the defendants ; whereas, by the law of the land, the said Justice ought not to have so charged the Jury, but ought to have charged them to find a verdict in favor of the plaintiff, therefore in this there is manifest error ; and also there is error in this, to wit, that the judgment aforesaid, by the record aforesaid,

appears to have been given for the said "The Newark and New York Railroad Company and the said Clinton H. Sage and John J. Flanagan," against the said Jane Cuff, administratrix as aforesaid, whereas, by the law of the land, the said judgment ought to have been given for the said Jane Cuff, administratrix as aforesaid, against the said "The Newark and New York Railroad Company, Clinton H. Sage and John J. Flanagan." And the said Jane Cuff, administratrix as aforesaid, prays that the judgment aforesaid, for the errors aforesaid and for other errors in the record and proceedings aforesaid being, may be reversed, annulled and altogether holden for nought, and that she may be restored to all things which she has lost by occasion of the said judgment, &c. 10

S. B. RANSOM,

Atty. for and of Counsel with the Plaintiff in Error.

The Defendants in Error have filed the Common Joinder in Error.

NEW LIBRY

County of ... and ...

Know all men by these presents that ...

... the said ... and ...

ATTESTATION

... of the ...

WITNESSES

... of the ...

NEW JERSEY

Court of Errors and Appeals.

JANE CUFF, ADM'X OF MICHAEL CUFF,  
Deceased,  
Plff. in Error,  
*vs.*  
THE NEWARK AND NEW YORK RAILROAD  
COMPANY AND CLINTON H. SAGE AND  
JOHN J. FLANAGAN,  
Defts. in Error.

Writ of Error to Supreme  
Court.  
Exhibit.

CONTRACT

BETWEEN FLANAGAN & SAGE AND THE NEWARK AND  
NEW YORK RAILROAD COMPANY.

ARTICLES OF AGREEMENT entered into this twenty-fifth day of October, 1866, between Flanagan & Sage of the first part, and the NEWARK AND NEW YORK RAILROAD COMPANY, by John McGregor, their President, of the second part, whereby it is agreed as follows:

The said Flanagan & Sage, contractor, hereby promise and agree to perform in a thorough and workmanlike manner, agreeably to the directions of the Engineer of the said Corporation, and to his satisfaction, and subject to all the clauses (specific or general,) of the accompanying specification, which are applicable thereto, the following work of graduation, viz.: Sections four and five extending from Hackensack River to Communipaw Bay or as far in that direction as may be required by the Company, the terminus of section five being the shore of the bay; and it is understood that the contractor will furnish all iron and ties required for his work, on condition that when they are done with them the Company take so much of them at their cost as shall be undamaged, subject to the approval of the Engineer.

SPECIFICATION.

\* \* \* \* \*  
The length, position and termini of these sections may be changed at the discretion of the Engineer.

GRADUATION.

8. All blasting shall be done at the risk of the contractor, who shall be liable to the Company for any damages caused thereby to dwelling houses, individuals, or otherwise.

51. All directions, explanations, superintendence or instructions spoken of or required under this contract, refer to, and will be given by, the Engineer of the Company, or his authorized agents; the contractor may at any time require such instructions to be stated in writing.

The Engineer may, at any time, make such changes in the amounts of any of the descriptions of work to be done, or in the character or description of any materials to be used, as the interest of the work may, in his opinion require; a fair allowance being made by him on either side of such changes, where provision is not made in one or other of the clauses of this contract for the particular case.

Whenever the word Engineer is mentioned, it is understood to be the Engineer for the time being.

52. Until the Company shall have procured the right of way through all the lands applicable to this contract, the contractor shall commence work or make arrangements for commencing work, whether of graduation, masonry or otherwise, on such grounds only as the Engineer may designate.

53. All materials used under this contract, shall at all times be subject to inspection by the Engineer, or by such person or persons as he may appoint.

55. The contractor shall not be at liberty to sub-let any part of the work without the consent of the Engineer; no sub contract, however, shall relieve the contractor of his liabilities under this contract, should the sub-contractor fail to perform the work undertaken by him.

56. The contractor shall employ competent foremen and workmen, and experienced mechanics, and he shall immediately discharge whenever required to do so by the Engineer, any men considered by the Engineer to be incompetent, and disorderly, or disposed to foment discontent or mischief on the work.

57. The Contractor shall not sell or give, nor allow to be sold or given, within the limits of his work, any spirituous liquors, nor allow any such to be brought upon the work; and he shall do all in his power to assist the officers of the Company, in maintaining such regulations as shall conduce to the orderly and peaceable progress of all parts of the work, and as shall tend to prevent all unnecessary interference with the rights, privileges and property of persons in the vicinity of said railroad, and he shall instruct his foremen and agents accordingly.

66. The first party to this contract has no exclusive right to the occupation of the ground or conveniences included in its extent, but is only entitled to such accommodation, not inconsistent with the necessary and timely prosecution of the other work pertaining to the completion and operation of this Railroad, as is necessary for the proper prosecution of the work herein undertaken by the said first party.

In testimony whereof, the parties have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered }  
in the presence of us }

JOHN MCGREGOR. { Seal of }  
Co. }

J. COUNSELLOR,  
E. M. SARGENT.

JOHN J. FLANAGAN, [L. S.]  
CLINTON H. SAGE, [L. S.]

NEW JERSEY COURT OF ERRORS AND APPEALS.

JANE CUFF, ADM'X OF MICHAEL CUFF, Deceased,	}	Writ of Error to Supreme Court of New Jersey.
Plff. in Error,		
vs.	}	Points for Plff. in Error.
THE NEWARK AND NEW YORK RAILROAD COMPANY AND CLINTON H. SAGE AND JOHN J. FLANAGAN,		
Defts. in Error.		

I.

The death of the plaintiff's intestate, resulted from a nuisance, created, continued and sustained upon the lands of the defendant, "The Newark and New York Railroad Company," by all the said defendants.

II.

This nuisance consisted of a magazine made by the defendants, or with their consent and acquiescence, upon the lands of the Company, for the purpose of storing therein and using therefrom, a highly explosive and dangerous material, known as *nitro glycerine*.

- 1st. This Magazine was *per se* a nuisance.
- 2d. Its object and contemplated use was unlawful, and in this respect it was a nuisance.
- 3d. Its management was negligent, unskillful and criminal, greatly increasing its danger.

III.

The defendants being the authors of the nuisance, are responsible or answerable for all damage resulting from its existence, its use or its negligent and unskillful management.

IV.

The death of plaintiff's intestate having been caused by the negligent, unskillful and reckless management of this magazine, the defendants are liable in this action.

## V.

That in a business involving the personal safety and lives of others, all having any control of the business, are bound to exercise due care and diligence, which is nothing less than the most watchful care, and the most active diligence.

## VI.

This magazine and its contents, on the land of the Railroad Company, being in itself dangerous to the lives of those around it, required at the hands of the Company and Flanagan and Sage the most watchful care, and the most active diligence; and the neglect on their part, to see that it was entrusted to the most skillful hands, and managed in the safest manner possible, was on their part gross negligence, and criminal carelessness, and made them liable for all damages resulting therefrom.

## VII.

The relation which existed between Burns and the Newark and New York Railroad Company, and between Burns and Sage and Flannagan, at the time of the explosion, was that of master and servant; and the injury having resulted from the unskillfulness, carelessness, drunkenness, and gross negligence of Burns, the servant of the defendants, the defendants are liable.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JANE CUFF, ADM'X OF MICHAEL CUFF, Deceased, Plff. in Error,	}	Writ of Error to Supreme Court of New Jersey. Points for Plff. in Error.
vs. THE NEWARK AND NEW YORK RAILROAD COMPANY AND CLINTON H. SAGE AND JOHN J. FLANAGAN, Defts. in Error.		

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NEW JERSEY

Court of Errors and Appeals.

JANE CUFF, ADM'X OF MICHAEL CUFF,  
Deceased,  
Plff. in Error,  
*vs.*  
THE NEWARK AND NEW YORK RAILROAD  
COMPANY AND CLINTON H. SAGE AND  
JOHN J. FLANAGAN,  
Defts. in Error.

Writ of Error to Supreme  
Court.

Exhibit.

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The Engineer may, at any time, make such changes in the amounts of any of the descriptions of work to be done, or in the character or description of any materials to be used, as the interest of the work may, in his opinion require; a fair allowance being made by him on either side of such changes, where provision is not made in one or other of the clauses of this contract for the particular case.

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53. All materials used under this contract, shall at all times be subject to inspection by the Engineer, or by such person or persons as he may appoint.

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56. The contractor shall employ competent foremen and workmen, and experienced mechanics, and he shall immediately discharge whenever required to do so by the Engineer, any men considered by the Engineer to be incompetent, and disorderly, or disposed to foment discontent or mischief on the work.

57. The Contractor shall not sell or give, nor allow to be sold or given, within the limits of his work, any spirituous liquors, nor allow any such to be brought upon the work; and he shall do all in his power to assist the officers of the Company, in maintaining such regulations as shall conduce to the orderly and peaceable progress of all parts of the work, and as shall tend to prevent all unnecessary interference with the rights, privileges and property of persons in the vicinity of said railroad, and he shall instruct his foremen and agents accordingly.

66. The first party to this contract has no exclusive right to the occupation of the ground or conveniences included in its extent, but is only entitled to such accommodation, not inconsistent with the necessary and timely prosecution of the other work pertaining to the completion and operation of this Railroad, as is necessary for the proper prosecution of the work herein undertaken by the said first party.

In testimony whereof, the parties have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered }  
in the presence of }

JOHN MCGREGOR.

{ Seal of }  
{ Co. }

J. COUNSELLOR,  
E. M. SARGENT.

JOHN J. FLANAGAN, [L. S.]  
CLINTON H. SAGE, [L. S.]

