New Jersey Court of Errors and Appeals.

WILLIAM W. BELL, ET AL, TRADING, &C. AS WILLIAM W. BELL & COMPANY, Defendants in Error, CLEAYTON WISTAR, ET AL, TRADING, &C. AS WISTAR & WOODNUTT, Defendants in Error, vs. CHARLES MECUM, TRUSTEE IN BANKRUPTCY, &C., Plaintiff in Error.	On Mechanics Lien.

Brief of Defendants in Error.

In these cases, the defendants in error, seek to enforce mechanics liens against the land and building, the same comprising what is known as the Reliance Brass Foundry, situate on Fifth street, Salem, N. J., for materials furnished to the owner and builder thereof for the erection and construction of the building situate thereon. One Charles H. Muckenhirn was the original owner and builder of said plant, and these suits were originally brought against him as builder and The Reliance Brass Company as owner, but shortly after they were instituted, Muckenhirn was adjudged a bankrupt by the United States District Court for the District of New Jersey, and by an order of the Circuit Court of the County of Salem, Charles Me-

cum, Trustee in Bankruptcy for Charles H. Muckenhirn, bankrupt, was substituted as defendant in the place and stead of Muckenhirn as builder and The Reliance Brass Company as owner.

Wistar & Woodnutt, defendants in error in one case, are lumber dealers in the City of Salem, and furnished the lumber used in the construction of the plant.

William W. Bell & Company operate a sash and planing factory in the same city, and furnished the windows, window frames and sash, glass, &c., for the construction of the building.

The building and lands, against which these liens are claimed as stated by Mr. Keasbey, the Surveyor who made the plan of the plant, (Pr. Bk. p. 42, 1. 25) "consists of a large building starting on Fifth street" on land partly owned by Muckenhirn and partly leased by him (Pr. Bk. p. 42, 1. 37 & P. 43, l. 1 to 35); that it consists of a foundry, machine shop, etc; that "you can go from the front of the building and to the back end of it without going out in the weather"; that only one roof covers the entire plant, (P. 45 line 1 p. 44 l. 11 & 12).

At the trial of the causes in the Salem Circuit, it was the contention of plaintiffs that the different shops of Muckenhirn constituted an entire building for the manufacture of brass, and that the materials were furnished for the construction and erection of one building and not for separate and distinct ones as claimed by defendant.

By consent of counsel both cases were tried as one (see Pr. Bk. p. 1 lines 32 to 35), and the jury returned a verdict in each case, giving to plaintiffs the full amount claimed by them and that the moneys be specially made out of the lands and building described in plaintiffs' declaration. Judgment final was duly entered in each case in the Salem County Circuit Court on the jury's verdict.

The plaintiff in error sued out a writ of error from this Court, and assigns seven assignments of error in the record. They will be considered separately.

I.

By the first assignment of error, it is claimed "that the trial judge ruled out and rejected competent evidence."

We do not think this assignment is of such a nature as to require an answer. No specific instance of competent evidence is pointed out where the trial judge rejected it.

The answer to this assignment is that "the grounds of error should be definitely pointed out in an assignment or they will not be considered."

Donnelly v State, 2 Dutch. 463-512.
State v Lewis, 10 Vr. 501.
Lutlopp v Heckmann, 41 Id. 272.

But in order to meet such a charge squarely, the record has been examined, and except in one instance, no bill of exception was sealed to any objection made by plaintiff in error, and in absence of this, error may not be assigned upon matter that such bill should contain.

Wanamassa Amusement Park Association v Clark, 32 Vr. 611.

The admissibility of some questions was passed on by the Court where objection had been made as to them being leading questions, but the admission of leading question is a discretionary matter with the trial court, and cannot be reviewed on error. Trenton Passenger R. Co., v Cooper, 31 Vr. 219.

Luckenback v Sciple, 43 Id. 476.

The only instance where evidence offered by plaintiff in error was rejected by the trial court, and a bill of exception taken, is to be found on page 258 of the printed book. Plaintiff in error sought by the witness Muckenhirn, to offer in evidence an "illustrated postal card" printed by a local firm called "Plant of Reliance Brass Company, Salem, New Jersey."

Muckenhirn is asked (p. 258 l. 13 and 14) "if it is a correct deliniation and portrayal of your plant," and answers

"I should say that is a half tone reproduction of a photograph."

This is all the matter of proof verifying the picture as a "correct resemblance or true representation" of the subject.

It was properly rejected by the trial judge, because

(1) It was not a photograph.

(2) The original photograph was not produced from which the "half tone" was taken.

(3) It was not shown how or by whom it was taken or made.

(4) It was admittedly a printed picture.

(5) It was not verified by proof that it was a correct resemblance or true representation of the subject.

Whether it was properly verified was a question to be decided by the trial judge and cannot be reviewed.

Goldsboro v The Central R. R. Co. of N. J., 31 Vr. 49.

II.

By the second assignment of error it is alleged that the trial judge admitted illegal and incompetent evidence.

No ground whatever on which this assignment is based or any specific instance of it is pointed out. This assignment is therefore not entitled to consideration. Lutlopp v Heckmann, 41 Vr. 272.

We have, however, carefully examined the books, and on this point we find but one instance where a bill of exceptions was sealed at plaintiff in error's request. This is based on his motions to be found on pages 215, 216, 217, 218, 219 and 220.

The witness, Joseph H. Bell, was on the stand and had testified (page 129, lines 35, 36 and p. 130, l. 1 to 10, p. 152, lines 18 to 37,) that he had drawn plans for the Brass Foundry, and that he built the factory by these plans. Counsel for plaintiff in error (P. 215, lines 29 to 37 and p. 216, l. 1 to 10) moved on the second day of the trial to

strike out all of Bell's oral testimony, because if plans of the building were in existence they should speak for themselves. Both sides deny knowing what became of the plans, and the witness, Muckenhirn, on being called claims there were no plans, (Pr. book pages 216, 217, 218 and 219). Plaintiff in error's counsel states on p. 218, lines 23 to 26, that he gave notice this motion at the beginning of the morning trial. No such motion appears to have been given. The Court rules, (p. 218, lines 32 to 37), that counsel had consented at the opening of the W. W. Bell case that this testimony of Joseph H. Bell given in the Wistar case should be considered in the W. W. Bell case, and that it was given without objection of plaintiff in error.

We cannot see any force in this assignment. Plaintiff in error could not produce the plans and, therefore, refusing to produce them defendants in error were compelled to resort to secondary evidence. Aside from the question of the validity of this testimony, plaintiff in error cannot avail himself of any objection at this time. The testimony was agreed by him to be used and considered in both cases, and he made no objection at the time it was given. It certainly comes with ill grace under these circumstances.

III.

The third assignment of error claimed is that the trial judge refused to non-suit the plaintiff.

The motion for a non-suit is to be found on pages 231 and 232 of the printed books, lines 32 to 35 and 1 to 11.

It was based on three grounds.

(a) That there was no proof that materials were within the four months, ordered for the purpose of the construction and erection of the building.

(b) That there was going on that time the work of erection, alterations, additions, repairs and operations of the plant and the proofs do not separate the items in the mechanics lien claim.

(c) And that the materials were not ordered for the construction and erection of the building.

In the consideration of this matter, it will answer all purposes to consider reasons 'A and C" as one.

The testimony as to the ordering and the furnishing of lumber and other materials for the construction and erection of the building, both before and within the four months next before the filing of the claim and the issuance of the summon, is as follows:

Richard H. Woodnutt testifies (p. 49, line 10 to 12) that the plant "is all a frame building except one little building that is a brick building. It is all connected except that small building that is all by itself."

(P. 49, line 36) "Yes sir" I furnished lumber for that building.

(P. 50, l. 1 to3) "Q. When did you begin to furnish lumber for that building ?

A. I think it was in November of 1904."

(P. 57, l. 34) Now what were these articles furnished for, Mr. Woodnutt ?

"A. (P. 58, 1) For a brass foundry."

"Q. (P. 58, 2) For whom."

"A. (P. 58, 3) For Charles H. Muckenhirn."

(P. 59, l. 9) "Q. Do you know where the lumber and material furnished by you in this bill of items went ?

A. Went in the brass foundry of Mr. Muckenhirn."

(P. 60, l. 35) "Q. What was the condition of the building with reference to its finish ?

A. Well it isn't finished; the water closet there with the door not hung, and one place with the ventilators just lined up, but isn't finished at all."

Clayton Wistar

P. 93, line 36

Q. Will you look over the schedule annexed to the declaration in this case and state whether or not the lum-

ber mentioned in that declaration or schedule was furnished by your firm to Charles H. Muckenhirn ?

A. Yes, this was furnished there all of it.

Q. For what purpose ?

A. For erecting a building a brass plant.

Q. (P. 94, l 11) Did you ever have any conversation with Mr. Muckenhirn with reference to that material ?

A. Yes sir, he was often in our office talking about this building there and talking about his building, this building and enlarging it from time to time. He told us when he got this completed and paid for he expected to build a larger one; that when he was done this he expected to build more."

(*P. Bk.k 95 lines 7 to 8.*)

"*We sent him bills from time to time, not any completed bills.*"

(*Pr. Bk. 96, lines 1 to 5.*)

"*Q. Did he or did he not ask you to furnish the lumber for the building ?*

"*A. Yes he did.*

"*Q. Now in consequence of that request what did you do ?*

"*A. We furnished the lumber for him.*

(Pr. Bk. 102, l. 14 et seq.)

Q. Now Mr. Wistar do you know whether or not that building was completed ?

A. Yes, I know.

Q. What ?

A. No.

Q. In what respect ?

A. Well, the windows have never been cased around in the whole building except the office. The office is the only part of the building that has got any casing around the building, in the whole of the large, any addition or any part of the building.

Q. What else ?

A. The roof hasn't been tacked down properly, etc.

The testimony of Cleayton Wistar, R. H. Woodnutt and others show the delivery of the lumber to Muckenhirn.

Joseph H. Bell

(Pr. book 131, 132, line 35, 1 to 35)

Q. Now Mr. Bell did you order any lumber for that building ?

A. I did.

Q. By whose authority ?

A. By Mr. Muckenhirn's.

Q. Where did he tell you to order it ?

A. From Wistar & Woodnutt.

Q. How long did you remain and work on that foundry ?

A. I worked up 'till sometime in November.

Q. How did you leave, in what state of completion was the building when you left ?

A. Nowheres near finished when I left ?

Q. (P. 133, line 26) ?

Now looking at the claim beginning November the 7th, 1905, just before you left, Mr. Bell 5664 frame. Do you know where that was used.

A. Yes sir.

Q. Where ?

A. In the frame of the factory.

Samuel Bell,

(Pr. book p. 168, line 9 to 20)

Q. Who ordered the lumber that was used on the building during the period from about the middle of November, 1905, until April the 17th or 20th, 1906 ?

A. I ordered most of it.

Q. Who ordered the rest ?

A. I think once or twice Mr. Smiley sent a boy up there and told Mr. Wistar I wanted a certain amount of lumber.

Q. Was all the lumber brought by W. & W. for that building during that period used in that building ?

A. All except, there were some there that I had that

wasn't used at all. I don't know what became of that.

Norris K. Trullender,

(Pr. Bk. 209, l. 3 et seq.)

Q. For whom do you work ?

A. William W. Bell & Company.

Q. Do you know whether or not William W. Bell & Company supplied any materials for that plant ?

A. Yes sir.

Q. What materials did they supply to your knowledge ?

A. Window frames and sash and some other articles.

Q. How did you know they were supplies for that factory ?

A. I made them and delivered them there.

Q. Where were they used ?

A. In the foundry.

Joseph H. Bell,

(Pr. Bk. 212, l. 28)

Q. Now did you get any supplies from William W. Bell & Company ?

A. I did.

Q. For what purpose ?

A. For to complete the building.

Q. Now by whose order did you get the supplies ?

A. Mr. Muckenhirn's.

Q. What kind of supplies did you get ?

A. Well I got frames, sash, doors and some trimmings, mouldings and such as that.

As to the alleged blending of the articles in used some for building and some for operating the plant. In the testimony of Joseph H. Bell (Pr. Bk. 144, l. 3) in speaking of the making of trays, follow boards for moulds, &c.

Q. And what material did they make them out of ?

A. Out of waste.

Q. You say they made some of these out of new material ?

A. No sir. Lots of that there burned up after we came away.

We cannot see where under this testimony the plaintiff in error can allege that there was no evidence to show that materials were furnished for the construction and erection of this plant.

It is the settled law of this State that "it is no objection to the validity of a lien claim for materials furnished for the erection of a building that such materials were not actually used in the erection of any building *when it appears that the materials were furnished in good faith for the building and delivered to the defendants or their agents in good faith whether they were used in the building or not. The right to the lien depends upon the fact that the debt was incurred and the materials furnished for the purpose of the building. In the absence of fraud in the part of the creditor, the rights of the lien holder are not affected by a failure to use the materials, or by their diversion from the purpose for which they were intended.*

Morris County Bank v Rockaway Mnfg. Co., 1 McCart, 189.
Campbell v Taylor Mnfg. Co., 19 Dick. 344.

There seems to be no doubt but that Muckenhirn and his duly authorized agents contracted with Wistar & Woodnutt and with William W. Bell & Co., to supply materials for the construction of the plant. If as the testimony above recited shows they so furnished and delivered the lumber for that purpose, a lien in their favor on the building was created by statute, and it is not essential for the maintenance thereof that they were bound to show that the materials actually entered into its construction.

Justice Fagg in Morrison v Hancock, 40 Mo. 561, puts this as a matter of common sense, when he says:

"It would be altogether unreasonable to require him

(i. e. the materialman) to follow those materials from his lumber yard to the building and to make positive proof of the fact that they were actually used for the purposes for which they were alleged to have been purchased. Such a thing is not only a matter of extreme inconvenience in all cases, but in a majority of instances must be totally impracticable."

In Nelson et als. v The Iowa Eastern R. R. Co. 1 N. W. 434. Justice Seevers delivering the opinion of the Iowa Supreme Court said: "The ties were delivered at the place designated in the contract. A portion thereof were not used. More were contracted for than was required to construct that portion of the road which was built, the corporation being unable, for want of means, as we understand, to construct any more than it did at that time. For the ties not used it is insisted the plaintiffs are not entitled to a lien. The argument amounts to this. If a person contract and furnishes a million of bricks for the purpose of erecting a building, and the owner for want of means to complete the whole, erects only a portion, as originally intended, and uses only one-half of the bricks so furnished the materialman can only have a lien for the bricks actually used. Such cannot be the law. There is such an element of injustice and wrong in the proposition that nothing short of a positive statute would justify its adoption *All the materialman has to do under the statute is "to furnish" the material for the designated use. This gives him a lien to the extend of the value of the material furnished if the building, or any part thereof is coustructed.* It is immaterial whether the materials are used or not. If this be not so the owner might sell the materials furnished, and with the money obtained therefor purchase other materials, erect the building therewith, and thus defeat the lien. Such a proposition cannot we think be maintained. And was so held in Esslinger v Huebrier, 22 Wis. 602."

It was urged as one of the reasons why a non-suit should

be granted that the evidence did not state that any of the items furnished during the last four months prior to the date of filing the lien claim were ordered for the construction of the building.

As one of defendant's arguments is that the building was completed prior to that time, our reply is that the testimony of planitiff's witnesses all tended to show that the building was not only in an unfinished condition during this period but also at the time of the filing of the lien claims.

The time when a building is actually completed is a question of fact to be determined by the Court in each case.

Willamette v Steam Mills Co., 94 Cal. 205.

Willamette Steam Mills Lumber Co., v Los. Angeles College Co., 94 Cal. 229.

Johnston v Harrington, 5 Wash. 82.

In Burns et al. v Sewell et al. 51 N. W. 227, Chief Justice Gilfillan in the Supreme Court of Minnesota said: "The Court below finds that two items of the material were not actually used in the construction of the building and as a conclusion that plaintiffs were not entitled to a lien for those two items. As the lien statement was not filed within the prescribed time after the last of the other items, plaintiffs' entire claims depends on those two items referred to.

"Is the material deemed to be furnished under these provisions only from the time when the owner or contractor purchasing the material actually incorporates it in the building ? Must the materialman await, before filing his statement, the action of the purchaser ? We think not. In the ordinary understanding of the term "furnish for the erection of," &c., the furnishing of the material is complete when it is sold and delivered for the purpose of the erection."

IV.

The fourth assignment assigns error in the refusal of the trial judge to direct a verdict for the defendant.

In the reasons given for the motion it is contended by the defendant.

(1) That the plaintiff has not shown that the labor and material were furnished within the four months of the filing of the claim, for the erection and construction of the building.

(2) Because the proofs show that claim inseparately blends items for construction, alteration, and for the operation of the plant.

(3) That by reason of section 16 of the Mechaincs Lien law of 1898, where any of the bill of particulars contains any wilful or fraudulent misstatement the building and the lands shall be free from all lien for the matters in such claim.

Answering these allegations separately, defendants in error say that as to the reason contained in paragraph 1 it is the testimony of the plaintiffs, of Joseph H. Bell, Samuel Bell and Norris K. Trullender that the items furnished during the last four months of the filing of the claim were furnished for the erection and construction of the building.

We would call the Court's attention to the testimony of Charles H. Muckenhirn himself, the defendant's principal witness.

On page 264 of printed book, line 17.

Q. What lumber or material, if any, was furnished subsequent to December 23d, 1905, for the erection of the building ?

A. None.

Q. From December the 14th until April the 20th there appears by the bill of particulars to the lumber furnished at various times. Can you say in a general way what this lumber was used for ? "

A. It was used for various purposes."

Q. Now 307 feet of boards, filistered boards do you know whether they went into the building or not ? (P.277.l.29

A. I believe so.

Mr. Carr. What was that date Mr. Acton ?"

Mr. Acton. That date was February 10th, 1906," or within the four months next before the filing of the lien claim.

Whether the item within the limited period is so connected with the earlier items, that together they constitute one debt is a question of fact that should be left to a jury wherever such an inference is permissible under the testimony.

Downington Mfg. Co. v Franklin Paper Mills, 34 Vr. 32.

As to the blending of articles for construction with articles for repairs, alterations and for the operation of the plant, there is nothing in the testimony of the defendant in error's witnesses on which to base that allegation.

The witnesses, Joseph H. Bell and Samuel Bell, both say that the fixtures used in the operation of the plant were made from out old lumber and waste.

Lumley, Booz and Muckenhirn, the plaintiff in error's witnesses, are the *only* persons who testify to the contrary.

Admitting, however, that this disposition of the lumber was made by Muckenhirn after it had been delivered to him under an agreement to furnish lumber for the erection and construction of the plant, we cannot see where it clothes the plaintiff in error with any defense whatever. When the lumber is delivered on the premises to be charged with the lien there has been a compliance by the defendants in error with every necessary requisite in order for them to maintain a lien claim against the building and land.

White v Chappin, 32 Ark. 59.
Smalley v Gearing, 121 Mich. 190.
Morris County Bank v Rockaway Mfg. Co., 1 McCart. 189.

To our mind blending of items on the part of the person to whom the materials are delivered cannot defeat the materialman of his claim. It must be shown that he actually knew that certain articles included in the lien claim were not intended for the construction and erection of the building. This was not shown.

It is immaterial that the last item is a trifling one when such item was furnished in good faith and with an intent to charge therefor.

Farnham v Richardson, 91 Me. 559.

Whether all the items were furnished under a single contract or whether some of the items were furnished under separate and independent contracts is a question of fact for the jury.

Downington Mfg. Co. v Franklin Paper Mills, 63 N. J. L. 32.
Trensch v Shryock, 51 Md. 162.

As to the reason given for directing a verdict for defendant on the ground that plaintiff's lien claims violated section 16 of the Mechanics Lien act of 1898 in containing wilful and fraudulent misstatements, our answer to this is that there is not a scintilla of testimony in the record giving the least warrant to the charge of fraud on the part of the plaintiffs in making up their claim, and as the word wilful has been defined "intentional" there is absolutely nothing that tends in the least degree to suport this claim.

On the other hand we doubt if there is anything in the bill of exceptions taken to the refusal to direct a verdict for the defendants that gave the trial judge any specific reason or pointed out any definite grounds for so doing. Throughout the whole record, the defendant based all his objections in vague, general terms.

It is the settled doctrine of this Court (Errors and Appeals) that it will not review nor reverse a judgment under review because of an alleged error involving judicial action thereon, unless such action was invoked upon the ground relied on, which was distinctly and plainly made known to the Court below.

Allaire v Allaire, 10 Vr. 113.
Hoey v Lewis, Id. 501.
P. R. R. Co. v Page, 12 Vr. 183.
Conover v Middletown, 13 Vr. 382.
Packard v Bergen Neck Railway Co., 25 Vr. 553.
Van Alstyne v Franklin Council, 40 Vr. 672.

The refusal of a motion to direct a verdict in favor of the defendant when the bill of exception does not show that any ground was assigned for the granting of the motion will not be considered upon writ of error.

Trade Ins. Co., v Barraclif, 16 Vr. 543.
Garretson v Appleton, 29 Vr. 386.
Ottawa Tribe v Munter, 31 Vr. 459.
Hopegood v Atha & Illingsworth Co., 39 Vr. 707.
Hood v. Pub. Service Corp. 64 Atl. Rep. 980.

This Court (Errors and Appeals) on a writ of error will not review the findings of a question of fact.

Snyder v Commercial Union Co., 38 Vr. 626.

A writ of error brings for review before the higher Court the judgments of inferior tribunals upon *matters of law only*

Del. Lack. & Western R. Co. v Newark, 34 Vr. 310.

The removal of decisions founded on blended law and fact, in no sense appertains to writ of errors.

Falkner v Dorland, 25 Vr. 409.

V.

The fifth assignment is based on the refusal of the trial judge to charge a request of the defendant in the following form: "The undisputed evidence shows that a part of the material furnished went in to the erection and construction; that another part went into the reparation and alteration; that another part went into the addition to the building; and that still another part was used in the making of movable chattels for the operation of the plant and if these various items are inseparably blended then the building is not subject to the lien."

We think this request was properly refused for two reasons.

In the first place, admitting the premises to be true as stated in the request, yet nevertheless, it would not bar the plaintiff from recovering on his claim, if the materials were furnished by him for the erection and construction of the building. What material difference did it make to his claim what use the party to whom he delivered them to, made of them. His contract in order to enable him to maintain his lien was complete when he made delivery. If the request was a proper one to charge, then no one would be able to maintain a lien, or to do so, the vendor's lien over the goods so sold and delivered would not cease until the articles actually went into the construction and erection of the building.

Smalley v Gearing, supra.
Morris Co. Bank v Rockaway Mfg. Co., supra.

The request was also properly refused on the further ground that it was so framed as to take away the prerogatives of the jury. It begins with the arbitrary statement that the evidence on these matters is "undisputed"! We have not the time and space to refute such a childish claim other than by a mere denial of it. It was properly refused as it was a disputed question of fact.

Questions of fact are for the jury.

Boisot's Mechanics Liens, 641.

So it has been held that it is for the jury to determine whether materials were furnished under one contract or several (Helzell v Railway Co., 20 Mo. App. 435), (Helena Steam Heating & Supply Co. v Wells, 40 Pac. 78) and whether plaintiff has in his lien claim knowingly and wilfully claimed more than his due. McGee v Mnfg. Co. 7 S. C. 263.

The plaintiff furnished machinery for both buildings and filed a lien claim which was too late unless the whole structure *should be deem d one building. It was held tnat this was a question for the jury.*

Diller v Burgen, 68 Pa. St. 432.

VI. and VII.

Assignments six and seven are so similar in their nature that they will be considered together.

The sixth assignment charges that there was error in the Court's charge to the jury in these words: "Error in an account filed does not invalidate the lien when the error occurs by a mistake and without any fraudulent purposes especially when no one has been injured by the mistake and the erroneous items are easily separated from the rest. If, however, you find that certain of the items charged in this account do not enter into the construction of the building and that they were included in the account by inadvertence and mistake you may still sustain the lien if you find that some of the items furnished within four months prior to April 24th, 1906, did actually enter in the construction of the building."

Our *answer to this is that the above language of the Court's charge is taken word for word from the 15th volume of the American and English Encyclopedia of Law (1st edition) page 143* and it has been held to be good law in the cases of

Springer Land Ass. v Ford, 168 U.S. 513

Allen v Framel Mer. Co., 73 Mo. 688.

Johnson v Barne & M. Bldg. Co., 23 Mo. App. 546.

Fairbairn v Moody, 116 Mich. 61

Certainly the plaintiff in error cannot complain of this instruction when it is borne in mind that this language was used in connection with another statement in which the Court charged the jury that if plaintiff's claim contained any "wilful misstatement," they should find for the defendant, and *wilful* or *fraudulent* misstatements in a lien claim are the only kind that the statute says should be rejected.

Defendant cannot complain of an instruction in an action to enforce a mechanics lien, restricting plaintiff's recovery to the value of the materials furnished by him on the credit of the buildings and actually used in their construction.

Scranton Lathe Turning Co. v Cassedy, 31 Atl, 734; 167 Pa. St. 469.

To our mind the plaintiffs in error cannot complain of this as it is evident that the jury failed to find any items of the materials furnished by defendants in error, but what went into the construction of the building. None were deducted, and the *verdict was for the full amount called for in the lien claims*

Immaterial error in instructions to a jury will not avoid a verdict.

Eustice v Courtright, 32 Vr. 653.
Freeman v Headley, 4 Vr. 540.
Smith v Ruecastle, 2 Halst. 357.
Den, Steelman v Steelman, 1 Harr. 66.
Jackson v Miller, 1 Dutch. 93.
Graham v Whitely, 2 Dutch. 284.
Johnson v State, Id. 313.
Schenck v Cottrell, 1 Zab. 5.

Again, we fail to see how the plaintiffs in error can complain of this instruction or the instruction on which

the seventh assignment of error is based, which is in these words: "If you find that certain items within the four months prior to April 24th, 1906, were furnished not for construction, but to operate the plant, such items must be by you deducted from the account."

If the whole charge be examined it will readily be seen that every point claimed by plaintiff in error was charged. The Court charged the jury that defendants in error must show that the materials were furnished wholly for construction. That it must be shown to have been a continuous transaction; that if there was any blending of the parts of the account, they could not recover.

If the charge and especially the instructions which plaintiff in error makes complaint are closely examined, it would seem that the Court seems to hold that defendants in error in order to recover could only recover for the part of the materials that entered into the construction of the building. Under the case of Morris County Bank v Rockaway Mnfg. Co. supra, we are not limited to this, as it is immaterial to us if we contract to furnish materials for construction and deliver them for that purpose what disposition the vendee may make of them. So as we view these instructions, their effect was more restrictive in their operation on the plaintiffs than on the defendant.

We fail to see any error in the record. We think the case was given a thorough, intelligent and conscientious consideration by the Court and jury, and that the verdict is a just one based on the weight of the evidence as the jury viewed the matter. The record shows that the plaintiffs furnished all the materials out of which the Reliance Brass Foundry was constructed, amounting to several thousands of dollars, no attempt was ever made to pay them, and at this late day it is certainly unfair for them to be met with the defense that their materials were not used for construction. The furnishing of our materials gave an increased value to this property, and

as the "laborer is worthy of his hire," it is no more than common justice that by legislative enactment a lien is created in favor of the materialman in order to defeat the natural injustice there is in the owner of the land appropriating to his use, without compensation, the toil and capital of others.

For these reasons we respectfully ask that the judgment below be affirmed.

Lewis Starr

HARRY BURT WARE,
Attorney for Defedants in Error.

New Jersey Court of Errors and Appeals

William W. Bell, et al, Trading &c. as William W. Bell & Company, Defendants in Error. Clayton Wistar, et al, Trading &c. as Wistar & Woodnut, Defendants in Error. vs. Charles Mecum, Trustee &c., plaintiff in error.	On Mechanics' Lien On Error to Salem County Court. Two Cases.

STATEMENT OF FACTS.

Charles H. Muckenhirn was originally engaged in the manufacture of brass goods at Salem, New Jersey; he erected certain factory buildings on lands partly bordering on Fifth Street in that City. The first building erected was one commencing along the line of Fifth Street and running thence westward one hundred feet. This building was commenced in November, nineteen hundred and four, and was used as a foundry and machine shop. Later a second building, known as the foundry, and entirely separated from the first building by a space not indicated in the oral testimony, was built and occupied continuously by Muckenhirn's working force from

September fourth, nineteen hundred and five until the closing of the plant by reason of Muckenhirn's insolvency on April twenty-first, nineteen hundred and six. (case pp. 256 & 257).

After work had been commenced upon the erection of the foundry building. Muckenhirn started the work of erecting a third building between the foundry and the original building. This third building was joined as an addition to the original machine shop, but was entirely detached from the foundry building save by a passage way of about ten feet wide. (case p. 45).

The last building to be erected was occupied by Muckenhirn's working force, and the large engine, shafting and machinery were in operation continuously from some time in the week ending November seventeenth, nineteen hundred and five until April twenty-first, nineteen hundred and six. (case p. 242).

Muckenhirn was asked—(case p. 273)

"Q. On November 15th, 1905, what further work, if any, had you in contemplation in order to complete the buildings the present buildings of the Muckenhirn plant?

A. The joining of the addition to the front building where they came together.

Q. And by that do you mean the joining between the original machine shop and the extension to the machine shop?

A. The joining of the new addition to the original one hundred feet, yes sir.

Q. The joining being made at what point accord-

ing to the diagram here?

A. About there (Indicating)

Q. And when was that joining done?

A. Oh, possibly two weeks after that, may be sooner.

Q. Now when that was finished what further work did you contemplate being done to your plant and the existing buildings in order to complete them?

A. We finished the buildings."

In March or April, nineteen hundred and six the buffing room was enlarged so as to increase the ground space occupied by the factory. (case p. 263). This was done by moving the existing partition outward making a lateral addition to the building.

Separate liens were filed on April twenty-third, nineteen hundred and six by William W. Bell and Company, and also by Wistar and Woodnut. These two cases were consolidated and tried as one case in the Salem Circuit, and are here being tried as one case. These liens were filed for labor and material alleged to have been furnished for the erection and construction of the buildings in question, and were not filed for the repairing or alteration thereof, or for addition thereto.

These suits were brought against Muckenhirn as builder, and the Reliance Brass Company as owner, Muckenhirn having previously conveyed the buildings and the curtilage whereon they stood to a corporation of that name. While the suits were pending a petition in involuntary bankruptcy was filed in the United States District Court for the District of New Jersey against Muckenhirn, and subsequently

Muckenhirn was duly adjudicated a bankrupt therein.

On May fifth, nineteen hundred and six the Reliance Brass Company re-conveyed the premises in question to Muckenhirn and later title vested in Charles Mecum as Trustee in bankruptcy of Muckenhirn. Mecum is the present defendant.

It will be observed by reference to the Bill of Particulars filed by Bell and Company that all of the materials furnished by them within four months of the filing of the lien, viz; (within four months succeeding December twenty-third, nineteen hundred and five) consisted of small items and amount in all to the sum of twenty-four dollars and fifty three cents ($24.53) out of a total claim claim of five hundred and twenty-nine dollars and eighteen cents ($529.18), and that (case pp. 10, 11, 12 and 13) with reference to the claim of Wistar and Woodnut, the labor and material furnished within the four months period amount to one hundred and eighty-two dollars and sixty-two cents ($182.62) out of a total of five thousand and twenty-two dollars and seventy cents ($5022.70).

Some of the materials furnished both by Bell and Company and Wistar and Woodnut were unquestionably used in the lateral addition to the buffing room, and hence cannot be the basis of a claim for erection and construction. These items are so blended as to be indistinguishable and non-apportionable.

Muckenhirn testified that by the latter part of

November, nineteen hundred and five that the buildings were finished, and that everything was done that he contemplated having done in order to complete the plant, (case p. 273); that in November, 1905 the "builders' risk insurance" was discontinued and "straight insurance" was taken out on the buildings. (case p. 264).

This statement is corroborated by the testimony of I. O. Acton, the agent who placed the insurance, who made a survey of the buildings at the time, and he was through the buildings and all around them with a tape line; that on November thirteenth the buildings were practically complete and the temporary form of insurance to cover the buildings in process of erection was cancelled on that date, and the buildings insured as completed buildings. (case pp. 303 and 304).

Muckenhirn further testified (case p. 264) as follows-

"Q. What lumber or material, if any, was furnished subsequent to December 23rd, 1905, for the erection of this building?

A. None.

Q. From December the 14th until April the 20th, there appear by the bill of particulars to the lumber furnished at various times can you say in a general way what this lumber was used for?

A. It was used for various purposes.

Q. Name those purposes.

A. Largely for putting up work benches, constructing bins, partitioning off the stock room, and the tool room, for putting up stringers to fasten

the countershaft to, to run the machines as they were put up.

Q. Now for what other purposes, Mr. Muckenhirn?

A. Oh, such as making master patterns, boxes for the purpose of carrying raw material and partly finished material from one machine to another.

Q. What if anything, stood underneath the lathes?

A. What we called work benches; when the work was completed or partly completed it was dropped into the box and, if another operation was required, it was taken to the machine where the work was performed and the box taken back to the machine.

Q. Was there a box to each machine?

A. Yes, sir.

Q. How many machines?

A. Fifty two turret lathes.

Q. Were the boxes fastened to the building?

A. No, sir.

Q. What was fastened to the side of the lathe, if anything?

A. Each lathe had a stand for the purpose of carrying the castings or partly completed castings to make it convenient for the men handling the machine to do his work.

Q. And what were they made out of?

A. Lumber.

Q. What kind of lumber?

A. I suppose they were nearly all new. I know that part of them were made of new lumber.

* * * * * * * * * * * * *

Q. Now what was used to construct the sand troughs in the factory?

A. A good clean white pine plant.

Q. New or old?

A. New.

Q. Where was that gotten?

A. Wistar and Woodnut.

Q. Were these troughs fixed or moveable?

A. Moveable.

Q. How many of these are there?

A. I'm not certain, ten or twelve.

Q. What dimensions?

A. Eight or ten or twelve feet and ten inches deep.

. . . .

Q. What was in the foundry building made of wood?

A. They were what we call spill troughs and they were set so that the metal could be poured into them.

Q. How many spill troughs were there?

A. There was one for each man, ten or twelve.

Q. Of what material were they made?

A. Four or five of them.

Q. New or old lumber?

A. New mostly.

Q. Where did it come from?

A. Wistar and Woodnut.

Q. How large were these spill troughs?

A. About twelve feet long.

Q. Now what else was there made of new lumber in the foundry building?

A. Fallow boards or bottom boards that we placed under each flask as it was taken up.

Q. How many of them were there?

A. I should say one hundred and fifty.

Q. Of what were they made?

A. One inch lumber.

Q. From where did it come?

A.,Wistar and Woodnut.

* * * * * * * * * * *

Q. What, if anything, was there in the foundry moveable and made of new lumber?

A. There were tote boxes or work stands or tool boxes under the machines and the metal bins.

Q. Was or was there not any carpenters moveable carpenter's tables or benches?

A. There was.

Q. How many?

A. One that I positively know of.

Q. What was that made of?

A. One inch lumber with two by four legs.

Q. Where did that come from?

A. Wistar and Woodnut.

Q. Can you say whether or not any lumber was purchased from Wistar and Woodnut between December the 14th and April the 20th for pattern purposes?

A. Yes, sir.

Q. What was purchased do you know?

A. Quite a little lumber."

On page 274 with reference to the claim of Bell and Company Mr. Muckenhirn testified as follows:-

"Q. Now, Mr. Muckenhirn, I find on the claim of Bell and Company three circles under date of December 30th, one of thirteen inches, one of seven inches and one of fourteen inches in diameter, do you know what they were?

A. Yes, sir.

A. They were circles to which were glued some

emery paper and was used on the pattern maker's lathe so as to make patterns on them.

Q. Were the circles movable?

A. They were part of the machine, they could be screwed on and off.

Q. And where were they kept?

A. In that original room.

Q. What were the circles made of?

A. Soft pine, I think, in one piece without knots.

Q. Now I notice on the same claim, the claim of Bell and Company charges for three lights of glass, ten lights of glass, six lights of glass, under date of January 6th, do you know for what purpose they were used?

A. I know some of them were used to replace broken lights.

Q. Now I notice an item under January 6th of turning on pattern, do you know what that was?

A. I think so, yes, sir.

Q. What was it?

A. It was a pattern for a top of the stringers in the brass foundry.

Q. Is that pattern movable?

A. Yes, sir.

Q. I find a charge under same date of gig sawing, what was that for?

A. I think it was to saw segments of circles to go in some chicken wire we had to separate a part of the tool room from the tool room proper.

* * * * * *

Q. I have under date of November 25th one pattern twenty-two inches in diameter, do you know what that was?

A. I think that was the same thing as the last pat-

tern you mentioned. It didn't prove just the right thing and we made a new one.

* * * * * *

Q. I see one cypress board, do you know what that was for?

A. I knew they used cypress in the pattern room because——

Q. Did they use cypress anywhere else beside the patern room?

A. No, sir.

Q. Was this cypress used in any other place in your building besides the pattern room?

A. No, sir.

The contention of the trustee is that the last of the buildings in question was fully completed in November, nineteen hundred and five, and that the materials furnished after that time were furnished for the purpose incident to the ordinary operation of a large manufacturing plant. That the materials in question were used to make up movable wooden trays, movable wooden tool boxes, movable sand troughs, movable wooden bottom boards, movable wooden spill troughs, movable wooden tote boxes, as well as patterns and other miscellaneous movable chattels. That some of the materials were used for repairs and some were used for trifling alterations or in the construction of additional bins inside of the factory building, and some were used in constructing a lateral addition to the buffing room. That all of the items are inseparably blended. That the lien claimants are simply attempting to tack on to a stale claim for the erection and construction of a building, materials which were not furnished for

that purpose, in order to bring their claim within the statutory period.

Even if the Court should conclude that there was a question for the jury as to whether or not the building was completed within the four months period, the whole claim must be rejected because there are inseparably blended charges for materials that went undeniably into the operation of the plant and into the construction of movable chattels, and into the erection of a lateral addition,

In such case the Court must either reject the entire claim or permit the lien claimant to have a lien for furnishing materials for a purpose for which the statute gives no lien whatever. In other words:—In such a situation the lien claimants position would be "I have furnished material for the erection or construction of a building, I have also furnished materials for purposes for which the law gives no lien whatever, I cannot tell what proportion is within the lien of the statute and what proportion is without, therefore, I demand a lien for the entire amount." The above position is demonstrably untenable.

In support of the position that the factory building was not completed, the lien claimants offer the following testimony: That of Joseph H. Bell, whose testimony shows the strongest kind of bias towards the lien claimants, and who personally ceased work upon the plant some time before November eighteenth, nineteen hundred and five. (case p. 141). Who testified that the ventilators were not finished, and that there remained to be done about one half

day's work in tacking down certain roofing paper. (case p. 148.)

Powers testified (case p. 153) that the windows had no casings on them and that there were no stops in the ventilator sashes, and that there remained the work of tacking roofing paper on the roof, and that for these reasons the building was not complete, although he stated that the glass was in the ventilator sash, that the sash was closed, and the ventilator could be operated from the ground by means of a rope. This witness seemed to think "stops" should have been added to the ventilating sash. The only purpose of the "stop" was to keep the weather out, and had nothing whatever to do with the opening and closing of the sash; (case p. 198) so that the non-completion of the factory rests entirely upon the following grounds.

1. That no stops had been provided for the ventilator sash in the foundry.

2. That no casings had been furnished for the inside of the windows (this casing is merely the inside stripping which is sometimes used to surround a window frame.)

3. That there remained to be done about two hours work in tacking roof paper to the roof.

4. Also that certain water-closets were omitted.

All of the witnesses agree that the work in the buffing room was done within the four months period, consisting of a lateral addition to the building by the

tearing out of an existing wall and moving it outward. So this addition could not be held to be any part of the original erection of the building.

I.

As to the ventilator stops, Muckenhirn testified that these sash were hung upon a swivel, which was to be placed above the center of the sash so that they would remain normally closed by force of gravity. That a screw eye was fastened to the sash and a cord connected thereto so that it could be operated from the ground by the workmen, and that when this was done he contemplated doing nothing further to the sash in order to complete them. (case p. 259.)

II.

As to the casings, they were never intended to be put on the window frames, and that there was no necessity whatever for so doing. (case pp. 272 & 273).

III.

As to the roofing, Muckenhirn did not testify specifically, but stated (case p. 273) that in the latter part of November the buildings were completed, and that he contemplated no further work in order to finish them.

IV.

As to the water-closets. That he intended at some indefinite period to put in some five or six water-closets, and that he had not fixed any definite time for so doing. In the meantime his working force were

actually provided for.

It surely cannot be held that when an owner has done everything which he contemplates doing in the erection or construction of a building that the building is incomplete because other builders or carpenters would have added casings to windows or stops to ventilators. If Muckenhirn never intended to add these features to his buildings ,either the buildings must be complete without them or else the right to file a lien would extend, not for a period of four months, but for all eternity. Nor did the fact that Muckenhirn had in contemplation that at some future time, as the need arose that he would install additional water-closets, or that he would have corrected what was more than likely some workmen's inadvertence, viz: the failure to tack down a portion of the paper roofing, render these buildings unfinished. The roof did not leak and apparently it was satisfactory to Mr. Muckenhirn. Suppose Muckenhirn had by reason of the fact that the roof did not leak, failed to observe for a period of five years that some workman employed upon the roof had omitted to drive a few nails or tacks, could it be said that during all that period material men would have had a right to lien for materials furnished towards the erection and construction of the building?

STATEMENT OF LAW.

PROPOSITIONS No. 1.

The plaintiffs cannot recover, because they did not within the four months next preceding the filing of the lien claim, furnish any labor or material for or

towards the erection or construction of the buildings in question.

PROPOSITION No. 2.

The plaintiffs cannot recover, because the materials and labor furnished did not constitute one continuous transaction, but are founded on different, separate and unrelated orders.

PROPOSITION No. 3.

The plaintiffs cannot recover, because a part of the materials furnished were used in the operation of the factory as distinguished from its erection, such part is undistinguishably blended with the other parts, and the whole claim must be rejected.

PROPOSITION No. 4.

The plaintiffs cannot recover, because a part of the material and labor was used for repairs, alterations and additions, another part was used for the original erection and construction and such materials are indistinguishably blended, and the whole claim must be rejected.

PROPOSITION No. 5.

Any lien to which the plaintiffs might be entitled by reason of material and labor furnished for or towards the addition to the buildings in question must be limited to the addition itself, and cannot embrace as well the building to which the addition is annexed.

All of the above propositions were made the basis of a motion for a non-suit (case p. 232), and also the basis for a motion for a directed verdict in favor of the defendant. (case p. 310).

PROPOSITION No. 6.

The plaintiffs cannot recover, because the bill of matters directed by section 16 of the mechanics' lien act of 1898, to be therein inserted, and consequently the buildings and lands are free of the lien of all matters contained in such claim.

The refusal of the Court to non-suit plaintiffs, and also to direct a verdict in favor of the defendant are made the foundation of the third and fourt assignments of error.

The seventh assignment of error is based upon the following portion of the Judge's charges:

"If you find that certain items within the four months prior to April twenty-fourth, nineteen hundred and six were furnished not for construction, but to operate the plant, such items must be by you deducted from the account."

This was erroneous because it required the jury to separate something which was inseparable. The difficulty is that the charges were inseparably blended, and there was not a particle of evidence from which the jury could determine what portions of the materials were used in the operation of the plant,

in repairs, additions, alterations and in the construction of the various movable chattels. The jury were asked to "make bricks without straw." As a matter of fact the jury made no deduction whatever from the face of the claim, but allowed the whole claim with interest to the date of the verdict.

PROPOSITION No. 1.

The plaintiffs cannot recover, because they did not within the four months next preceding the filing of the lien claim, furnish any labor or materials for or towards the erection or construction of the buildings in question.:

"No debt shall be a lien by virtue of this Act unless a lien claim is filed as hereinafter provided within four months from the date of the last work done or materials furnished, for which said debt is due."

Pamphlet Laws 1898, page 544, Section 18.

The defendant contends that the evidence hereinabove quoted at length shows that the buildings were completed in the latter part of November, nineteen hundred and five, and more than four months preceded the filing of the lien claim. That Muckenhirn had then done everything which he contemplated doing towards the erection and contruction of the buildings.

If we accept as true the statements of the witnesses for the plaintiffs that casings were not provided for the windows, stops were not furnished for the ventilator sash, that there remained to be done about

two or three hours work upon the roof, and that certain water-closets had not been installed, we contend that this is not proof of non-completion of the buildings.

It is evident that Muckenhirn regarded the plant as finished and complete; that he operated it continuously from the latter part of November, nineteen hundred and five until April, nineteen hundred and six, employing in the foundry building from twenty to forty-five hands (case p. 257.) and in the machine shop as many as ninety hands. All of these people worked in the building without inconvenience, and there were operated an engine, shafting and more than fifty turret lathes. During all of this time the buildings housed comfortably and safely the one hundred and twenty-five to one hundred and thirty hands and a lot of valuable machinery. There was nothing required to be added to the buildings in order to permit the workmen to work, and there was nothing incomplete that in any way interfered with the operation of the foundry department. (case p. 244).

The four trifling particulars in which the plaintiff allege the buildings to be incomplete are in matters that are trifling and non-essential, and the doing thereof was never contemplated by Muckenhirn. It cannot be said that because some one other than the owner may have regarded the addition of these details as either important or desirable that the buildings were therefore incomplete. In this case there were no definite plans or specifications, and the real criterion is the intent of the builder. The builder has stated what his intention was and it is uncontradicted. We therefore contend that the undisputed testimony shows that all the buildings in

question were completed in the latter part of November, nineteen hundred and five, and more than four months prior to the filing of the lien.

PROPOSITION NO. 2.

The plaintiffs cannot recover, because the materials and labor furnished did not constitute one continuous transaction, but are founded on different, separate and unrelated orders.

Under the proofs, the material and labor furnished were not for one continuous transaction, but were used for repairs, alterations, additions, operation of the factory, and the construction of sundry movable chattels among which were fifty two trays used under the lathes, fifty two wooden tool trays used along side of the lathes, from twelve to fifteen wooden sand troughs, some ine hundred and fifty bottom boards, ten or twelve spill troughs, a number of tote boxes, re-modeling barrels, tubs, patterns, and other miscellaneous chattels.

"Two things must, therefore, have concurred to draw the plaintiff's claim within the benefit of the statute, viz: a part of it must have occured within the four months, and such part must have been so connected with the earlier part that together they make a single debt."

Downington Mfg. Co., vs Franklin Paper Mills, 63 N. J. L., page 33.

PROPOSITIONS NOS. 3 and 4.

The plaintiffs cannot recover, because a part of

the materials furnished or used in the operation of the factory as distinguished from its erection, such part is indistinguishably blended with the other parts, and the whole must be rejected.

The plaintiffs cannot recover, because a part of the material and labor was used for repairs, alterations and additions, another part was used for the original erection and construction, and such materials are indistinguishably blended, and the whole claim must be rejected.

Proposition No. 3 appears to counsel for the defendant to be self evident. It is beyond dispute that the only foundation for the right to lien for materials and labor furnished for the erection or construction of a building is to be found in the Mechanics' Lien Act. This statute does not give a material man the right to lien a building because he has furnished labor or material for the operation of a factory, or for the construction of movable chattels as distinguished from its erection. Therefore, such part of the claim as represents material used for the purposes of operation cannot form the basis of a mechanics' lien claim, and should be rejected, but it is uncertain what materials were used for repairs, alterations, additions, erection and construction, and the Court is in a position where it must either reject the entire claim, or allow it for an amount for which there is no legal justification. The only proper solution for such a dilemma is the rejection of the entire claim. The plaintiffs always had it in their power to keep an accurate record and to separate the materials furnished for the various purposes above enumerated. Indeed, any

other course would open wide the door for fraud, and would always enable a material man to obtain a lien for a larger amount than the statute authorizes, and for purposes for which there is no statute authority whaeever.

James vs VanHorn, 39 N. J. L. 353. holds that:-

"When a lien claim is filed for debts incurred both for construction and reparation, the claims should distinguish the amounts of each."

The same case at page 359 holds as follows:

"It is also highly essential that the record should show what part of the claim recovered represents construction, and what part reparation. A judgment upon a lien for either or both is conclusive in any collateral proceedings as to the amount of the debt or debts."

"The time at which the debts became liens must be established in such proceedings by extrinsic testimony; and by virtue of the proviso relative to liens for reparation, the establishment of the time in each, as we have already observed, differs. Upon proof of the time of the commencement of the construction, the attachment of the lien for the debt incurred for that purpose is fixed at that time, and the lien of any subsequent encumbrancer is subjected to it. But the discovery of the time of the attachment of the lien for reparation may involve another inquiry, as to whether a person acquiring a lien between the time of the beginning such reparation and the filing of the lien claim, had notice of such work at the time of acquiring his lien."

James vs VanHorn, 39 N. J. L. 353.

In the case of James vs VanHorn items for construction and reparation were blended, and for this reason the case was reversed.

PROPOSITION NO. 5.

Any lien to which the plaintiffs might be entitled by reason of material and labor furnished for or towards the addition to the buildings in question must be limited to the addition itself, and cannot embrace as well the building to which the addition is annexed.

Whitenack vs Noe, 11 N. J. Eq. at page 327.

In the case of Whitenack vs Noe where the lien claimant had constructed a piazza, kitchen, and bar-room to a building, and the new work was held to be an "addition," the court said. "It is further objected to this claim, that it is filed embracing all the buildings, as well the piazzas, kitchen, and bar-room, and is a lien upon them as well as upon the buildings to which these additions are attached. The counsel for the claimants contend that such is the true construction of the act. But I cannot yield assent to this construction."

* * * * * *

"The act declares that every building shall be liable for the payment of any debt contracted, &c., for the erection and construction thereof, and that any addition erected to a former building shall be considered a building for the purposes of this act. The act draws a distinction between the original building and an addition. Any addition erected

to a former building is, then, liable for the payment of any debt contracted in its erection, but the act does not declare that the buildings to which the addition is erected shall be liable for the payment of any debt contracted for the erection and construction of such addition."

PROPOSITION NO. 6.

All of the above propositions were made the basis of a motion for a non-suit (case p. 232), and also the basis of a motion for a directed verdict in favor of the defendant. (case p. 310).

It must have been well known to the mechanics' lien claimants that the Muckenhirn plant was in active operation as a completed and going concern from the latter part of November, nineteen hundred and five. Indeed, by the middle of November, nineteen hundred and five the contractor, Joseph Bell, had ceased his work thereon, and the orders for supplies were given by different persons, the purposes for which they were ordered were not stated, and the total amount of such orders in the case of the Bell claim during the four months preceding the filing of the lien was in all twenty-four dollars and fifty-three cents ($24.53) out of a total of five hun- ($529.18), and in the Wister and Woodnut claim the total supply of materials during the same period amounted to one hundred and eighty-two dollars and sixty-two cents, ($182.62), out of a total of five thousand and twentw-two dollars and seventy cents ($5022.70).

A considerable portion of the material furnished

within the four months period was known by the claimants to have been furnished for the purpose of constructing an addition to the buildings, and not for the original construction. It was, at least, the duty of the claimants to ascertain for what purpose these materials were being ordered before filing a sworn claim that they were furnished for the erection and construction of the buildings. In other words, where it is the duty of a material man to ascertain the truth of the facts which he sets forth in his claim, and where he is required by law to swear to the truth of such facts and he takes an affidavit of the truth thereof without investigation or without knowledge, it must be held to be a fraud upon the act. At the very least it must be construed to be such wilful misstatements as under section No. 16 of the mechanics' lien Act to vitiate the entire lien claim.

For the foregoing reasons the defendant respectfully submits that the judgment of the Circuit Court is erroneous, and should be reversed.

Respectfully submitted

WILSON, CARR and STACKHOUSE,
Attorneys for
CHAS. MEECUM, Trustee, &c.
Plaintiff in Error.

New Jersey Court of Errors and Appeals.

WILLIAM W. BELL, et al, TRADING &c. as WILLIAM W. BELL & COMPANY,

Defendants in Error.

CLAYTON WISTAR, et al, TRADING &c. as WISTAR & WOODNUT,

Defendants in Error.

vs.

CHARLES MECUM, TRUSTEE &c.,

Plaintiff in Error.

ON MECHANICS' LIEN.

ON ERROR TO SALEM COUNTY CIRCUIT.

TWO CASES.

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SALEM COUNTY CIRCUIT COURT.

Cleayton Wistar and Richard H. Woodnut, trading as Wistar & Woodnutt, Claimants.	
vs.	Lien Claim.
Charles H. Muckenhirn, builder, Reliance Brass Company, Owner, and Union Trust Company, Mortgagee.	

Be it known that Cleayton Wistar and Richard H. Woodnutt, trading as Wistar & Woodnutt, of the City of Salem, in the County of Salem and State of New Jersey, file this their claim upon the building and the lots or curtilage whereupon the same is erected, and hereinafter particularly described, pursuant to the provisions of an act of the Legislatuer of the State of New Jersey, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting and building," "Revision 1898, approved June 14, 1898, and the several acts supplemental thereto and amendatory thereof, for a debt contracted and owing by Charles H. Muckenhirn, builder of the said building, to the said claimants for labor performed and materials furnished in and about the erection and repairs of said building, as hereinafter set forth, to wit:

1. The said building is a frame machine shop, or machine factory, or brass factory, with additions, front and sides, and shedding thereto and the lots of

land or curtilages whereon said buildings are erected, are two several lots on the westerly side of Fifth Street, in the City of Salem, New Jersey, and are described as follows:

No. 1. All the following described lot, tract or piece of land, situated in the City of Salem, in the County of Salem and State of New Jersey, and bounded as follows, viz:—Beginning at a point ten feet in a northerly direction from the centre of the track of the Salem Branch Railroad Company in the easterly line of Friends' property, known as the "Quaker Meeting Lot", thence thereby north six degrees fifteen minutes east eighty seven feet to a corner in (formerly) Wistar land, now Hilliard and Sherron, thence thereby south seventy four degrees east two hundred and twenty six and 38/100th feet to the westerly edge of Fifth Street, thence thereby south fourteen degrees west forty and 7/10th feet to a point ten feet in a northerly direction from the centre of the track of said Salem Branch Railroad Company, thence north eighty one degrees forty minutes west two hundred and nineteen and 6/10th feet to the place of beginning. Being the same premises which Charles H. Muckenhirn and Ellen, his wife, by deed bearing date the twentieth day of February 1906, recorded in Salem County Clerk's Office in Book 102 of Deeds, page 225, granted and conveyed to said Reliance Brass Company, its successors and assigns, in fee.

No. 2. Beginning at a stone set for a corner between lands of Thomas T. Hilliard, formerly Hilliard and Sherron, and lands now or late of Charles H. Muckenhirn, which stone is distant two hundred and twenty six and thirty eight hundredths (226.38) feet on a course north seventy four degrees west sixty

seven and eight-tenths (67.8) feet, more or less, along other land leased by said Thomas T. Hilliard from the Society of Friends to a point ten feet distant easterly from the centre line of the freight extension of the Salem Branch Railroad Company leading into property formerly belonging to Hilliard and Sherron, thence along said Railroad and ten (10) feet distant from the centre line thereof on a curve with a radius of three hundred seventy eight (378) feet, the chord of which curve runs south sixty degrees thirty three minutes west one hundred eighty-five (185) feet to a point ten (10) feet distant northerly from the centre of the main line of the said Salem Branch Railroad, thence along the same and ten feet distant northerly therefrom south eighty one degrees forty minutes east two hundred thirteen and two tenths (213.2) feet to the rear line of property now or late of Charles H. Muckenhirn, thence along the same north six degrees fifteen minutes east eighty seven (87) feet to the place of beginning.

II. The name of the owner of the said lot or curtilage whereon said buildings are erected is the Reliance Brass Company, which has an estate in fee simple in Lot No. 1 above described, and a lease for twenty one years in Lot No. 2, above described.

III. The name of the person who contracted the said debt and for whom, or at whose request the said labor was performed or materials furnished, for which the aforesaid lien is claimed, is Charles H. Muckenhirn.

IV. The Union Trust Company of Philadelphia, as mortgagee, claims to have an interest in or claim upon said property.

V. The following is a bill of particulars exhibiting the account and kind of labor performed and ma-

terials furnished by the said claimants, the price at which and the times when the same were performed and furnished, giving credits for all payments made thereupon and deductions that ought to be made therefrom, and exhibiting the balance justly due to the said claimants from the said Charles H. Muckenhirn, and which said labor was performed and materials furnished between the twenty second day of March, 1905, and April 20th, 1906:

Charles H. Muckenhirn

To Cleayton Wistar and Richard H. Woodnutt, trading &c., as Wistar & Woodnutt. Dr.

1905.

Mch. 22.	To	100 ft. H. P. Sc.	$3.00	
		688 " Hem. Plank & Sc.	17.20	
		570 " Fil. Boards	17.10	
		207 " Y. P. Pl.	5.18	
		200 " Y. P. Flooring	5.00	
		96 " Y. P. Joist	2.40	
		159 " Hem. Sc.	3.98	
		200 " Rubberoid roofing	5.00	$58.86
23		108 feet Hem. Bds.	2.81	
		40 " Fil. "	1.20	
		32 " Pld. "	1.44	
		93 " Rubberoid roofing	2.33	
		5 " nails	.20	
		24 " Y. P. S. C.	.60	
		30 " H. P. railing	.60	
		168 " " plank	5.88	
		42 " Hemlock railing	.63	
		53 " Pl. Y. P. boards	1.33	
		Planing	.75	17.77
Apr. 6		11 " Pl. boards	.55	

	8 " W. P. "	.28		
	533 " Fil. "	1.60		
	133 1/3 ft. Pl. Y. P. boards	3.33	5.76	
19	454 " H. P. Sc.	13.62		
	748 " Hem. J. Sc.	18.70		
	934 " Y. P. Plank	23.35		
	548 " Y. P. flooring	15.34		
	678 " " Sheathing,	16.95		10
	133 " fil. boards,	3.99		
	16 " Pl. "	.72		
	344 " Hem. "	8.94		
	550 " rubberoid roofing	13.75		
	5 W. O. posts,	1.25		
	253 feet Y. P. Fil. boards,	6.33		
	12 Sawed Ches. Posts	2.64		
	5 lbs. Nails,	.20	125.78	
				20
26	25 ft. Cedar siding ,	.63		
	16 " Pld. W. P. Lath	.19		
	18 " 6 in. " Boards	.63		
	216 " Hem. Fencing	5.62	7.07	
May 1	3 Sawed Ches. Posts	.66		
	107 ft. Hem. Sc.	2.68		
	23 " H. P. Plank	.81		
	184 " Y. P. 6 in. Boards	4.60		
	80 " " 10 " Pld. "	2.00		30
	32 " " 12 " " "	.80		
	160 " Fil. Boards	4.80	16.35	
12	152 " Hem. Sc.	3.80		
	160 " Fil. Boards	4.80		
	96 " H. P. Plank	3.36		
	100 " Pld. Y. P. Boards	2.50		

		20 " " W. P. "	.90	
		Planing	.30	
		26 " Rubberoid Roofing	.65	
		64 ft. W. P. Boards	2.05	
		133 " Fil. "	3.99	
		16 " H. P. Railing	.32	
		Sawing	.15	
		72 " Y. P. Pld. Boards	1.80	
10		28 " H. P. Sc.	.84	25.46
	25	20 " Cedar Siding	.50	
		11 " Pld. Boards	.50	
		63 " Y. P. Plank	2.21	
		143 " " Pld. Boards	3.50	6.71
	27	72 " H. P. Sc.	2.16	
		140 " Y. P. "	3.50	
20		101 " Hem. "	2.53	
		96 " " Railing	1.44	
		48 " Pld. 6 in. Boards	2.16	11.79
	June 5	32 " Hem. Sc.	.80	
		72 " Y. P. "	1.56	
		103 " " Sheathing	2.58	
		50 " Cedar Siding	1.25	
		24 " Pld. 6 in. Boards	1.08	7.37
30	8	187 " Y. P. "	4.68	
		78 " Pld. "	3.51	
		45 " " Cedar Siding	1.13	
		133 " Fil. Boards	3.99	
		3 " Wide "	.18	
		24 " Y. P. Joists	.60	
		5 Gal. Ruberim	6.25	20.34

June 26	674 " Hem. J. & Sc.	16.85		
	321 " Fil. Boards	9.63		
	310 " Y. P. "	7.75		
	8 " " "	.20		
	32 " " Lath	.22		
	600" Ruberoid Roofing	5.00		
	56 " Pld. 6 in. Boards	2.52	52.17	
July 3	200 " Hem. Plank	5.00		10
	14 " H. P. Sc.	.45		
	128 " W. P. Boards	4.10		
	64 " " "	2.43	11.98	
18	28 " Pld. "	1.26		
	80 " " Y. P.	2.00		
	16 " " " "	.72	3.98	
Aug. 10	96 " H. P. Sc.	3.07		20
	7 " Pld. Boards	.32		
	3 " " wide "	.18		
	20 " H. P. Plank	.80	4.37	
24	144 " Pld. 6 in. Boards	1.48	1.48	
30	20 " " W. P. Plank	1.40		
	154 " Y. P. Boards	3.85		
	251 " H. P. Plank	8.79		
	Sawing & Planing	.35		30
	180 " H. P. Plank	6.30	20.69	
Sept. 9	228 " Hem "	5.70		
	96 " H. P. "	3.36		
	70 " " 2/4 Sc.	1.75		
	48 " " Railing	.72	11.53	

	11	228 " Hem. Plank	5.70	
		116 " H. P. "	4.06	
		200 " Fil. Boards	6.00	
		240 " W. P. "	7.68	
		134 " Pld. 6 in. "	6.03	29.47
	15	160 " Y. P. Boards	4.00	
		52 " Pld. W. P.	2.34	6.34
10				
	Oct. 19	3211 " Long H. P. Frame	160.55	
		5905 " " "	227.34	
		2727 " " Sc.	95.45	
		32 " " 2x4 Sc.	.88	
		16421 " Hem. Joists&Planks	451.58	
		363 " long Hm. Joists	11.18	
		4167 " Y. P. Plank & "	114.59	
		10860 " " "	298.65	
20		10701 " " Pld. Sheathing	294.28	
		3436 " " Frame	94.49	
		1744 " " Flooring	47.96	
		9372 " Fil. W. P. Boards	309.28	
		380 " Pld. " "	18.81	
		16 " " 1/2 "	1.06	
		9800 " Ruberoid Roof'g	269.50	2395.60
	23	188 " Cypress Plank	11.28	
		7 " Wide Pld. Boards	.49	
30		120 " H. P. Sc.	4.20	
		945 " Y. P. Sc.	23.63	
		32 " Hem. "	.90	
		305 " Fil Boards	10.07	50.57
	30	337 " Fil. "	11.12	
		36 " Pld. Siding	.97	
		160 " W. P. Boards	5.60	

	16 " Pld. "	.72		
	315 " H. P. Sc.	12.60		
	415 " H. P. Sc.	14.56		
	928 " " "	32.48		
	294 " Y. P. "	7.35	85.40	
Nov. 3.	107 " Hem. Sc.	3.00		
	192 " " Railing	2.88		
	1008 " Y. P. Pld. Boards	27.22		10
	460 " " Fil. "	12.42		
	160 " H. P. Sc.	5.60	51.12	
7	5664 " " Frame	218.06		
	2118 " " "	88.96		
	1203 " " "	66.17		
	9123 " Hem. Joist & Sc.	280.98		
	7132 " Y. P. "	196.13		
	8107 " " Pld. Sheathing	240.78		20
	4199 " Fil. Boards	152.42		
	5634 " Y. P. Flooring	154.95		
	2717 " " 4-1/2 " ,	89.66		
	90 " H. P. Plank	3.78		
	247 Cedar Poles	27.17		
	1200 " Ruberoid Roofing	66.00		
	12 lbs. Roofing nails	1.32		
	10 " "	.40		
	7 " tin caps	.77	1587.55	30
9	160 ft. Pld. Y. P. Boards	4.32		
	128 " Hem. Sc.	3.58		
	64 " H. P. Plank	2.43		
	20 " W. P. 3 in. Plank	1.10	11.43	
13	256 " Y. P. Pld. Boards	6.91		
	178 " H. P. Sc.	6.23	13.14	

	23	224 " Hem. Plank	6.27	
		544 " Y. P. Flooring	14.59	
		102 " " "	3.06	
		1112 " " Pld. Boards	30.02	
		16 " Y. P. " "	.72	
		266 " Y. P. "	7.18	
		112 " " Sc.	2.80	
		59 " H. P. Plank	2.36	67.00
10				
	Dec. 4	112 " " Sc.	3.92	
		48 " " Plank	1.92	
		128 " Y. P. Boards	3.46	
		307 " Fil. "	10.13	
		22 " Hem. Sc.	.62	20.05
	9	43 " " "	1.20	
		1333 " Fil. Boards	4.44	
20		110 " Cy. Plank	7.15	
		200 " Y. P. Boards	5.40	
		32 " Y. P. "	1.12	19.31
	14	71 " Hem. Joist	1.99	
		27 " " Plank ,	.75	
		757 " Y. P. Boards	20.44	
		15 " Pld. 1/2 "	.83	
		288 " Fel. "	9.50	
		34 " Cypress Plank	2 .21	35.72
30				
	23	119 " H. P. Sc.	4.17	
		176 " Y. P. Sc.	4.40	
		307 " " Boards	8.29	
		22 " Hem. Plank	.62	
		28 " Pld. Boards	1.26	
		605 " Fel. "	19.97	38.71

1906				
Jan. 3.	467 " Y. P. Boards	12.61		
	200 " Fel. "	6.60	19.21	
12	133 1/3 ft. " "	4.39		
	240 ft. Y. P. Boards	6.48	10.87	
Jan. 15.	267 " Fil. "	9.35		
	296 " Y. P. "	7.99	17.34	
				01
24	224 " W. P. "	7.84		
	76 " Hem. Railing	1.14		
	28 " H. P. Planks	1.12		
	128 " Y. P. Boards	3.58	13.68	
Feb. 2	193 " " "	5.38	5.38	
10	80 " " "	2.40		
	80 " " Pld. Boards	2.40		
	16 " Pld. W. P. "	.80		20
	307 " Fil. "	11.67		
	280 " Y. P. Beaded "	9.80	27.07	
20	208 " W. P. Boards	8.32		
	26 " H. P. 2x4 Sc.	1.04		
	1 ℔ nails and caps	.15	9.51	
Mar. 14	347 ft. Fel. Boards	13.19		
	6 " Wide Pld. "	.38	13.55	30
26	147 " Hem. Sc.	4.70		
	252 " " Plank	8.06		
	176 " Y. P. Boards	5.28	18.04	
Apr. 17	107 " Fel. "	4.07		
	161 " Y. P. Pld.	4.83		

		365 " " Flooring	12.78	
		236 " Ruberoid Roofing	5.90	27.58
	20	166 " Y. P. Joist	4.98	
		1 lb caps & 2 lbs. nails	.20	5.18
		78 ft. H. P. Sc.	3.12	
		978 " Hem. Joist & Sc.	31.30	34.42
10				5022.70
Credit				
Nov. 13	by	56 ft. H. P. Sc.	1.96	
		99 " Y. P. Sc.	2.48	
		24 " Hem. Joists	.67	
1906			5.11	
Feb. 19		cash on a/c	1000.00	1005.11
20		balance due		$4017.59

State of New Jersey }
}ss.
Salem County }

Cleayton Wistar, alleging himself to be conscientiously scrupulous of taking an oath and being duly
30 affirmed on his solemn affirmation saith: That he is one of the firm of Wistar and Woodnutt, and one of the claimants named in the foregoing claim, and that the above bill of particulars is for labor done or materials furnished by said claimants in the erection and repairing and equipping of the buildings in the above claim described, at the times therein specified, and that the amount claimed there-

in is justly due and owing to the said claimants from the said Charles H. Muckenhirn.

Affirmed and subscribed to before me this 24th day of April, A. D. 1906
D. HARRIS SMITH
Justice of the Peace.

CLEAYTON WISTAR.

10

Filed and docketed April 24, 1906 at 12.10 P. M.
BENJ. E. HARRIS,
Clerk.

20

(Endorsed) Summons issued on the within claim
April 24th, 1906 BENJ. E. HARRIS,
Clerk.

30

SALEM COUNTY CIRCUIT COURT.

William W. Bell, Cleayton Wistar, and Richard H. Woodnut, trading as William W. Bell and Company. Claimants.	
vs.	Lien Claim.
Charles H. Muckenhirn, builder, Reliance Brass Company, Owner, and Union Trust Company, Mortgagee.	

Be it known that William W. Bell, Cleayton Wistar and Richard H. Woodnut, trading as William W. Bell and Company, of the City of Salem, in the County of Salem, and State of New Jersey, file this their claim upon the building and the lots or curtilage whereupon the same is erected, and hereinafter particularly described, pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building." Revision 1898, approved June 14, 1898, and the several acts supplemental thereto and amendatory thereof, for a debt contracted and owing by Charles H. Muckenhirn, builder of the said building, to the said claimants for labor performed and materials furnished in and about the erection and repairs of said building, as hereinafter set forth, to wit:

1. The said building is a frame machine shop,

or machine factory, or brass factory, with additions, porches, front and sides, and shedding thereto and the lots of land or curtilages whereon said buildings are erected, are two several lots on the westerly side of Fifth street, in the City of Salem, New Jersey, and are described as follows:

No. 1. All the following described lot, tract or piece of land, situate in the City of Salem, in the County of Salem and State of New Jersey, and bounded as follows, viz:—Beginning at a point ten feet in a northerly direction from the centre of the track of the Salem Branch Railroad Company in the easterly line of Friends' property, known as the "Quaker Meeting Lot", thence thereby north six degrees fifteen minutes east eighty seven feet to a corner in (formerly) Wistar land, now Hilliard and Sherron, thence thereby south seventy four degrees east two hundred and twenty six and 38/100th feet to the westerly edge of Fifth Street, thence thereby south fourteen degrees west forty and 7/10th feet to a point ten feet in a northerly direction from the centre of the track of said Salem Branch Railroad Company, thence north eighty one degrees forty minutes west two hundred and nineteen and 6/10th feet to the place of beginning. Being the same premises which Charles H. Muckenhirn and Ellen, his wife, by deed bearing date the twentieth day of February 1906, recorded in Salem County Clerk's Office in Book 102 of Deeds, page 225, granted and conveyed to said Reliance Brass Company, its successors and assigns, in fee.

No. 2. Beginning at a stone set for a corner between lands of Thomas T. Hilliard, formerly Hilliard and Sherron, and lands now or late of Charles H. Muckenhirn, which stone is distant two hundred and

twenty six and thirty eight hundredths (226.38) feet on a course north seventy four degrees west sixty seven and eight-tenths (67.8) feet, more or less, along other land leased by said Thomas T. Hilliard from the Society of Friends to a point ten feet distant easterly from the centre line of the freight extension of the Salem Branch Railroad Company leading into property formerly belonging to Hilliard and Sherron, thence along said Railroad and ten (10) feet distant from the centre line thereof on a curve with a radius of three hundred seventy eight (378) feet, the chord of which curve runs south sixty degrees thirty three minutes west one hundred eighty-five (185) feet to a point ten (10) feet distant northerly from the centre of the main line of the said Salem Branch Railroad, thence along the same and ten feet distant northerly therefrom south eighty one degrees forty minutes east two hundred thirteen and two tenths (213.2) feet to the rear line of property now or late of Charles H. Muckenhirn, thence along the same north six degrees fifteen minutes east eighty seven (87) feet to the place of beginning.

II. The name of the owner of the said lot or curtilage whereon said buildings are erected is the Reliance Brass Company, which has an estate in fee simple in Lot No. 1 above described, and a lease for twenty one years in Lot No. 2, above described.

III. The name of the person who contracted the said debt and for whom, or at whose request the said labor was performed or materials furnished, for which the aforesaid lien is claimed, is Charles H. Muckenhirn.

IV. The Union Trust Company of Philadelphia, as mortgagee, claims to have an interest in or claim upon said property.

V. The following is a bill of particulars exhibiting the account and kind of labor performed and materials furnished by the said claimants, the price at which and the times when the same were performed and furnished, giving credits for all payments made thereupon and deductions that ought to be made therefrom, and exhibiting the balance justly due to the said claimants from the said Charles H. Muckenhirn, and which said labor was performed and materials furnished between the twenty-fifth day of February, 1905, and April 7th, 1906:

Charles H. Muckenhirn

To William W. Bell, Cleayton Wistar and Richard H. Woodnutt, trading &c., as W. W. Bell & Co., Dr.

1905.			
Feb. 25	To	Planing	$.95
Mar. 14	"	2 pieces of oak	.10
18	"	4 window frames 8x12, 1,50	6.00
	"	4 windows 12 lt. 8x12,	6.00
Apr. 15	"	3 window frames 8x12 1.50	4.50
	"	3 windows 12 lt. 8x12 1.50	4.50
May 27	"	1 pc. 21/2x36 ft.	.25
June 28	"	18 sash 9 lt. 8x10, 1.10	19.80
July 1	"	10 ft. i" W. Pine	.50
	"	sawing	.20
8	"	6 lts. glass 8x10	.25
	"	planing	.15
15	"	Sawing 20 - 30	.50
	"	12 ft. planed lumber	.40
19	"	1 bd. 1x8-12 ft.	.40
	"	1 " 1/2x4-6	.15
Aug. 12	"	50 window frames 10x14 1.30	

				65.00
			" 50 windows 12 lt. 10x14	1.07
				85.00
		26	" 56 window frames 8x10	1.10
				61.60
			" 2 window " 12 ft. 8x12	2.50
			" 2 windows " 12 ft. 8x12	3.00
			" sawing and planing	2.35
10			" 48 ft. cypress for beads	2.40
	Sept.	2	" sawing .25, .15, .20	.60
		9	" " and planing	3.30
			" 120 ft. 1x1	1.00
		16	" planing and sawing	3.05
			" 56 sash 12 lt. 8x10, 1.25	70.00
			" 96 ft. 3 sash	1.11
			" 1 strip for measuring	.15
			" strips by Sam Bell	.15
20		23	" sawing and lumber	.20
		30	" 24 window frames 8x10	24.00
			" 50 sash 9 lt. 8x10	55.00
			" 1 block for steam gauge	.40
	Oct.	7	" 2 window frames 8x12, 1.25	
				2.50
			" 2 windows 12 lt. 8x12, 1.50	3.00
		14	" planing and sawing	.60
		17	" 7 window frames 8x12	8.75
30			" 7 windows lt. 8x12	10.50
			" 4 window frames 10x12	5.40
			" 4 windows 10x12, 1.60	6.40
		21	" saw. bds. 11 1/2 & cutting	1.00
			" 20 ft. of lumber	.80
			" sawing	.10
			" 2 glass 8x12	.12
		21	" 890 ft. 1/2x7/8 strips	5.79
			" 1 bd. 18 1/2x20 5/8 thick	

	" 1 bd. 18 1/2x20 1/4 thick		
	" 1 bd. 13 1/2x20 5/8 thick		
	" 1 bd. 13 1/2x20 1/4 "	1.00	
	" planing 1 bd. 1/4	.05	
	" sawing	.15	
28	" planing	.10	
	" 6 glass 8x10	.25	
Nov. 2	" 125 ft. 1/2x7/8 stopt.	.75	
4	" planing	2.65	
Nov. 4	" 2 glass 8x12	.12	01
11	" planing and sawing	1.70	
20	" 8 sash 9 lt. 8x10	8.80	
25	" 1 pattern 22 dia. 6 ft. lumber	.30	
	" work	1.30	
	" 1 lt. glass 12x20	.20	
	" 1 lt. " 10x14	.12	
	" planing 1080 ft.	3.24	
Dec.2	" " and sawing	4.55	20
	" " " "	1.60	
23	" "	3.00	
	" 2 sash 9 lt. 8x10	2.20	
	" 1 sash 9 lt. 8x10	1.10	
	" planing	.30	
30	" " and sawing	1.60	
	" 1 cypress bd.	.20	
	" 1 circle 13" dia. 4 ft. lumber	.24	
	" 1 " 7 " " sawing	.20	30
	" 1 " 14 " Turning	.15	
1906.			
Jan. 6	" planing	1.65	
	" 3 lts glass 10x14	.35	
	" 7 " " 8x12	.49	
	" 6 " " 8x10	.25	
	" Turning on Pattern	.60	

	8	" Jig sawing	.75	
	13	" planing and sawing	1.00	
		" 6 lts. glass 8x10 and putty	.35	
	20	" planing and sawing	1.25	
	27	" " " "	1.20	
		" cutting off 10 bds, 19 1/2 long	.45	
Feb.	3	" planing	1.60	
		" 1 sash 6 ft. 8x10	.80	
		" 10 ft. 2 lumber	.50	
	10	" 3 lb. putty	.15	
		" 15 sawing 50	.50	
	17	" planing and sawing	.90	
		" box 8x10 glass	3.25	
		" 25ft. 1 1/4 W. Pine	1.50	
		" 5 lbs. putty	.25	
	24	" sawing and planing	1.00	
		" cutting off	.50	
		" planing	.25	
Mar.	10	" 2 sash 6 lt. 8x10	1.50	
	31	" planing	.85	
Apr.	7	" planing	.15	$529.18

State of New Jersey }
} ss.
Salem County }

Cleayton Wistar, alleging himself to be conscientiously scrupulous of taking an oath and being duly affirmed on his solemn affirmation, says: that he is one of the firm of William W. Bell & Company, and one of the claimants named in the foregoing claim, and that the above bill of particulars is for

labor done or materials furnished by said claimants in the erection and repairing and equipping of the buildings in the above claim described, at the times therein specified, and that the amount claimed therein is justly due and owing to the said claimants from the said Charles H. Muckenhirn.

Affirmed and subscribed to before me this 24th day of April, A. D. 1906 D. HARRIS SMITH Justice of the Peace.	CLEAYTON WISTAR.

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Filed and docketed April 24, 1906 at 3.30 P. M.
BENJ. E. HARRIS,
Clerk.

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(Endorsed) Summons issued on the within claim
April 24th, 1906 BENJ. E. HARRIS,
Clerk.

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SALEM COUNTY CIRCUIT COURT

CLAYTON WISTAR AND RICHARD H. WOODNUT, TRADING AS WISTAR & WOODNUT, WILLIAM W. BELL, CLAYTON WISTAR AND RICHARD H. WOODNUT, TRADING AS WM. W. BELL & CO., vs. CHARLES MECHUM, TRUSTEE &C., OF CHARLES MUCKENHIRN.	On Contract On Mechanics Lien. Two Cases.

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SALEM, N. J., OCTOBER 24, 1906.

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TESTIMONY.

APPEARANCES:

For Plaintiffs:

J. W. ACTON and HERBERT WARE.

For Defendants:

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WILSON, CARR & STACKHOUSE.

It is agreed between Counsel that the cases of Wistar & Woodnut, vs. Charles Mecum, Trustee, shall be tried together, the issue being the same in each case.

NEW JERSEY, ss. State of New Jersey to Allen B. Endicott, Esquire, Judge of our Circuit Court, at Salem in and for the County of Salem, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit, Court, GREETING:

[L. S.]

Because in the record and proceeding and also in the giving of judgment in a plaint which was in our Circuit Court holden at Salem, in and for the said County of Salem, between William W. Bell, Clayton Wistar and Richard H. Woodnut, partners, trading, etc., as Willia mW. Bell and Company, plaintiffs and Charles Mecum, Trustee in Bankruptcy for Charles H. Muckenhirn, builder and owner, and Union Trust Company, mortgagee, defendants in an action upon contract, on mechanic's lien, manifest error hath intervened to the great damage of the said Charles Mecum, Trustee in Bankruptcy for Charles H. Muckenhirn, builder and owner, as by his complaint we are informed, we being willing that speedy justice should be done to the parties aforesaid in this behalf do command you distinctly and openly to send under your seal the record and proceeding aforesaid with all things touching and concerning the same to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the 16th day of January, nineteen hundred and seven, together with this writ, that the record and proceeding aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and according to the law and custom of the State of New Jersey ought to be done.

WITNESS our Chancellor and President Judge

of our said Court of Errors and Appeals, at Trenton aforesaid the 28th day of December, nineteen hundred and six.

S. D. DICKINSON
Clerk.

Wilson, Carr and Stackhouse,
Attorneys.

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The answer of Allen B. Endicott, Esquire, Judge of the Circuit Court of the County of Salem within named.

The record and proceeding of the plaint whereof mention is made with all things touching the same I certify to our Judges of our Court of Errors and Appeals in the last resort in all causes, at the day and place within contained, in a certain schedule to this writ annexed, as I am commanded.

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ALLEN B. ENDICOTT,
Judge.

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NEW JERSEY, ss. State of New Jersey To Allen B. Endicott, Esquire, Judge of our Circuit Court, at Salem, in and for
[L. S.] the County of Salem, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, GREETING:

Because in the record and proceeding and also in
10 the giving of Judgment in a plaint which was in our Circuit Court holden at Salem ,in and for the County of Salem, between Cleayton Wistar and R. Henry Woodnut, partners trading etc., as Wistar and Woodnutt, plaintiff, and Charles Mecum, Trustee in Bankruptcy for Charles H. Muckenhirn, builder and owner, and Union Trust Company, mortgagee, defendants in an action upon contract, on mechanics' lien, manifest error hath intervened to the great damage of the said Charles Mecum, Trustee in Bank-
20 ruptcy for Charles H. Muckenhirn, builder and owner, as by his complaint we are informed, we being willing that speedy justice should be done to the parties aforesaid in this behalf do command you distinctly and openly to send under your seal the record and proceeding before said with all things touching and concerning the same to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton on the 16th day of January,
30 nineteen hundred and seven, together with this writ, that the record and proceeding aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey ought to be done.

WITNESS our Chancellor and President Judge

of our said Court of Errors and Appeals, at Trenton aforesaid, the 28th day of December, nineteen hundred and six.

S. D. DICKINSON,
Clerk.

Wilson, Carr & Stackhouse,
Attorneys.

10

The answer of Allen B. Endicott, Esquire, Judge of the Circuit Court of the County of Salem within named.

The record and proceeding of the plaint whereof mention is within made with all things touching the same I certify to our Judges of our Court of Errors and Appeals in the last resort in all causes, at the day and place within contained, in a certain schedule to this writ annexed, as I am commanded. 20

ALLEN B. ENDICOTT,
Judge.

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SALEM COUNTY CIRCUIT COURT.

Willia mW. Bell, Clayton Wistar and Richard H. Woodnutt, partners, trading etc., as William W. Bell and Company, Plaintiffs, V. Charles Mecum, Trustee in Bankruptcy for Charles H. Muckenhirn, builder and owner, and Union Trust Company, Mortgagee, Defendants.	On Mechanics Lien. Upon Contract.

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As yet of the term of September, in the year of our Lord, one thousand nine hundred and six.

Witness:

Allen B. Endicott, Judge, Benjamin E. Harris, Clerk. Salem County Circuit Court.

Of the seventh day of May, A. D. Nineteen hundred
30 and six. Salem County, ss.

Charles H. Muckenhirn, builder, Reliance Brass Company, owner and Union Trust Company, mortgagee, the defendants in this suit, were summoned by the Sheriff of the County of Salem by serving copies of the summons issued in this cause, on the said Charles H. Muckenhirn, and Reliance Brass

Company and Union Trust Company, to answer unto Cleayton Wistar and Richard Henry Woodnutt and William W. Bell, partners trading as William W. Bell and Company, the Plaintiffs therein in an action upon contract, and thereupon the said Plaintiffs by Jonathan W. Acton, their attorney, complain for that whereas the said defendants the said Charles H. Muckenhirn heretofore, to wit, on the seventh day of April, nineteen hundred and six, at Salem, in the County of Salem was indebted to the said Plaintiffs in the sum of One Thousand Five Hundred Dollars for work done and labor, care and diligence of the said Plaintiffs before that time done, performed and bestowed for the said defendant and at his special instance and request, and also for divers materials and other necessary things by said Plaintiff before that time found, provided, used and applied in and about the work and labor for the said defendant and at his special instance and request, and in the further sum of one thousand five hundred dollars for goods, wares and merchandise sold and delivered by the said plaintiffs to said defendant at his instance and request, and in the like sum of money for the price and value of goods bargained and sold by the plaintiffs to the defendant at his request, and in the like sum of money for the price and value of work done and materials for the same provided by the plaintiffs for the defendant at his request, and in the like sum of money for money lent by the Plaintiffs to the defendant at his request, and in the like sum of money for interest due from the defendants to the plaintiffs, the plaintiffs having forborne moneys due from the defendant to the plaintiffs at his request for a long time elapsed, and in the like sum of mon-

ey found to be due from the defendant to the plaintiffs on an account then and there stated between them, and the defendant afterwards, to wit, on the day and year aforesaid, in consideration of the premises, promised to pay the said several last mentioned moneys respectively to the plaintiffs on request, yet the defendant has disagreed his promises and has not paid any of the said moneys or any part thereof to the plaintiffs' damage fifteen hundred dollars, and therefore plaintiffs bring their suit, &c.

And the said plaintiffs aver, and in fact say that the said debt is by virtue of the provisions of an act of the legislature of the State of New Jersey, entitled "An Act to secure to Mechanics and others payment for their labor and materials in erecting any building. Revision of 1898, approved June 14, 1898, and the several supplements thereto, and is a lien on all the certain building and curtilage thereto described as follows.

Being those certain lots upon which the frame machine shops of the Reliance Brass Company are situate.

No. 1. Begins at a point ten feet in a northerly direction from the centre of the track of the Salem Branch Railroad Company in the easterly line of Friends property, known as the "Quaker Meeting Lot," thence north six degrees fifteen minutes east eigthy seven feet to a corner, formerly Wistar land, now Hilliars and Sherron, thence thereby south seventy four degrees east two hundred and twenty six and thirty eight hundred feet to the westerly edge of Fifth Street, thence thereby south fourteen degrees west forty and seven tenths feet to a point ten feet in a northerly direction from the centre of the tract of

said Salem branch Railroad Company, hence north eighty one degrees forty minutes west two hundred and nineteen and six tenths feet to the beginning. Being the same premises conveyed to Reliance Brass Company by Charles H. Muckenhirn and wife by deedd ated February twentieth, nineteen hundred and six, and recorded in Salem County Clerk's Office in Book No. 102 of Deeds, page 225 &c..

No. 2. Is that certain tract of land and premises leased to Charles H. Muckenhirn, by indenture dated January fifth, nineteen hundred and six, for the term of twenty one years and which lease was assigned to Reliance Brass Company February twenty fourth, nineteen hundred and six, and thus described, situate at the lower end of the westerly side of Fifth Street, in the City of Salem, bounded as follows, viz:

Beginning at a stone for a corner, between lands of Thomas T. Hilliard, formerly Hilliard and Sherron, and lands now or late of Charles H. Muckenhirn, which stone is distant two hundred and twenty six and eighth hundredths (226.38) feet on a course north seventy four degrees west sixty seven and eight tenths (67.8) feet more or less along other land leased by said Thomas T. Hilliard from the Society of Friends to a point ten feet distant easterly from the centre line of the freight extension of the Salem Branch Railroad Company leading into property formerly belonging to Hilliard and Sherron, thence along said Railroad and ten feet distant from the centre line thereof on a curve with a radius of three hundred and seventy eight (378) feet, the chord of which curve runs sixty degrees thirty three minutes west one hundred eighty five (185) feet to a point ten (10) feet distant northerly from the cen-

tre of the main line of the said Salem Branch Railroad, thence along the same and ten feet distant northerly therefrom south eighty one degrees forty minutes east two hundred thirteen and two tenths (213.2) feet to the rear line of property now or late of Charles H. Muckenhirn, thence along the same north six degrees fifteen minutes eighty seven (87) feet to the place of beginning. And consisting of
10 a frame machine shop, sheds and foundry located on both of the above described lots. And upon which said Union Trust Company holds a mortgage of record.

JONATHAN W. ACTON,
Attorney for Plaintiff.

Notice to defendants the following is a bill of particulars of the work and labor performed and ma-
20 terials furnished for the said defendants, Charles H. Muckenhirn, by the said plaintiffs and for which the said suit is brought.

Charles H. Muckenhirn
to William W. Bell and Company, Dr.

1905.		
Feb. 25	To Planeing	.95
Mar. 14	" 2 pieces of oak	.10
Mar. 18	" 4 window frames 8 x 12	6.00
30	" 4 windows 12 lt. 8x12	6.00
Apr. 15	" 3 window frames 8x12 1.50 each	4.50
	" 3 wdws 12 lt. 8x12 1.50	4.50
May 27	" 1 pc. 2½x3 6 ft.	.25
June 28	" 18 sash 9 lt. 8x10 1.10	19.80
July 1	" 10 ft. 1 in. W. Pine	.50

	" sawing	.20	
July 8	" 6 lts. glass 8x10	.25	
	" Planeing	.15	
July 15	" sawing 20-30	.50	
	" 12 ft. of planed lumber	.40	
July 19	" 1 bd. 1x8 12 ft.	.40	
	" 1 bd. 1/2x4-6	.15	
Aug. 12	" 50 wdw. frames 10x14, 1.30	65.00	10
	" 50 wdw. 121t 10x14 1.70	85.00	
Aug. 26	" 56 wdw frms 8x10, 1.10	61.60	
	" 2 wdws frms 12ft. 8x12	2.50	
	" 2 wdw frms 12ft. 8x12	3.00	
	" sawingand planeing	2.35	
	" 48ft Cypress for beads	2.40	
Sept. 2	" Sawing .25 .15 .20	.60	
Sept. 9	" sawing and planeing	3.30	
	" 120ft lxl	1.00	20
Sept. 16	" Planeing and sawing	3.05	
	" 56 sash 12 lt 8x10, 1.25	70.00	
	" 96 ft. sash	1.11	
	" 1 strip for measuring	.15	
	" strips by Sam Bell	.15	
Sept. 23	" Sawing and lumber	.20	
Sept. 30	" 24 window frames 8x10	24.00	
	" 50 sash 9 lt 8x10	55.00	
	" 1 block for steam gauge	.40	30
Oct. 7	"Window frames 8x12	2.50	
	" 2 Windows 12 lt 8x12	3.00	
Oct. 14	" Planeing anw eawing	.60	
Oct. 17	" 7 window frames 8x12	8.75	
	"7 window lts 8x12	10.50	
	" 4 window frames 10x12	5.40	
	" 4 windows 10x12, 1.60	6.40	

	Oct. 21	" Sawing bds 11½ & ctg	1.40
		" 20 ft of lumber	.80
		" Sawing	.10
	Oct. 21	To 2 glass 8 x 12	.12
	Oct. 21	" To 980 ft ½x⅞ strips	5.79
		" 1 bd 18 ½x20⅝ thick	
		" 1 bd 1 ½x20¼ thick	
		" 1 bd 18½x20⅝ thick	
10		" 1 bd 3½x202¼ thick	1.00
		" Planing 1 bd ¼	.05
		" Sawing	.15
	Oct. 28	" Planeing	.10
	1905		
	Oct. 28	To 6 glass 8x10	.25
	Nov. 2	" 125 ft ½x⅞ stop	.75
	Nov. 4	" Planeing	2.65
		" 2 glass 8x12	.22
20	Nov. 11	" Planeing and sawing	1.70
	Nov. 20	" 8 sash, 9 lts 8x10	8.80
	Nov. 25	" Pattern 22 dia ft lum.	.30
		" work	1.30
		" sawing	.75
		" 1 lt glas̄s 12x30	.20
		" 1 lt glass 10x14	.12
		" Planeing 1080 ft	3.24
	Dec. 2	" Planeing and sawing	4.55
		" Planeing and sawing	1.60
30		" Planeing b planing	3.00
		" 2 sash 9 lt 8x10	2.20
		" 1 sash 9 lt 8x10	1.10
		" Planeing	.30
	Dec. 30	" Planeing and sawing	1.60
		" 1 Cypress bd	.20
		" 1 circle 13'' dia 4 ft lum.	.24

	" 1 circle 7" sawing	.20		
1906	" circle 14" Turning	.15		
Jan. 6	" Planeing	1.65		
	" 3 lts glass 10x14	.35		
	" 7 lts glas^{s} 8x12,	.49		
	" 6 lts glass 8x10	.25		
	" Turning on Pattern	.60		
Jan. 8	" Jig sawing	.75		
Jan. 13	" Pla and sawing	1.00		10
	" 6 lts glass 8x10 & putty	.35		
Jan. 20	" Planeing and sawing	1.25		
	" Planeing and sawing	1.20		
	" Ctng off 10 bds 18½ long	.45		
Feb. 3	" Planeing,	1.60		
	" 1 sash 6 lt 8x10	.80		
	" 10 ft 2 lumber	.50		
	" 3lb putty	.15		
Feb. 10	" sawing 50	.50		20
Feb. 17	" Pla and sawing	.90		
	"" box 8x10 glas^{s}	3.25		
	25 ft 1¼ W. Pine	1.50		
	" 5 lb putty	.25		
	" sawing and planeing	1.00		
	" cutting off	.50		
	" planeing	.25		
Mar. 10	" 2 sash 6lt 8x10	1.60		
Mar. 31	" planeing	.85		30
Apr. 7	" planeing	.15	$529.18	
	Int. 6 mo. 6 days,		17.73	
			$546.91	

At the trial of this cause judgment will be claimed for Five Hundred and twenty nine dollars and eighteen cents with interest from the seventh day of April nineteen hundred and six, besides costs of suit to final judgment.

JONATHAN W. ACTON,
Attorney for Plaintiffs.

10 To the within named defendants.

In case the within summons and declaration are served upon you personally then take notice that if you intend to make a defence to this action, you must file an affidavit of merits within ten days from the date of the service hereof upon you, and that unless you file such affidavit judgment by default will be entered against you at the end of said ten days, and that in case you file said affidavit, unless you file a
20 plea or demurrer within twenty days from the date of service hereof upon you, judgment by default will, in such case be entered against you at the end of said twenty days.

In case the within summons and declaration are served upon you by the leaving of a copy at your dwelling house, or place of abode, then take notice, that unless you appear and file a plea or demurrer within twenty days after the date of the service hereof upon you, judgment will be entered against
30 you.

JONATHAN W. ACTON.
Attorney.

SALEM COUNTY CIRCUIT COURT.

Charles W. Casper, William W. Bell, Cleayton Wistar and Richard H. Woodnutt,, trading as William W. Bell and Company, —and— Cleayton Wistar, and Richard H. Woodnutt, trading as Wistar and Woodnutt, Plaintiffs. —vs— Charles H. Muckenhirn, et al, Defendants.	On Mechanic's Lien. Order.

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It appearing to the Court that due notice of this application has been given, and Jonathan W. Acton appearing for the plaintiffs. and Wilson, Carr and Stackhouse appearing for Charles Mecum, petitioner, and it further appearing that since the commencement of the above named suits the Reliance Brass Company, one of the defendants, did on the fifth day of May, nineteen hundred and six, grant and convey all of its estate in and to the lands and premises particularly described in the respective writs of summons herein to Charles H. Muckenhirn, and it further appearing that the said Charles H. Muckenhirn was duly adjudged a bankrupt by the United States District Court for the District of New Jersey, and that Charles Mecum was appointed trustee in

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bankruptcy of the said Charles H. Muckenhirn, it is on this 31st day of July, nineteen hundred and six, ordered that Charles Mecum, Trustee in bankruptcy as aforesaid, be, and he hereby is, authorized and empowered to file a plea as owner of the lands and premises particularly described in the several writs of summons herein, and it is further ordered that the said Charles Mecum, Trustee as aforesaid, have leave to file a plea in all of the above stated causes within fifteen days from the date of this order, and that a copy of said plea be served upon the said plaintiffs.

On motion of

Wilson, Carr and Stackhouse,
Attorneys for Charles Mecum,
Petitioner.

Let this rule be entered.

Allen B. Endicott,
C. C. J.

SALEM COUNTY CIRCUIT COURT.

William W. Bell,, Cleayton Wistar, and Richard H. Woodnutt, trading etc., as Willia mW. Bell & Co., Plaintiffs, -vs- Charles H. Muckenhirn, builder et al. Defendant.	On Mechanics Lien. Plea of Charles Mecum, Trustee in Bankruptcy of Charles H. Muckenhirn, Owner.

And the said Charles Mecum, Trustee in bankruptcy of Charles H. Muckenhirn, in pursuance of the order of the Court entered herein on the thirty-first day of July, nineteen hundred and six, authorizing and empowering the said Charles Mecum to file a plea as owner of the lands and premises particularly described in the several writs of summons herein, by Wilson Carr and Stackhouse, his attorneys comes and defends the wrong and injury when, etc., and says: That the said Charles H. Muckenhirn, Builder, did not undertake and promise in manner and form as the plaintiffs hath above thereof complained against him, and of this he puts himself upon the country, etc.

And for a further plea in this behalf the said defendant says that the said plaintiffs ought not further to have or maintain their aforesaid action thereof against him and against the said buildings and

lands in the plaintiffs declaration above mentioned and described, because he says that said building and lands are not liable to the supposed debt in manner and form as the plaintiffs hath above thereof complained against him, and of this he puts himself upon the country, etc.

Wilson, Carr & Stackhouse,
Attorneys for Defendants.

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STATE OF NEW JERSEY,
COUNTY OF SALEM. ss.

Charles Mecum, of full age, being duly sworn according to law, on his oath says: That he is the defendant named in the foregoing plea, that the said plea is not filed for the purpose of delay, but that this deponent believes that said defendant has a
20 just and legal defense to the above action upon the merits of the case.

Sworn and subscribed to before me this 4th day of August 1906.

Charles Mecum.

J. Forman Sinnickson,
M. C. C.

Therefore, the Sheriff is commanded that he cause
30 to come before the Judge of the Circuit Court of the County of Salem, at Salem, in the County of Salem, on the twenty fifth day of October, in the year of our Lord one thousand nine hundred and six, a jury by whom the truth of the matter may be better known, and who are in no wise of kin either to William W. Bell, Clayton Wistar and Richard H. Wood-

nutt, partners trading as William W. Bell and Company, the plaintiffs, and Charles Mecum, Trustee in bankruptcy for Charles H. Muckenhirn, builder and owner, et al., defendants, to make a certain jury of the country between the parties aforesaid, in an action upon contract, on mechanics lien, because as well the said Charles Mecum, Trustee in Bankruptcy for Charles H. Muckenhirn, builder and owner et al., as the said William W. Bell, Cleayton Wistar and Richard H. Woodnutt, partners, trading as William W. Bell and Company, between whom the matter in variance is, have put them selves upon that jury and the same day is given to the parties aforesaid then and thereto try the difference as aforesaid and render judgment thereon.

And the jurors of the jury whereof mention is made, also come, who to speak the truth of the matter within contained, being chosen, tried and sworn, upon their oaths say that they find for the plaintiffs in the sum of five hundred and forty six dollars and ninety one cents. And the court doth order judgment final in favor of the plaintiffs and against the defendants in the following form, that is to say: That judgment final for the said sum of five hundred and forty six dollars and ninety one cents, damages assessed by the said jury as aforesaid, with costs to be taxed be entered in favor of the said plaintiffs and against the said defendant, Charles H. Muckenhirn, both builder and owner, and specially to be made of the lands and buildings in said declaration described.

Therefore it is considered that the said plaintiffs do recover against the said defendant, Charles Mecum, Trustee in bankruptcy for Charles H. Mucken-

hirn, both builder and owner, the sum of five hundred and forty six dollars and ninety one cents, damages by the jurors aforesaid in form aforesaid assessed, and also the sum of sixty seven dollars and four cents for their said costs and charges, by the said court now here adjudged of increase to the said plaintiffs, and with their assent, which said damages, costs and charges in the whole amounting to the sum of six hundred thirteen dollars and ninety five cents.

And it is also considered that the lien of the sum so adjudged to be due the said plaintiffs is prior to the lien of the mortgage of the said defendant, Union Trust Company.

And the said defendants in mercy, &c.,

Allen B. Endicott,,
C. C. J.

Judgment actually entered November 9, 1906 at 9 A. M. and recorded.

Benj. E. Harris,
Clerk.

SALEM COUNTY CIRCUIT COURT.

Cleayton Wistar and R. Henry Woodnutt, partners, trading etc., as Wistar & Woodnutt, Plaintiffs,	On Contract.
V.	
Charles Mecum, Trustee in bankruptcy for Charles H. Muckenhirn, builder and owner, and, Union Trust Company, mortgagee.	On Mechanics Lien.

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As yet of the term of September, in the year of our Lord, one thousand nine hundred and six.

Witness:

Allen B. Endicott, Judge,
Benjamin E. Harris, Clerk.

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SALEM COUNTY CIRCUIT COURT.

Of the seventh day of May, A. D. nineteen hundred and six. Salem County, ss.

Charles H. Muckenhirn, builder, Reliance Brass

Company, owner, and Union Trust Company, mortgagee, the defendants in this suit, were summoned by the Sheriff of the County of Salem by serving copies of the summons issued in this cause, on the said Charles H. Muckenhirn, and Reliance Brass Company and Union Trust Company, to answer unto Cleayton Wistar and Richard Henry Woodnutt, Partners, trading as Wistar and Woodnutt, the Plaintiffs therein in an action upon contract and thereupon the said plaintiffs by Jonathan W. Acton, their attorney, complain for that whereas the said defendant the said Charles H. Muckenhirn heretofore, to wit, on the twentieth day of April, nineteen hundred and six, at Salem, in the County of Salem was indebted to the said plaintiffs in the sum of eight thousand dollars for work done and labor, care and diligence of the said plaintiffs before that time done, performed and bestowed for the said defendant and at his special instance and request, and also for divers materials and other necessary things by said plaintiffs before that time found, provided, used and applied in and about the work and labor for the said defendant and at his special instance and request, and in the further sum of eight thousand dollars for goods, wares and merchandise sold and delivered by the said plaintiffs to the said defendant at his instance and request, and in the like sum of money for the price and value of goods bargained and sold by the plaintiffs to the defendant at his request, and in the like sum of money for the price and value of work done and materials for the same provided by the plaintiffs for the defendant at his request, and in the like sum of money for money lent by the plaintiffs to the defendant at his request, and in the like

sum of money for interest due from the defendant to the plaintiffs, the plaintiffs having forborne moneys due from the defendant to the plaintiffs at his request for a long time elapsed, and in the like sum of money found to be due from the defendant to the plaintiffs on an account then and there stated between them, and the defendant afterwards, to wit, on the day and year aforesaid, in consideration of said premises, promised to pay the said several last mentioned moneys respectively to the plaintiff on request, yet the defendant has disregarded his promise and has not paid any of the said moneys or any part thereof to the plaintiffs damage Eight thousand dollars and therefore plaintiffs bring their suit, &c.

And the said plaintiffs aver, and fact say that the said debt is by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act to secure to mechanics and others payment for their labor and materials in erecting any building." Revision of 1898, Approved June 14, 1898, and the several supplements thereto, and as a lien on all the certain building and curtilage thereto described as follows:

Being those certain lots upon which the frame machine shops of the Reliance Brass Company are situate.

No. 1. Situate on the westerly side of Fifth Street in the City of Salem. Beginning at a point ten feet in the northerly direction from the centre of the track of the Salem Branch Railroad Company in the easterly line of the Friends property, known as the "Quaker Lot", thence north six degrees fifteen minutes east eighty seven feet

to a corner formerly Wistar land, now Hilliard and Sherron, thence thereby seventy four degrees east two hundred and twenty six and thirty eight hundredths feet to the westerly edge of Fifth Street, thence thereby south fourteen degrees west forty and seven tenth feet to a point ten feet in a westerly direction from the centre of the track of the said Salem Branch Railroad Company, thence north eighty one degrees forty minutes west two hundred and nineteen and six tenth feet to the beginning. Being the same premises conveyed to Reliance Brass Company by Charles H. Muckenhirn and wife by deed dated February twentieth, nineteen hundred and six, and recorded in Salem County Clerk's Office in Book No. 102 of deeds, page 225 &c.

No. 2. Is that certain tract of land and premises leased to Charles H. Muckenhirn by indenture dated January fifth, nineteen hundred and six, for the term of twenty one years, and which lease was assigned to Reliance Brass Company February twenty fourth, nineteen hundred and six, and thus described:

Situate at the lower end of the westerly side of Fifth Street in the City and County of Salem, bounded as follows; viz: Beginning at a stone set for a corner between lands of Thomas T. Hilliard, formerly Hilliard and Sherron, and lands now or late of Charles H. Muckenhern, which stone is distant two hundred and twenty six and thirty eight hundredths (226.38) feet on a course north seventy four degrees west sixty seven and eight tenths (67.8) feet more or less along other land leased by said Thomas T. Hilliard from the Society of Friends to a point ten feet distant easterly from the centre line of the freight extension of the Salem Branch Railroad Com-

pany leading into property formerly belonging to Hilliard and Sherron, thence along said railroad and ten (10) feet distant from the centre line thereof on a curve with a radius of three hundred seventy eight (378) feet, the chord of which curve runs south sixty degrees thirty three minutes west one hundred eighty five (185) feet to a point ten (10) feet distant northerly from the centre of the main line of the said Salem Branch Railroad, thence along the same and ten feet distant northerly therefrom south eighty one degrees forty minutes east two hundred thirteen and two tenths (213.2) feet to the rear line of property now or late of Charles H. Muckenhirn, thence along the same north six degrees fifteen minutes east eighty seven (87) feet to the place of beginning. And consisting of a frame machine shop or foundry and sheds located on both of the above described lots.

Jonathan W. Acton,
Attorney of Plaintiff.

Notice to Defendants: The following is a bill of particulars of the work and labor performed and materials furnished for the said defendant, Charles H. Muckenhirn, by the said plaintiffs and for which the said suit is brought:

Charles H. Muckinhern,

To, Wistar and Woodnutt, Dr.

1905.			
March 22	To	100 ft.h.p.Cc.,	$3.00
		688 " Hem. Plk & Sc.,	17.20
		570 " Fil. Boards,	17.10
		207 " Y.P.Pl.,	5.18
		200 " Y.P.Flooring,	5.00

		96 " Y.P.Joist,	2.40	
		159 " Hem. Sc.,	5.98	
		200 " Rubberoid Roofing,	5.00	$58.86
	" 23	108 " Hem.boards,	2.81	
		40 " Fil, "	1.20	
		32 " Pld. "	1.44	
		93 " Rubberoid roofing,	2.33	
10		5 lbs Nails	.20	
		24 ft. Y.P.S.C.,	.60	
		30 " H.P.Railing,	.60	
		168 " H.P.Plank,	5.88	
		42 " Hem. railing,	.63	
		53 " Pl.Y.P. Boards,	1.33	
		Planing,	.75	17.77
	April 6	11 " Pl. boards,	.55	
20		8 " W.P.Boards,	.28	
		553 " Fil.Boards,	1.60	
		133 1/3 ft. Pl.Y.P.bdr,	3.33	5.76
	" 18	454 " H.P.Sc.Boards	13.62	
		748 " Hem.J.&Sc.,	18.70	
		934 " Y.P.Plank,	23.35	
		548 " Y.P.Flooring ,	15.34	
		678 " Y.P.Sheating,	16.95	
30		133 " Fil.Boards,	3.99	
		16 " Pld.6 in."	.72	
		344 " Hem. "	8.94	
		550 " Rubberoid roofing,	13.75	
		5 W.O.Posts,	1.25	
		253 " Y.P.Fil Boards	6.33	
		12 Sawed Ches Posts	2.64	
		5 lbs Nails	.20	125.78

" 26	25 ft. Cedar siding	.63		
	16 " Pld. W.P.Lath,	.19		
	18 " Pld. W. P. Boards,	.63		
	216 " Hem. Fencing,	5.62	7.07	
	3 Sawed Ches.Posts,	.66		
	107 " Hem. Sc.,	2.68		
	23 " H. P. Plank,	.81		
	184 " Y.P. 6 in. Boards	4.60		10
	80 " Y.P. 10 in Pld.	2.00		
	32 " Y.P. 12 in. Pld.	.80		
	160 " Fil. Boards,	4.80	16.35	
May 12,	152 ft Hem.Sc.,	$3.80		
	160 " Fil. Boards,	4.80		
	96 " H.P.Planks,	3.36		
	100 " Pld. Y.P.Boards,	3.50		
	20 " W. P. Boards,	.90		20
	Planing,	.30		
	26 " Rubberoid Roofing	.65		
	64 " W. P. Boards	2.05		
	133 " Fil. Boards,	3.99		
	16 " H. P. Railing,	.32		
	Sawing,	.15		
	72 " Y. P. Pld. Boards,	1.80		
	28 " H. P. Sc.,	.84	$25.46	
				30
May 25	20 " Cedar Siding,	.50		
	11 " Pld. Boards,	.50		
	63 " Y. P. Plank	2.21		
	143 " Y. P. Boards,	3.50	6.71	
May 27	72 " Y. P. Boards,	3.16		
	140 " Y. P. Sc.,	3.50		

		101 " Hem. Sc.,	2.53	
		96 " Hem. Railing,	1.44	
		48 " Pld. 6 in. Boards,	2.16	11.79
	June 5	32 " Hem. Sc.,	.80	
		72 " Y. P.	1.66	
		103 " Y. P. Sheathing,	2.58	
		50 " Cedar Siding,	1.25	
10		24 " Pld. 6 in. Boards,	1.0 8	7.37
	June 8	187 " Y. P. 6 in. Boards,	4.68	
		78 " Pld. 6 in. Boards	3.51	
		45 " Pld. Cedar Siding,	1.13	
		133 " Fil. Boards,	3.99	
		3 " Wide Boards,	.18	
		24 " Y. P. Joists,	.60	
		5 Gal. Ruberine,	6.25	20.34
20	June 26	674 " Hem. Jt. & Sc.,	16.85	
		321 " Fil. Boards,	9.63	
		310 " Y. P. Boards,	7.75	
		8 " Y. P. Boards,	.20	
		32 " Y. P. Lath,	.22	
		600 " Ruberoid Rofi'g, 2½,	15.00	
		56 " Pld. 6 in. Boards,	2.52	52.17
30	July 3	200 " Hem. Plank,	5.00	
		1 4 " H. P. Sc.,	.45	
		128 " W. P. Boards,	4.10	
		64 " W. P. Boards,	2.43	11.98
	July 18	28 " Pld. Y. P. Boards,	1.26	
		80 " Pld. Y. P. Boards,	2.00	
		16 " Pld. W. P. Boards,	.72	3.98

Aug. 10	96 " H. P. Sc.,	3.07		
	7 " Pld. Boards,	.32		
	3 " Pld. wide boards,	.18		
	20 " H. P. Plank,	.80	4.37	
Aug. 24	144 " Pld. Boards,	1.48		
	20 " Pld. W. P. Boards,	1.40		
	154 " Y. P. Boards,	3.85		
	251 " H. P. Plank,	8.79		10
	Sawing and Planing,	.36		
	180 " H. P. Plank,	6.30	20.69	
Sept. 9	228 " Hem Plank,	5.70		
	96 " H. P. plank,	3.36		
	70 "" H. P. 2/4 Sc.,	1.75		
	48 " H. P. Railing,	.72	11.53	
	228 " Hem. Plank,	5.70		20
	116 " H. P. Plank,	4.06		
	200 " Fil. Boards,	6.00		
	240 " W. P. Boards,	7.68		
Sept. 15	134 " Pld. Boards,	6.03	29.47	
	160 " Y. P. Boards,	4.00		
	52 " Pld. W. P. Boards,	2.34	6.34	
Oct. 19	3211 " Long H. P. Frame	160.55		30
	5905 " Long H. P. Frame,	227.34		
	2727 " Long H. P. Sc.,	95.45		
	32 " Long H. P. 2x4 Sc.,	.88		
	16421 " Hem. Joist & Plank,	451.58		
	363 " Long Hem. Joist,	11.18		
	4167 " Y. P. Pl. & Jst. 27½	114.59		
	10860 " Y. P. Pl. & Jst 27 ½	298.65		

		10701 " Y. P. Pld. Sheathing 27 ½	294.28	
		3436 " Y. P. Frame, 27 ½	94.49	
		1744 " Y. P. Flooring, 27 ½	47.96	
		9372 " Fil. W. P. Boards,	309.38	
		380 " Pld. W. P. Boards,	18.81	
		16 " Pld. ½ boards 6,	1.06	
		9800 " Ruberoid Roofing,	269.50	2395.60
10				
	Oct. 23	188 " Cypress plank,	11.28	
		7 " Wide Pld. Boards,	.49	
		120 " H. P. Sc.,	4.80	
		945 " W. P. 3x6 Sc.,	23.63	
		32 " Hem. 3x6 Sc.,	.90	
		305 " Fil. Boards,	10.07	50.57
	Oct. 3$	337 " Fil Boards,	11.12	
		36 " Pld. C. Siding,	.97	
20		160 " W. P. Boards,	5.60	
		16 " Pld. Boards,	.72	
		315 " H. P. Sc. Boards,	12.60	
		416 " H. P. Sc., Boards	14.56	
		928 " H. P. Sc. Boards	32.48	
		294 " Y. P. 3x6 Boards,	7.35	85.40
	Nov. 3	107 " Hem. Sc.,	3.00	
		192 " Hem. Railing,	2.88	
30		1008 " Y. P. Pld. Boards,	27.22	
		460 " Y. P. Fel. Boards,	5.60	51.12
				3027.96
	Nov. 7	5664 " H. P. Frame,	218.06	
		2118 " H. P. Frame,	88.96	
		1203 " H. P. Frame	66.17	

	9123 " Hem. Joist & Sc.,	280.98		
	7132 " Y. P. Joist	196.13		
	8107 " Pld. Sheathing,	240.78		
	4199 " Fel. Boards,	152.42		
	5634 " Y. P. Flooring,	154.95		
	2717 " Y. P. Flooring,	89.66		
	90 " H. P. Plank,	3.78		
	247 " Cedar poles,	27.17		
	1200 " Ruberoid Roofing,	66.00		10
	12 lbs. Roofing nails	1.32		
	10 lbs. Roofing nails	.40		
	7 lbs. Tin caps,	.77	1587.55	
Nov. 9	160 ft. Pld. Y. P. Boards,	4.32		
	128 " Hem. Sc.,	3.58		
	64 " H. P. Plank,	2.43		
	20 " W. O. in. plank	1.10	11.43	
				20
Nov. 13	256 " Y. P. Bld. Boards,	6.91		
	178 " H. P. Sc.,	6.23	13.14	
Nov. 23	224 " Hem. 2x8 plank,	6.27		
	544 " Y. P. 6 in. Flooring,	14.59		
	102 " Y. P. Flooring,	3.06		
	1112 " Pld. Boards,	30.02		
	16 " Y. P. Pld. Boards,	.72		
	266 " Y. P. Pld. Boards,	7.18		
	112 " Y. P. Pld. Boards,	2.80		30
	59 " H. P. Plank,	2.36	67.00	
Dec. 4	112 " Y. P. Sc.,	3.92		
	48 " H. P. Plank,	1.92		
	128 " Y. P. Boards,	3.46		
	307 " Fel. Boards,	10.13		

		22 " Hem. Sc.,	.62	20.05
	Dec. 9	43 " Hem. Sc.,	1.20	
		1333 " Fil. Boards,	4.44	
		110 " Cy Plank,	7.15	
		200 " Y. P. Boards,	5.40	
		32 " W. P. Boards,	1.12	19.31
10	Dec. 14	71 " Hem. Joist,	1.99	
		27 " Hem. Plank,	.75	
		757 " Y. P. Plank,	20.44	
		15 " Pld. ½ Boards,	.83	
		288 " Fel. ½ Boards,	9.50	
		34 " Cy plank,	2.21	35.72
		119 " H. P. Sc.,	4.17	
		176 " Y. P. Sc.,	4.40	
20		307 " Y. P. Boards,	8.29	
		22 " Hem. plank,	.62	
		28 " Pld. Boards,	1.26	
		605 " Fel. Boards,	19.97	38.71
				4820.87
	1906			
	Jan. 3	467 " Y. P. Boards,	12.61	
		200 " Fel. Boards,	6.60	10.87
30	Jan. 12	133-1/3 ft. Fel. Boards,	4.39	
		240 ft. Y. P. boards,	6.48	
	Jan. 15	267 " Fel. Boards,	9.35	
		296 " Y. P. Boards,	7.99	17.34
	Jan. 24	224 " W. P. Boards,	7.84	
		76 " Hem. railing,	1.14	

	28 " H. P. Plank,	1.12		
	128 " Y. P. Boards,	3.58		
Feb. 2	192 " Y. P. Boards,	5.38	19.06	
Feb. 10	80 " Y. P. Sc.,	2.40		
	16 " Pld. W. P. Sc.,	.80		
	280 " Y. P. Boards,	9.80	27.07	
	307 " Fel. Boards,	11.67		10
Feb. 20	208 " Y. P. Boards,	8.32		
	26 " H. P. 2 & 4 Sc.,	1.04		
	1 ℔ nails and caps,	.15	9.51	
Mar. 14	347 ft. Fel Boards,	13.19		
	6 " wide pld. boards,	.38	13.55	
Mar. 26	147 " Hem. Sc.,	4.70		
	252 " Plank	8.06		20
	176 " Y. P. Boards,	5.28	18.04	
Apr. 17	107 " Fel. Boards,	4.07		
	161 " Y. P. Pld. Boards,	4.83		
	365 " Pld. Flooring	12.78		
	236 " Ruberoid flooring,	5.90		
Apr. 20	166 " Y. P. Joist,	4.98		
	1 ℔ & 2 ℔ nails,	.20	32.76	
Apr. 11	78 ft. H. P. Sc.,	3.12		30
	978 " Hem. Joist & Sc.,	31.30	34.42	
			$5022.70	

Cr.

Nov. 13	By 56 ft. H. P. Sc.,	1.96	

	99 " Y. P. Sc.,	2.48	
	24 " Hem. Joist,	.67	5.11
			$5017.59
1906.			
Feb. 19	By cash on account,		1000.00
			4010.59
	Int. 6 mo. 6 days,		126.55
			$4144.14

At the trial of this cause, judgment will be claimed for Four thousand, seventeen dollars and fifty nine cents, with interest from the twentieth day of April, nineteen hundred and six, besides cost of suit to final judgment.

Jonathan W. Acton,
Attorneys for plaintiffs.

To the within named defendants.

In case the within summons and declaration are served upon you personally, then take notice, that if you intend to make a defense to this action, you must file an affidavit of merits within ten days from the date of the service hereof upon you, and that unless you file such affidavit, judgment by default will be entered against you at the end of said ten days, and that in case you file said affidavit, unless you file a plea or deumrrer within twenty days from the date of service hereof upon you, judgment by default will, in such case be entered against you at the end of said twenty days.

In case the within summons and declaration are

served upon you by the leaving of a copy at your dwelling house, or place of abode, then take notice that unless you appear and file a plea or demurrer within twenty days aftre the date of the service hereof upon you, judgment will be entered against you.

Jonathan W. Acton,
Attorney.

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SALEM COUNTY CIRCUIT COURT.

Charles W. Casper, William W. Bell, Cleayton Wistar and Richard H. Woodnutt,, trading as William W. Bell and Company, —and— Cleayton Wistar, and Richard H. Woodnutt, trading as Wistar and Woodnutt, Plaintiffs. —vs— Charles H. Muckenhirn, et al, Defendants.	On Mechanic's Lien. Order.

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It appearing to the Court that due notice of his application has been given, and Jonathan W. Acton appearing for the plaintiffs, and Wilson, Carr and Stackhouse appearing for Charles Mecum, petitioner, and it further appearing that since the commencement of the above named suits the Reliance Brass Company, on of the defendants, did on the fifth day of May, nineteen hundred and six, grant and convey all of its estate in and to the lands and premises particularly described in the respective writs of summons herein to Charles H. Muckenhirn, and it further appearing that the said Charles H. Muckenhirn was duly adjudged a bankrupt by the United States District Court for the District of New Jersey, and that Charles Mecum was appointed Trustee in bank-

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ruptcy of the said Charles H. Muckenhirn, it is on this thirty-first day of July, Nineteen hundred and six, ordered that Charles Mecum, Trustee in bankruptcy as aforesaid, be, and he hereby is, authorized and empowered to file a plea as owner of the lands and premises particularly described in the several writs of summons herein.

And it is further ordered that the said Charles Mecum, Trustee as aforesaid, have leave to file a plea in all of the above stated causes within fifteen days from the date of this order, and that a copy of said plea be served upon the said plaintiffs.

On motion of

Wilson, Carr & Stackhouse,

Attorneys for Charles Mecum,

Petitioner.

Let this rule be entered.

Allen B. Endicott,

C. C. J.

SALEM COUNTY CIRCUIT COURT.

Cleayton Wistar and Richard H. Woodnutt, trading as Wistar and Woodnutt, Plaintiffs, -vs- Charles H. Muckenhirn, Builder, et al., Defendants.	On Mechanics Lien. Plea of Charles Mecum, Trustee in Bankruptcy of Charles H. Muckinhern, Owner.

And the said Charles Mecum, Trustee in bankruptcy of Charles H. Muckenhirn, in pursuance of the order of the Court entered herein on the thirty-first day of July, nineteen hundred and six, authorizing and empowering the said Charles Mecum, to file a plea as owner of the lands and premises particularly described in the several writs of summons herein, by Wilson, Carr and Stackhouse, his attorneys, comes and defends the wrong and injury when, etc., and says that the said Charles H. Muckinhern, Builder, did not undertake and promise in manner and form as the plaintiffs hath above thereof complained against him, and of this he puts himself upon the country, etc.

And for a further plea in this behalf the said defendant says that the said plaintiffs ought not to further have or maintain their aforesaid action thereof against him and against the said buildings and lands in the plaintiffs declaration above mentioned and described, because he says that said building

and lands are not liable to the supposed debt in manner and form as the plaintiffs hath above thereof complained against him, and of this he puts himself upon the country, etc.,

Wilson, Carr & Stackhouse,
Attorneys for defendant.

STATE OF NEW JERSEY, }
} ss. 10
COUNTY OF SALEM. }

Charles Mecum, of full age, being duly sworn according to law, on his oath says, that he is the defendant named in the foregoing plea, that the said plea is not filed for the purpose of delay, bu that this deponent believes that said defendant hath a just and legal defense to the above action on the merits of the case. 20

Sworn and subscribed to before
me this 4th day of August, 1906. Charles Mecum.

J. Forman Sinnickson,
M. C. C.

Therefore, the Sheriff is commanded that he cause to come before the judge of the Circuit Court 30 of the County of Salem, at Salem, in the County of Salem, on the twenty-fifth day of October, in the year of our Lord, one thousand nine hundred and six, a jury by whom the truth of the matter may be better known, and who are in no wise of kin either to Cleayton Wistar and Richard Henry Woodnutt, partners trading as Wistar and Woodnutt the plain-

tiffs, and Charles Mecum, Trustee in bankruptcy for Charles Muckinhern, Builder and owner et al., defendants, to make o certain jury of the country between the parties aforesaid, in an action upon contract, on mechanics lein, because as well the said Charles Mecum, trustee in bankruptcy of Charles H. Muckinhern builder and owner et als., as the said Cleayton Wistar and Richard Henry Woodnutt, part-
10 ners trading as Wistar and Woodnutt, between whom the matter in variance is, have put themselves upon that jury, and the same day is given to the parties aforesaid then an dthere to try the difference as aforesaid and render judgment thereon.

And the jurors of the jury whereof mention is made, also come, who to speak the truth of the matter within contained, being chosen, tried and sworn, upon their oaths say that they find for the plaintiffs
20 damages in the sum of four thousand one hundred and forty-four dollars and fourteen cents, and the court doth order judgment final in favor of the plaintiffs and against the defendants in the following form, that is to say: That judgment final for the said sum of four thousand one hundred and forty-four dollars and fourteen cents damages assessed by the said jury as aforesaid, with costs to be taxed be entered in favor of the said plaintiffs, and against the said defendant, Charles Mecum, Trustee in bank-
30 ruptcy for Charles H. Muckinhern, both builder and owner, and specially to be made of the lands and buildings in said declaration described.

Therefore, it is considered that the said plaintiffs do recover against the said defendant, Charles Mecum, Trustee in Bankruptcy for Charles H. Muckinhern, both builder and owner, the sum of Four thou-

sand one hundred and fourty-four dollars and fourteen cents, damages by the jurors aforesaid in form aforesaid assessed, and also the sum of Seventy-two dollars and thirty four cents for his said costs and charges, by the said Court now here adjudged of increase to the said plaintiffs, and with their assent, which said damages, costs and charges in the whole amount to the sum of four thousand two hundred sixteen dollars and forty-eight cents. 10

And it is also considered that the lien of the sum so adjudged to be due the said plaintiffs is prior to the lien of the mortgage of the said defendant, Union Trust Company.

And the said defendants in mercy &c.

Allen B. Endicott,
C. C. J.

Judgment actually entered November 9, 1906 at 9 a. m. 20

Benjamin E. Harris,
Clerk.

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HOWARD KEASBEY, Sworn.

DIRECT EXAMINATION.

BY MR. ACTON:

Q. Mr. Keasbey, where do you reside?
A. Salem, New Jersey.
Q. What is your business?
10 A. Lawyer and surveyor.
Q. Member of the bar of this State?
A. Yes.
Q. Have you made a plan of the plant of the Muckenhirn property known as the Muckernhirn property, the Reliance Brass Company?
A. Yes, sir.
Q. Is this the plan? (handing paper to witness.)
A. That is it.
20 Q. You made it?
A. Yes, sir, with the assistance of men to measure
Q. Mr. Keasbey, of what does that plant consist?
A. Of what does it consist?
Q. Yes.
A. It consists of a large building starting at Fifth street.
Q. Running thence back how far?
A. Whether it is one or more buildings is a ques-
30 tion which will be brought out by the law, but it is a large building which stands from here to here; this is the line of the leased property, this being the owned property.
Q. Just put A B, will you, on your map?
A. Yes, sir.
Q. Now A-B is what?
A. A-B is the property owned by Charles H.

Muckenhirn's firm and the property leased by Charles H. Muckenhirn from the Society of Friends.

Q. And which portion is the portion owned by Charles H. Muckenhirn and which portion owned by him?

A. The portion owned by Charles is from Fifth street to the line A-B and the portion leased by him is the portion west of the line A-B.

Q. Now beginning at Fifth street is it—isn't the building a continuous building back and back for how far? 10

THE COURT: The jurors can't see this. Isn't there a rack to hold the map?

MR. ACTON: Yes.

Q. Now then Mr. Keasbey, as I understand this line represents the line of the leased ground? 20

A. Yes, sir.

Q. The line A-B and all east of that to Fifth street is the Muckenhirn property, the deed of which is in his own name, and all west of that line is the leased ground?

A. That is correct.

Q. Now will you give me the tracings of the outside line of this plant so the jury can see you?

A. In explanation I will say that the black, the first black line here represents the line of the property as owned or leased this being the leased and this being the owned. The second black line represents the building wall. It runs along Fifth street right along the building line. It runs down on this side in an irregular line no portion of which comes quite to the outside line of the property, no portion of 30

which comes to the outside line of the property.

Q. Now then, Mr. Keasbey, would you continue your description of the outside line of this building?

A. As I was saying, this is the outside line of the building here; this portion was at one time a machine shop and various places containing machines. This machine shop runs completely up to the foundry with a door in between, this being the outside
10 line of the foundry; this here is a coal house joining the foundry. You can go from the front of the building and to the back end of it without going out into the weather. There are doors here and here; and this is a store house here, a brick building, and I suppose that is a coal shed. There is a door here which looks from the entryway to the coal house to a point opposite the door in the brick building.

Q. Now these dotted lines, which you see along here, what are they?

20 A. This dotted line here represents what appears to have been the outside of a building at one time.

MR. CARR: Now I object to what it appears to have been at some other time.

THE COURT: Just tell what he finds there now.

A. I find here now along this line a series of
30 posts set in this fashion with braces similar to the bent of a barn. My recollection is also that there is a break in the roof at this point.

Q. I ask you, Mr. Keasbey, if this building is all under one roof?

A. The entire plant?

Q. Yes, sir.

A. You can go from one end to the other without

going out into the weather. It is one roof only there are breaks in the roof.

Q. But the buildings are all joined?

A. All joined, yes, sir.

Q. It makes one continuous building?

A. You can go from one end of the building to the other without going out into the weather. There are some partitions up that I have not placed in. I didn't think they were at all important; I understood they were not. In further explanation I might say that this is a small engine room and this is a larger engine room.

Q. But they are in no way separate from the building?

A. No, sir; the same condition exists along this line as exists along this line. (indicating.)

CROSS EXAMINATION.

BY MR. CARR:

Q. Mr. Keasbey, between the building to the east of the line A-B and the foundry building to the west the connection is by a narrow passageway, is it not?

A. The building runs to it, you might call it a passageway. This is a watercloset here in process of construction.

Q. A passageway of about what width?

A. About ten feet, I should suppose that about.

Q. So that the connection between the building to the east of the line A-B and the foundry building is by a passageway about ten feet wide, is that cor-

rect?

A. Yes, sir.

Q. And with the exception of the passageway, the building is entirely detached from the foundry is it not? That is, the building to the east of A-B is entirely detached except for the passageway A-B?

A. The building runs up to this point. Behind is a little addition which has been put in formerly; the passageway is between this and this line. It was apparently—this has been added and has not been finished. This dotted line here is in process of construction.

Q. I ask you whether the passageway between the buildings east of A-B and the foundry is not merely a covered passageway not running up to the entire roof of the building?

A. That is a point I didn't notice, Mr. Carr, I am sorry to say.

Q. Now except for the passageway between the building to the east of A-B and the foundry the building to the east is a separate building, is it not?

A. There are narrow places; there are ends.

BY MR. ACTON:

Q. They are joined there?

A. Why they were joined.

Q. They are joined there?

A. They come together; yes, sir.

Q. And you can stand here and see down to the end of the building?

A. By opening the door here.

Q. And they are all under one roof?

A. As I explained to you, yes, sir.

BY MR. CARR:

Q. Now by one roof you mean this roof of the building to the east of A-B is a continuous roof, but that the roofs are at various pitches and angles, is it not?

A. That is what I have testified to.

———o———

10

RICHARD H. WOODNUT, Sworn.

DIRECT EXAMINATION.

BY MR. ACTON:

Q. Mr. Woodnut, where do you live?

A. Salem.

Q. What is your business?

20

A. Lumber business.

Q. Are you a member of the firm of Wistar and Woodnut?

A. Yes, sir.

Q. Where is your place of business?

A. On Market street, Salem.

Q. How long have you been in the lumber business?

A. A little over twenty-one years.

Q. Do you know Charles H. Muckenhirn?

30

A. Yes, sir.

Q. Did you ever sell Charles H. Muckenhirn any lumber?

A. Yes, sir.

Q. What for?

A. For the brass and moulding foundry.

Q. Where is that situated?

A. On Fifth street, extends to the creek or nearly so.

Q. In the City of Salem?

A. In the City of Salem.

Q. Do you know on what ground it is located?

A. Yes, sir.

Q. What ground is it located upon?

10 A. Well part of it is on ground that we sold him; part of it is on ground that he rented from Mr. Hilliard.

Q. The Society of Friends?

A. Well I think he rented it from Mr. Hilliard, maybe the Society of Friends owned it.

Q. Showing you the map, from Fifth street to the line A-B indicates what?

A. I suppose that is the line he owns to.

20 Q. That is Fifth street?

A. This is Fifth street; I suppose property that the man——

Q. The line A-B?

A. The line A-B, I suppose that is back of the lot that we sold him.

Q. And then westward from the line A-B?

A. Why that is on the Creek, on the Friend's property.

Q. On the leased property?

30 A. The leased property.

Q. Do you know whether or not his building extends over the whole of that property?

A. Well it is pretty well over it. Maybe there is just a few places. It is nearly all over it.

Q. Do you know whether or not it is one continuous building?

(Objected to. Objection sustained.)

A. It is all one building.

THE COURT: The answer should be stricken out.

Q. Now, Mr. Woodnut, will you testify as to the nature of this building that covers this ground? 10

A. It is a frame building except one little building that is a brick building. It is all connected except that small building that is all by itself.

Q. What can you say as to the roof of this building?

A. Most of it Rubberoid roofing and some of it is Carrey's roofing.

Q. Do you know whether or not the building is all under one roof? 20

(Objected to.)

Q. Do you know whether or not—I don't want to suggest an answer—

(Objection withdrawn.)

A. I guess so.

Q. Well, what is the nature of the roof?

A. It is a continuation of one roof. Of course, some of it is not quite level because the foundry 30 part is lower and higher both, the floor is lower and the roof is higher. They have to have it higher on account of the ventilation.

Q. Now, Mr. Woodnut, did you furnish any lumber for that building?

A. Yes, sir.

(Objected to. Question allowed.)

Q. When did you begin to furnish lumber for that building?

A. I think it was in November of 1904.

Q. Have you an account of it?

A. Yes, sir.

Q. Have you your books of original account here?

THE COURT. Can we save any time on the ac-
10
count or must it be formally proven?

MR. CARR. I think it must be formally proved, as it don't run in sequence in some places.

A. Commenced in November and kept on furnishing until the first of the year. I kept it on the bill book and then copied it up at the end of the year, as far as we have gotten, a continuation of the first
20 building with the building there. First is, he started there, open, I think the account was opened the eighteenth of November, I think the account was opened.

Q. What year?

A. Nineteen four.

Q. Well, what is your first item?

MR. CARR. Well now, he has not proved the
30 books. I object to any use of these books.

Q. Mr. Woodnut, what books have you there?

A. This is a blotter we call it and we put the items down in the blotter and we copy it up.

Q. When are the items put in the blotter?

A. Some of the items are put at the very day we get them, but when a person is furnished a bill we

have a bill book and put the items down when they are first gotten.

Q. Have you the bill book?

A. Yes, sir. January Seventeenth, that includes up to the first of the year because we wanted to prove or know so as to tell how much was furnished and what we sold up to the first of the year.

Q. Well take your original book, if you have it, in which the order is orginally placed, where is it? 10

A. This book here.

Q. Now what book is this?

A. Bill Book, we call it.

Q. Now where on the bill book does Mr. Muckenhirn's name first appear?

A. On page one hundred and one.

BY MR. CARR.

20

Q. Page one hundred and one?

A. Yes, sir.

BY MR. ACTON.

Q. Now what have you charged that time?

(Objected to.)

BY MR. CARR.

30

Q. Now, Mr. Woodnut, the various items appearing on page one hundred and one of your bill book, you call it?

A. Yes, sir.

Q. Were they entered by you?

A. Some of them were and some of them were entered by Mr. Wistar.

Q. Now those that were entered by you, were they made at the time of the sale of the goods?

A. Well, sometimes we would put the order down and as the bill was out we would put a crossmark and check the accounts off on a piece of paper and figure them all out correctly to what, if the amounts were carried out—

Q. Now do I understand that page one hundred and one represents the order as originally received?

A. Not necessarily.

Q. What does it represent?

A. It represents when the small items like that—well, the most of them were put down as the lumber went out and cross it off as gone.

Q. When are these entries made in this book with relation to the making of the order or the filling of the order?

A. At the filling of the order.

Q. Or were these all made at one time?

A. Oh, no, made at different times.

Q. Now there is nothing here to indicate the date of the sale or delivery?

A. Only know it is got between November the eighteenth and the end of the year.

Q. So that you are unable to tell when the goods were delivered except that it was some time between November eighteenth, 1904 and January first, 1905?

A. No, it was gotten between that time.

Q. Between that time. Now from this book where do you go?

A. Well it is copied up into this book.

Q. Where do you enter your charges?

A. Carry the charges in this book.

Q. What is that book?

A. Blotter, we call it, and this is the day book.

Q. Your charges go from the blotter upon your bill book and the blotter?

A. Yes, sir.

Q. Your charge then first takes permanent form in your blotter; is that the first charges of money?

A. The money all goes down here first, yes.

Q. That is, the first entry of money is in your blotter and the entries in your blotter are made at one time; that is, you transfer— 10

A. A page here is transferred all at one time and charged up; and first month seventeenth that includes up to the first of the year, but then I brought it in and posted it up on this book so as to bring it in with the first of the year before the previous year, but it was all gotten before the first of the year.

MR. CARR: When these books are offered, I shall object to the offer. 20

BY MR. ACTON:

Q. Now, Mr. Woodnut, looking at your books of original entry under date of aMrch twenty-second, 1905, what have you?

MR. CARR: Just a moment. Now to what book does the witness refer? 30

MR. ACTON: The book of original entry.

MR. CARR: Which does he call it?

THE WITNESS: This is the blotter, yes, sir.

BY MR. CARR:

Q. And you are referring to that?
A. Yes, sir.

MR. CARR: I object to the use of it for the reason that the charges are not made at or about the time of the respective sales. Now here is a transfer of the accounts from the books of original entry which consist of the sales and orders from November 18th, 1904 to January 1st, a transfer en mass and the charges made then and nothing to indicate when the sales and deliveries took place, so it seems to me that this book must be excluded.

BY MR. ACTON:

Q. Mr. Woodnut, when did you make those entries?
A. Made them as the lumber went out.

BY MR. CARR:

Q. Are you referring to this particular book?
A. I am referring to this book.

MR. CARR: I wish you would designate them. Will you make your question so that we will know which of the two books he is talking about.

BY MR. ACTON:

Q. Where is the book in which you make your original entries?
A. These two books.
Q. When did you make the entries in those books?
A. When the lumber went out.

Q. At the very time the lumber went out?

A. Not the very time, before I could get to the office.

Q. But you went directly to the office and made the charge?

A. Yes, put it on a slip of paper and when I got to the office I made the charge. You can't carry books out in the yard.

10

MR. ACTON: It seems to me that that covers it, your Honor.

MR. CARR: If your Honor pleases, the book which is here offered is the book known as the blotter and into the blotter a transfer en mass is made of the account, so that that cannot be a book of original entry. The salesbook itself may be, but the blotter surely cannot be.

20

BY MR. CARR:

Q. In whose hand writing is this?

A. Part of it is mine and part of it is in Mr. Wister's.

THE COURT: Well, the books are not offered now.

30

BY MR. ACTON:

Q. Looking at those books, Mr. Woodnut, will you state what they disclose of a transaction between you and Mr. Muckenhirn on March 22nd, 1905?

A. That refers to lumber, one hundred and ten feet of hard pine scantling.

Q. How much?
A. Three dollars.
Q. Where was that order first taken?
A. Taken at our office, I suppose.
Q. In whose handwriting is that charge?
A. Mine.
Q. Where is the original of that charge?
A. I think that is it, but I aint sure, but I will
10 look. That is the original charge.
Q. Which is the original charge?
A. That is here, March 22nd.
Q. In whose handwriting is that?
A. In mine.
Q. Do you know when it was made?
A. Made on March 22nd.
Q. And that was made on that date?
A. March 22nd, 1905. There was one item here.

20

MR. CARR: To save time I will admit these books. It is so that we won't have to go over each item.

THE COURT: What is the consent now?

MR. CARR: That the books maybe introduced as the books of original entry without formal proof.

30 Q. Now, Mr. Woodnut, who ordered these various articles?
A. Well, Mr. Bell.
Q. Which Mr. Bell?
A. Both of them, sometimes one and sometimes the other.
Q. Well, what are their names?
A. Joseph H. Bell and Samuel Bell.

Q. Now when is the last charge on your books?

A. April 17th, 1906.

Q. What was that charge?

A. Well is was 107 feet of weatherboarding, 106 feet—161 feet of yellow pine planed boards for sheathing under a roof, 356 feet of floor boards, 231 feet of Rubberoid roofing, 160 feet of yellow pine joists and foundry caps and two pounds of nails to nail the roofing on. 10

Q. Now will you———

A. I will state that last item was gotten on April the twentieth.

Q. What year?

A. Same year, 1906; on the bill book April the twentieth when it was gotten.

Q. Now, Mr. Woodnut, will you look at the schedule annexed to the declaration in this case and state whether or not the articles entered in that schedule were furnished to Charles H. Muckenhirn? 20

A. Compare it with my books?

Q. Go over it carefully.

THE COURT: Hasn't he compared it?

BY MR. CARR:

Q. You know it to be correct, don't you?

A. I haven't compared. 30

Q. Say, "Yes", and we will accept it.

A. Yes.

BY MR. ACTON:

Q. Now what were these articles furnished for, Mr. Woodnut?

A. For a brass foundry.

Q. For whom?

A. For Charles H. Muckenhirn.

Q. Did anybody else furnish lumber there, but your firm?

A. Why Mr. — —

(Objected to.)

10

Q. Do you know whether or not anybody else furnished lumber?

A. I know nobody else furnished it. There was very little furnished but what we furnished.

Q. Now, Mr. Woodnut, in whose name, if you know, were these goods ordered?

A. Charles H. Muckenhirn.

Q. Did you ever have any order for the Reliance Brass Company?

20

(Objected to as leading. Question allowed.)

Q. Did you or did you not?

A. It was always ordered as Charles H. Muckenhirn.

Q. Did you have any account opened on your books as the Reliance Brass Company?

A. Never charged any.

30

(Objected to.)

Q. Mr. Woodnut, do you know whether or not this plant has since been sold by the referee in bankruptcy?

A. Yes, sir.

Q. Do you know whether or not it was sold as

a whole or separate?

(Objected to as immaterial. Question overruled.

Q. Now, Mr. Woodnut, how much is due to your firm on this bill?

A. $4,017.59.

Q. Do you know where the lumber and materials furnished by you in this bill of items went? 10

A. Went in the brass foundry of Mr. Muckenhirn's.

Q. Do you know that of your own knowledge?

A. I know some of it, because I took it down there and the balance of it I put on the wagon and I suppose he took it there.

Q. Have you recognized any of this lumber which you sold as being in this building?

A. Probably might be some of it we could by picking out the sizes. 20

Q. I ask you if you have recognized it?

A. No, havn't recognized any of it; only took it down there and I know it is there.

Q. On March 17th, 1906 I notice an item, 236 feet of Rubberoid roofing, do you know where that went?

A. Went down to Mr. Muckenhirn's foundry.

Q. How do you know that?

A. Because I think I charged it, called the man to take it there. 30

MR. CARR: What date is that, Mr. Acton?

MR. ACTON: April the 17th.

Q. On March 26 there is a charge for 252 feet of

plank, do you know where that went?

A. Only know it is charged to Mr. Muckenhirn and went to his foundry. I know that.

Q. Have you any present personal recollection of that specific order?

A. I couldn't say I had of any particular order now. Only go by our books.

Q. Do you know who was working on this building up to the time it shut down?

A. No, sir; only know that Mr. Bell was working there.

Q. Which Mr. Bell?

A. Mr. Samuel Bell used to come up and order the lumber.

Q. How long since you have been over that factory, Mr. Woodnut?

A. I think I walked through it last Sunday.

Q. Do you know whether the factory is completed?

MR. CARR: Until some expert knowledge is shown as to this man, I will object to his conclusion.

THE COURT: This going to be an essential question in this case?

MR. CARR: If this is simply— —

THE COURT: Is it likely to be material?

MR. ACTON: I think it is, your Honor.

THE COURT: Then you better ask him the condition of the building.

Q. What is the condition of the building with

reference to its finish?

A. Well it isn't finished; the water closet there with the door not hung and one place with the ventilators just lined up, but isn't finished at all. You can see it by going down there.

Q. Have you noticed these things yourself?

A. Looked at them, yes, sir.

Q. Come under your personal observation?

A. Yes, sir. 10

Q. You are at present one of the owners of that building, are you not?

A. Yes, sir.

(Books admitted in evidence by consent.)

CROSS EXAMINATION.

20

BY MR. CARR:

Q. Mr. Woodnut, will you turn to your books and show me on what page or pages you have the charges which go to make up the account or bill dated October 16th, 1905 rendered by your firm to Mr. Muckenhirn. Won't you look at this bill dated Salem, October 16th, 1905 to C. H. Muckenhirn, bought of Wistar and Woodnut, amounting to $445.27 and 30 say whether this is a bill rendered by your firm to Mr. Muckenhirn? Is it?

A. Mr. Wistar's writing.

Q. Now I show you a bill dated October 1905 on the letter head of Wistar and Woodnut to Charles H. Muckenhirn amounting to $2395.60 and ask you whether that bill was made out by your firm to Mr.

Muckenhirn?

A. Yes, sir, made out by Mr. Wistar.

Q. Now I show you a statement dated—or bill to Charles H. Muckenhirn bought of Wistar and Woodnut, without date at the top, the first item of which begins November the 7th, for total of $2044.43 and ask you whether that is a bill rendered by your firm to Mr. Muckenhirn?

10 A. That is Mr. Wistar's writing.

Q. Well, what is your answer?

A. Yes, sir.

(Bills marked D 1, 2 and 3 for identification.)

Q. Now won't you kindly turn to your books and show me where the account is in the bill marked D 1 for identification?

(Witness refers to blotter page 165.)

20 A. One hundred feet of hard pine scantling.

Q. Is page 165 the beginning of the account under date of March 22nd?

A. I think so.

Q. And on that page appear the charges for $58.-86, is that right?

A. Yes, sir.

Q. Now your book doesn't designate what the purpose is for which it is used, does it?

30 A. Don't any, I think.

Q. Now turn to your book under date of March 23rd, items amounting to $17.77, let me see that will you?

MR. ACTON: What year is that Mr. Carr?

MR. CARR: 1905.

A. 108 feet of hemlock boards.

Q. That appears on the bottom of page 165 of

the blotter?

A. Of the blotter.

Q. Now is there any charge previously in the bill book for these items?

A. I don't know.

Q. Can you tell by reference to exhibit D 1 for identification whether any of the items charged therein appeared originally in your bill book?

A. It doesn't look so because they are smaller items, but there may be possibly some. 10

Q. I am willing to accept your impression.

A. That might be because of a charge. I don't think there is anything on the bill book.

Q. Now won't you show me in your books the first charge covering the account dated October 13th, D 3 for identification?

MR ACTON: What year Mr. Carr? 20

MR. CARR: October, 1905, that is the date on the statement.

Q. Now show me in your books where this account first appears, whether in your bill book or in your blotter?

A. It is dated here 18th, charged October 18th.

Q. Appearing upon page 107 of your bill book, does it? 30

A. I think so.

Q. Show me where on page 107 the account represented by D 3 for identification stops, won't you please, the last charge on your book? No, on your bill book?

A. This bill here do you mean?

Q. Yes. Show me in this book the last charge

for items represented in D 3 for identification?

A. I lon't know as I can tell the very last charge.

Q. In D 3 for identification are they grouped for instance, item 10701 of yellow pine planed?

A. These are all grouped here and carried out to make that number of feet.

Q. Where does the account in your bill book stop for the items mentioned in D 3 for identification?

10 A. Where do they stop?

Q. Yes.

A. Stop on the pages, I guess.

Q. Now turn to where this charge from page 107 of your bill book is transferred to your blotter.

A. October the eighteenth.

Q. Now where is it in the blotter?

A. October the eighteenth is the charge.

Q. Well show it to me, won't you?

20 MR. ACTON: What year, Mr. Carr, 1905?

MR. CARR: Yes, 1905.

Q. It appears on page 286 of the blotter, is that correct?

A. Yes, sir.

Q. And the total amount there is $2395.60?

A. Yes.

30 Q. Now when that was transferred from the bill book to the blotter did you regard it as a completed transaction?

A. No, sir, not at all.

Q. What decides the fact as to when an account—

A. The pages getting filled up I have to start another account.

Q. Well what makes you transfer it to your blot-

ter? You transfer incomplete entries into your blotter?

A. How it that?

Q. Do you transfer incomplete entries into your blotter?

A. Well he probably might have wanted his bill at that time, but it was charged up because the page was getting filled and we must post the accounts up once is awhile. The page was all full and we must start another page.

Q. Now I show you a letter dated—upon the letter head of Wistar and Woodnut, dated Salem, October 20th. 1905 purporting to be signed by Wistar and Woodnut and I ask you whether the letter was signed by a member of your firm?

MR. ACTON: Don't answer that question, Mr. Woodnut.

Q. Now what is the answer?

(Question repeated.)

A. It looks like Mr. Wistar's writing and I would say it was, yes, sir.

Q. Do you know whether it was mailed to Mr. Muckenhirn or not?

A. I don't know.

Q. Again, is that in your writing?

A. Not in my writing, no, sir.

Q. Was it written in your presence or in your knowledge?

A. Not that I remember.

Q. You have no recollection of it?

A. No, sir.

Q. Who mailed the bills marked for identification D 1, 2 and 3, you or Mr. Wistar?

A. I don't remember now.

Q. Don't recall. In whose hand writing is D 1 for identification? This one?

A. Mr. Wistar's writing.

Q. Mr. Wistar's? D 2?

A. Mr. Wistar's writing.

10 Q. D 3 is whose?

A. Mr. Wistar's writing.

Q. Now, Mr. Woodnut, when these goods were ordered they were ordered from time to time by Mr. Joseph Bell and Mr. Samuel Bell, was that it?

A. Most of it was, yes, sir.

Q. And you didn't take all the orders yourself, did you?

A. Not all, no, sir.

20 Q. Some of the orders came by telephone?

A. Not many, most of them came direct.

Q. And what would they do, simply order so many thousand feet of lumber or whatever they wanted?

A. Order what they wanted.

Q. What would they do, give you a specific order to furnish certain supplies?

A. Well they—certain supplies—they came and ordered the lumber and we sent it down to them.

30 Q. Well what would Mr. Bell say in the first place that he wanted so much lumber, is that all?

A. Generally give us a memorandum of it, of what he wanted.

Q. Memorandum in writing?

A. Generally give us a memorandum of what he would want.

Q. And what would he say, send down to the Muckenhirns so much lumber and state the number of feet and the kind? Would that be about it?

A. Well yes. I suppose he ordered it as anybody else ordered lumber.

Q. Well how do they generally order lumber?

A. Say they want so much lumber and say what it is they want.

Q. Now Samuel Bell didn't order, did he, until sometime in November, 1905? 10

A. I couldn't say about that. He used to come up sometimes before that.

Q. And that is what was done in this case?

A. Yes, sir.

Q. Well wasn't there a time when Joseph Bell ordered lumber and a later time when Samuel Bell used to order lumber?

A. Well when Joseph Bell was there Samuel Bell used to come up there. 20

Q. You do remember, as a matter of fact, that the lumber ordered during the last couple of months was ordered by Sam Bell, not Joseph Bell?

A. Joseph Bell aint been working there for the last two or three months.

Q. And during these last two or three months Sam Bell ordered it, didn't he?

A. And sometimes before.

Q. But during the last two or three months the orders came from Samuel Bell, didn't they? 30

A. Mostly, but sometimes a boy would come up but sometimes too the orders came from Samuel Bell.

Q. But you know of none that Joseph ordered during the last two or three months?

A. I don't remember any time.

Q. But during the last two or three months you know of no order placed by Joseph Bell, do you?

A. I don't remember any now.

Q. Now you knew that Mr. Muckenhirn was operating a foundry down there, didn't you?

A. Yes, sir.

Q. And you knew that for a year or more he was employing a large number of hands and operating a
10 brass foundry, didn't you?

A. Yes, sir.

Q. And you knew that—you knew that he required in the operation of that plant certain supplies in the nature of lumber, did you not?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. And you knew, as a matter of fact, that a part
20 of the material that you were furnishing was being used in the operation of the plant, didn't you?

A. Knew it all was.

THE COURT: He means in the operation of the plant, as distinguished from the erection of the building.

A. No, in the building.

Q. Didn't you know, as a matter of fact, that lumber was required as supplies?

A. I don't know what supplies they would want.

30 Q. For the making of box trays and sand bins and some others of that character?

A. Might have been something used in the making of bins and made fast.

Q. But didn't you know as a matter of fact, that some of this material was being used for patterns.

A. No, sir, didn't know he made any wooden pat-

terns, thought they were all iron patterns.

Q. But you didn't know to what specific uses this lumber was being used, did you?

A. Supposed it was in the building.

Q. Didn't you reach a time, in your mind, when you believed the building was completed?

A. No, he had been getting lumber right along.

Q. Just answer my question?

A. No, sir. 10

Q. You hadn't? Hadn't you and Mr. Wistar rendered a bill as for the completed building on October 16th and 19th—hadn't you?

A. October the 19th?

Q. Yes?

(Question repeated.)

A. I don't remember. Is the bill there, I don't remember just exactly what it is now? 20

BY MR. ACTON:

Q. Was it for a completed building?

A. Not that I know of. I know nothing about that.

BY MR. CARR:

30

Q. When you saw this factory in operation for a number of months, didn't you believe that the factory was completed?

A. No, they were working out doors pretty near part of the time they were working down there.

Q. And how late was that?

A. I don't remember just now. They were work-

ing all the time, increasing the plant all the time.

Q. And you thought that the plant so being increased from time to time it wasn't finished, is that it?

A. Certainly is wasn't completed. Mr. Muckenhirn told us he was going to pay us all up when the building was completed. He told us— —

Q. Now I show you — —

10 (Letter marked D 4 for identification)

Q. Now won't you turn to your accounts under date of December 23rd, turn to your books?

MR. ACTON: What year Mr. Carr?

MR. CARR: 1905.

Q. Now I refer you to the following charges on the bill of particulars—119 feet—these abbreviations

20 here are probably more readable to you than to me—119 feet of H. P. Sc. amounting to 4.17; 176 feet Y. P. Sc. 4.40; 307 feet Y. P. boards 8.29; 22 feet hem. plank 62; 28 feet Pld. boards, 1.26; 605 feet Fil. boards 19.97; making a total charge for that day of 38.21—and ask you who ordered those items?

A. I don't know who ordered them.

Q. You don't know. Now do you know how they were used?

30 A. In building the building down there, that is all I know.

THE COURT: What date are you speaking of?

MR. CARR: I am speaking now of December 23rd, 1905.

Q. Now you say you know they were used in the building?

A. I know they went down there for that purpose

Q. How do you know they went down there for that purpose?

A. Because I charged them and I ordered the man to take them there or I wouldn't charge it.

Q. You know they went down there because you told the man to take them there? 10

A. That is the reason, because I charged it on the book and I wouldn't have charged it.

Q. But you didn't know for what purpose it was to be used or you don't know who ordered it?

A. No, sir.

Q. Now I refer you to January 3rd, 1906, 467 feet Y. P. boards, 12.67; 200 feet Fil. boards, 6.61; and ask you who ordered them?

A. I don't remember. Mr. Bell, I suppose, he ordered most everything, yes, sir. 20

Q. Do you know?

A. I firmly believe he did.

Q. Do you know?

A. I might say I know. I don't remember that particular charge.

Q. You don't remember the charge?

A. Not that particular charge, no.

THE COURT: What time was that?

MR. CARR: That is January 3rd, 1906, a total charge of 10.87. 30

Q. Then you don't know for what purpose it was ordered, do you?

A. I have every reason to believe it was to build the building.

Q. But you don't know, do you?

A. I feel that I know as much as any of the lumber was. I don't know about any special part of the lumber; he might have got some lumber for the frame.

Q. But you don't know for what purpose it was ordered, do you? I am speaking now of absolute knowledge?

A. Might say I don't know of anything.

10 Q. Well I don't know whether you do or not. No; but I want you to answer me whether you do know absolutely for what purpose that lumber was ordered?

A. No, for the purpose, no. I supposed it would be used for weather boarding the building.

Q. Do you know for what purpose it was used?

A. I am pretty sure weather boarding was used for weather boarding the building.

20 Q. But you don't know whether it was used at all, do you?

A. No, sir.

Q. Now I call your attention to the item 103-1/3 feet fil. boards, 4.39, 240 feet Y. pine boards, 6.48 and ask you if you know who ordered these two items?

A. No, sir, I don't know sure.

Q. I ask you if you know for what purpose they were ordered?

30 A. For building the building is all I know about.

Q. Well you were not informed of that by anybody were you?

A. I don't remember now.

Q. Well you don't know of your own knowledge for what they were actually used, do you?

A. I had every reason to believe they were used

for weather boarding a building.

Q. But you don't know for a fact that they were so used there?

A. I don't know for sure; I couldn't swear to it.

Q. I ask you to look at your book under date of January 15th and see whether item of 296 feet Y. P. boards, 7.99 is charged under that date?

A. Is charged the seventeenth.

Q. Seventeenth? 10

A. Seventeenth, yes, sir.

Q. Is that the same item that appears on the bill of particulars under date of the fifteenth?

A. Yes, sir, I think so. I will look at the other book and see—yes, sir, marked on the book the seventeenth.

Q. And that is the same item that appears on the bill of particulars of January 15th, is it not?

A. Yes, sir. 20

Q. Now the item of 296 feet Y. P. boards, 7.99; by whom was that ordered?

A. By Sam Bell. It is marked on the book.

Q. Sam Bell? Is that entry in your writing?

A. Mr. Wistar's writing.

Q. Then you don't know of your own knowledge, do you?

A. Only what I see on that book here.

Q. Now for what purpose was it ordered?

A. I don't know. 30

Q. Now item of January 24th, 224 feet Y. P. boards 7.84, by whom was that ordered? Do you know?

A. No, sir, I don't remember who ordered it.

Q. For what purpose was it ordered?

A. I don't know.

Q. For what purpose was it used?

A. I don't know.

Q. Now item of 76 feet of hemlock pailing, $1.14, by whom was that orderel?

A. 176 feet of hemlock railing?

Q. Railing is it? Now by whom was that ordered?

A. I don't know.

10 Q. By whom was it used?

A. Charles H. Muckenhirn.

Q. For what purpose was it used?

A. Building his building, I suppose, finishing up around the building.

Q. Do you know for what purpose it was used?

A. No, sir.

Q. Do you know for what purpose it was ordered?

20 A. Ordered for building, that is all I know. Only as it is charged on the books, that is all I know.

Q. 28 feet of H. P. plank $1.28, by whom was that ordered?

A. I don't know.

Q. For what purpose was it ordered?

A. I don't know.

Q. For what purpose was it used?

A. I don't know.

Q. 128 feet of Y. P. boards, 3.58: by whom was

30 that ordered?

A. I don't know.

Q. For what purpose was it ordered?

A. I don't know.

Q. For what purpose was it used?

A. I don't know, I suppose it was used in the building.

Q. February 2nd, 1906, 192 feet of Y. P. boards 5.38, by whom was that ordered?

A. It isn't marked here, only charged to Mr. Muckenhirn. I don't—

Q. For what purpose was it ordered?

A. I don't know.

Q. For what purpose was it used?

A. I don't know.

Q. February 10th, 80 feet of Y. P. Sc. 2.40: by whom was that ordered? 10

A. February 10th?

Q. Yes, sir.

A. What was the question?

Q. By whom was it ordered?

A. I don't know.

Q. For what purpose was it ordered?

A. I don't know: it might be for the partitions; I don't know. 20

Q. For what purpose was it used?

A. I don't know. I would say it was for the partitions in the water closet, but I don't know.

Q. Do you know for what purpose it was used?

A. No, sir.

Q. February 16th—16 feet of Pld. W. P. 80c by whom was that ordered?

A. February 16th?

Q. No, February 10th—16 feet—the date is February 10th. 30

A. Bill doesn't say and I don't know.

Q. For what purpose ordered?

A. Only that the items indicate what they were used for is the only way I can tell. Weather boards were used for weatherboarding, I suppose, as that is the only thing it could be used for.

Q. Do you know for what purpose it was ordered?
A. I don't remember now.
Q. Do you know for what purpose it was used?
A. I don't remember now.
Q. February 10th, 107 feet of Fil. boards, 11.67: do you know by whom it was ordered?
A. No, sir.
Q. Do you know for what purpose it was used?
10 A. Only by the item of weatherboarding, it might be used for partitions. ,
Q. These fil. boards?
A. Yes, sir
Q. Now do you know for what purpose it was ordered?
A. No, sir.
Q. Do you know for what purpose it was used?
A. No, sir.
20 Q. Same date, 280 feet Y. P. bevel $9.80, do you know by whom that was ordered?
A. No, sir.
Q. Do you know for what purpose it was ordered?
A. No, sir.
Q. Do you know for what purpose it was used?
A. No, sir.
Q. Now February 20th, 208 feet W. P. boards—
Q. Do you know by whom that was ordered?
A. No, sir.
30 Q. Do you know for what purpose it was ordered?
A. No, sir.
Q. Do you know for what purpose it was used?
A. No, sir.
Q. February 20th, 26 feet H. P. 2x4 Sc—
A. Two by four scantling?
Q. Yes, 2 x 4, do you know by whom that was

ordered?

A. No, sir.

Q. Do you know for what purpose that was ordered?

A. No, sir.

Q. Doy ou know for what purpose that was used?

A. No, sir.

Q. One pound of nails and caps, 15c do you know by whom that was ordered? 10

A. I think that was ordered by Sam Bell by 'phone and the boy came and got it, if I remember right.

Q. You think for Sam Bell?

A. And he sent a boy for it.

Q. Do you know for what purpose it was ordered?

A. I think it was upon the roof, but I won't say sure.

Q. You don't know. Do you know for what purpose it was used? 20

A. No, sir.

Q. March 14th, 347 feet fil. boards 13.19, do you know by whom ordered?

A. By Samuel Bell, Mr. Wistar's writing.

Q. That you say because—

A. He has it written down on the book here, Sam Bell.

Q. Then you don't know of your own knowledge? 30

A. No, sir.

Q. Do you know for what purpose it was ordered?

A. No, sir.

Q. Do you know for what purpose used?

A. No, sir.

Q. Same date, six feet wide Plk. boards, 38c do you know by whom that was ordered?

A. No, sir.

Q. Do you know for what purpose ordered?

A. No, sir.

Q. Do you know for what purpose it was used?

A. No, sir.

Q. March 26th,, 147 feet hem. sc. 4.70, do you know by whom that was ordered?

A. No, sir.

10 Q. Do you know for what purpose it was ordered?

A. No, sir.

Q. Do you know for what purpose used?

A. No, sir.

Q. Same date, 252 plank, I suppose that is feet isn't it?

A. 252 feet of hemlock plank.

Q. 252 hemlock plank, $2.87 do you know by whom ordered?

20 A. No, sir.

Q. For what purpose ordered?

A. No, sir.

Q. For what purpose used?

A. No, sir.

Q. March 26th, 176 feet of Y. P. boards, I guess it is 5.28, do you know by whom that was ordered?

A. No, sir.

Q. For what purpose that was ordered?

A. No, sir.

30 Q. For what purpose that was used?

A. No, sir.

Q. April 17th - -

THE COURT: Why not include the rest in one question.

Q. April 17th, following items, 107 feet fel.

boards, 161 feet Y. P. Pld. boards, 365 feet Y. P. floor, 236 feet rubberoid roofing, do you know by whom these items were ordered?

A. No, sir.

Q. Do you know for what purpose they were used?

A. I know what the roofing was used for; used for a roof.

A. Do you know that this was used for that roof? 10

A. No, that is what it was sold to him for.

Q. And how do you know that?

A. Because that is the only thing it is sold for.

Q. What did he ask for?

A. I don't remember what he said now.

Q. Then you don't know what was said when the order was placed and you infer because it is roofing that is why it was ordered?

A. No, sir. 20

Q. Now the other items, do you know for what purpose they were ordered?

A. No, sir.

Q. Or for what purpose they were used?

A. No, sir.

Q. Now item April 20th, 166 feet Y. P. joists, one pound and two pounds of nails, do you know by whom ordered?

A. No, sir. 30

Q. For what purpose ordered?

A. No, sir.

Q. Or what purpose used?

A. No, sir.

Q. Item of April 11th, 78 feet H. P. Sc. and 978 feet hem. joists and Sc. do you know by whom ordered?

MR. ACTON: April 20th, that is Mr. Carr.

Q. Mr. Acton says that correct date is April 20th?

A. April 20th,,, yes, sir.

Q. Now there are items, 78 feet H. P. Sc. and 978 hem. and Sc. -31.30, do you know by whom they were ordered?

10 A. No, sir.

Q. For what purpose ordered?

A. No, sir.

Q. For what purpose used?

A. No, sir.

Q. Sir?

A. No, sir.

Adjourned to 1.30.

20

Afternoon session, 1.30 P. M.

RICHARD H. WOODNUT, Resumed.

CROSS EXAMINATION

30

BY MR. CARR:

Q. Now Mr. Woodnut, I call your attention to the bill of particulars annexed to the declaration in this case and especially to the items commencing under date of December 23rd, 1905 down to and including the end of the account and I ask you whether

as to any of these articles you can say by whom they were ordered, for what purpose they were ordered or for what purpose they were used?

A. December the 23rd?

Q. Yes, beginning with December the 23rd, inclusive?

A. December the 23rd. You want to know what they were used for?

10

(Question repeated.)

A. Well, I am sure they were ordered by Mr. Bell for the Muckenhirn foundry building.

Q. But, do you know, Mr. Woodnut?

A. I am sure they were ordered by Mr. Bell for the Muckenhirn foundry.

Q. I call your attention to the fact that the question which I now ask you comprehends all the items which I asked you about and went over specifically and to which you responded, as I recall it, that you didn't know by whom the materials were ordered, for what purpose they were ordered or for what purpose they were used and I now ask you if you are able to say by whom the materials were ordered, for what purpose they were ordered and for what purpose they were used, including all materials shown on the bill of particulars from December 23rd inclusive to the end of the bill of particulars?

20

30

MR. ACTON: I object, if court pleases, on the ground that he has already answered it. It is a repetition.

MR. CARR: The purpose, your Honor, is that I am not sure whether in checking out one or two

items may be omitted.

(Question admitted.)

A. Do I know what they were used for? I know they were used in the Muckenhirn building, but in what particular place, I don't know what they were used. I know they were used in the building, because they were sent there for that
10 purpose, to finish it up.

Q. Now I ask you how you know the items were used in the building?

A. I kno wthey were used in the building as much as I know anything were used in the building.

Q. Now I ask you how you know the articles were used in the building.

A. Well some of the boards I saw in the building. I saw it this noon, them new weather boards that
20 were in the building.

Q. Can you identify these weather boards?

A. Yes, sir.

Q. How can you identify them?

A. By the size.

Q. There is no marks on the boards themselves by which they could be identified themselves, are there?

A. No particular marks, no. Only the width
30 of the boards.

Q. The boards were of the same general character and size as are sold by other lumber lealers?

A. Not necessarily; there are different width ones.

Q. Well these widths are handled by other lumber dealers, are they not?

A. Well perhaps there is.

Q. Was there anything about these boards by which you could tell them from some other lumber sold by other dealers?

A. Well some other dealer may have the same kind.

Q. Now, how do you identify these boards which you say you saw on the floor?

A. Well, they were the kind of floor that we sold him. 10

Q. But you can't say that they were the same?

A. Well I felt they were.

Q. But you can't say so positively, can you?

A. Couldn't anybody say that.

Q. But you don't definitely know?

A. Yes I do definitely.

Q. How do you know?

A. Because I believe that they were our boards. I am firmly sure of it they were our boards. 20

Q. Now how are you sure of it?

A. Because I saw the boards and they were the same kind.

Q. But you can't say they didn't come from any other dealer, can you?

A. Can you say they did come from any other dealer?

Q. Can you?

A. I can say that they didn't.

Q. Well now is that the most that you can say that you think and believe that these boards - - 30

A. I am sure of it that they didn't come from anywheres else than our place.

Q. Now how do you know that they didn't come from any other place?

A. I would have known now.

Q. Now you say that he ordered almost all his lumber of you?

A. I don't suppose that he got five dollars worth from any one else.

Q. But you know that he did buy some lumber from some one else?

Q. You don't mean to say that he got lumber from some one else, do you?

10 A. No, can't say that.

Q. How can you say that?

A. Because I recognized the lumber as being our lumber and I know that he got the lumber from us and I know that we furnished the very same lumber.

Q. You didn't see the lumber delivered?

A. I don't remember.

Q. You don't have any recollection of having seen it delivered?

20 A. I charged it up on the book and I know it went in.

Q. You dont have any recollection of having seen it delivered?

A. I know I saw it in part in our yard.

Q. You have no recollection of having seen it delivered in Muckenhirn's place, have you?

A. I have no particular recollection of that.

Q. And the situation of your knowledge is that

30 you saw the lumber leave your place and that you saw lumber down there which appears to be of the same size and general nature?

A. That is the situation of my knowledge. I didn't see them.

Q. Tell me what the situation is?

A. I can't say just now.

Q. Now with reference to these particular boards?

A. My knowledge is on the books as far as my charging and as far as the entire lumber went there, I might have taken it there, yes, sir.

Q. And this lumber you didn't take there yourself?

A. I don't know, I might. If I didn't take it there myself, I had the man to take it there. 10

Q. Now what is this particular lumber that you are speaking about?

A. Well there is 110 feet hard pine scantling.

Q. Under what date?

A. Twenty-third.

Q. Of what?

A. December, part of it and part went on the 28th.

Q. 119 feet and what else? 20

A. Well there is 176 yellow pine scantling went on the 23rd and 112 feet went on the 28th.

Q. Twenty-eighth of December?

A. Twenty-eighth of December.

Q. Don't seem to be any charged on the bill of particulars?

A. Well it was all charged up together.

Q. Delivered on the 28th and charged on the 23rd?

A. It may be on the 23rd; it is marked here C/12/28. 30

Q. Now how many feet of this lumber did you see in the factory when you went down at noon?

A. What is that?

Q. How many feet did you see?

A. Well there is a space twenty-six feet long

and ten feet wide.

Q. And how much went into that? How much lumber would that be?

A. It would take in the neighborhood of one hundred feet of flooring, I should say.

Q. You didn't measure the flooring?

A. I measured the size of the floor and I saw the new boards.

10 Q. Where were these boards?

A. In the Muckenhirn.

Q. What part?

A. I don't know what part. It is all one building to me.

Q. Will you look on this plan and say what part you saw it in?

A. I was on the side next the railroad.

Q. Do you know the room that was formerly the
20 buffing room?

A. No, I don't know one room from another.

Q. Can you indicate on here where it was?

A. No, sir.

Q. You don't know?

A. I know where it is on the building, but not on that map.

Q. Can't you point out on the map where it was?

A. It goes to the -no, sir, I can't. It is some-
30 whers along—well I couldn't tell from that map where it is.

Q. You can't tell by the map? Now I understood you to say that the building was incomplete, that is correct isn't it?

A. Yes, sir.

Q. Now you didn't know, of course, what Mr.

Muckenhirn's plans were with relation to the completion of the building, did you?

A. Well he was in the office one day and said after he got this building completed he was going to build another building clear over to Jones factory.

Q. Well with respect to this building of this plant you don't know what the plans were with water closets and so forth?

A. Only what I saw the plans down there where they started the water-closets. 10

Q. But you didn't know what Mr. Muckenhirn intended to do nor that he was going to put up any other building?

A. He told me that he was going to put up another building.

Q. But you don't know what he intended to put in in the way of finish windows, ventilating and water-closets, do you? 20

A. No, sir.

Q. You don't know what his plans were as to those articles, do you?

A. No, sir.

Q. And as I understand it all that you observed as being incomplete were the windows, water-closets and ventilators?

A. No, sir, I noticed that the roof wasn't completed, wasn't nailed down. 30

Q. And they are the only things you have noticed?

A. No I don't say they are the only things. I don't remember everything.

Q. And they are the only things yon remember?

A. Well there is some rafters that aren't fastened.

Q. That is what you ment when you said the roof was incomplete?

A. No, sir; no, sir.

Q. Now the rafters that are incomplete, as you say, are in this portion of the building, are they not?

A. I don't know what portion of the building. Over that floor, the new floor.

Q. Now can you tell from this map?

10 A. No, sir. If I had the map down to the building I could tell.

Q. You don't know in what portion of the building the uncompleted rafters are?

A. Not from the map; I know down there.

Q. Now the roof, what was the matter with that?

A. It wasn't nailed down. Started to nail down and got half done and quit.

20 Q. Now do you know how long it would take a man to finish that?

A. No, sir.

Q. Have you any idea?

A. Yes, sir.

Q. What is your idea?

A. It wouldn't take so many hours to do it.

Q. A matter of two or three hours?

A. I don't know as it would take him that long. I think I could nail it in less time than that if I

30 should go at it very spry.

Q. Now the ventilators, what did you say was wrong with them?

A. The ventilators—one ventilator I don't think is completed, but I don't know what is the matter with it though.

Q. How do you know the one ventilator isn't

complete?

A. Well I heard it given in court here and I looked at it to-day, but didn't examine.

Q. Now what did you see that was wrong with it yourself?

A. I am not a particular judge about it. I didn''t go up on the roof and examine it.

Q. Now you said it was incomplete. Now won't you say in what respect it was incomplete, as for as you know? 10

A. I don't know as I remember exactly.

Q. Then you don't know what was wrong with the ventilator of your own knowlelge?

A. I don't remember now.

Q. Now what was wrong with the window?

A. Which window?

Q. I don't know; the one you spoke about?

A. I don't know, only I understand they weren't cased up. 20

Q. Do you know this from your own observation?

A. I saw it to-day and it hadn't been finished and had no casings.

Q. On how many windows?

A. I don't know. I didn't examine them. There is a good many windows there.

Q. Did you examine all of them?

A. No, sir, but I went around the building. I didn't examine all of them. 30

Q. And the casings were missing on a good many of the windows?

A. A good many of the windows.

Q. How many would you say?

A. I didn't keep track of the count of them.

Q. On some of them? Now the casings is what?

A. Generally only on the inside of the window.

Q. Something like that strip of wood?

A. On a building of that kind it would be plainer than that.

Q. It occupies the same position?

A. I'm not a judge of that kind.

Q. That casing would be a wooden strip occupying this position in regard to a window, would it?

10 A. I'm not very well posted on window frames, only on lumber.

Q. Don't you know what the casings are?

A. I know what casings are.

Q. What do you mean that the casing ought to be on the window?-

A. The windows generally have casings on.

Q. That is absolutely necessary to complete a building, is it, a foundry building?

20 A. They might stick a nail in back of the window to hold it, or something of that kind.

———o———

RE-DIRECT EXAMINATION.

BY MR. ACTON:

Q. Mr. Woodnut, did Mr. Muckenhirn ever tell

30 you that he had completed his building?

A. No, sir.

Q. When this lumber left your yard do you know the destination for which it was intended?

A. Destination, yes, sir.

Q. Where was it?

A. Mr. Muckenhirn's foundry.

Q. Did you ever take any down yourself?

A. Yes, sir.
Q. More than once?
A. Well I think I have more than once, yes, sir.
Q. Has that ever been paid for?
A. No, sir.
Q. Is that included in this bill?
A. Yes, sir.
Q. Who carted most of it down there?
A. Our man, driver. 10
Q. What is his name?
A. Albert Giles, the most of it.
Q. Would Mr. Bell in the telephone messages tell you where to send it?
A. Said down to the foundry. That was very seldom, mostly he came himself.
Q. Now do you know the use that filistered boards are to be put?
A. Weatherboarding. 20

MR. CARR: If your Honor pleases, it is a part of the direct examination; it is nothing that I brought out.

THE COURT: Well, if it is something that has been overlooked, I will allow it.

Q. Mr. Woodnut, do you know whether or not at the time those bills were sent that they were sent 30 for a completed transaction?

MR. CARR: I object because the bills are not in evidence.

THE COURT: Did you ask him if he didn't send the bills for a completed building?

MR. ACTON: You asked him that.

Q. Were those bills sent as bills for a completed building?

A. I couldn't say about that, I didn't send them.

Q. Well, did you know about that, that the building was completed at this time?

A. No.

10 Q. Did you ever send a bill to Mr. Muckenhirn for any completed building?

A. Never remember it. Well—no, I didn't remember it.

Q. Did Mr. Muckenhirn ever tell you what he wanted this lumber for?

A. For to build a foundry and machine shop and brass plant.

20 MR CARR: Now I ask to strike that out. It isn't responsive.

Q. Did he tell you?

A. I don't remember everything he said.

Q. Do you remember Mr. Muckenhirn ever saying anything to you about what he wanted this lumber for. Now that can be answered yes or no.

MR. CARR: I object; this is a part of the main case of the plaintiff.

30 THE COURT: Yes, it ought to have been produced then, of course.

CLAYTON WISTAR, Sworn.

DIRECT EXAMINATION.

BY MR. ACTON:

Q. Mr. Wistar, where do you live?
A. I live in Salem, New Jersey.
Q. What is your business? 10
A. Lumber business.
Q. Whereabouts?
A. On Market street, Sixty eight Market Street, Salem, New Jersey.
Q. With whom?
A. With R. H. Woodnut.
Q. Under what firm name?
A. Wistar and Woodnut.
Q. How long have you been in business?
A. We have been in business twenty one years. 20
Q. Do you know Charles H. Muckenhirn?
A. I do. I think I do.
Q. What business was he—has he been in—engaged in until recently?
A. In the—in a foundry business.
Q. Where?
A. On Fifth street, Salem New Jersey.
Q. What kind of a foundry?
A. A brass foundry. 30
Q. Did your firm of Wistar and Woodnut furnish any lumber for that foundry?
A. Yes.
Q. Will you look over the schedule annexed to the declaration in this case and state whether or not the lumber mentioned in that declaration or sched-

ule was furnished by your firm to Charles H. Muckenhirn?

A. Yes; this was furnished there, all of it.

Q. For what purpose?

A. For erecting a building, a brass plant.

Q. Upon whose order?

A. Well, it was ordered by Mr. Bell, Mr. Joseph Bell in the first start and continued on by Mr. Samuel
10 Bell.

Q. Did you ever have any conversation with Mr. Muckenhirn with reference to that material?

A. Yes we—he was often in our office talking about this building there and talking about his building this building and enlarging it from time to time. He told us that when he got this completed and paid for he expected to build a larger one; that when he was done this he expected to build more.

20 Q. Did he, or did he not ever admit to you receiving any of this lumber?

A. No; they never quibbled over the bill in any way.

Q. Did he ever have any talks with you in which he admitted receiving these lumbers you sent him?

(Objected to as leading.)

Q. What conversations have you had with Mr.
30 Muckenhirn, if any, relative to the lumber you were furnishing him?

A. Well in regard to the lumber we were furnishing him and in asking him he said he always was satisfied.

(Objected to, "that he was satisfied." Ordered stricken out.)

Q. Did you send him bills from time to time?

A. Yes, sir.

Q. For partial payments—demanding partial payments?

A. Well I don't understand what you mean by partial payments. We sent him bills from time to time, not any completed bills.

Q. Were these bills that you sent him from time to time, did they embody the items in this declaration? 10

A. They did.

Q. Now you said something about not being completed bills, what have you to say in explanation of that?

A. Well we couldn't never, he was always ordering, if we sent him a bill one day he would be ordering that same day and therefore needing more lumber all the time or using more lumber, in fact, I mean to say. 20

Q. Now how did you come to furnish Mr. Muckenhirn with this lumber in the first place?

A. Well, he came and talked with us about the building what he was going to do down there, what he was going to put up.

Q. What did he say?

A. Well I suppose — —

(Objected to what he supposed.) 30

Q. State what he said?

A. The first conversation we had with him was about buying the lot and he finally bought the lot and afterwards went on, in fact before he got his deed he went to building on the lot.

Q. Did he or did he not ask you to furnish the lumber for that building?

A. Yes, he did.

Q. Now in consequence of that request, what did you do?

A. We furnished the lumber for him as we were instructed by those employed under him.

MR. CARR: I object to the statement, "of those
10 employed under him."

THE COURT: Strike out that and just state who gave the order.

Q. Who gave you he order for this lumber in that first place?

A. Mr. Joseph Bell on the start.

Q. Was that before Mr. Muckenhirn — —

20 A. Before Mr. Muckenhirn?

Q. Yes.

A. He wasn't working for Mr. Muckenhirn.

Q. Do you know whether or not Mr. Muckenhirn —did Mr. Muckenhirn ever say anything to you about his relation with Joseph Bell there, who was building his plant?

A. Well I couldn't say that, I—he said he wanted the lumber; I couldn't say.

Q. Did he say who would get it—who to deliver
30 it to?

A. Yes, I should say that he said Joseph Bell was going to build the building; I should say that.

Q. Did you ever see him and Joseph Bell together?

A. Well, I don't know that I have without I have been down there at the factory and seen them togeth-

er.

Q. Did you not go to the factory from time to time while it was in course of erection?

A. Yes, sir.

Q. Did you at any of these times see Mr. Muckenhirn and Mr. Bell there together?

A. Well not very often; he wasn't much down there anyway, I guess.

Q. Did you ever deliver any of the articles to that factory yourself? 10

A. Yes, sir.

(Objected to as leading. Question allowed.)

Q. Taking this bill of items, can you identify any articles which you delivered there?

A. Myself?

Q. Yes.

A. No, I couldn't. I could identify articles that I went down and took account of for him. I could identify articles I went down and took account of. Of course, I had to keep very close run of them and I would be qualified to say what articles were in that book were furnished down there. 20

Q. Who was the man who was working for you carting?

A. Albert Giles.

Q. Who received these orders?

A. Sometimes Harry would receive them, my partner, and sometimes I would. Who was there wouldr eceive them. 30

Q. In what way were those orders received?

A. Why the larger orders were brought there and handed right to us by Mr. Joseph Bell.

Q. And the other orders?

A. The other orders were from time to time

phoned or they would send up a boy from the factory.

Q. Now upon receipt of those orders what would you do?

A. We would put them on the wagon and send them down there.

Q. Did you ever help load any of these orders?

A. Yes, I've helped load a great number of them.

10 Q. What instruction would you give your carter? if any?

A. To take them down there to Mr. Muckenhirn's factory.

Q. Do you know in truth and in fact whether those orders were delivered there of your own knowledge?

A. I am satisfied they were delivered there.

Q. Have you seen in that building any of the 20 lumber which you recognize as coming from your place of business?

A. Yes, sir.

(Objected to as leading. Question allowed.)

Q. What lumber have you seen in that building which you have been able to recognize as coming from your firm?

A. Well, I was down there from time to time and I knew pretty much all the lumber that went down there and knew it came from us. I am satisfied that 30 all came from us in a part of that building; of any size, of any length I can identify by going down to the building. I know where they went and all about it except may be it might be small items, because I mean the larger buildings.

Q. Turning to the schedule I ask you, Mr. Wistar, if the articles mentioned in this schedule have been

paid for?

A. In this schedule?

Q. Yes, the articles?

A. No, sir, except the credits as on the bill.

Q. There has been a thousand dollars?

A. A thousand dollars.

Q. How much is due and owing to you on this claim?

A. Four thousand seventeen dollars and fifty-nine cents. 10

BY THE COURT:

Q. Interest from when?

A. No interest.

Q. You mean you waive interest?

A. No, there is no interest.

Q. From what date, when was the last material furnished? 20

A. April the eleventh.

BY MR. ACTON:

Q. Twentieth, isn't it?

A. Yes, twentieth.

Q. When was the credit of a thousand dollars paid on this bill?

A. February nineteenth. 30

Q. What year?

A. Nineteen six.

Q. By whom was that paid?

A. That was paid by Mr. Muckenhirn.

Q. Now do you know, Mr. Wistar, whether or not when this credit was paid that bills for goods ordered had been renderd up to the time of that credit?

A. I couldn't say how far the bills had been rendered up then. February nineteenth, I suppose they had— —

Q. Did that settle your claim at that time?

A. No, sir; this is in part payment.

Q. Now will you look at your account from December the 23rd, 1906?

A. 1905 you mean?

10 Q. 1905, I should say—do you reconize any charges after that date?

A. Well I should have to have the blotter, I guess. I made that. That is November or December last.

Q. December?

A. These two charges seem to be in my partner's handwriting.

Q. Well now, go on to the next charge?

A. What is the next date?

20 Q. January 3rd.

A. That is in Mr. Woodnut's handwriting too.

Q. Well what is the charge that you find there?

A. I find 467 feet of yellow pine boards 12.61.

Q. To whom is that charged?

A. Charles H. Muckenhirn—and 200 feet of filistered boards 6.60.

Q. Do you know where they were used?

A. They were used down at the factory.

Q. How do you know that, Mr. Wistar?

30 A. I knew all this lumber that we furnished was delivered down there in erection and completion of the foundry.

Q. Do you see any subsequent charges in your own handwriting that you identify ?

A. I find one on the fifteenth.

Q. What is that?

A. That was for 267 feet of filistered boards, 9.35.

BY THE COURT.

Q. What is the date of that?
A. January 15th.

BY MR. ACTON:

10

Q. Do you know what was done with it?
A. Sent down to the factory.
Q. Do you know where it was used?
A. It was used in erecting and completing the factory, that is all I know about it.
Q. To whom is it charged?
A. Charles H. Muckenhirn; ordered by Samuel Bell.
Q. So marked in your book?
A. Yes. sir.

20

Q. It was ordered by Samuel Bell for Charles H. Muckenhirn?
A. Yes, sir.
Q. Do you see any subsequent charges in your handwriting?
A. I see charge in Mr. Woodnut's handwriting up to March 14th.
Q. Well, to whom are they charged?
A. Charles H. Muckenhirn. I have one on March 14th in my handwriting, 147 feet of filistered boards.

30

BY THE COURT:

Q. What is the item?
A. 347 feet of filistered boards.
Q. What is the date?

A. March 14th.

BY MR. ACTON:

Q. Now to whom is that cahrged?

A. C. H. Muckenhirn.

Q. Do you know where those boards were used?

A. Yes, sir. They were used at the factory. They
10 were ordered by Samuel Bell.

Q. See any other?

A. The 17th seems to be in Mr. Woodnut's handwriting.

Q. Now, Mr. Wistar, do you know whether or not that building is completed?

A. Yes, I know.

Q. What?

A. No.

20 Q. In what respect?

A. Well the windows have never been cased around in the whole building except the office. The office is the only part of the building that has got any casing around the building in the whole of the large—any additions or any part of the building.

Q. What else?

A. The roof hasn't been tacked down properly. Hasn't been nailed down as it should be when it is completed.

30 Q. What else?

A. Well, there is a ventilator there, I think it is in this buffing room, that is just boards nailed over the top of it. It is a hole cut in and just boarded over and never been any skylights or anything put in it.

Q. What else?

A. There is a window in the watercloset, in the front watercloset that has never been put in. The window is there to go in, but never has been put in.

Q. What else?

A. The casings around the ventilators have never been put in or strips, as I should say.

Q. Notice anything about the waterclosets?

A. Yes, sir, there is a place there to be waterclosets that has drains laid under it but there is no waterclosets there. It has never been put in. The door has never been hung and the watercloset — —

Q. What about the buffing room?

A. The buffing room is—there is extra stays there they ought to be bolted fast, but they have never been put on.

Q. Places made there for the bolts?

A. Places made there for the bolts.

Q. And the bolts never put in?

A. No.

Q. Who is the present owner of this building?

A. Wistar and Woodnut.

Q. You bought it how?

A. Bought it at the sale of the Trustee in Bankruptcy.

Q. Was it sold in portions?

(Objected to. Question withdrawn.)

CROSS EXAMINATION.

BY MR. CARR:

Q. Now, Mr. Wistar, I understood you to say

that Wistar and Woodnut furnished all the lumber that went into the Muckenhirn plant, was that correct?

A. To the best of my belief we furnished everything.

Q. So that to the best of your knowledge and belief all of the lumber that went down there was furnished by Wistar and Woodnut, was it not?

10 A. Well I wouldn't say everything because I wasn't down there all the time to see it, but I say all the lumber, but if there was any lumber there it was very immaterial to the plant. I know from the bills and we were furnishing all the time.

Q. So that you are satisfied that you furnished practically all the lumber that went down there?

A. Yes, sir.

Q. You were present at the sale by the Trustee in

20 Bankruptcy of the plant, were you not, Mr. Wistar?

A. Yes, sir.

Q. And were a bidder at that sale, were you not?

A. I wasn't myself.

,Q. You were present at the sale however?

A. Yes, sir.

Q. You went through the plant, did you not, and examined it at the time?

A. Yes, sir.

Q. Did you observe there wooden trays under the

30 lathes—wooden boxes or trays setting on the floor under the lathes?

A. I don't know as I noticed any trays.

Q. Sir?

A. I don't know as I noticed any trays.

(Objected to as not cross examination.)

MR. CARR: That is very important. This witness has testified so far that this became a part of the real estate; now I have a right to find out whether some of it didn't become a part of the personal estate.

THE COURT: Has this witness said anything about what was in the building?

MR. CARR: Said that this lumber was all furnished for the erection and construction of the building? 10

THE WITNESS: Of the plant I said.

THE COURT: Well you may ask him how it was used, of course.

Q. Now how was this lumber used, Mr. Wistar? 20
A. How was it used?
Q. Yes, for what purpose?
A. To build the plant.
Q. All of it used for the building of the plant?
A. I should say the plant consisted of all that was necessary so to run a foundry of that kind.
Q. And by a plant you would mean then the work benches, tables, trays, sand boxes — —

(Objected to as incompetent. Objection overruled.) 30

Q. Now by plant do you mean the movable boxes, tool stands, trays and sand boxes and patterns—is that, in your judgment, a part of the plant?
A. I don't know anything about those parts of

the plant. I don't know whether there is any lumber used for it.

Q. Now what do you mean by the word plant?

A. I mean the building and the construction built down there.

Q. And the moveable things inside of the building?

A. No, I mean what was fast to the building.

10 Q. Exactly, so that when you say that all of it went into the plant you mean that all of it went into the permanent building, do you not?

A. I said as far as I know. I don't know anything about what they used in any of their trays or those things. I don't know anything about that.

Q. Now isn't it a fact that a considerable part of this lumber purchased and, especially within the four months preceeding the filing of the lien, went for use in the operation of this factory as distinguish-
20 ed from its erection or construction?

A. No, I shouldn't think it would.

Q. Do you say that no part of this material went into the operation, as distinguished from the erection of the plant?

A. I should think in four months from the time they commenced to build if they used the lumber or the quantity of lumber they had, it was in extending the plant, in some shape or other.

30 Q. But then you have no exact knowledge as to whether the materials furnished within four or five months preceeding the filing of the lien by you, were furnished for the erection of the building or were furnished in connection with the operation of the building, have you?

A. Yes, I have.

Q. You have exact knowledge? Now having that exact knowledge what proportion, if any, was used in the erection and what proportion, if any, was used in the operation?

A. I don't know anything about proportion. I know the lumber we furnished last was furnished to enlarge the plant.

Q. To enlarge the plant?

A. Yes, sir. 10

Q. And that meant the addition to the buffing room, did it not?

A. Yes, sir, in part.

Q. And that addition to the buffing room consisted in increasing the walls and the floor space of the buffing room, did it not?

A. Yes, sir.

Q. So that the buffing room after the alteration would occupy more room than it did before? 20

A. Yes extend, would occupy more room, of course.

Q. But as to those items from December 14th, inclusive, down, you have no exact knowledge as to which of the mwere used in connection with the erection of the building and which of them were used in connection with the operation, have you?

A. Since when did you say?

Q. December 14th, 1905.

A. Yes, I know of some that has been used in the erection of the building and some were used making partitions in the building. 30

Q. Some were used for making partitions in that building and some were not used for that purpose were there?

A. I wouldn't say that all of it.

Q. And as to some of it at least you can't say for what it was used?

A. I know it was used down there in the plant or finishing up the plant.

Q. Now how can you say that it went into the permanent building, in with the finishing up of the plant?

A. I know from a conversation I had.

10 Q. Conversation with whom?

A. Mr. Bell.

Q. In the presence of Mr. Muckenhirn?

A. No, sir.

Q. Then you can't say?

MR. ACTON: I don't know about that, your Honor. He was there as Muckenhirn's agent.

THE COURT: He is not required to answer him.

20

Q. Do you know that all of the materials that were sent down there from December 14th inclusive to the end of your account were used as a part of the erection of the building?

A. I have a reason to believe they were used in the construction and finishing up of the building.

Q. And have you any reason to believe that no part were used in the making of work benches and

30 trays?

A. I have no reason to believe any other way.

Q. Now when you were down there you observed various wooden boxes and you observed sand boxes at the time of the sale?

A. No, I didn't follow the sale around at all.

Q. Did you observe any moveable things made out of lumber on that day?

A. No, I didn't.

Q. You didn't observe anything of that kind?

A. No, sir.

Q. Now won't you tell me how you are able to say that all of these articles were ordered for the permanent structure?

A. Well you won't let me. I wanted to tell you how it was done. I went down there and seen and was told where it went. 10

Q. All of the articles?

A. Not all of the articles but the main part of it.

Q. No your knowledge is from having gone down there and seeing the articles that had been placed in the building?

A. That is the major part.

Q. Then as to the minor part?

A. I couldn't say about the minor part.

Q. Then as to the minor part you unable to state of your own knowledge that they went into the building, that is true is it not? 20

A. I couldn't say how much, but my belief is that they all went there for the construction of the building.

Q. But your own knowledge is only as to the major part and that because you had seen it in the build ing?

A. Yes, I had seen it in the building and knew the lumber when I seen it. 30

Q. But aside from what you learned from inspection of the building there remained a portion which wasn't accounted for in that way, was it not?

A. I don't know as there was.

Q. Do you mean to say it was pointed out to you where every item in your account went in the build-

ing?

A. No I don't know as anybody working there could say that. The man who done the work I don't believe could tell exactly where it went.

Q. And you didn't know exactly where it went either did you?

A. I say no man could say exactly where a piece of lumber went. I was satisfied that it went there in the building and construction.

Q. Now the most of these orders came, as I understand it, from Samuel Bell—from Joseph Bell and later from Samuel Bell, that is correct, isn't it?

A. Yes, sir.

Q. And your personal knowledge of the items, does it extend further than the items which you have written in the book?

A. I am satisfied that they all went there.

Q. What I mean to say is that the items written by your partner represent the orders that came to him, isn't that true?

A. Not exactly; I might have taken the order and he might have taken it down.

Q. But does your personal knowledge extend beyond the entries made by you?

A. Yes, I am satisfied that it all went there.

Q. What I mean to say is this, when the orders were received by Wistar and Woodnut from either of the Messrs. Bell the order was taken by either yourself or your partner, was it not?

A. Yes, sir.

Q. And if your partner took it he would write it in the book, wouldn't he?

A. Not exactly.

Q. What would he do with the order?

A. He would note the order down and whichever took the order out would put it on the books.

Q. Who had particular charge of the book entries?

A. Didn't belong to either one particularly.

Q. Now I understand that you have made from December the 14th to the present time but two entries in the books, namely, entry of January 15th and that of April the 14th, that is correct is it not? 10

A. I don't know. I didn't locate and get down all the bills, I don't know who ordered—17th—I didn't notice who put that in there. I guess that is correct.

Q. Now won't you turn to the account—turn to the bill of particulars under date of December 23 several items consisting of a total of 38.71 and say whether you or your partner received the order for that?

A. Well my partner—I received the order—I 20 couldn't tell you that.

Q. You don't know?

A. One or the other of us received it.

Q. You don't know who gave that order do you?

A. I believe Mr. Samuel Bell gave it.

Q. I asked you whether you know?

A. I should say Samuel Bell gave it.

Q. Do you know?

A. He gave all the orders. I don't see why I 30 should know.

Q. Do you know whether he gave that order or not?

A. I have reason to believe he gave it.

Q. Have you any clear recollection of that order itself?

A. I have no recollection of that order, but I

know he is the man who ordered the stuff.

Q. Now do you know for what specific purpose it was ordered?

A. No, I don't know, I don't know as I do but still with the exception it is—it was used in the construction of the building.

Q. Just a moment. Now do you know for what purpose this material was used?

10 A. Which material?

Q. Mentioned in the last item of 38.71 that is the total of the charges for December 23rd?

A. Well it was used in the construction of the plant down there.

Q. How do you know?

A. Well I know just as much about that as any other part of the bill, that is what it is all used for.

Q. Did you see this used?

20 A. Didn't see any of it used.

Q. Well I ask you whether you saw this used?

A. It is used in the construction and building the plant; that is what they were doing down there.

Q. Did you see this used?

A. Don't know as I did.

Q. Now I call your attention to the item under date of January 3rd, amounting to—I call your attention to items of January 3rd consisting of 12.61 and 6.60 and ask you whether the order was received

30 by you or by your partner?

A. I couldn't say and if he received it he charged it.

Q. And you don't know by whom the order was given?

A. Samuel Bell always gave the orders except where he sent a boy up there.

Q. Have you any independent recollection of this order?

A. Not of that separate one, only I know that was always the case.

Q. Now have you any independent recollection of what the goods were ordered for?

A. They were ordered for the erection of the plant.

Q. Was it so stated when the order was placed? 10

A. Wasn't none of them stated from the first to the last.

Q. Was never stated?

A. No, sir.

Q. And do you know for what purpose they were actually used?

A. Only the erection of the plant and equipping of it.

Q. But you don't know that of your own knowledge, do you Mr. Wistar? 20

A. Don't believe anything else.

Q. No, but do you know—did you see the material used?

A. No, sir, didn't see it used.

Q. Now have you any independent recollection of the next items under date of January 15th consisting of one charge of 4.39 and another charge of 6.48—is there a third charge there—no—have any independent recollection of who received the order for that? 30

A. Who received the order?

Q. Yes.

A. The order is marked as received from Samuel Bell.

Q. And you believe Samuel Bell placed the order for this too?

A. I know he did.

Q. All right now for what purpose did Mr. Bell say the goods were to be used?

A. He didn't say.

Q. Didn't say? Now do you know for what purpose they were used, of your own knowledge?

A. Used in building the building.

Q. Do you know that of your own knowledge?

10 A. I know that is what they were doing. That is the only thing I can tell.

Q. But of your own knowledge do you know that the goods were used in this building?

A. Don't suppose they were used in any other building thereby I believe they were used there.

Q. Do you know of your own knowledge that they were used in the building?

A. Yes, they were used in the building.

20 Q. Do you know that of your own knowledge?

A. Yes.

Q. Did you see them used?

A. I didn't see them used, but I know they were sent there.

Q. Now how do you know that they were so used?

A. So used?

Q. So used, that is, used in the building?

A. I don't think that is much of a question.

30 Q. I didn't expect you to admire my questions Mr. Wistar, won't you answer them though?

A. I only know they were sent there and that is all I know.

Q. But how do you know that fact?

A. Well I sent it there and I have every reason to believe — —

Q. Isn't it true that you merely believe and don't

know of itself?

A. I am not going to tell only what I know.

Q. That is all I want to know.

MR. CARR: Here is a witness who says that he knows it is used in the building..

A. I took the lumber there and expected it to be used there. 10

Q. Now the next charge here 296 feet of yellow pine boards and 267 feet of fil. boards — —

A. What date is that?

Q. That is dated, I think, January 15th.

A. Well that is the same one we had.

Q. 296 feet of Y. P. boards 7.89, is your answer the same as to that?

A. Yes, sir; it was ordered by Samuel Bell as marked on the books. I am satisfied it went there and nowheres else. 20

Q. Now, Mr. Wistar, taking all the items of this account from January 15th exclusive to the end of the account can you say by whom the order was placed?

A. Well I have told you several times these orders were given to us by Samuel Bell or else sent up by a boy from the factory by Samuel Bell.

Q. Now I ask you of each of these items whether you know of your own personal knowledge by whom the order was placed? 30

A. Well I should say by Samuel Bell, because he didn't give any large quantity of lumber without he came up to the yard to see about or sent over the phone and the only thing they sent by a boy was something of no large amount. Wherever there was

a large order Mr. Bell attended to himself.

Q. And Mr. Bell would simply ask for so many boards or what he wanted, would he not?

A. Just what he wanted.

Q. And he would make no statement as to the purpose for which it was to be used?

A. Just send it down to the factory.

Q. Now you don't know what use was actually
10 made of that lumber do you, that is, of your own knowledge?

A. I have told you that several times. In the erection of that factory or the completion of it. He wouldn't buy that quantity of lumber for anything else.

Q. And your reason for stating that is that you believed the lumber would be used for that purpose, is that right?

20 A. I say because I believe it was used for that purpose.

Q. But not because you have seen it used, isn't that true?

A. I have seen the lumber down there and they built the factory and completed it.

Q. Now what I want to really get at, Mr. Wistar, is this. You can't tell, can you, whether all of this lumber was used in building the factory or whether some of it was used in the making of boxes or
30 work benches or of tables, you can't tell that, can you?

A. I know it was sent down to the factory for the use of the factory, in the building and completion of the factory.

Q. What they wanted to make down there, isn't that it?

A. You want me to say what they built everything of down there, because nobody under Heavens could do that.

Q. All I want you to say is whether or not you can tell that all of this material went into the permanent building or whether some of it was used for other purposes, that is all I want to know.

A. That is the same question you have asked me several times. 10

Q. Yes, but I havn't got an answer to it.

A. I told you I believed it went down there to build and erect the factory.

(Question repeated.)

A. I couldn't say.

Q. Mr. Wistar, I show you exhibit D 4 for identification and ask you whether you wrote that letter?

A. Yes, sir, I did.

Q. I show you exhibits D 1, 2 and 3 for identification and ask you whether these statements are in your writing? 20

A. Yes, sir.

Q. Now won't you read aloud exhibit D 4?

A. Won't I what?

Q. Read it out, won't you please? Read it out so the jury can hear it?

A. "We render you a lumber account. Long bill is for lumber used inside factory extending around along railroad, engine room and buildings for moulding sand. Short one is for moulding building next to creek, built in August. Will render you a bill for last building later. Hoping this will be satisfactory to you, we are, Yours respectfully." 30

Q. Now what is the date of that letter?

A. October 20th.

Q. October 20th. Now is the long bill referred to therein exhibit D 1, is this the long bill?

A. I don't understand what you mean.

Q. In your letter you say the long bill is for lumber used inside the factory extending out along the railroad, engine room and buildings for moulding sand. I say is exhibit D 1, this paper here, what is referred to as the long bill?

10 A. I don't know what that there bill is.

Q. Look at that here. Can you tell Mr. Wistar?

A. I suppose that is the first bill referred to.

Q. Now the short bill referred to in your letter exhibit D 4 is this the bill dated October 19th and being exhibit D 3 for identification, is it not?

A. Yes, sir.

Q. Now the short bill your letter says is for the moulding building next to the creek and built in 20 August, now won't you refer to the diagram and indicate which building you mean by the moulding building?

A. It is the foundry, I suppose.

Q. That is, the large foundry building?

A. Yes, sir.

Q. And this bill exhibit D 3 for identification was for the foundry building built in August was it not?

A. Yes, sir.

Q. Now your letter says, "will send you a bill 30 for last building between the two when they get through." Now I show you exhibit D 2 and ask you whether this is the bill referred to as being for the building, the last building between the two, is it?

A. I suppose it is.

Q. Yes. Then exhibit D 2 for identification — —

A. I don't know as that is necessary, "when they

got through with the building."

Q. I am not asking you about that. Then exhibit D 2 for identification is a bill for the extension of the machine shop, isn't it? Being this building here in the centre? Could you tell better if you saw a picture of the plant?

A. That is the moulding room. This is the bill for the building in here.

Q. That is, it is for the building connecting the foundry building with the original machine shop, is it not? 10

A. Yes, sir.

Q. And that was the bill that you were to send when they got through with the building, was it not?

A. I told him I would send him that bill, but they came to us and wanted this bill and that is the reason I delivered it. I don't know as it was through at that time. 20

Q. But that is the bill which you said you would send when the last building between the two, when they got through?

A. They came and requested that bill. We didn't send it to them, take it to them. They came and requested it at some certain time.

Q. Now do you remember having an interview

A. November?

with Mr. Muckenhirn about November 15th, 1905? 30

Q. Yes.

A. I don't know, I had so many interviews with him, I don't know.

Q. Do you remember on that day Mr. Muckenhirn gave you a promissory note for fifteen hundred dollars?

A. I don't think I was in the office at the time.

Q. Don't recall it?

A. No, sir. I think he gave that note to my partner. I don't think I was in the office.

Q. I show you the note itself?

A. I know the note is there, but I didn't take it.

Q. It wasn't handed to you.?

A. No, sir.

Q. Are you sure of that?

10 A. Yes, sir.

Q. Were you in the office with your partner on November 15th, when this note was discussed?

A. No, sir.

Q. Did you have any talk with Mr. Muckenhirn about the fifteen hundred dollar note?

A. No, sir. I told my partner I didn't want to take any notes and when I came back to the office and found he had taken that note I didn't like it.

20 (Objected to. Ordered stricken out.)

Q. About November 15th, 1905 didn't Mr. Muckenhirn tell you that the plant was completed and that thereafter such material as was ordered would be for miscellaneous purposes?

A. No, sir, Mr. Muckenhirn never told us that from the first start because he never offered to pay for the bill and that is the reason he didn't say it.

Q. Didn't he tell you sometime in November?

A. Never did tell us anything of the kind.

30 Q. Now just wait. Didn't he tell you sometime in November 1905 that from that time forward the material ordered would be used for miscellaneous purposes?

A. No, sir, he never spoke a word of that kind in our office while I was there.

Q. Did you hear him state it to your partner in

your presence?

A. No, sir, I didn't hear him state it to my partner, but he didn't state while I was in the office that I know of.

Q. Do you recall that Mr. Muckenhirn asked you to send separate bills for the lumber, that he didn't want to wait so long for the bills?

A. No, I don't know as I do. I remember his asking for the bill and I think that is the reason we sent that bill. 10

Q. Don't you recall Mr. Muckenhirn asking you for a separate bill for the transactions later than November 15th?

A. No, sir, he never — — —

Q. Can you say positively that he did not?

A. He never did in my presence.

Q. Don't you recall that after you had rendered the bill exhibit D 2 that Mr. Muckenhirn asked you for the rest of the bills and that you then requested exhibit D 2 then consisting of one sheet to be handed back to you and that you pasted a separate sheet to it and added the additional charges after that date? Do you recall that? 20

A. Mr. Muckenhirn I don't think he ever asked for a bill. He never came to our office unless we asked him to come there. We asked him to come there because we wanted a settlement with him and he stayed away. He never was in the office hardly. 30

Q. Never mind that. Do you recall what I have said?

A. Mr. Muckenhirn never asked for any bills.

Q. And you don't recall what I have stated?

A. No, sir.

Q. During the time these mechanics lien claims

were running or rather during the time the bills were running Mr. Muckenhirn was operating a factorry plant, was he not?

A. Was he operating the plant?

Q. He was running a factory down there wasn't he?

A. Yes.

Q. And during all this time he was employing a
10 considerable number of hands, was he not?

A. I couldn't say what he was employing.

Q. But you knew there was a factory down there?

A. He told us he was.

Q. But you were down there and saw it?

A. I saw it, yes.

Q. The thing was in operation all the time you saw it wasn't it? There was a running factory all this time?

20 A. Yes. I guess it was always running.

Q. You would call it a receiving concern during all that time?

A. Some parts of it was going. Wasn't all going when I was down there.

Q. There were some parts of the factory in operation during all this time until April of this year?

A. What year?

Q. This year.

30 A. Well I guess I was down there before they started the plant, it wasn't in operation then.

Q. But from the time they started the plant until this year parts of the plant were in operation, were they not?

A. I can't say that, because I wasn't there all the time.

Q. I mean when you were down there?

A. When I was down there.
Q. But you had no doubt ?
A. I wasn't down all the time.

RE-DIRECT EXAMINATION.

BY MR. ACTON: 10

Q. Mr. Wistar, did you receive any information any time from Mr. Muckenhirn or anyone representing him to what use the items of lumber delivered by you to Mr. Muckenhirn was to be put?

(Objected to as double in form and calling for a conclusion. Objection sustained.)

Q. Did you ever have any information at any time from Mr. Muckenhirn to what use the items of lumber used—delivered was used and put to? 20

A. Well he stated he was going to build the factory there; that led us to deliver the lumber there for the factory.

(Objected to what he led you to believe.)

Q. Now by reason of what he said what did you do? 30

A. We delivered the lumber down there to his factory.

(Bills offered in evidence marked Exhibits D 5, 6 and 7.)

Q. Mr. Wistar, showing you bills 1, 2 and 3 I

ask you to explain those bills in relation to whether or not they were completed or closed transactions or partial bill —bills on account?

A. They were bills on account; just put them in this shape to designate more specifically where the lumber went to so as Mr. Muckenhirn would know what part of the foundry they were used. That is the reason they were gotten out in this shape.

10 Q. Were they in any way bills for separate plant or separate buildings or part of one continuous plant.

(Objected to. Question overruled.)

———o———

ALBERT GILES, Sworn.

DIRECT EXAMINATION.

20

BY MR. ACTON:

Q. Albert where do you live?
A. Sixteen Market street.
Q. In Salem?
A. Yes, sir.
Q. For whom do you work?
A. Wistar and Woodnut.
30 Q. How long have you worked for Wistar and Woodnut?
A. About thirteen year.
Q. All the time?
A. Yes, sir.
Q. What do you do there?
A. Deliver lumber.
Q. Now do you know Mr. Muckenhirn?

A. Yes, sir.

Q. Do you know where Mr. Muckenhirn's factory is?

A. Yes, sir.

Q. Where is it?

A. On Fifth street.

Q. Whereabouts in Salem?

A. Yes, sir.

Q. Do you remember when that factory was built? 10

A. I don't know as I can just say, about a year ago I guess or more.

Q. Who furnished the lumber for that factory?

A. Wistar and Woodnut.

Q. Who carted it?

A. Myself and Jerry Crane.

Q. When did you begin to cart lumber there?

A. Don't know just when I began. 20

Q. About when?

A. I suppose a year ago or more or less.

Q. When did you stop carting lumber there?

A. When did I stop taking any there at all?

Q. Yes.

A. About two weeks before they closed.

Q. Do you remember when they closed?

A. No, sir; closed this last summer, I guess it was this last summer sometime.

Q. Now what did you cart there, what kinds of lumber? 30

A. Sir?

Q. What kind of lumber did you cart there?

A. All kinds.

Q. Well, what do you mean by all kinds?

A. Carted three by fours, pine boards, filistered

boards.

Q. Any frame stuff?

A. Frame stuff, yes, sir.

Q. Who told you to cart it there?

A. Mr. Wistar or Woodnut.

Q. What did you do with it after you got it there?

A. Took it there and put it wherever they told me to put it.

10 Q. Where who told you?

A. Mr. Sam Bell or Mr. Smiley.

Q. Did you deliver it on the ground?

A. Yes, sir.

Q. Unload it yourself?

A. Yes, sir.

Q. Now about how often did you go there to deliver lumber during the past year and up to the last summer?

20 A. I can't tell you how often; quite often.

Q. Do you remember the last stuff you delivered there?

A. What it was?

Q. Yes.

A. No, sir.

Q. Do you remember delivering any stuff there last Winter in January, in cold weather?

A. I been delivering stuff there cold weather and warm weather and all times and I couldn't tell just 30 what I have taken there at different times now.

Q. Did you deliver any roofing there?

A. Yes, sir.

Q. What kind of roofing?

A. Rubberoid.

Q. When did you deliver rubberoid roofing there?

A. I can't tell just when. I think there was some went there about two weeks before they closed; I think, I'm not sure.

Q. Do you know what was done with it?

A. No, sir, couldn't say what was done. I suppose it yas used there at the building.

Q. Did you unload it at the building?

A. Yes, sir.

Q. Where did you take it from? 10

A. Wistar and Woodnut's.

Q. Who ordered you to take it?

A. Mr. Wistar or Mr. Woodnut, I couldn't say just which.

Q. Who received it?

A. Mr. Samuel Bell.

Q. That was about two weeks you say before they shut down?

A. Yes, sir. 20

Q. Did you along about that time take any filistered boards or plank there?

A. I disremember what I had taken. What kind of boards they were. I think they were filistered boards some of them.

Q. Now what was Sam Bell doing at this time that you took this lumber there?

A. Carpenter.

Q. Did you see him actually at work, at carpentering work? 30

A. Yes, sir.

Q. Whereabouts?

A. Up on the building front and about on the building.

Q. First on one part of the building and then on another?

(Objected to.)

Q. What parts of the building?

A. Front part.

Q. Ever see him do carpenter work on other parts of the building?

A. Yes, sir.

Q. Did you ever see Walters there doing carpenter work?

10

A. Yes, sir.

Q. Ever see Groscop there doing carpenter work?

A. Yes, sir.

Q. Ever see them use any of this lumber?

A. In the buildings?

Q. Yes.

A. Yes, sir.

BY MR. CARR:

20

Q. You of course kept no record of the lumber you delivered, did you Mr. Giles?

A. No, sir.

Q. You can't remember what was delivered there can you?

A. No, sir I can't tell what lumber. I can tell some kinds of lumber what was delivered there.

Q. Just know that you were hauling lumber during the year from time to time to the Muckenhirn plant?

30

A. Yes, sir.

BY MR. ACTON:

Q. How frequently would you go there?

A. Maybe three or four times a week or maybe

three or four times a day, sometimes.

Q. And that kept right on?

A. Yes, sir.

Q. Clear up to two weeks before they stopped?

A. Yes, sir.

JOSEPH H. BELL, Sworn. 10

DIRECT EXAMINATION.

BY MR. ACTON:

Q. Mr. Bell, where do you live?

A. Salem.

Q. What is your business?

A. Carpenter, contractor and builder.

Q. Do you know Wistar and Woodnut? 20

A. I do.

Q. What is their business?

A. They are in the lumber business.

Q. Know Charles H. Muckenhirn?

A. I do.

Q. Now were you employed by Charles H. Muckenhirn to perform any service for him?

A. I was.

Q. When? 30

A. Well it began in November 1904. The first start of this was Mr. Muckenhirn came to me and on — —

Q. State your relation with Mr. Muckenhirn?

A. Mr. Muckenhirn came to be and told me that he was going to build a building and he drawed out, pencilled out what he wanted. And he wanted me

to figure it out and build it by contract. I figured out the building for Mr. Muckenhirn and I went and showed it to him.

Q. Plan?

A. Yes, I had the plan of the sides, ground floor and the trusses. I had the trusses drawed. I couldn't figure them out without I drawed them. And I told him what I would build the building for; he said that was satisfactory and I supposed I was going to have it by contract. I afterwards met him, he says, "no, if it don't make any difference to you, I will build this by the day, because I don't know how far I am going to build and I may extend on. I am going to do a great deal more building," so I said it was all right, so I took it by the day. I went there in November to work and worked on that building through the winter and it was cold ——

BY THE COURT:

Q. November of that year Mr. Bell?

A. That was 1904, November 1904. Staked the ground out in November 1904, and then I afterwards went there and built these other buildings up to the main foundry, and he extended the building all down to the water there.

BY MR. ACTON:

Q. Now what parts of these buildings were first built?

A. The first building that was built was the front.

Q. What part of the building was first built?

A. Of the entire plant you mean?

Q. Yes.

A. The main building that fronts on Fifth street.

Q. Then what?

A. Then the next building built was the little moulding room back.

Q. Then what?

A. Then there were some temporary core rooms, a coke shed, a kind of a temporary coke shed, the door put in afterwards. 10

Q. Then what?

A. Then the next building commenced was the big foundry.

Q. And then what?

A. And the next one was the building that connected it in a whole. We commenced that building considerably before the foundry was finished. They were working in the foundry, but they had to quit every time it rained. It rained in there and wet 20 their sand and they had to quit.

Q. Now, Mr. Bell what is the nature of that plant?

A. The entire plant?

Q. Yes.

A. Well it is a plant built for a brass plant and equipped for a brass plant, it was.

Q. What is the nature of the continuity of the building?

A. Well the building—of the whole building you mean? The building now is all under one roof. The 30 roof from the foundry extends right down over the passageway that comes through into the machine building. It is right up on top of this building and comes right off from the—I joined it there, cut the roof off myself and cut the paper for it.

Q. Now Mr. Bell, did you order any lumber for

that building?

A. I did.

Q. By whose authority?

A. By Mr. Muckenhirn's.

Q. Where did he tell you to order it?

A. From Wistar and Woodnut.

Q. How long did you remain and work on that foundry?

10 A. I worked up till sometime in November.

Q. What year?

A. This is in 1905.

Q. How did you happen to leave?

A. I had a building going on that I was building at the Oil Cloth factory ten by — —

(Objected to as immaterial. Objection sustained.)

Q. How did you leave—in what state of completion was the building when you left?

20 A. Nowheres near finished when I left.

Q. Did you leave anybody there?

A. I did.

Q. Who did you leave?

A. I left William Walters, John Groscop and George Sanderlin.

Q. Samuel Bell there?

A. He was.

Q. Now what remained to be done when you left?

A. Well the building was all open, the ventilat-
30 ors wasn't finished and there wasn't no window sash in some of them. In the front window and in the gable ends there was no sash. They couldn't work in there when it rained but they were pushed out of there to complete this other part of the building so that they could get their machinery up.

Q. Now will you look over this bill of items in

this case with the dates.

A. Dated 1905.

Q. 1905, beginning March 22nd, 1905 and going up to November the 15th, 1905 and I ask you, looking over those items, if they were furnished and, if so, by whom and to what use they were put?

(Objected to as leading. Question allowed.)

A. Yes, sir; a great many of those are my orders.

Q. From whom? 10

A. By authority of Mr. Muckenhirn.

Q. From whom did you get the goods?

A. Wistar and Woodnut.

Q. Do you know whether or not they were delivered at the plant?

A. I do.

Q. Were they delivered?

A. They were. My orders were all delivered, I am sure. 20

Q. How was that material used?

A. Used most of this was in the partitions and in finishing up, weatherboarding and such as that, floors.

Q. Now looking at the claim beginning November the 7th, 1905, just before you left, Mr. Bell, 5664 frame?

A. I gave that order.

Q. Do you know where that was used?

A. Yes, sir. 30

Q. Where?

A. In the frame of the factory.

Q. And the same date, 2118 frame?

A. I gave that order.

Q. Same date, 1203 frame?

A. I gave that order.

Q. Same date, 193 hemlock joists?
A. I gave that order.
Q. Same, 7132 feet yellow pine?
A. I gave that order.
Q. 8107 feet sheathing?
A. I gave that order.
Q. 4199 filistered boards?
A. I gave that order.
10 Q. 4137 feet yellow pine floor?
A. I give that order.
Q. 12117 feet 4-½?
A. Same, flooring yellow pine.
Q. Same date, 90 feet of plank hard pine plank?
A. Yes.
Q. 274 cedar posts?
A. That, my brother Sam gave that order. They were for piling under the engine.
20 Q. Do you know where they were used?
A. They were used for piling.
Q. Do you know where the other articles were used?
A. Which, those that you have named?
Q. The frames and the joists and the sheathing?
A. Yes, they were used in the big building, most of it.
Q. From whom were they gotten?
A. Gotten from Wistar and Woodnut.
30 Q. Received at the factory?
A. Yes, sir.
Q. By whom?
A. Received by me.
Q. By whose authority did you receive them?
A. Received them by Mr. Muckenhirn's authority He gave me authority to order all this stuff.

Q. 1200 feet of rubberoid roofing?
A. I give that order.
Q. From whom did that come?
A. Came from Wistar and Woodnut.
Q. Delivered there?
A. Yes, sir.
Q. Who received it?
A. I received them and unloaded them in there, took the paper myself and had it put on the building. 10
Q. Referring to the charge of October 19th, 1905, 3211 — —
A. Wait one moment; October you say?
Q. Yes.
A. The 19th?
Q. Yes.
A. Yes, sir.
Q. 3211 long hard pine frame?
A. Thirty-two—October the 19th? 20
Q. Yes, sir.
A. 3200?
Q. Yes.
A. That is 4167 feet of yellow pine plank.
Q. Before that?
A. Oh, yes, here we are down here. 3211 feet of long hard pine frame.
Q. 5905 feet of the same?
A. Yes, sir, I ordered that. 30
Q. 2727 feet?
A. That is long frame; they were the truss girders.
Q. From whom were they obtained?
A. They were obtained from Wistar and Woodnut.
Q. The 16424 hemlock joists?

A. They were obtained from Wistar and Woodnut. They were the floor in the main house, in the main building, the most of it.

Q. 4167 yellow pine plank?

A. How's that?

Q. 4167 feet of yellow pine plank?

A. I ordered that.

Q. 10860 feet of yellow pine plank?

10 A. Yes, sir, I ordered that.

Q. 10701 feet of sheathing.

A. Plain sheathing, sheathing boards, sheathed the roof with.

Q. Who ordered them?

A. I ordered it.

Q. 3136 feet of frame?

A. I ordered that. I ordered all this frame there with the exceptions once in a while I would get my 20 brother to go in and phone. Probably it would be I would have to have a little more and he would go in and phone for me.

Q. Then these items up to November the 15th, do I understand you to say that you ordered them?

A. I ordered the most of them except what my brother ordered.

Q. Now from whom did this lumber come?

A. Came from Wistar and Woodnut.

Q. Where was it used?

30 A. Used down at the brass foundry.

Q. Was any of this lumber used to make boxes and so forth?

A. No, they used waste off of this stuff to make boxes in under all their machines. They had more than enough to make it. They had lots of stuff there.

Q. Now, Mr. Bell, it has been testified something

in relation to these bills; do you know anything about how those bills, exhibits one, two and three, came to be made out?

A. Yes, sir.

Q. What have you to say with reference to them?

A. Mr. Muckenhirn requested me if I wouldn't go and get Mr. Wistar and Woodnut to make him out a bill as far as they had went; that he wanted to settle with them; that he wanted to pay them some money. I went and told Wistar and Woodnut to make these bills out; that Mr. Muckenhirn wanted them and they had them make it out, some bills made out the second time I went there and Mr. Wistar says, "I don't know what is the use of making out bills as they are getting stuff right along." And these were the bills I had that day.

Q. Was the work completed about that time?

A. No, sir, I was there myself.

Q. Then you were requested to get these bills on account of what was being done?

A. I was, by Mr. Muckenhirn.

Q. Now, Mr. Bell, has that factory been completed in accordance with the instructions as given you at the start from Mr. Muckenhirn?

(Objected to as calling for a conclusion of a witness.)

Q. In what was it incomplete, if incomplete then?

A. Well, when I went away from there in November the ends were off, the side was all open, the foundry wasn't completed and there were—and there weren't some of the sash in. There was lots of the sash that wasn't in. They nailed the windows up,

nailed and stopped them up to keep the storms out and also there was never a window cased in the whole building with the exceptions in the office.

Q. How about the cupola?

A. The cupola?

Q. The ventilator?

A. The ventilator was never finished. It wasn't finished the last time I saw it. That was in January.

10 Q. Mr. Bell, was any lumber gotten for that building from—while you are at work there, from any other person except Wistar and Woodnut?

A. Not to my knowledge, with the exception that Wistar and Woodnut bought some stuff and furnished.

Q. That came from Wistar and Woodnut, didn't it?

A. Came through Wistar and Woodnut.

20 Q. Didn't any independent person furnish any lumber except Wistar and Woodnut?

A. Don't think there was while I was there.

———o———

CROSS EXAMINATION.

BY MR. CARR:

30 Q. Mr. Bell, you are perfectly familiar with this plant, are you not?

A. I am.

Q. Know every detail in it, do you not?

A. Why pretty well acquainted with it.

Q. If you should be shown a picture of it, could you tell whether it was a correct reproduction of it or not?

A. I think so, yes, sir.

Q. I show you this picture and ask you whether or not it is a correct reproduction of the factory building.

(Objected to. Objection overruled.)

A. It will show you what it is, but it isn't finished.

Q. But I ask you whether the plant was finished?

A. The picture of it is correct, but it is — — 10

Q. Now won't you kindly refrain from volunteering the statement, don't tell me about it unless I ask you. Just remember that, won't you. Now you say that is a correct reproduction of the plant?

A. Well, I should say that it looks something like the plant.

Q. Now do you know whether it looks exactly like it or not?

A. I can't say that it does. 20

Q. You can't say because your lack of knowledge is that it?

A. That is a good picture of the plant.

Q. That is a correct picture of the plant, is it not?

A. That is a picture of the plant.

(Objected to. Objection overruled.)

Q. A correct picture?

A. I can't say that it is on that side. On that side I should say it is, but I can't see the other side of the building. 30

Q. But it only purports to be the one side and the end?

A. It looks something like the plant all right, but there is lots there you can't see.

Q. Well is that a correct reproduction of the side that you can see?

A. I know there is a difference in the building on the other side.

Q. But this side is all right isn't it?

A. I can't say that it is perfect.

Q. But you don't know?

A. As far as it went it is perfect.

Q. You don't know whether it is a correct picture or not, that is your answer?

10 A. I know it is a picture of that plant, but I don't know if it is a correct picture or not.

Q. You don't know?

A. No.

Q. Now you left there in November 1905, didn't you?

A. Yes, sir, I went away from there.

Q. And after that time you ordered no materials, did you?

20 A. Yes, sir, I did. Mr. Muckenhirn wanted me to be particular and get some heavy lumber that he wanted there and I give the order to Wistar and Woodnut. That was for the stringers to go across to strengthen the building.

Q. And that was to carry the shafting wasn't it?

A. Yes, sir and to stiffen the building; he thought it wasn't stiff enough.

Q. And when was that?

30 A. That was after I went away I ordered this stuff.

Q. That is, shortly after you left there?

A. I suppose the stuff came.

Q. You suppose the stuff came?

A. Yes, sir.

Q. How long will you say?

A. I can't. I don't know the exact date, I don't

know.

Q. In the matter of a week or two?

A. Yes, inside of a week or like that.

Q. And that was in November?

A. Yes.

Q. Your best recollection is that you left there November 18th, isn't it?

A. I left there a little before November 18th; those bills are for men I had working there. 10

Q. Earlier than November 18th?

A. Yes, somewheres around there.

Q. Now after you left there on November 18th, you weren't there except one day in January?

A. One day in January I was there with my men looking after the men and I didn't do any work and I only went down there to see how they were getting along.

Q. You didn't do any work in January when you went down there? 20

A. I wasn't working, no, sir, I just went down there looking after the — —

Q. These men that you spoke of as being "my men" they were men being paid by Mr. Muckenhirn, weren't they?

A. No, sir, I don't know who paid them; my brother paid them.

Q. You don't know who paid them, but your brother paid them, is that the answer? 30

A. If you will allow me, I will explain this to you.

Q. Just a moment, Mr. Bell, your explanations are very lengthy, did you pay them?

A. I did pay them part of the time, up to November the eighteenth.

Q. And then you ceased to pay them did you not?

A. I ceased to pay them and I will tell you why I ceased to pay them.

Q. I ask you whether or not these men didn't become Mr. Muckenhirn's employees from that date and I ask — —

(Objected to. Objection overruled.)

10

Q. When did you pay them?

A. Well I don't know exactly just when it was. It was afterwards though.

Q. How much?

A. Well I don't know I can't tell you that.

Q. You didn't pay them their regular weekly or daily wages after November the 18th?

A. No, sir, I didn't pay them; my brother paid them.

20

Q. And you never rendered any bill after November the 18th?

A. It wasn't any use.

Q. You never rendered any bill after November 18th?

A. No, sir. It was no use.

Q. And from November the 18th until April or as long as these men were with Mr. Muckenhirn, you didn't pay them for any services performed after November the 18th?

30

A. I said I paid them some money.

Q. For services that they had performed before November the 18th, was it not?

A. No, sir, I had these men paid.

Q. You had them paid before November the 18th, didn't you?

A. I paid them for their services, yes.

Q. And after that time you didn't pay them at all?

A. My brother paid them. I instructed him to get the money and pay them.

Q. And you never rendered any bill after that time?

A. No, sir, I didn't it wasn't necessary.

Q. Now during the—or do you remember when the workmen started to work in that foundry building, the large foundry building? 10

A. They moved in there under great difficulties.

Q. Don't tell me about the great difficulties.

A. They moved in there on Labor Day.

Q. In 1905?

A. Yes.

Q. And when did they actually begin work in there? 20

A. Well they worked on a little whenever they could, some days they couldn't work.

Q. When did they start to work there?

A. Some of them worked — —

Q. In 1905?

A. They started in there, I think, I think — —

Q. Now in their foundry room they required a great many follow boards, did they not?

A. What? 30

Q. Do you know what a follow board is?

A. A follow board?

Q. Yes.

A. You mean to put the moulds on?

Q. Yes.

A. Yes, sir.

Q. They made a matter of hundreds of them, did

they not?

A. Yes, I know.

Q. And what material did they make them out of?

A. Out of waste.

Q. Out of waste?

A. Out of the waste of the factory.

Q. You say they made none of them out of new
10 material?

A. No, sir. Lots of that there burned up after we came away.

Q. You mean the waste from this Wistar and Woodnut lumber?

A. Waste lumber that wasted from the building, yes, sir.

Q. Shipped there originally by Wistar and Woodnut?

20 A. This waste which usually is around any big building like that.

Q. Those follow boards were made out of Wistar and Woodnut lumber?

A. Waste, waste lumber that would be thrown away.

Q. But they were used out of Wistar and Woodnuts lumber?

A. They were used because — —

Q. I don't ask you because. I ask you the fact.

30 A. They were made out of lumber, but it was waste.

Q. Now you have told me four times it is waste. Now when you left there in November the building was all open wasn't it?

A. Mostly when I left there.

Q. All open was it?

A. Partly so, yes, sir; a good bit of it open.

Q. A good bit of it open?

A. No partitions put up yet.

Q. Now as to the foundry building, the roof was on it?

A. The roof was on the foundry building; on all the buildings mostly.

Q. All the roofs were on?

A. Mostly, but not finished. 10

Q. And the side walls were on were they not?

A. The side walls were all built before the building was put up.

Q. I mean the exterior walls of the building?

A. The frame work was up, but it wasn't enclosed all.

Q. Now how long would it have taken to have finished the building, when you left it?

A. Well you couldn't finish—it would have kept you at something all the time. 20

Q. How long would it have taken to finish the outside of the building?

A. Well it would have taken sometime.

Q. Well, what was sometime?

A. Well I should think to finish the outside probably two or three weeks.

Q. Two or three weeks?

A. Yes, sir, that is about.

Q. How many men, three or four men? 30

A. I had three men.

Q. And you would think that three men could finish the outside of the building?

A. No I don't. They were there longer and didn't get finished, but I am speaking of that single place along that side there where I said.

Q. Now tell us how long it would have taken three men to finish the outside of the building so as to enclose it.

A. I couldn't tell you that; there was so much on the outside of it that wasn't finished, but they worked in the foundry when there wasn't any floor in that building. We layed plank down for them to wheel their stuff over. The building wasn't wholly roofed in when they were working in that foundry.

Q. Why did you say that?

A. Because the roof wasn't on on Labor Day when they moved in the building.

Q. What was wrong with the roof?

A. There was no roof there hardly. We hadn't begun to raise it yet; we only had the foundations up.

Q. What building are you talking about?

A. I am talking about the extending building in between the two.

Q. When was the roof put on the large foundry building?

A. That was put on, was roofed in partially, not finished, before we started building on from the extension on.

Q. When, in point of time, was that?

A. Well that was before Labor Day.

Q. Now when was the roof placed on the center building, Mr. Bell?

A. Oh that wasn't—sometime in October, last October partly roofed and partly wasn't, partly wasn't finished up at all.

Q. Yes, well has it ever been finished, the roof?

A. Has it ever been finished?

Q. Yes.

A. Well there is some things that has not been finished, such as has been stated here before.

Q. You consider neither of these buildings are under roof at the present time?

A. What buildings?

Q. Foundry, neither of them are under roof?

A. Yes, sir; they are now, they're all under one roof now.

Q. When did they all come under one roof? 10

A. Sometime, I should say, in October.

Q. Now there never was any plans with elevations drawn were there?

A. Well one minute. There was quite a lapse of time between the two buildings, between the center and from the first one of roofing because I know they were working all the time in the other building they were working all the time in the other building and really before we had it raised and they were 20 wheeling outside and wheeling over — —

Q. Mr. Bell, can't you say, without these long explanations, when the middle building came under roof?

A. I think the middle building sometime in October.

Q. And the large foundry building sometime in September?

A. I know I left there pretty soon after.

Q. And when you left there the buildings were 30 under roof?

A. Under roof partly. The ventilators were under roof over the engine rooms and some of the ventilators there wasn't — —,

Q. With the exception of the ventilators the building was under roof, was it not?

A. Part was not finished.

Q. You said the ventilators weren't finished.

A. The roof wasn't finished, Carrey's roof paper.

Q. You refer to the tacking down of the edge, a matter of some two hours work, is that the matter you are referring to?

A. I don't just recollect how much there was of it.

10 Q. Do you know whether it would take two hours or two weeks?

A. Well probably it would take a man half a day to finish it up.

Q. Now with the exception of the ventilators?

A. He couldn't do them in half a day, but no –

Q. How long would it take?

A. I guess it would take a man four or five days to finish all them ventilators and finish that roof, 20 but they were left go for I had to get something else done.

Q. Now just keep quiet and answer my questions. I say with the exception of a half a days work in tacking the Carrey roofing and with the work on the ventilators the roof was completely finished, was it not?

A. No, sir, it wasn't. I said so before.

Q. With what other exceptions?

A. Because there was none at all on the ventila- 30 tors.

Q. I say with the exception of the ventilators and with the exception of half a days work in nailing the Carrey roofing on, the roof was done when you left, was it not?

A. On that building with probably one hour's –

Q. Well on every building.

A. No, sir.

Q. Well on what buildings was it?

A. There was some roofs on the back building, on the coke shed, some roof off when I left.

Q. I am talking about the main buildings?

A. When I left the main buildings were partly, most roofed.

Q. They were all under roof?

A. No, sir. 10

Q. Won't you be quiet while I ask my question? I say with the exception of the ventilators and the Carrey roofing, the tacking to be done there, the roofing on the main building was entirely complete when you left in November, was it not?

A. There was some of the roofing on the main building wasn't finished.

Q. What else?

A. Some of the ventilators. 20

Q. I say with the exception of the ventilators?

A. I don't know whether there is anything else.

Q. The only thing you knew was the ventilators and a half days work on the Carrey — —

A. Most of the roof was completed. Except that, the most of the roof was finished.

(Question repeated.)

A. There was nothing but the Carrey roof on that factory.

Q. The roof you say was incomplete, you say that, do you not? 30

A. It wasn't finished.

Q. What remained to be done in order to finish the roof?

A. Well it wasn't nailed down on the edges where it is turned down here. There is a lap goes up every

seam; this lap is supposed to to be secure and it is a double lap and it nails here and this laps over and consents down. Now that wasn't done.

Q. What else wasn't done?

A. There is nothing else on that roof.

Q. On any roof in the main buildings?

A. There was some of the roof on the engine house, the boiler room and some of that with the exceptions most of that was on, but it wasn't really finished.

Q. What remained to be done?

A. Some laps as I told you, had to be finished up. It was put on in a hurry, they wanted to get it on.

Q. What else remained to be done to the roof?

A. I don't know what else; we began all of the matter sometime ago. I don't know hardly what they did.

Q. And this work to be done on the Carrey roofing was work that could be done in two or three hours, I understand?

A. The work was on the laps, probably a half a day.

Q. With the exception of the half a days work the roofs of the main building were complete, were they not?

A. The roofs of the main building consists of the machine—

Q. Just answer my question, you can do that?

A. They were finished as far as I know with the exceptions of these items I have told you.

Q. Those items are what?

A. I have told you the laps, the laps and the edges that weren't nailed down here. I have to tell it two or three times.

Q. Now at the present time the building is incomplete, you say?

A. It was the last time I was there.

Q. How recently have you seen it?

A. Well as has been stated before the windows wasn't cased.

Q. How long ago since you seen it?

A. I haven't been down there for some time, not—I was down there one time with Capt. Cape. I don't know just when I was down there. 10

Q. A month or two ago?

A. I couldn't say at that.

Q. Since January?

A. I know they weren't finished when I quit.

Q. Since January?

A. No, I don't think I have, since January.

Q. Yes.

A. I was down there awhile before they quit, in April sometime. 20

Q. You went down there in April?

A. I had a reason to go.

Q. You were familiar with the original structure, were you not?

A. I were.

Q. And you recall that in April sometime changes were made to the buffing room?

A. That was made while my men were there.

Q. You recall the fact? 30

A. I know they were working there and saw them working on it.

Q. And those changes were increase in the size of the buffing room?

A. Increased and opened up the side.

Q. So as to make the buffing room larger?

A. I suppose.

Q. But that was the effect of it, wasn't it?

A. Yes.

Q. And that had the effect of occupying more ground space than the buffing room did then?

A. Sure it would.

Q. Didn't it?

A. Sure it would, yes.

10 Q. So that the last work you know of down there was an addition to the buffing room, was it not?

A. That is the last I know of. It was about the time they closed, I think.

Q. That was an addition to the buffing room?

A. I think it was. I'm not sure what they used it for.

Q. Now, Mr. Bell, you say Mr. Muckenhirn drew plans for this building?

20 A. I did. He drawed me two sets. He pencilled them out.

Q. Were they ground plans or side elevations?

A. Ground plans, it was only a ground plan.

Q. He gave you no side elevations, did he?

A. Oh, no, he told me what he wanted and I did that myself, drawed the—

Q. So the only thing you got was the ground plan of the building?

A. I made the one I figured from.

30 Q. That was the ground plan?

A. That was the ground plan and I figured to finish the building and everything in it.

Q. Did you draw any detail elevations yourself?

A. I did.

Q. Submit to Mr. Muchenhirn?

A. Mr. Muckenhirn later had them and also the

both buildings he held in there.

Q. They were of the trusses, were they not?

A. They were of the trusses, side faces and end faces of the building.

JOSEPH POWERS, Sworn.

DIRECT EXAMINATION 10

BY MR. ACTON:

Q. Mr. Powers, where do you live?

A. Salem.

Q. What is your business?

A. Well, at the present time it is iron; iron business.

Q. What was formally your business? 20

A. Builder.

Q. For how long were you a builder?

A. Somewheres around thirty years.

Q. And are you acqnainted with the Muckenhirn factory?

A. I've seen it.

Q. When were you last there?

A. This noon.

Q. What was the condition of the building as you saw it today? 30

A. Well I saw a lot of the windows there that had never been finished.

Q. In what way?

A. No inside casings on them.

Q. What else did you see?

A. Well I saw these ventilator windows there

has been a controversy about.

Q. What about them?

A. No stops in the tops of the windows.

Q. They necessary to the finishing?

A. Yes, sir; not finished without them.

Q. What else did you see?

A. Well that is about all, I believe, that I took any particular notice of.

10 Q. Did you notice the roof?

A. Yes, I saw some roof there that wasn't finished, wasn't tacked down.

Q. What kind of roof was it?

A. Carrey's.

Q. Patent roof?

A. Yes.

Q. In your opinion as an expert carpenter was that building finished or not?

20 A. No, it is not finished.

CROSS EXAMINATION.

BY MR. CARR:

Q. When is a building finished, Mr. Powers?

A. Sir?

30 Q. When is a building finished?

A. Well, if there is no finish on the inside of the windows it isn't completed.

Q. The house isn't done?

A. No, sir.

Q. If the casings isn't around the windows?

A. If the casings isn't around the windows it

isn't completed.

Q. Now, Mr. Powers, suppose I build a house and determine never to put the casings on the windows, is the house completed?

A. Well, if that satisfies you.

Q. If that satisfied me the house is done?

A. It isn't a completed house.

Q. If the house satisfies me is it a complete house or not? 10

A. No, sir.

Q. Then I must put casings on there in order to complete the building?

A. If you want it to be a complete house, you must.

Q. Suppose there is no shutters on the house is it complete?

A. It isn't a complete house.

Q. Suppose I never intended to put shutters on the house? 20

A. What kind of a house?

Q. A dwelling house.

A. Well that would be what arrangements you had made with the builder.

Q. Suppose I told the builder I didn't want any shutters on the house, is it complete or not complete?

A. Well it is complete according to your contract.

Q. Then isn't the completing of a building when it reaches the stage of construction when the owner's design is finished? 30

A. I don't know what his design is in that matter.

Q. You would put casings on a frame factory building on all the windows?

A. I would, yes, sir.

Q. Have any casings been put on this factory building since—

A. Yes.

Q. That Muckenhirn factory?

A. Since?

Q. Since its purchase by Wistar and Woodnut?

A. No, there is none on there now.

Q. Now the ventilator windows you spoke of
10 were in that buffing room, were they not?

A. No, there was some on the main ventilator.

Q. The sash are in are they not?

A. The sash is in there.

Q. The glass is in the sash?

A. Some of them.

Q. The rope is there that pulls it up?

A. Yes.

Q. And the sash is shut, is it not?

20 A. Looks so; looks as if it was nailed down.

Q. All seem to be closed, sash in place, glass in sash, rope fixed to sash and the ventilator is not complete?

A. No stops and there is an open joint for the storm to beat through.

Q. Now this Carrey roofing, this is something that could be fixed in an hour's time?

A. No. it would take more than an hour or two.
30 I should think it would be a day's work before you got these things fixed up.

Q. A day or two?

A. I should think so.

Q. You don't know, of course, what Mr. Muckenhirn intended doing as to further operations?

A. No, I don't know anything about Mr. Muckenhirn's intends, not at all.

BY MR. ACTON:

Q. Were there any catches over the windows?
A. I didn't see any, no; only nails drove in.

———o———

SAMUEL BELL, Sworn.

DIRECT EXAMINATION 10

BY MR. ACTON: Z

Q. Mr. Bell, where do you live?
A. Salem.
Q. What is your business?
A. Carpenter.
Q. Do you know Charles H. Muckenhirn?
A. I do. 20
Q. Do you know the location of his plant?
A. I do.
Q. Where is it?
A. It is on Fifth street right along side the railroad.
Q. Do any work there for him?
A. Yes, sir.
Q. Now when you went there to work did you go there to work at the building of this factory? 30
A. I did at first, yes, sir.
Q. Under whose employ were you then?
A. My brother's.
Q. Joseph H. Bell?
A. Yes, sir.
Q. You continued under his employ there how long?

A. Well that I couldn't say, pretty much all winter, though. I couldn't say exactly how long. The building wasn't enclosed—I worked there most all winter, I guess as far as my recollection goes.

BY MR. CARR:

Q. What year, what winter?

A. That was 1904, I think, the year that he—

BY MR. ACTON:

10 Q. Did you work there in 1905?

A. I worked there right on.

Q. Continued on?

A. Yes, sir.

Q. Until what time?

A. Until the plant shut down.

Q. When was that?

A. I think the last pay I drawed was on the 20th of April.

20 Q. Of what year?

A. 1906.

Q. For whom were you working prior to April 1906, from the fall of 1905 to April 1906?

A. Mr. Charles Muckenhirn.

Q. What were you doing there?

A. Well I was doing carpenter work, and—

Q. Now—

MR. CARR: Let him tell the rest of it Mr. Acton.

MR. ACTON: He has answered the question en-
30 tirely satisfactory. You can ask him that if you want to.

Q. Now, Mr. Bell, what kind of carpenter work did you do there?

A. All kinds.

Q. Where abouts over the factory?

A. All over the factory.

Q. Did you order any lumber during that time?

A. I did.

Q. From whom?

A. From Wistar and Woodnut.

Q. Do you know whether or not the lumber that you ordered was delivered to the factory?

A. Always was, yes, sir.

Q. By whom?

A. By either Mr. Wistar or Woodnut or the driver. 10

Q. Acquainted with the drivers?

A. I am.

Q. Know the teams of Wistar and Woodnut?

A. I do.

Q. By whose order did you order this lumber?

A. Who did?

Q. Who instructed you to order this lumber?

A. Mr. Muckenhirn. 20

Q. Can you recognize or do you recognize, showing you the bill of particulars in this case, any of the lumber that you ordered. (Handing paper to witness) from Wistar and Woodnut?

A. Yes, sir; I see some here that I know that I ordered.

Q. Calling your attention to the items of November the 23rd, 1905—224 feet of hemlock plank?

A. November the what?

Q. Twenty-third. Do you know whether that material was ordered or not? 30

A. 224 feet of hemlock 2 x 8 plank, yes, sir.

Q. Who ordered that?

A. I did.

Q. From whom?

A. From Clayton Wistar.

Q. Do you know whether or not it was delivered?

A. It was.

Q. For whom did you order it?

A. For Charles H. Muckenhirn.

Q. Do you know where that was out in the factory?

A. Yes, sir.

Q. Whereabouts?

10 A. Some of it was in the—used for joists in the buffing room there and others, two of them, is used on a bench.

Q. What kind of a bench?

A. A bench that was built alongside of the factory.

Q. The bench fastened to the factory?

A. It was.

Q. Looking at the item under the 23rdof November, 1905, 544 feet of yellow pine flooring?

20 (Objected to because it is not a record kept by the witness himself. Objection sustained.)

Q. Now Mr. Bell, do you remember whether or not in December of 1905 you ordered any planking from Wistar and Woodnut to be used in that factory?

A. I did.

Q. Do you know whether or not the planking was used there?

30 A. It was.

Q. By whom was it used?

A. It was used by myself.

Q. And where was it used?

A. I lengthened out the run that goes out into the foundry from the machine shop down in the foundry. It was a short run there, and then there were a top that was put on the shipping room step,

I don't know what you would call it, a platform, I guess.

Q. Do you know whether or not there was any yellow pine boards ordered from Wistar & Woodnut in December of 1905 for a flooring in a passageway between the foundry and the core room?

(Objected to as leading. Question overruled.)

Q. Well do you know whether or not there was any flooring laid between the passageway to the foundry and core room? 10

A. Yes, sir.

Q. Do you know when it was laid?

A. I couldn't say exactly, when it was laid, but it was laid there in the cold, it was cold weather.

Q. What winter?

A. The winter before they closed it.

BY THE COURT:

Q. Last winter you mean? 20

A. Yes, sir.

BY MR. ACTON:

Q. Where did the lumber come from?

A. It came from Wistar and Woodnut.

Q. Who received that lumber?

A. I did.

Q. By whose order did you order it and receive it? 30

A. Mr. Muckenhirn's.

Q. Do you know whether or not you used any lumber under the building to stay the floor?

A. I do.

Q. When did you use that?

A. I used that along frequently.

Q. Well?

A. I put some under almost the last work that I did.

Q. And how near the last work that you did?

A. Within—I don't think it was more than a week or so.

Q. Where did the lumber come from by which you did that work?

10 A. From Woodnut and Wistar.

Q. Who ordered it?

A. I did; part of it.

Q. Who directed you to order it?

A. Mr. Muckenhirn.

Q. Do you know what kind of lumber you used in making these stays?

A. I used different kinds. There were sometimes there were four by four placed up under joists and 20 down on the ground with the plank and sometimes it was a three by four.

Q. Did you use any lumber in the core room, under the core room?

A. In the core room?

Q. Yes.

A. I enclosed the passageway there.

Q. When did you do that work?

A. That was late in the winter, I couldn't say; it was cold weather.

30 Q. Where did you get the lumber to do that?

A. From Woodnut and Wistar.

Q. What kind of lumber did you use for that work?

A. I used some filistered boards, some three by fours.

Q. By whose order did you get those boards?

A. Whose order?
Q. Yes.
A. I got that from Mr. Muckenhirn.
Q. And where did you get them?
A. Where did I get them?
Q. Yes.
A. Wistar and Woodnut.
Q. Were they used in the building?
A. Yes, sir. They were all - - 10
Q. Well was there any work done over the eaves?
A. There was some loose boards thrown up there for to pile things on.
Q. Where did those boards come from?
A. They came from Woodnut and Wistar.
Q. What kind of boards were they?
A. They were yellow pine, I think, ten inch boards.
Q. When did you get them? 20
A. I couldn't tell you exactly when I did get them, but it - - -I got them when Mr. Smiley had a lot of stuff he wanted to put away that he had no use for down there.
Q. Were they fastened up there?
A. They were just laid loosely to make a place to pile stuff.
Q. Did you know whether or not you built any door for the water-closet?
A. I did. 30
Q. When did you build that?
A. That was just before I started the addition to the buffing room.
Q. Well when was that, what year?
A. Well, I suppose that was about two weeks before the plant closed.

Q. Where did you get the lumber for that?
A. Woodnut and Wistar.
Q. At whose order?
A. Mr. Muckenhirn's.
Q. Did you do any repairs or work to the shipping room?
A. Yes.
Q. When did you do that?
10 A. Well that I couldn't say exactly when I did. I put up partitions there; there was some yellow pine boards and they were one by tens.
Q. Can you say how long before the plant closed?
A. It wasn't more than, I don't think over a month. It wasn't that, I don't think. I put up partition and also put up the partition down along the stock room.
Q. Where did you get the boards to do that?
20 A. They came from Woodnut and Wistar.
Q. Whose order?
A. Mr. Muckenhirn ordered me to do it.
Q. Did you do any work on the roof?
A. Yes, sir.
Q. When did you do that?
A. Just before they closed.
Q. What was the nature - well how long before they closed?
A. Well, within a week or so, I should judge.
30 Q. What was the nature of that work?
A. Puting in the skylights.
Q. Put any covering?
A. Two of them got covered.
Q. Where did these skylights come from?
A. The glass came from W. Bell and Company.
Q. What kind of a cover did this roof have on?

A. The skylights?

Q. The roof?

A. Had on over the—part of the roof is covered - the roof where these skylights went is rubberoid roofing.

Q. Where did that come from?

A. Came from Woodnut and Wistar.

Q. When did you get that?

A. That was gotten, I couldn't say when that was gotten. We generally had a roll of that there pretty much all the time. I couldn't say when. 10

Q. Well did you get any in the present year, 1906?

A. Yes, sir, got it for the buffing room, the roof on the buffing room.

Q. Where did you get it?

A. Got it of Woodnut and Wistar.

Q. Whose order? 20

A. Mr. Muckenhirn.

Q. What was done with it?

A. Put on the roof.

Q. How about the nails and the heads or caps that went in it?

A. They came from Woodnut and Wistar.

Q. When?

A. Just about the same time.

Q. Did you build any platform there? 30

A. To the buffing room?

Q. No, in the building, anywhere?

A. I built a platform, yes, sir, there to the shipping room.

Q. What was it built from?

A. That was built from plank, two inch plank, the covering.

Q. Where did you get the plank?

A. From Woodnut and Wistar.

Q. Do you know where that was built?

A. I can't say exactly when it was built.

Q. Well, was it in 1906?

A. Yes, sir.

Q. Now was there any partition built between the stock room?

10 A. Stock room yes, sir.

Q. When was that built?

A. That was built early in the spring, I couldn't say exactly.

Q. What spring?

A. Before they closed.

Q. This last spring, this year?

A. Yes, sir, during the winter or spring before—I couldn't give just — — —

20 Q. Now where did the lumber come from which that was built?

A. Came from Woodnut and Wistar.

Q. At whose order?

A. I ordered it.

Q. At whose order?

A. I ordered it.

Q. At whose direction?

A. Mr. Muckenhirn's.

30 Q. Now was there any work done on the buffing room?

A. There were.

Q. When?

A. It was started before the plant closed, but didn't have time to finish it.

Q. Do you know whether it is a part of the main building or not?

A. It is all fast to the main building.

Q. Now where did the lumber come from that was put into the buffing room?

A. Came from Woodnut and Wistar.

Q. At whose order?

A. Mr. Muckenhirn's. I ordered it from there, but — —

Q. Do you know whether the lumber was received there for it? 10

A. Yes, sir.

Q. What was the nature of the lumber that was received there for it?

A. It was flooring, joists, there were some roofing, some sheathing and some scantling. I couldn't say exactly just what they were.

Q. Do you know whether or not they were delivered to the factory by Wistar and Woodnut?

A. I know that it was, yes, sir. 20

Q. Who received it at the factory?

A. I did.

Q. Were you working on this at the time the factory closed?

A. Yes, sir.

Q. In April, 1906?

A. Yes, sir.

Q. Now did anybody else furnish any lumber there except Wistar and Woodnut?

A. I don't think there were any lumber furnished 30 if I remember right and I won't say positive about that that I did get a few pilings to go under the engine from Mr. Wattger.

Q. Were they gotten through Wistar and Woodnut?

A. I think they were.

Q. Do you know who ordered the lumber that went into the building from November 1905 until April 1906?

MR. CARR: Objected to unless it is shown that he knows what lumber came in. I don't see how he can answer that question.

10 Q. Who ordered the lumber that was used on the building during the period from about the middle of November 1905 until April the 17th or 20th, 1906?

A. I ordered most of it.

Q. Who ordered the rest?

A. I think once or twice Mr. Smiley sent a boy up there and told Mr. Wistar that I wanted a certain amount of lumber.

Q. How were the deliveries made?

A. They came all right.

20 Q. Well, by whom?

A. By their driver.

Q. You know the drivers and the teams of Wistar and Woodnut? Know that this lumber was delivered by them?

A. I know that all that I ordered was delivered.

Q. Was there much lumber used in this building during this period?

A. Why there were quite a lot, yes, sir.

30 Q. Was all the lumber brought by Wistar and Woodnut to that building during that period used in that building?

A. All except - there were some there that I had that wasn't used at all. I don't know what became of that.

CROSS EXAMINATION

BY MR. CARR:

Q. You don't mean to say, Mr. Bell, that you ordered all of the lumber that was ordered for the Muckenhirn plant?

A. I don't.

Q. There was lumber you saw that came there that you didn't order, was there not? 10

A. There was lots of it came there that I didn't order.

Q. Lots of lumber that you didn't order and that was ordered chiefly by Mr. Smiley, wasn't it?

A. No, sir.

MR. ACTON: Call his attention to the date. I don't think that a fair question.

Q. I mean after Joseph Bell went away? 20

A. After he went away?

Q. Yes.

A. I don't think that Mr. Smiley ever ordered any lumber without—only for me by sending a boy where I had no right to send one.

Q. A considerable part of the lumber was ordered for Mr. Smiley's use, was it not?

A. No, sir, he wasn't using the lumber. He was a tool maker.

Q. Wasn't a large part of it used for making benches for Mr. Smiley? 30

A. Benches?

Q. Yes.

A. No, sir.

Q. Wasn't any of it used for making benches for Mr. Smiley?

A. Some of it was used for making bins if they are what you are calling benches, but they were fast to the floor.

Q. You weren't asked that. What makes you say that every time?

A. I say they was. I considered they went with the building.

Q. Now a part of this material was used in making an addition to the buffing room, was it not?

A. Sir?

Q. Sir?

A. I don't understand you?

Q. A part of the lumber which you have testified to was used in making an addition to the buffing room?

A. Which I ordered you mean?

Q. Sir?

A. Which I ordered you mean?

Q. Yes.

A. Yes, sir.

Q. A part of it was made in altering a runway into the foundry, was it not?

A. Yes, sir.

Q. A part of it was used in laying a boardwalk between the core room and the foundry, was it not?

A. Yes, sir.

Q. Now you say you were employed as a carpenter by Mr. Muckenhirn?

A. I did.

Q. And what other duties did you perform?

A. Most anything that came at hand.

Q. And generally speaking, what were they?

A. Well putting up machinery and hanging shafting, and whatever they needed worst that was the

job that I quit everything and went and done.

Q. Lacing belting?

A. Yes, sir.

Q. Weren't you employed by him as a general utility man to do these various things?

(Objected to as a conclusion.)

A. I never heard tell of anything of the kind until I seen it published on the list of names. 10

Q. Weren't you employed to do these various things that you have just stated, that is, to oil the machinery, to put up, to erect machinery?

A. I never was employed to do the oiling. Mr. Smiley asked me if I would do the oiling.

Q. And you did do it?

A. I did.

Q. And you laced the beltings and you—in fact you did whatever Mr. Muckenhirn told you, didn't you? 20

A. Well he told me—I took his jobs over the building but after he was gone away he left Mr. Smiley there in charge.

Q. Now when your brother left in November 1905 did Mr. Muckenhirn put in your hands definite plans for the finishing of the building?

A. Did he do which?

Q. Put in your hands definite plans for the finishing of that building? 30

A. Never put in my hands no definite plans, no, sir.

Q. Now how did you know from week to week what you were to do?

A. Well he never told me as far as that he was

going to put a roof on the building but entirely supposed that he would. That is the same way with the windows.

Q. Now what would you start in on Monday, would you have instructions for a full week to cover what you would do?

A. I had instructions from Mr. Muckenhirn at any time I had nothing else to do to go on with the
10 completion of that building.

Q. Well, were you told what you were to do with completing that building?

A. He never told me what I was to do.

Q. That is he told you that whenever you had nothing else to do you were to use your own judgment in completing the building?

A. To do the other work first.

Q. What was the other work?

20 A. This in the machine shop.

Q. That is, you were to work in the machine shop and when you weren't working there you were to use your own judgment in finishing the building, is that true?

A. I was to finish it up as it was supposed to be finished.

Q. And it was absolutely in your discretion as to when and how that building should be finished, was it?

30 A. It was absolutely in my mind that it wasn't finished.

Q. Answer my question. The jury won't miss it.

(Question repeated.)

THE COURT: Answer that yes or no, can't you.

A. Well I don't understand the word, its meaning.

THE COURT: Well were you to finish it as you pleased or as you were told to. That is how I understand it?

A. Well I was working for Mr. Muckenhirn.

Q. Were you to finish the building just as you pleased without any instructions from Mr. Muckenhirn? 10

A. He had never said nothing against me going on and doing anything on that line.

Q. Did you understand that you were to finish it just as you pleased?

A. I understand that I was to finish it as I was going on and finish it as I would have finished it if I had the time. 20

Q. How did you know what to do?

A. Well there was buildings that I worked on.

Q. And not from any instructions from Mr. Muckenhirn?

A. Well he said he wanted the building completed.

Q. Well he left this large factory building in your hands incomplete and unfinished and told you to go and work in the machine shop and then whenever you wasn't busy in the machine shop to finish the factory building up when and how you pleased. Is that your story? 30

A. He never said when and how I pleased.

Q. Well isn't it a fact that you were to finish it when you weren't engaged in the machine shop, when and how you pleased?

A. I was to finish it in the way I would finish any building. He never give me no instructions.

Q. Your common sense then in the absence of any instructions from Mr. Muckenhirn was to finish the building as it should have been finished, wasn't it?

A. Yes, sir.

Q. Now your common sense then was to fix the
10 ventilators in the roof wasn't it?

A. Yes, sir.

Q. And after a period of more than a year you didn't do it, did you?

A. For, how is that?

Q. For a period of six or seven months you didn't do it did you?

A. They're not done yet.

Q. Why didn't you do it?

20 A. I didn't have time.

Q. Anybody take you away from the work?

A. Oh, yes.

Q. Yes.

A. Yes, sir.

Q. Who?

A. Mr. Smiley has called me off of the work and Mr. Muckenhirn has.

Q. What were these three carpenters doing all
30 along?

A. What were they?

Q. Yes.

A. They put a new roof on the shipping room, they cut in the skylights or cut the ventilators, it was over the old engine room and put it over to the nickel plating.

Q. Was this in January?

A. I couldn't say. There were three men there at that time helping think it was during the early spring—sir?

Q. Early spring of which year?

A. 1906.

Q. Didn't have time to fix the ventilators?

A. Didn't they?

Q. Didn't they?

A. They didn't have time. 10

Q. They were working under your direction?

A. They were.

Q. And the ventilators could have been fixed in two or three day's time?

A. There were other work there that they were doing.

Q. And you didn't assign them to the work of finishing the building?

A. I couldn't. I was informed by Mr. Muckenhirn to do what he wanted first. 20

Q. Now when you say that you were—I understand that no definite plans were submitted to you to finish up this building, were there, that is no written plans?

A. No, there were just a ground plan and a plan of the king rafters was drawn at all.

Q. And that is all you had to go by?

A. That is all that I had to go by, yes, sir.

Q. Now when you say that—were you ever told to finish the ventilators? 30

A. Sir?

Q. Were you ever told to finish the ventilators?

A. I was told that when I got time to finish them to finish them.

Q. Were you ever told to put these strips on the

ventilators?

A. I was told to get them and put them on, yes, sir.

Q. Now when you say that Mr. Muckenhirn authorized you to order these various supplies you don't mean to say that in every case he authorized you to get them, do you?

A. In every case.

10 Q. Or did he just simply authorize you generally to get your supplies from Wistar and Woodnut?

A. He told me, if I remember right, to get all the lumber I wanted from Wistar and Woodnut and that it was all right — —

Q. And then after that you went on and ordered?

A. I did.

Q. Now did you order any of this for the Reliance Brass Company?

20 A. Sir?

Q. Did you order any of this material for the Reliance Brass Company?

A. No, sir.

Q. You were ordering other material for the Reliance Brass Company since the first of January, weren't you?

A. I ordered over the 'phone. I didn't never have a chance. They always knew my voice, Mr. Wistar or Mr. Woodnut, and they never questioned 30 I was down to the foundry. I never even told them to charge it to C. H. Muckenhirn.

Q. And you never told them what it was for?

A. Never did.

Q. Just simply told them to send so many pounds of nails or whatever it was?

A. Whatever it was to the foundry.

Q. Did you ever make any follow boards for the foundry?

A. Never did.

Q. Who did that work?

A. I don't know whether there were any follow boards made.

Q. It is the mould that connects to the flask.

A. That is the bottom board.

Q. What is it? 10

A. They call them bottom boards.

Q. Did you make any?

A. There were some of them made there, yes, sir.

Q. Several hundred of them?

A. I couldn't say how many.

Q. You made some of them yourself, didn't you?

A. I did.

Q. And from time to time new lumber was used for that wasn't it? 20

A. Very little new lumber; the lumber was cut out of the partition was all used.

Q. Some of the new lumber was used in making the bottom boards?

A. There were some new lumber used for it, but it was pieces that had been cut as a general rule.

Q. Do you remember the tubs that were made for the nickel solution?

A. Yes, sir.

Q. That was made out of new lumber, was it not? 30

A. That was for the water tub you mean?

Q. Yes.

A. Yes.

Q. Made out of the new lumber wasn't it?

A. The nickel tub was bought already made.

Q. And that came from Wistar and Woodnut,

didn't it? You said there was a water tub in connection with the nickel operation that was made from new lumber, it was, wasn't it?

A. Yes, sir.

Q. And the sand troughs in the foundry, sand boxes were made from new lumber were they not?

A. Yes, sir.

Q. That came from Wistar and Woodnut?

10 A. It did.

Q. And they were long moveable tubs eight feet long were they not?

A. I think they were, I couldn't say the exact length of them.

Q. There were some twenty of them, were there not, in the foundry?

A. I couldn't say, I never counted them.

Q. Well what do you think there was?

20 A. I should say I can't say how many there were, but I don't think there were twenty.

Q. Would you say there were ten?

A. Probably there were ten and probably more. I wouldn't say.

Q. And they were made out of new lumber from Wistar and Woodnut's were they not?

A. I think some of the beams were put on out of plank that came out of the old foundry.

30 Q. Well, don't you know that some of the lumber came from Wistar and Woodnut?

A. I do.

Q. And they were moveable sand troughs or tubs, were they not?

A. They were what they mould in.

Q. Yes, just simply setting there on the floor were they not?

A. Set on to, yes, precisely.

Q. Now the benches which they laid the flasks on, what were they made out of?

A. They were made of three by fours, I think.

Q. Made out of new lumber?

A. They were made, my brother was there doing the work.

Q. Were all of these benches?

A. They made those that the moulders set their moulds on. I don't know what you call them. 10

Q. Were all of these benches made while your brother was there?

A. Yes, sir.

Q. And none of them made while you were there?

A. I never made one.

Q. I say were any of them made while you were there?

A. I was there, but I never made one. 20

Q. I ask you whether they were made while you were there?

A. While I was in the foundry, yes, sir.

Q. Now do you know whether or not they were made of new lumber or old lumber?

A. I couldn't say.

Q. Couldn't you tell from the appearance?

A. I never noticed that until after they were used.

Q. Where would they get three by four lumber? 30

A. Where would they?

Q. Yes.

A. I couldn't say. They were made, probably the first lot that they used in the old foundry might have been of new lumber.

MR. ACTON: This witness it being asked something that he doesn't know.

THE COURT: I think it an awful waste of time.

Q. Now the boxes under the lathes and machines were made out of new lumber, were they not?

A. Some of them.

10 Q. And where did that new lumber come from?

A. That came from Woodnut and Wistar.

Q. And the stands nailed to each lathe or machine are made out of new lumber, are they not?

A. No, sir, they were not.

Q. None of them made out of new lumber?

A. I don't think there were one.

Q. Did you make them?

A. I made a good many of them.

20 Q. Where did you get the lumber from?

A. They were made from boxes and the likes of that; ripped up the plank that came with the machines. I ripped them out.

Q. Now there was a large wooden washing trough in the main factory building, what was that made out of?

A. I think that was made of cypress.

Q. And out of new lumber?

A. That was, yes, sir.

30 Q. And where did that come from?

A. It came from Woodnut and Wistar.

Q. Now, how long was that?

A. Why I don't know, I couldn't say. I should judge about eight feet. I think the plank cut in half, if I remember right. I wouldn't say.

Q. Now there were two or three carpenters' work

benches, were there not?

A. Never saw any carpenters'.

Q. Work tables then?

A. There were tables there that they had machinery setting on.

Q. Weren't there benches that you used for planing and doing carpenter work on?

A. None there that I know of. I used the tops of the other peoples's. 10

Q. Were you working as a carpenter without a bench?

A. I would work over the tops of the other benches, I never had no bench of my own.

Q. Did you ever see any carpenters' table or bench there?

A. I don't know that I did.

Q. I ask you whether you didn't see two tables made out of white pine boards about ten feet long? 20

A. My brother had one there that belonged to him when he was there, but it went away.

Q. But you haven't seen any yourself?

A. I havn't used any.

Q. Were you there when the factory was sold, on the day of the sale?

A. No, sir.

Q. Now a considerable part of this material was used in furnishing a stringer to the main shaft, was it not? 30

A. There were pieces sawed across between each king girder or rafter or girder, whatever you call it.

Q. That was for the purpose of carrying the main shaft, was it not? To carry the hangers for the shaft?

A. No, sir, those pieces run the other way.

Q. What are the stringers made of that carry the hangers for the main shaft?

A. Four by six, I think.

Q. Where did they come from?

A. The came from Wistar and Woodnut.

Q. And the stringers that carried the counter shafts for the machinery, what were they made of?

A. I think they were three by six.

10 Q. And where did they come from?

A. I think they came from Woodnut and Wistar.

Q. Now a considerable part of your work was in the changing of partitions, was it not, inside of the building?

A. Wherever there were a partition to be changed, I changed it, yes, sir.

Q. And in putting up new partitions inside of the building, was it not?

20 A. I did that, yes, sir.

Q. And in doing that considerable of this lumber has been used, has it not?

A. Yes, sir, some of it used in putting up the partitions.

Q. Some of it used in altering partitions, was it not?

A. Well I think—No, I don't think that there was any partitions altered but what I always got more out of it.

30 Q. Cut it bigger?

A. Cut it smaller, I think. I won't say positive about that.

RE-DIRECT EXAMINATION.

BY MR. ACTON:

Q. Now how were these stringers fastened Mr. Bell?

A. The stringers carries the shaft.

Q. The shafting and so forth.

A. Why the most of them are put up there, all of them are held by lag screws, that is a square headed wood screw.

Q. Are they a part of the equipment of the factory? 10

A. For running machinery.

Q. Were they so used?

A. They were.

Q. Now these sand boxes, were they fastened to the floor?

A. They were not.

Q. Were they a part of the equipment of the factory? What were they used for?

A. These, the moulders used them for putting 20 up their moulds in them.

Q. Were they or were they not necessary?

A. They were necessary.

(Objected to.)

Q. Now who helped you do this work?

A. John Groscop, William Walters, and Richard Sanderlin was there.

Q. Were they there continuously? 30

A. Not continuously, no, sir.

Q. How long were they there?

A. They were there different times.

Q. Up to what time?

A. Well William Walters and John Groscop were working there at the time that they closed.

Q. In April 1906?

A. Yes, sir.

Q. What work did they do there?

A. They were on the - -

(Objected to as not re-direct examination. Question allowed.) (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

10 A. They were helping there on the buffing room.

Q. What kind of work?

A. Carpenter work.

RE-CROSS EXAMINATION

BY MR. CARR:

20 Q. Do you know when the workmen commenced in the foundry building, the large foundry building?

A. Do I know when they did commence?

Q. Yes?

A. I think there were one or two moved in there on Labor Day, if I remember right.

Q. And when did the rest come in?

A. I couldn't say. They moved in at different times, I think.

30 Q. But they opened the foundry up the day after Labor Day, didn't they?

A. I couldn't say that they worked the next day or not.

Q. A few days afterwards?

A. A few days afterwards I know they were working in there.

Q. The foundry didn't close down long enough

to close the machine shop, did it?

A. I think, if I remember right, I think the machine shop closed down one day.

Q. Labor Day?

A. No, one day on account of the moving.

Q. And when did Mr. Muckenhirn's men get into the building connecting the foundry to the first building?

A. I couldn't say that. 10

Q. Have you any idea?

A. It was a good while after that, but how long I couldn't say.

Q. A month or two?

A. I couldn't say.

Q. You didn't observe that?

A. I couldn't say.

BY MR. ACTON: 20

Q. Mr. Bell, do you know whether or not there was a floor laid in the foundry when the men went to work there?

A. The foundry floor wasn't all down, no, sir.

Adjourned to nine A. M. October 25th, 1906. 30

Salem, N. J., October 25, 1906.

Trial of cause resumed at 9 A. M.

WILLIAM W. BELL, Sworn.

DIRECT EXAMINATION

BY MR. ACTON:

Q. Mr. Bell, where do you reside?
A. Salem, New Jersey.
Q. What is your business?
10 A. Mill business.
Q. Wherabouts?
A. On River Street below Fifth.
Q. How long have you been in the mill business?
A. Been in the mill business ten years last June.
Q. Of whom is that firm composed?
A. Wistar and Woodnut and myself.
Q. Trading as what?
A. William W. Bell and Company.
20 Q. Are you the plaintiffs in this case?
A. We are.
Q. Who has the active management of that business?
A. I do.
Q. Now you say a mill, what kind of a mill, Mr. Bell?
A. It is a planing and sash mill. Planing and sawing any odd work in the finish business.
30 Q. Do you know Charles H. Muckenhirn?
A. I do.
Q. Did you do any work for Charles H. Muckenhirn at that mill?
A. We did.
Q. Have you any books of account showing the work that you did for Charles H. Muckenhirn?

A. I have.

Q. Have you your books or original account here?

A. Yes.

Q. By whom were the entries made on those books?

A. Myself.

Q. When were those entries made?

A. There were two of us, Norris Stranger, he works for me. 10

Q. When were those entries made?

A. At or about the time of the delivery of the articles.

Q. What do those books consist of?

A. We carry a ledger and day book, a blotter and order book. There is a memorandum kept - -

BY MR. CARR:

Q. Now what is the first book to which you make charges? 20

A. When we place a good order, that is the order book and that is what we call our order book.

Q. Now when an order comes in what do you do first?

A. Place it in the order book.

Q. Now turn to your first entry in the lien claim?

A. That is for planing isn't it?

Q. Yes.

A. A man wouldn't come down and order some planing. 30

Q. Now where would that first appear in your books?

A. That would be on the memorandum of the sawyers down stairs.

Q. And into what book would that go?

A. That would be posted into our day book.

Q. Now get your day book, won't you? Where would it first appear, February 25th is the date?

A. 1905?

Q. Yes?

A. This is the old book. The first one wasn't lettered at all, February?

Q. February 25th.

A. Planing ninety-five.

10 Q. Now who makes that entry?

A. I do.

Q. That is your writing?

A. That is my writing, yes, sir.

Q. And from the day book you post that to the ledger?

A. To the ledger, yes, sir.

Q. Now as the materials are sold, where do you first enter them?

20 A. Well if there is an order it is entered into the order book until filled.

Q. Now show me what is your order book?

A. This one. It is not like any business or matter. We have got to make these articles.

Q. And you put it in your order book?

A. Yes.

Q. And you put it into the order book first.

A. Sometimes we do and sometimes we carry it into the day book.

30 Q. And you post from the order book to the day book and from the day book to the ledger?

A. Yes, sir.

Q. And where planing is done you put it into what book?

A. It is posted right off of the memorandums into the day book.

Q. Did you make all of these entries yourself?

A. Yes, I kept my own books.

Q. You are the book-keeper, are you?

A. Well, I do most everything. I keep books when I got time to keep them.

Q. I don't mean a clerk, but you keep the books, don't you?

A. Yes, I keep books.

BY MR. ACTON: 10

Q. Mr. Bell, will you look over the schedule annexed to the declaration in this case and say whether or not it conforms to your books of original entry. (Handing paper to witness.)

A. To the best of my knowledge I believe I did. It is a copy of our books.

Q. Now the work and labor performed indicated in that bill and the materials furnished were furnished by whom? 20

A Materials furnished?

Q. Yes.

A. By William W. Bell and Company.

Q. To whom?

A. C. H. Muckenhirn.

Q. And were delivered where?

A. In the erection of that foundry.

Q. How much is due and owing to you on this bill? 30

A. Five twenty-nine eighteen.

Q. What?

A. Five-hundred and twenty-nine dollars and eighteen cents.

BY THE COURT:

Q. When was your last item furnished?
A. Sometime in April, I think.

BY MR. ACTON:

Q. What year?
A. Nineteen six. April 7th, 1906.
10 Q. And your account began when?
A. I think it was the 18th of November.
Q. Now the account in this claim, just look at your claim?
A. February 25th, 1905.
Q. Who ordered these goods and this work?
A. Joseph Bell in the forepart of the erection of the building and Mr. Samuel Bell later.
Q. How were the orders given to you?
20 A. I think most of them verbally, I am pretty sure. In fact, I know all of Joseph Bell's were.
Q. Now do you know where these items of charge went?
A. Yes. Can I make first a little statement? There were sometimes other people ordered some few things.
Q. How do you mean other people ordered some few things?
30 A. Well some woulo send up for them.
Q. By whom?
A. Send maybe a workman for sash or something like that; I don't want to say that them two men ordered everything.
Q. Did anybody else furnish any of the sash or frames that went in that plant except yourself or do you know whether anybody else?

A. I don't know.

Q. Now, Mr. Bell, do you know whether or not any sash were furnished by you for a room called the buffing room in that building?

A. There was two sash put in between the buffing room and the nickelplate room.

Q. When?

A. In the latter part of - - along the forepart or somewheres there in April. 10

Q. Look at your books?

A. Can I look at my own memorandum?

BY MR. CARR:

Q. Not at your own memorandum.

A. I keep all my bills.

BY MR. ACTON:

20

Q. Just take your book, Mr. Bell, and look at it.

A. It was March the tenth.

Q. What year?

MR.CARR: What did he say Mr. Acton?

MR. ACTON: March 10th.

A. 1906.

Q. How do you know those sash went into the buffing room? 30

A. Because I took them over there and knew where Sam was going to put them.

Q. Who took them over there?

A. I did.

Q. At whose request?

A. Sam Bell's.

Q. Now do you see any other items that you can recognize that you took over?

A. Yes.

Q. What did you take over?

A. Most of these goods were delivered by team.

Q. At whose order?

A. Joseph Bell and Samuel Bell's.

10 Q. Now will you look at your bill under date of February the 17th and see if you furnished any glass at that time?

A. What date, 1906?

A. One box of eight by ten glass.

Q. Do you know who ordered that?

A. Sam Bell.

Q. Do you know where it went?

A. Yes.

20 Q. Where?

A. In those two skylights and Sam made the sash for them.

Q. In what building?

A. Why - -

Q. In what plant?

A. In what plant?

Q. Yes.

A. Fifth street foundry.

30 Q. Of whom?

A. C. H. Muckenhirn.

Q. Did you furnish any putty at that time?

A. I don't know.

Q. Look at your bill.

A. Well, there is three pounds of putty.

Q. Well, did you furnish that putty?

A. And down further twenty-five pounds of putty

but I couldn't say it went with the same glass.

Q. Now, Mr. Bell, do you know whether or not the plant is a finished plant?

A. I shouldn't consider it so.

Q. Why?

A. Because it isn't finished.

Q. In what respect?

A. Several respects.

Q. Name them? 10

A. In the first part it is a big water-closet no light in it at all and the sash sets there ready to be put in. There were one hundred seventy some windows that have never been cased at all. The skylight windows in the moulding room, the stop has never been put in. The stops were sent there for the purpose.

Q. Who sent them?

A. We did. It is on our bill.

Q. What else? 20

A. This piece of roof I saw there that wasn't nailed down on one edge and bad and short all the way on the other edge, I should judge.

Q. When were these stops ordered for these windows, Mr. Bell or when were they furnished?

A. August the 26th.

Q. What is that, sir?

A. August the 26th.

Q. What year?

A. 1905. 30

MR. CARR: Pardon me, I didn't hear that answer.

MR. ACTON: They were furnished August 26th 1905 and I put in—

MR. CARR: Is that an item on the bill here?

MR. ACTON: Yes.

Q. What is the charge, Mr. Bell, what is the charge?

A. Forty eight feet of cypress on all for pieces that must be—that was ripped up into half inch strips, I should judge.

10

(Books offered in evidence.)

THE COURT: The witness wants to correct a mistake. He may state what it is.

WITNESS: I think this might be more like it—125 feet ½—⅞ November 2nd, 1905.

20 THE COURT: What date is it?

WITNESS: November 2nd, 1905.

CROSS EXAMINATION.

BY MR. CARR:

30 Q. You are familiar with the Muckenhirn plant down there, are you?

A. Yes, slightly.

Q. Can you recognize a picture of the plant?

A. A picture?

Q. Yes.

A. I couldn't tell you sure whether it is just like

it is at the present time or not. Whether just taken before it was finished or not.

Q. Can you tell the general outline as to the picture? I show you a picture and ask you whether you can say whether that is correct picture of the general outline?

MR. CARR: Now I would state that I want, if possible to have this witness indicate the ventilator sash to which the stop applies to which he has been testifying for the purpose of testing his knowledge. 10

MR. ACTON: You want a correct photograph then.

THE COURT: You may interrogate him about this.

Q. Do you know whether or not it is a correct photograph? Do you know whether or not it is a correct portrayal? 20

A. I should say that ought to be trip windows.

Q. What I wanted to know is whether you can say whether this picture is a correct delineation or portrayal of the factory building?

A. I couldn't say whether it is correct or not.

Q. You don't know?

A. I couldn't tell you without going down there. 30

Q. You can't tell by examination whether or not this is a correct picture?

A. No.

Q. Can you tell by examination whether or not this correctly portrays the ventilators or ventilator sash?

A. I don't think it does.

Q. Now in what respect do you think it differs?

A. Well, I know that they are quod and trip frames in the top. Quod is four sash and trip is three.

Q. Four and three sash?

A. I don't mean just with the picture

Q. Well what do you mean?

10 A. It would have four windows in the end and then there would be a bunch of three and another bunch of three.

Q. What is the order, groups of four windows and same order groups of three?

A. The end one is a group of four.

Q. In other respects is it correct?

A. There may be more windows put in, furnished since it has been made. I am satisfied it - -

20 Q. Now does it show the general column of the window sash?

A. Don't show how they are hung.

Q. Aren't some of them open?

A. They're all shut, aren't they?

Q. Now I don't think so. Don't you see some sash open there? Oh, never mind, if you can't see it.

A. That end one, would you call that open or not?

30 Q. Now I understand you to say that the building was incomplete partly because the stops were not on the ventilator sash?

A. That is one thing, the head stop.

Q. And those stops were ordered of you I think you say under item of November 2nd?

A. That is when they're charged.

Q. Seventy-five cents was the charge was it?

A. Yes.

Q. So that the ventilator sash were complete save for this 75c, charge so far as you know?

A. No.

Q. What else required to be done?

A. Nothing there to stop them, nothing to catch them, No catches at all. They bang around and bang the lights out. 10

Q. Have you recently examined the ventilator sash?

A. Yes.

Q. Now at the present time the glass are in the sash are they not?

A. I think they are nearly all in.

Q. Except some that may have broken out and the sash frame - -the sash is in the frame, is it not?

A. Yes. 20

Q. And it is hung in the frame is it not?

A. Hung on the centre piviots

Q. And there is a rope made fast to a screw eye in the top of the frame, is it not, so that it can be controlled from the ground and as at the present time the sash can be opened and closed from the ground, can it not?

A. Be closed by its own weight.

Q. Be closed by its own weight and, as a matter of fact, they remain closed, do they not? 30

A. Except when the wind is blowing sometimes.

Q. Now do they swing all the way in and out with the wind?

A. No, they can't come only this far.

Q. That is they don't swing inside the building?

A. The top part comes in and the bottom goes

out.

Q. But the lower part of the sash can't swing inside as they are hung?

A. Can't swing inside but the top - -

Q. The top swings in and the bottom swings out. Now what keeps the bottom from swinging in?

A. The bottom of the sill.

Q. So that there is nothing to keep the lower
10 part of the sash from swinging in, is there?

A. No, sir.

Q. Now what would be the purpose of the stop that you speak about?

A. To keep the weather out.

Q. What connection would it have with the sash?

A. Makes a better stop for the sash to strike against.

Q. That would be on the outside?

20 A. Right across the top on the outside.

Q. But it would have nothing to do with the opening or closing the sash itself, would it?

A. No.

Q. And it would have nothing to do with keeping the sash closed, would it?

A. No.

Q. Now I understand that the orders for this material were given first by Joseph Bell?

30 A. Yes.

Q. And then later by Samuel Bell, was it not?

A. Yes, Joe wasn't there.

Q. And Joseph Bell stopped the ordering about the middle of November, did he?

A. I should judge so.

Q. And from that time on the orders were chiefly from Samuel Bell, is that correct?

A. Yes.

Q. Do your books indicate?

A. Sometimes, not always

Q. Now when Samuel Bell would order what would he say, generally speaking?

A. Why he would just come up there and order so many sash maybe or such and such an article and send it down to the foundry. We knew where he worked and sometimes he would say C. H. Muckenhirn. 10

Q. For instance, if he wanted some sash he would tell you to send eight sash and so many lights of such dimensions and that would be practically all of that conversation, would it not?

A. Yes.

Q. And you knew where he worked and sent it down to Muckenhirn's place

A. Yes. 20

Q. Now he wouldn't tell you for what particular use it was to be put to?

A. Not always, sometimes he would.

Q. Now look at your bill of particulars commencing with item of December 23rd and continuing to the bottom of the page the last item, I will ask you if you can state - if you can identify any of the items as having been ordered for a particular purpose?

A. I don't know that I do know for sure where any of these articles went. 30

MR. ACTON: Mr. Bell, wont' you speak up please; look over those items and speak up.

MR. CARR: If the jury don't hear you it isn't of much account.

A. I say I don't know.

Q. That is, as to the items beginning with September 23rd inclusive 1905 to the end of the bill of particulars you can't positively identify any article either by its order or by the use to which it was put except that you believe in a general way that it went into the building, is that true?

A. Yes.

10 Q. But you can't recall that any purpose was stated when the goods were ordered, can you?

A. I can identify some of these articles as making them, doing the work on them.

Q. What I mean Mr. Bell is - now this question applies to all of these articles between the dates mentioned unless you indicate otherwise - that as to those articles you can't recall the person ordering them saying for what purpose they were intended,

20 can you?

A. No.

Q. Sir?

A. No.

Q. Now do you know of your own knowledge for what the articles from December 23rd inclusive to the end of the bill of particulars were in fact used for?

A. I know where some of these sash went, but I couldn't tell you the exact place, that is I know

30 there was three or four sash used in the buffing room and other room there but which one went in each I couldn't tell you.

Q. Now between the dates mentioned I see charges for -

A. There was one sash put in the boiler room door very late but whether it was six light or nine

light I couldn't tell you.

Q. I see charges for five sash do you know whether they went in the building?

A. What date?

A. Between the dates mentioned.

A. Six sash?

Q. Altogether.

A. I should think to the best of my knowledge that they did. 10

Q. Do you know that they went into the building?

A. I know that they were ordered, sent down there, checked off the book.

Q. But do you know that they went into the building?

A. I didn't take them there.

Q. But do you know that they went into the building, were actually used, these particular sash?

A. I am satisfied that they did. 20

Q. But how do you know?

A. Well they were sent there and no doubt unloaded there or they wouldn't be charged with them.

Q. Then your answer is that they went into the building because they were ordered by Mr. Samuel Bell and were charged in your books to that account, is that your answer?

THE COURT: And delivered there, sent there. 30

A. Because there were several new sash put in there. That was some of the last work done along there by the buffing room.

Q. Do you know yourself that they were delivered there?

A. I didn't take them over.

Q. Then you don't know within your own knowledge?

A. Yes.

Q. That would be within the kwnoledge of your driver I suppose?

A. Yes.

Q. Now you spoke of some sash being used in connection with the buffing room; I show you the
10 plan which has been introduced into evidence by Mr. Acton in this case and ask you if you won't point out where the buffing room is? (Handing plan to witness.) Show me where it is.

A. I could soon show you if I was down there.

Q. I suppose you could, but can't you tell by this plan?

A. Well—I'm not pointing out where it is now but it runs right across the end of the nickel plate
20 room and there is two sash in between.

Q. Your answer is that you can't identify it by that map?

A. Not from that map, no, sir.

Q. Now the changes that were being made to the buffing room were an addition to its size, was it not, Mr. Bell?

A. Yes.

Q. The effect was to increase the floor space and the ground space occupied by the buffing room?
30 A. Made it 260 square feet larger.

Q. And it was for that portion of the building that the sash you saw being used was used, was it not?

A. Near there and in there.

Q. In connection with the alterations to the burfing room?

A. There was one put in the boiler room door, I couldn't testify what size.

Q. Inside door is it?

A. No, it is an outside door.

Q. That was replacing another door?

A. No, cut in there.

Q. A part of the slat door had been cut out?

A. A part of the centre of the door had been cut out. 10

Q. And this sash put in its place?

A. Yes.

Q. This sash that you saw was in connection with the changes in the buffing room, was it not?

A. Yes.

Q. Now you never saw any plans of this building, did you?

A. No.

Q. And you don't know what Mr. Muckenhirn's intentions were with regard to putting or not putting casings around the windows, did you? 20

A. No and he didn't either.

Q. You don't know?

A. No.

Q. You don't know what Mr. Muckenhirn's original intentions were with regard to putting stops on the ventilators in the foundry, do you?

A. No. 30

Q. Nor what his original plans were with relation to putting in a water-closet, was it you said?

A. A window.

Q. And wanted in the water-closet?

A. It is dark when you shut the door. It opens into the main office.

Q. Is there a slat door there now?

A. Yes.

Q. And in your opinion there ought to be a sash in it?

A. Yes, ought to be a sash in the partition.

Q. You don't know what Mr. Muckenhirn's intentions were?

A. Undoubtedly he intended to put sash in there.

Q. Do you know what his original intentions
10 were to put sash in that door?

A. I don't know.

Q. Do you know that his intentions were to put sash in that door?

A. No cutting out the partition.

Q. Well there is a slat - wooden stops there now, isn't there?

A. That would be just as he wanted to put it in.

Q. But where the door is now is closed by a slate
20 wooden slat?

A. Yes.

Q. And that would have to be cut in order to put it in?

A. Yes cut, cut it in the partition or in the door.

Q. Now you say the roof wasn't nailed on the edge; that was the Carney patent roofing that has been spoken of, wasn't it?

A. Yes.

Q. And that is a sort of burlap covered with tar?
30 A. Of that nature, yes, sir.

Q. And simply a portion of the edges of that roof weren't turned down?

A. Sticks out there where the wind can blow under it and blow the roof off if it blowed hard enough.

Q. Now how long would it take a man to finish

that do you suppose?

A. A couple of hours, I suppose.

Q. A couple of hours, did you say?

A. I suppose so.

Q. Then with the exception of the couple of hours on the roof and with the exception of putting stops on the ventilator windows and with the exception of putting casings on the windows and with the exception of putting a sash in the partition separating the water-closets from the office, the building was in your judgment complete, was it not? 10

A. Catches on the ventilator windows - didn't mention that did you?

Q. And the catches put on?

A. Casings over all the windows, you mention that? Casings over the windows; window frames.

Q. Now with the exception of the things that I mentioned the building is complete, is it not, so far as you know? 20

A. I don't know.

Q. Sir?

A. I don't know.

Q. You don't know, is that the answer?

A. I don't know what his intentions were.

Q. So that, not knowing Mr. Muckenhirn's intentions you would always be unable to say whether the building was complete or not?

A. If he didn't intend to make it any larger, so far as I know them additions would have finished it. 30

Q. That is, the things that I have specified, if put in the building, would, in your judgment, make it a completed building, that is true isn't it?

A. I should judge so, so far as the building goes.

Q. And the building was in its present condition

of completeness or uncompleteness by the 15th of November, 1905, was it not?

A. Fifteenth of November?

Q. 1905—well when did it reach its present stage of completion?

A. Not till they quit.

Q. Sir?

A. Not till they quit there.

10 Q. Do you know when the large foundry building was occupied?

A. I don't.

Q. Do you know when the building between the large foundry building and the original machine shop was occupied?

A. I couldn't tell you the date, no.

Q. Do you know within a week or two or a month?

20 A. Yes.

Q. You were down there occasionally, weren't you, at the plant?

A. I went there sometimes when they were building it and got some few orders while I was down there.

Q. Now all the time this work was going on on the building, the factory was being operated, was it not?

A. All the time.

30 Q. Yes, parts of the factory was being operated?

A. When they were building the main foundry, you mean the main foundry?

Q. Yes.

A. I should judge there were some working.

Q. Well don't you know the plant itself was in operation—don't you know that the plant itself was

in operation for at least a year before it closed in April of this year?

A. I don't know.

Q. When you were down there from time to time din't you see the factory in operation and machinery running and people working?

A. When I first made trips down there they was building the Fifth street end.

Q. Now when the Fifth Street end was done they started to operate that part of the factory, didn't they? 10

A. I suppose so.

MR. ACTON: Well answer if you know and not "suppose so." That is not a proper answer.

A. No.

Q. Well you from your observations saw that the factory at the Fifth street end was being operated and saw the people working? 20

A. After they built the Fifth street end I didn't go there.

Q. And you don't know whether there was any work done there at all?

A. Not at that time.

Q. When did you first observe the factory being in operation or any part of it?

A. I think the first time I was in there was when they was running the shafting between the room—between the foundry and the Fifth street end. 30

Q. When was that?

A. I don't know.

Q. Wasn't that in November?

A. I don't ——

Q. And at that time the foundry was in operation wasn't it?

A. I think so.

Q. And at that time the Fifth street end was in operation wasn't it?

A. I don't know.

Q. You don't know?

A. Not at that time.

10 Q. Now don't you know, as a matter of fact, that considerable of the material furnished by you was used in the operation of the plant as distinguished from its erection or construction?

A. Don't I know it was?

Q. Yes.

A. No. I couldn't identify only the sash.

Q. And you don't know then whether or not it was used in operation or construction, do you?

20 A. The sash and frames I do.

Q. As to other articles do you know whether or not they were used in erection or for operation?

A. Not with exception of them sash mentioned.

Q. That is with the exception of sash you can't say?

A. No.

———o———

30 NORRIS TRULLENDER, Sworn.

DIRECT EXAMINATION.

BY MR. ACTON:

Q. Mr. Trullender, where do you live?

A. 262 Sinnickson street, Salem, New Jersey.

Q. What is your business?
A. Sash and door maker.
Q. For whom do you work?
A. William W. Bell and Company.
Q. Do you know Charles H. Muckenhirn?
A. Not personally acquainted.
Q. Know him when you see him?
A. Yes, sir.
Q. Do you know whether or not he has a plant on Fifth street in the city of Salem? 10
A. Yes, sir.
Q. Do you know whether or not William W. Bell and Company supplied any materials for that plant?
A. Yes, sir.
Q. What materials did they supply to your knowledge?
A. Window frames and sash and some other articles. 20
Q. How do you know they were supplied for that factory?
A. I made them and delivered them there.
Q. How many did you make and deliver there, if you know?
A. I can't tell.
Q. Many?
A. Yes, sir.
Q. A hundred?
A. Fifty at one time. 30
Q. What is that?
A. Fifty at one time.
Q. Do you know where they were used?
A. Yes, sir.
Q. Where were they used?
A. In the foundry.

Q. Do you know where they were used?

A. Saw them put there.

Q. Who put them there?

A. Joseph Bell and William Walters.

Q. Did you subsequently deliver any to Samuel Bell?

A. I don't recall any particular ones, no, sir.

Q. Did you do any planing for the foundry?

10 A. Yes, sir.

Q. What was done with the material that you planed?

A. Taken to the foundry.

Q. Who took it there?

A. Al Giles.

Q. Did you see it taken there?

A. Yes, sir.

Q. Have you ever been in the Muckenhirn plant

20 and recognized any of the — —

(Objected to.)

Q. Well, have you ever been in Muckenhirn foundry?

A. Yes, sir.

Q. Were you able to reconize any of the window frames that you made there?

A. Yes, sir.

30 Q. Are they there now?

A. Yes, sir.

Q. Ever able to reconize any of the doors that you made?

A. No, sir.

CROSS EXAMINATION.

BY MR. CARR:

Q. Do you know when you delivered these fifty sash of fifty window frames, wasn't it?

A. Yes, sir.

Q. They were used in the foundry?

A. Yes, sir. 10

Q. And they were delivered there prior to November, were they not?

A. Yes, sir.

Q. And you don't recall any frames that you delivered?

A. I didn't deliver them, I recall making them.

Q. And they were used in the foundry prior to November, were they not?

A. Yes, sir. Which November? 20

Q. Why you spoke of knowing that Fifty window frames or sash were delivered to the foundry, you said that didn't you?

A. Yes, sir.

Q. And you knew they went into the foundry?

A. Yes, sir.

Q. And that was prior to November 1905, was it not?

A. Yes, sir.

Q. Now this planing that was done for the foundry, as you say, consisted in planing rough lumber into planed lumber, wasn't it? 30

A. Yes, sir.

Q. And you don't know what use was made of it at the factory, do you?

A. I planed some of it myself.

Q. But after the lumber was planed and sent down to the Muckenhirn plant, you don't know what was done with it do you?

A. No, sir.

———o———

JOSEPH H. BELL, Sworn.

10

DIRECT EXAMINATION

BY MR. ACTON:

MR. CARR: Your Honor, may I ask this witness not to volunteer statements and to make his answers responsive? The last two days he has volunteered about half of the testimony.

20 Q. Mr. Bell, where do you live?

A. Salem.

Q. What is your business?

A. Carpenter, contractor and builder.

Q. Do you know Charles H. Muckenhirn?

A. I do.

Q. Now did you get any supplies from William W. Bell and Company for - -

A. I did.

30 Q. For what purpose?

A. For to complete the building.

Q. Now by whose order did you get the supplies?

A. Mr. Muckenhirn.

Q. What kind of supplies did you get?

A. Well I got frames, sash, doors and some trimmings, mouldings and such as that.

Q. Where were all of them gotten?

A. The mouldings were used in the - -

Q. Where were they gotten?

A. Gotten at William W. Bell and Company's.

Q. Where were they used?

A. Used in that factory all over in different places, some in the big foundry, some in the machine shop. In the office, in all the attachments there. All used there in different places.

Q. Now how many window frames did you get? 10

A. I can't just exactly state just how many of them I ordered. I ordered most all of them; my brother ordered some few later on.

Q. Do you know how many windows in the foundry?

A. No I don't - I have not went down - -

Q. Now the planing - was there any planing done there?

A. Yes. 20

Q. What was it done for?

A. Well that was planing stop stuff and some few planking to a thickness and such as that.

Q. Do you know whether or not the sash and window frames were delivered?

A. They were.

Q. At the factory?

A. They were; sometimes I went over myself to the factory and got frames and carried over there when I needed them and the balance Mr. Bell would 30 send over by either Mr. Albert Giles or sometimes I would send one of Mr. Muckenhirn's men over with a wheel-barrow and have them wheel over a few.

Q. How long did you continue ordering these articles?

A. Right up till way in November.

Q. Of what year?

A. 1905 or 1906.

BY THE COURT:

Q. 1905?

A. 1905, Yes.

BY MR. ACTON:

Q. Then what did you do?

A. Then I left it—after that I left my men there
10 and left it with my brother to do the ordering what they want.

Q. Did you have any conversation with Mr. Muckenhirn? I think we have gone over that. Well, did you have any conversation with Mr. Muckenhirn with reference to leaving the completion of the work to your brother?

A. I did.

Q. What was the conversation?

20 A. I went to Mr. Muckenhirn and told him my situation, that I had other jobs pushing me and asking for men and these were men there that I needed, I could take off and that I had a contract of mine for Mr. Fred John Green and the American Oil Factory. I was building a building there and they were wanting men and I thought I was building Mr. Muckenhirn's building there and it wouldn't be right for me to take these men away and I made arrangement with Mr. Strong, one of the managers of the Ameri-
30 can Oilcloth Factory — —

Q. Your conversation with Mr. Muckenhirn?

A. I told him my situation in the matter.

Q. Well, did you have any agreement by which your men left there?

A. Yes, I told him I would leave my men there.

CROSS EXAMINATION.

BY MR. CARR:

Q. I understood from your previous testimony that you left the Muckenhirn plant about November the fifteenth, 1905?

A. Somewheres right around there.

Q. And at that time previous to that time the sash and window frames had been ordered and were in place, were they not, Mr. Bell? 10

A. No, sir, they were not.

Q. Hadn't been ordered?

A. Yes had been ordered, but hadn't been put in place. Some of them hadn't even been put in the foundry, in the foundry building.

Q. But you didn't order any after you went away? 20

A. No, sir, I didn't order any after I went away; I left that to my brother.

Q. So that your knowledge of what was ordered ends, does it not?

A. No, with the exception of some lumber.

Q. No, in this particular matter?

A. No, I didn't order anything after that because I left it to him.

MR. CARR: Now, if your Honor pleases, I want to state at this that my recollection of the previous 30 testimony of this witness was that the plans for he erection of this building were in writing. That there had been a rough floor plan submitted by Mr. Muckenhirn and that from that this witness drew a ground plan of the building and the side elevations of the building and the truss or girder rafter, the side ele-

vation of the trusses. Now, if that be so, I want to move that the oral testimony of this witness as to the completion of the building or as to what it was intended to do in the erection of the building be excluded from this case upon the score that better evidence exists, namely, the written plans or sketches themselves. I make that motion at this time in order that Mr. ACTON may have the benefit of this witness
10 he desires to supplement the testimony.

MR. ACTON: I would like to ask a few questions.

BY MR. ACTON:

Q. Mr. Bell what was done with those plans?

A. I left them there for the use of my brother and they layed in the building next to the old—we had the use of one of those — —

20 Q. Well, what did you do with them?

A. I left them there when I went away.

Q. Have you got them now?

A. I have not.

Q. Have you seen them since?

A. I saw them when I was down there once or twice.

Q. Were they left there?

A. They were left there—Mr. Muckenhirn seen
30 them.

MR. ACTON: We call on you to produce them.

MR. CARR: That is hardly fair and until this testimony came we knew nothing of these plans and a notice to be the foundation of second evidence must at least be reasonably sufficient to give the party time

to hunt up the papers, so that the foundation for that has not been laid.

BY THE COURT:

Q. Are these the plans which were drawn before the building was commenced and showed to Mr. Muckenhirn and agreed to by him?

A. They were. I couldn't go on and make the bill for that building if I didn't make the sketch. I couldn't go on with the trusses If I didn't make them. I called Mr. Muckenhirn in and called him. Mr. Muckenhirn came in there two or three times with me and sometimes he would make an alteration. He kept altering all the time on them from one thing to another.

Q. What did those plans show?

A. They showed the general ground floor, the side elevation, the trusses, the ventilators and that is about all there are there of both building of the whole building, all there are there. Plans of the whole things I had drawn, sketched. Mr. Muckenhirn gives me an outline of what he wanted and I told him I would draw it out and did.

MR. CARR: Your Honor can see the importance of these plans over the statements made by the witness. The question is was this a completed building. Now this man says the building wasn't complete because of certain things, but they don't know of what he contemplated building in these written plans.

MR. ACTON: Well, produce them.

MR.CARR: Your Honor can see that if it was

desired to produce these, these were the persons who knew of the existence of them. We learnd it the first time in the midst of this trial. Mr. Mecum, if called upon, would have no doubt gone through all those voluminous papers and would have produced them.

THE WITNESS: If necessary, I can furnish
10 five to six men that was working for me that knew I was working by the plans and have them here in an hour, three of them if you wish them.

THE COURT: Well, it is rather an unfortunate situation. If it had been called that there were such plans and the earlier testimony had been objected to, of course, it would have been ruled out, but now it is in without objection and I don't see — —

20 MR. CARR: It was in without objection but not without objection so far as this case was concerned, but so far as the other case, which was the only case that was being tried. Later it was decided to consolidate these two cases and this morning I gave notice to counsel at the opening of the court that I would make this motion so that he might have time to supplement his proofs if he so desired. I couldn't have been said to have consented at that time be-
30 cause the Bell case wasn't in the contemplation of either the court or counsel.

THE COURT: Yes, but when we agreed to have this jury dispose of the two cases it was agreed that the testimony already in should be considered by them in the Bell case. Well, these plans may be found yet.

MR. ACTON: We will make a demand for them to produce it.

MR. MECUM: The answer is this, that I got up all the papers that were in Mr. Muckenhirn's office, in his desks and in his safe and took them up to my office. All those papers I have examined with the exception of Mr. Rose's letters which Mr. Ware had gone through and examined. I find no plans or any indications of plans among all this mass of material that I took from Mr. Muckenhirn's office. Now if Mr. Ware has found any plans he can tell you. Mr. Rose's letters were all separate and distinct. Mr. Acton: That don't say Mr. Muckenhirn hadn't taken them anywhere else.

MR. MECUM. At the time of appointing the receiver, Mr. Muckenhirn wasn't in Salem and I locked everything up.

MR. CARR: Have you got the plans, Mr. Muckenhirn?

MR. MUCKENHIRN: No, sir, there never was any plans.

MR. CARR: Have you the plans?

MR. MUCKENHIRN: No.

MR. CARR: Do you know where they are?

MR. MUCKENHIRN: No.

THE COURT: Let the case proceed then.

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

———o———

WILLIAM W. BELL, Recalled.

10 DIRECT EXAMINATION.

BY MR. ACTON:

Q. What statement is it that you desire to correct, if any?

A. Why I did identify those two sash at the last of the bill I know.

Q. What do you mean by that Mr. Bell?

A. They asked me if I could identify any of these
20 articles and I went down there on November 2rd, wasn't it?

Q. December 23rd.

A. December 23rd and I had already identified two sash and I supposed you meant down to them.

Q. In what way had you identified them?

A. I told you I took them over there.

Q. What do you wish to correct?

A. Didn't I say I couldn't identify any of these
30 sure?

Q. Yes.

A. Well I supposed you meant down to this I had already identified.

BY THE COURT:

Q. Now you mean to say?

A. March 10th, two sash six light 8 x 10 4.60.

BY MR. CARR:

Q. Have you finished your correction?
A. I believe so.
Q. Now these two sash under date of March the tenth were for use in the addition to the buffing room, were they not? 10
A. In the buffing room and the nickel plate room in the addition.
Q. That was the change that was being made in the buffing room at the time?
A. I think so.

———o———

SAMUEL BELL, Sworn. 20

DIRECT EXAMINATION.

BY MR. ACTON:

Q. Mr. Bell, where do you reside?
A. Salem.
Q. What is your business?
A. Carpenter.
Q. After November—about November the 15th, 1905 who had charge of the carpenter work at the Muckenhirn plant? 30
A. I did about, we had—I was exactly.
Q. Did you order any materials from William Bell and Company?
A. I did.
Q. What did you order?

A. Ordered the sashes, different stripping.

Q. For whom did you order them?

A. For Mr. Muckenhirn.

Q. Where were they used?

A. Were used there in the building.

Q. Who furnished them?

A. Bell and Company.

Q. Now can you state any particular articles that
10 were furnished there?

A. Well there were several sash and glass and several light that—

Q. How much glass was furnished there?

A. Well there were—I couldn't say positively how much. There were fifteen or twenty orders of glass different sizes. How much I wouldn't say, that is the exact amount.

Q. Did you ever get a box of glass?

20 A. I got a box of eight by ten.

Q. When?

A. That was ordered toward the last before they closed.

Q. Well how long before they closed?

A. It was within a month.

Q. What was done with it?

A. They were put in the skylights in the roof.

Q. Any sash put in the engine room?

30 A. Yes, sir.

Q. Who put them in?

A. I cut out the hole for it and I think John Groscop nailed it in.

Q. When was that done?

A. That was done—that was done late. Suppose about a month or two from the time they closed. I can't give the — —

Q. Where did you get the sash?
A. W. W. Bell and Company.
Q. Who brought it there?
A. I brought it.
Q. At whose direction?
A. Mr. Muckenhirn's.
Q. Did you get any other sash or glass from anywhere else but Bell's?
A. Never did. 10
Q. Did you get any other glass than that box of glass this year?
A. Yes, sir.
Q. How much?
A. I suppose I got, well I can't tell the exact amount. I got it—it went for putting in windows. Some of them went in the office, some went in the ventilator—the last of them went in the ventilator where the wind had blown them open. 20
Q. Where did you get that glass?
A. W. W. Bell and Company.
Q. Who got it?
A. I did.
Q. Who took it to that factory?
A. I did.
Q. Did you do any work on the door of the shipping room?
A. Cut a window in there. 30
Q. When did you do that?
A. That was the last of my work.
Q. Well, what do you mean by the last?
A. Well, within a month I guess.
Q. Of their shutting down?
A. Yes, sir.
Q. And when did they shut down?

A. They shut down the twentieth of April, I think.

Q. Where did you get this glass?

A. From W. W. Bell.

Q. Who got it?

A. I got it.

Q. From whose order?

A. I think Mr. Muckenhirn told Mr. Smiley to
10 have it put in there.

Q. Now was any sash put in the buffing room?

A. Yes, sir.

Q. When was that done?

A. That was along the last work that I was doing. It has never been finished yet.

Q. How many sash did you put in there?

A. Two.

Q. Where did they come from?

20 A. Came from W. W. Bell.

Q. Who got them?

A. I ordered them.

Q. Well who brought them there?

A. Mr. Bell, I think, if I remember right.

Q. What did you do with the partition between the buffing room?

A. What I tore out, do you mean?

Q. Yes. When did you do that?

30 A. That was all done at the same time.

Q. Was there any materials used in repairing it that were planed?

A. Yes, sir.

Q. Where was that got?

A. Why there were some of it got to Bell.

Q. Where was the planing done?

A. The planing was done there to Bell and Com-

pany.

Q. Who delivered the planed goods?

A. Albert Giles as a general thing delivered the planed.

Q. And when were they delivered?

A. Well they were delivered as I wanted them there for the job.

Q. Well about when?

A. Well about—some I think was delivered within a couple of weeks I guess. 10

Q. Of what?

A. Sir?

Q. A couple of weeks of what?

A. The time I was told that we closed.

Q. And when was that?

A. Twentieth of April, I think.

Q. What year?

A. 1906. 20

Q. Now did you get any putty from Mr. Bell's?

A. I did.

Q. When did you get that?

A. At the same time that I got the glass, I think.

Q. Well about when was that?

A. Well that was right—wasn't over a month I don't think—it was when I was cutting in those skylights in the roof and they are not finished yet.

Q. A month from what? 30

A. From the time they closed.

Q. What was done with the putty?

A. It was put on the skylights.

Q. At whose order?

A. Sir?

Q. At whose order?

A. Mr. Muckenhirn's.

Q. Do you know whether or not—do you know Mr. Trullender?

A. I do.

Q. For whom did he work?

A. W. W. Bell and Company.

Q. Did he deliver any materials there?

A. He did.

Q. What were the materials delivered there?

10 A. I think he has brought over a sash or two at a time when they weren't closed when they went over there and he would bring them over.

Q. What became of the sash?

A. They were put in that building.

CROSS EXAMINATION.

20 BY MR. CARR:

Q. Now Mr. Bell, with regard to the several sash furnished by William Bell and Company after November 1905 I understand that two of them were used in a skylight in connection with the addition to the buffing room, that is correct, isn't it?

A. Not as a skylight, no, sir.

Q. Well what was it?

30 A. The skylight is in a roof.

Q. What was it for?

A. They were used for a light in the buffing room.

Q. And that buffing room because of this change that was made at that time—because of the addition to the buffing room — —

A. Well I don't know. I couldn't say about that because of the addition. Not at that time it wasn't

The buffing room was enlarged once before and that left a partition fronting on the nickel plating.

Q. And these sash were used in connection with new windows that were put in or what?

A. They were new windows, yes, sir.

Q. That is, the wall was cut out and new windows were cut in to give more light?

A. There were no windows in; it was a solid wall.

Q. Solid wall and that was cut out. Inside the building that was? 10

A. That was in the old partition in the original building.

Q. And that was cut out and these sash put in?

A. Yes, sir.

Q. And another sash I understoon used by cutting out the solid door of the engine room and putting a sash in the door?

A. That sash is not in the door, it is right above the door. 20

Q. Well it was made by cutting out and putting in the sash?

A. Yes, sir.

Q. So that all these sashes were used in work of alterations, were they not, and additions?

A. Used in all as additions, I suppose. They were used to get light because it was too dark in there for the men.

Q. That is where a wall was cut out and the sash was put in afterwards to get light? 30

A. They were not cut out in the shipping room, they was all they were.

Q. And they made more light by putting in these new sash?

A. They got more light, yes, sir.

Q. And this planing you speak of as being done with in two or three weeks from the time the factory closed was for the addition to the buffing room, was it not?

A. To the best of my knowledge.

Q. That was made necessary by tearing out the partition in the buffing room, wasn't it?

A. I can't say that that was made it necessary
10 by tearing out the partition. There were lots of rough sheathing that you couldn't lay paper on it and it was what they call skinned off to fetch it out to a thickness.

Q. And this was in the new work to the buffing room?

A. In some of the old buildings too.

Q. Now this box of glass that was bought for the skylight ni the roof that was a new skylight in
20 the old building, wasn't it

A. Sir?

Q. That was a new skylight in the old building?

A. It was put in the old building, yes, sir.

Q. And the roof was cut away to make room for this skylight, wasn't it? Originally it was a solid roof before the skylight?

A. It was a solid roof before the skylight.

Q. Now did you order all of the materials that came from Bell and Company so far as you know?
30 A. How is that?

Q. Did you order all the materials that came from Bell and Company, so far as you know?

A. If there were any ordered that I didn't order I didn't know nothing about it.

Q. Now let me see whether you do know. I notice under date of November 25th, 1905, a charge

for one pattern twenty-two inches in diameter, do you know anything about that?

A. Twenty two inches in diameter?

Q. Do you know anything about that, Mr. Bell?

A. I can't say that I do.

Q. Probably not ordered by you?

A. I can't say.

Q. You have no recollection? Now did you ever order any patterns from Bell and Company? 10

A. Not to my recollection, I didn't.

Q. Now did you ever order any cypress boards for patterns?

A. Sir?

Q. Did you ever order any cypress boards for patterns from Bell and Company?

A. I think once I did get a piece of cypress board for Mr. Smiley.

Q. And that was for patterns, wasn't it? 20

A. I can't say.

Q. For making patterns?

A. I can't say what use he made of the board.

Q. Now under date of December 30th there is one circle, thirteen inch diameter, do you know what that was for?

A. I can't recall it just at present, no, sir.

Q. That wasn't ordered by you?

A. II couldn't say. 30

Q. Now there is one circle seven inches in diameter under same date?

A. There is not but one place that I can place those circles and that is in the stock room where the window was made to pass the stuff in and out. They were cut out there and that is the only place that I can place them.

Q. Now these appear to be true circles - -

(Objected to as repetition. Question allowed.)

Q. Do you know what part of the building these circles could be used as a permanent part of the building?

A. One was used in the stock room and one was used in the tool room.

10 Q. Now what was the use of the circle used in the tool room?

A. Well there was a lock on the door and no one was supposed to go in there. The man was supposed to go in there - -

Q. Isn't a circle a solid block of wood?

A. Not if the centre was cut out of it.

Q. Do you know the centre was cut out of it?

A. The centre was cut out, yes, sir.

20 Q. Don't you think these were used by Mr. Sefler in the pattern room?

(Objected to. Objection overruled.)

A. I am not positive of it.

Q. You aren't positive where these were used?

A. No, sir I'm not.

Q. You didn't order any of these circles yourself?

30 A. I can't say.

Q. Now there is a fourteen inch circle, do you know anything about that?

A. I don't know.

Q. A number of panes of glass were broken in this factory from time to time, weren't there?

A. They were.

Q. And where did the glass come from to re-

place them?

A. Came from Bell and Company.

Q. Did you make any—did you go once to Bell and Company for turn patterns or for gig sawing?

A. I couldn't say.

Q. You don't remember?

A. No, sir.

Q. Now a portion of the putty that came from Bell and Company was used in replacing broken glass, was it not? 10

A. I don't think there were any of it used in replacing the broken glass. They were put in with tin points.

Q. You mean to say that when a pane glass was being placed that no putty could be used?

A. They're there today and anybody can go and see them and they're just put in with tin points.

Q. And no putty was used? 20

A. No, sir.

Q. And that is the way they were put in?

A. Yes, sir, the putty was used on the skylights.

PLAINTIFF REST.

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30

MOTION FOR NONSUIT.

MR. CARR: Now if your Honor pleases, in both theses cases I make a motion for nonsuit on the ground first that there is no proof that materials were

within the four months, ordered for the purpose of the construction and erection of this factory building.

Secondly because there was going on that time the work of erection, alterations, additions, repairs and operation of the plant and the proofs do not separate the items in the mechanics lien claim.

Upon the further ground that the materials were
10 not ordered for the construction and erection of the building.

THE COURT: The motion for a nonsuit will be denied.

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

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DEFENDANT'S TESTIMONY.

SAMUEL LUMLEY, Sworn.

DIRECT EXAMINATION.

30

BY MR. CARR:

Q. Mr. Lumley, where do you live?
A. Fifth Street, Salem.
Q. Where do you wrok?
A. Work at the glass house now.
Q. Did you ever work for Muckenhirn?

A. Yes, sir.

Q. When?

A. Started in on February 8th, 1904.

Q. And worked until what time?

A. Twenty-first of April, 1905.

Q. Nineteen five or six.

A. Six.

Q. Where did you work? In what department did you work? 10

A. Foundry, as a moulder.

Q. Do you remember the fact that a new foundry building was erected there?

A. Yes, sir.

Q. I show you the diagram in this case and ask you to indicate new foundry building? (Handing plan to witness.)

A. That is the new foundry yes, sir.

Q. Building marked foundry on plan? 20

A. Yes, sir.

Q. Do you remember when the workmen moved into the foundry building?

A. Moved in on the fourth of September, Labor Day.

Q. 1905?

A. Yes, sir.

Q. Can you say whether or not the foundry building was continuously operated thereafter until April 21st, 1906? 30

A. It was from the fifth. They went to work the next day, the day after, I think.

Q. Was it operated as a foundry and by the workmen there?

A. Yes, sir.

(Objected to as leading. Question allowed.)

Q. Will you say whether or not the building—will you say whether or not when you went in there on September the fourth the building was under roof?

A. It was under roof with the exceptions the windows were not in the ventilators.

Q. Were the sides of the building erected or were they not?

A. Yes, sir, the sides of the building were erected, but I don't think the windows were all in.

Q. Now can you say how soon afterward the windows were put in the ventilators, if at all?

A. Well it wasn't so very long afterwards, maybe two or three weeks.

Q. Now can you say how soon the windows in the side of the building were put in, if at all?

A. They were put in, but I can't tell definite what time. It wasn't so very long.

Q. Well would you say it was a matter of weeks?

A. Well, I should say about two or three weeks.

Q. Well after that work was done what could you observe about that building that was incomplete?

A. Nothing whatever as far as I could see.

Q. Were or were not the sash in the ventilators?

A. Yes, sir.

Q. Were or weren't the glass in the sash in the ventilators?

A. At what time?

Q. The period of some two weeks later that you refer to?

A. Yes, sir.

Q. Can you say whether or not ropes were fastened, made fast to the ventilator sash so that they could be operated at the ground?

A. There was an eye put in at the top of the win-

dow; these ventilators swing on a pivot and there was a rope fastened to that, a kind of weight, a knot made in the rope and when you wanted to open them you would pull down and put in this knotch.

Q. Can you say whether you could operate these ventilators from the ground?

A. Yes, sir. Tubs were in front of them and we would stand in front of the tubs when we wanted to open them for the gas to get away and we would pull them down. 10

Q. Do you recall when the building connecting the foundry and the original machine shop—this building here— was first occupied?

A. Well, I should say along about November, the first part of it.

Q. About the first of November 1905?

A. Somewheres thereabout. I don't know exactly. 20

Q. And for what purpose was it used?

A. For machine shop, tool and brass.

Q. Was there machines in there—was all machines in operation?

A. Lathes.

Q. Any shafting?

A. Yes, sir, shafting, pulleys, belts and clutches.

Q. Do you know whether or not the machine shop was in operation at that time? 30

A. This started in November or Decemberf.

Q. Do you know whether or not Muckenhirn's workmen were working in the machine shop at that time?

A. All the machines wasn't working, they would change them around, whenever orders would come.

Q. But was a part of this building in operation at

the time you have spoken?

Q. A part of the machines in use?

A. Yes, sir.

Q. Now can you say whether or not the machine shop continued in operation until the day of closing in April of this year?

A. Yes, sir. It did.

JQ. Will you say whether or not you had cause
10 to pass through the machine shop during cold weather?

A. I used to go through there in cold weather. In warm weather I would jump out of the window, I live right close there.

Q. Well, during cold weather which did you make the practice?

A. I most generally go through the machine shop. Toward the last part they got a system there that
20 I had to go through the machine shop.

Q. When was it that you had to go through the machine shop?

A. I think that started—we had a check system there that we had to enter and leave.

Q. Well, about when was it?

A. I won't say because I don't remember.

Q. Now did you—what did you observe about the machine shop that was incomplete so far as the build
30 ing was concerned?

A. Well so far as I know I didn't see anything. I supposed it was all done, that is all I know.

Q. Do you know the workmen were able to do their work inside the building?

A. They did do it because they worked there,

Q. Did you observe any inconvenience occurring to the workmen through any incomplete or supposed

incomplete conditions of the building?

A. Not after they started to work, no, sir.

Q. And that was in November 1905?

A. Yes, sir.

CROSS-EXAMINATION

BY MR. ACTON. 10

Q. Mr. Lumley, you say you observed no inconvenience that the workmen were subjected to, what workmen do you mean?

A. Machine hands.

Q. Whereabouts?

A. In the machine shop.

Q. Were you in there all the time?

A. No, sir. 20

Q. Then how do you know?

A. When I was going through.

Q. Going through to where?

A. Going home.

Q. When was that, the quitting hour?

A. Sometimes we would get done half past two; there wasn't any time.

Q. Did you stop in there and ask them if they were working under inconvenience? 30

A. I had a brother there.

Q. Did you stop and ask them?—

A. No, sir.

Q. Was Mr. Muckenhirn there?

A. He was there at times, yes, sir.

Q. How often?

A. I couldn't tell that, but he was there quite

often.

Q. On a average of once a week?

A. I should say he was there—

(Objected to. Objection sustained.)

Q. Are you a carpenter?

A. No sir.

Q. Do you know when a building is complete or
10 not?

A. No, sir. I don't know whether there is anything.

Q. Do you know whether the roof on this building was complete?

A. I should say so.

Q. Mr. Lumley, was it so?

A. Because I saw the paper was on there and I thought the building was built.

20 Q. Remember whether the paper was nailed down?

A. I don't remember about that.

Q. See any lumber and sash come there?

A. I saw lumber and sash come, yes, sir.

Q. What was done with it?

A. I couldn't say what was done with it. I don't remember.

Q. Who brought it there?

30 A. Sometimes Al. Giles brought it there and some times Trullender.

Q. Who did Trullender work for?

A. Mr. Bell.

Q. Who did Al Giles work for?

A. I think he worked for Wistar and Woodnut and Mr. Bell too.

Q. Any carpenters there at that time?

A. Yes, sir.
Q. Who?
A. Mr. Groscop and Mr. Samuel Bell.
Q. Mr. Walters?
A. I never seen Mr. Walters there but once.
Q. What were they doing there?
A. Working around there.
Q. What kind of work?
A. I've seen Groscop making match boxes and bottom boards and so forth. 10
Q. What else did you see him do; put in any windows or sash?

(Obpjected to. Objectilon sustained.)

Q. Now, Mr. Lumley, you have testified in regard to these ventilators. They were hung in the middle, weren't they and the cord fixed to the top?
A. In the center at the top. 20
Q. And when you wanted to open them you pulled them down?
A. Yes, sir.
Q. Now was there anything to keep them from banging?
A. They would go out I suppose.
Q. Bua as a fact didn't they bang out a great deal?
A. Well if the wind blowed hard they would bang. 30
Q. Then they weren't finished?
A. As far as I know. I met him, came to him one day and asked him if he wasn't going to fasten it.
Q. Who?
A. Mr. Muckenhirn.
Q. When did you first conclude to make that

statement?

A. Why for the reason they was always out and banging and I did get tired of - - -

Q. Breaking out window lights?

A. No, sir.

Q. Broken glass didn't come down on you?

A. No, sir, no window lights broke.

Q. Beating and banging there all that time, however?

10

A. Yes, sir.

Q. Rain come in?

A. No, sir we never lost any on account of rain.

Q. Did the rain come in?

A. Well it would come in at times.

Q. Did it wet the sand?

A. No, it didn't wet us.

Q. I said, did it wet the sand?

20

A. No, it didn't rain in enough to wet the sand.

Q. There was no complaint on account of these ventilators about wetting the sand?

A. There was some complaint, but we never lost any time on account of them. It was before they put in. There was no complaint, they only asked when they were going to be put in.

Q. Your work was altogether where?

A. In the foundry.

30

Q. Did they have a window in the foundry?

A. Yes, sir.

Q. When was that put in?

A. That was put in this September sometime, sometime I should judge the latter part of August.

Q. It was put in before you went to work there?

A. Sure.

ELLSWORTH E. BOOZ, Sworn.

DIRECT EXAMINATION.

BY MR. CARR:

Q. Mr. Booz, where do you live?

A. Salem, New Jersey.

Q. Were you formerly employed by Mr. Muckenhirn? 10

A. I was.

Q. At the brass plant in Salem?

A. Yes, sir.

Q. And later by Mr. Mecum, Trustee?

A. Yes, sir.

Q. How long did you work for Mr. Muckenhirn?

A. From June 1905 to the 21st day of April, 1906.

Q. What were your duties there?

A. From June 1905 up to November 1906 I was 20 employed doing jobs such as lacing belts, oiling machinery, moving machines, making boxes or whatever little odd jobs came around, lacing belts, steam fitting.

Q. Until what time did you say they were your general duties?

A. Up to November 1906.

Q. 1906 or 1905?

A. Up to November 1905. 30

Q. Now commencing with November 1905 what were your duties?

A. Running the larger engine.

Q. Do you remember the fact that a large foundry building was erected by Mr. Muckenhirn?

A. Yes, sir.

16 Q. And that is the building indicated on the

plan as foundry?

A. Yes, sir.

Q. Do you recall when the workmen got into the foundry building, that is Mr. Muckenhirn's workmen?

A. Yes, sir.

Q. When?

A. It was in September.

10 Q. Of what year?

A. 1905.

Q. Do you remember the day?

A. Labor Day.

Q. Couldn't tell you whether it was fourth or fifth.

Q. 1905. Now do you know whether or not from that time on the foundry was continuously operated, this building here?

20 A. It was.

Q. Do you know whether or not the workmen worked there daily?

A. They worked there every day that they had material to work with. They laid off three or four days probably waiting for material.

Q. Now do you recall that a building was erected between the foundry building and that original machine shop?

A. I do.

30 Q. Do you know when Muckenhirn's workmen got into that building?

A. They got in there the week ending November the 17th, 1906.

Q. How do you fix that date?

A. Because I was to have a raise when I started the big engine and the date I got my raise was Nov-

ember 17th, 1906.

Q. You mean November 1905, do you not?

A. 1905, yes, sir.

Q. Do you know when the machinery was in actual operation in the new portion of the machine shop?

A. Yes, sir.

Q. When was it?

A.From November 1905 till April 1906. 10

Q. Now in November 1905 do you know whether or not the main shaft was in operation in the extension?

A. It was, the big engine wouldn't have been any account if it hadn't been.

D. Do you know whether or not any machinery was in operation in the new machine shop?

A. Yes, sir, there were a few lathes running and emery grinders. 20

Q. Do you know whether or not the workmen were working in the new machine shop from that date in November continuously?

A. They were.

Q. You have - you were employed by Mr. Mecum as watchman also, were you not?

A. Yes, sir.

Q. As watchman did you have occasion to go through the whole plant? 30

A. I did.

Q. Did you have occasion to examine the windows or the fastenings?

A. Yes, sir.

Q. Now won't you say what you observed as being incomplete, if anything, in the foundry building, the largenew building?

A. Well as far as I seen, I didn't see anything that was incomplete.

Q. Can you say whether or not the sash were in the ventilators?

A. They were.

Q. You say whether or not the glass was in the sash?

A. Probably are one or two broke out.

10 Q. Can you say whether or not the sash were so arranged that they could be handled from the ground?

A. They could.

Q. By what means?

A. By a rope attached to a screw in the middle of the top of the sash.

Q. Could they be opened or closed at will from the ground?

20 A. Yes, sir.

Q. Now what, if anything, did you observe to be incomplete about the machine shop?

A. I don't know as I considered anything incomplete. The windows were all in and it had a roof on and it didn't leak.

Q. Did you see anything that appeared to be necessary to add to that building in order to permit the workmen to work?

A. No, sir.

30 Q. Was there anything about the building that interfered with the operation of the machinery?

A. There wasn't.

Q. Was there anything about the building that interfered with the operation of the foundry department?

A. No, sir.

Q. Do you recall the fact that an addition was made to the buffing room?

A. Yes, sir.

Q. And that was made when - or started when?

A. A while before they closed down. Probably a month before they closed down or probably six weeks.

Q. And can you say whether or not the effect of that was to have the buffing room covering more ground than previously? 10

A. Well after they got their entire machine shop running their buffing room capacity wasn't large enough to turn out the work.

Q. Then what did they do?

A.They put an extra buffing frame in and when they got that frame in it wasn't light enough and they had to ut a hole in the roof for a skylight.

Q. They had to cut a hole in the roof, did they? 20

A. Yes, sir.

Q. And did they or did they not move the inside walls of the - what if anything, was done to the inside partitions of the buffing room?

A. Well Samuel Bell built piers along outside and set his wall on and run his sills out and took this partition and moved it out.

Q. To the line he made?

A. Yes, sir. 30

BY THE COURT:

Q. That was to the buffing room?

A. Yes, sir.

Q. When was that started?

A. Probably six weeks before they shut down,

probably longer. Couldn't give just the exact date.

BY MR. CARR:

Q. Did you say that you did some carpenter work too?

A. Well, if you might call it carpenter work, made boxes and trays and something like that.

10 Q. Out of what material did you make boxes?

A. Well I made some out of this material that they used for sheathing the roof under the rubberoid roofing.

Q. Was it new material or old roof?

A. New material.

Q. Who brought it?

A. Al Giles brought it there.

Q. Now you used some of this for making boxes?

A. Yes, sir.

20 Q. What were these, tool boxes?

A. They were boxes twenty-two inches wide and ten inches deep.

Q. What were they used for?

A. Well they had legs on twenty-eight long and they put their work in; bring this work in and take out under the lathe. Then there were boxes under the lathe that caught the dirt and the watchman at night would just dump this into the wheelbarrow.

30 Q. Was there a box of this kind accompanying each lathe?

A. Yes, sir.

Q. How many lathes were there?

A. Fifty-two turret lathes and two engine lathes.

Q. Do you know who made the hangers for the shafting?

A. Who made them?

Q. Yes.

A. No, sir, I know where they came from.

Q. Where did they come from?

A. George B. Grace and Company in Philadelphia.

Q. The stringers I mean upon which the hangers are fastened?

A. They were hauled over by Al Giles and when he hauled them in there they wasn't planed and when the George Grace and Company's men came down they had them taken over to the planing mill and had them planed so as to make them of the same thickness. 10

Q. And these were used for that purpose?

A. For stringers to bolt the shafting to, four by six's.

Q. Now do you know whether or not new material went into the making up of moveable work benches? 20

A. Moveable work benches?

Q. The carpenter's work benches or something of that sort?

A. Yes, sir, it did.

Q. How many benches of that character were there?

A. There is one long bench - have your plan here, I can show you - one long bench runs over here up to very near the engine room, that was, if I'm not mistaken, was a hemlock and there was benches inside the stock room here and bins underneath - - - 30

Q. Yes?

A. - -and there was a bench in the buffing room a new one and there was work benches in the machine shop up here next to the office and work

benches along here up in the machine shop.

Q. What material was used for them new or old?

A. Well them, I didn't see put up, these in the old department, but in the new department that long bench was new material, hemlock plank.

Q. Do you remember seeing a couple of carpenter's work benches?

A. There was one carpenter's work bench, yes,
10 sir.

Q. What was that made out of?

A. Made of pine.

Q. New or old material?

A. New material.

Q. Do you remember the wooden sand troughs in the foundry building?

A. I do.

Q. Were they moveable?

20 A. Yes, sir.

Q. Were they made out of new or old lumber?

. Well some of them was made out of new lumber and some of them probably had some old lumber in the bottom.

Q. Partly new lumber or not?

A. Partly new lumber.

Q. How many of these sand troughs were there?

A. Twelve.

30 Q. How long were they?

A. Probably eight feet.

Q. How wide?

A. Well they were wider at the top than they were at the bottom. They sloped down this way at probably four feet at the top and three at the bottom.

Q. Do you remember the work benches in the foundry the benches upon which the flasks would

set?

A. Those stands? Yes, sir.

Q. What were they made out of?

A. Made out of hemlock, I think.

Q. New or old lumber?

A. Well I couldn't tell you.

Q. Do you know anything about the bottom boards?

A. I know ther was bottom boards there, yes sir. 10

Q. Do you know whether or not they were made of new or old lumber?

A. There was some made of new lumber there the day of the sale; some have - -

Q. Some made of new and some of old. Do you remember the wooden tote boxes?

A. Carried by the hand?

Q. Yes, sir.

A. Made some of them. 20

Q. What did you make them of?

A. New lumber and some out of old lumber.

Q. Do you know how many there were of those around the factory?

A. No, I couldn't tell you how many of those there were; there were several of them; quite a number of them.

Q. What do you mean by quite a number?

A. Probably twenty-five, probably more. 30

Q. How large were they?

A. They were a box about that long and about that width and about six inches deep.

Q. Do you know Mr. Samuel Bell?

A. I do.

Q. What did he do around the factory?

A. Well he was like myself before I took the

engine and done everything that was asked of him.

Q. Well generally speaking what was that?

A. Laced belts if they asked him, hung shafting, asked to do the oiling and he did it, asked to carpenter, asked to build a brick pier hebuilt it, steam fitting, he done it, put on roof, or anything they asked don't matter what it was.

Q. Did you see him building this factory after
10 November the 18th?

A. Building it?

Q. Yes.

A. I don't know what you mean by building it.

Q. Erecting or constructing the factory?

A. I seen him doing a good many things.

Q. Did you see him building it after that time?

A. I seen him putting a window in the shipping room door.

20 Q. Was that or was that not where the hole was cut out and where the window was put in afterward? the door was cut out on the railroad.

Q. Originally that was a solid door?

A. Originally there was a solid door.

Q. They just cut a hole in and put a sash in?

A. Yes.

Q. Where was Mr. Samuel Bell principally engaged so far as you observed?

A. Oh, he was everywheres; it was hard to keep
30 track of him.

Q. You didn't see him erecting the factory?

(Objected to as a conclusion. Objection sustained.)

Q. Mr. Booz, have you been employed in other factories?

A. Yes, sir.

Q. Where have you been employed?

A. Salem Brass and Iron, Phoenixvile Iron Foundry, Phoenixville Iron Works.

Q. How long were you employed by this other company?

A. Employed by the Salem Brass and Iron about three years, Phoenixville about ten years, Quinton, New Jersey five years. 10

Q. From your experience in the factory -from your experience in factories are you able to say whether or not a factory building is completed?

A. Well this factory down here is like - -

(Objected to as no answer.)

A. No.

Q. That is, you can't say whether or not a factory building is complete? 20

A. No, sir.

Q. Why not?

A.I don't know what one man might call complete and another man might not call it complete.

Q. In your experience in working in other factories can you say whether or not there is or is not constant changing in the machinery and the buildings?

A. There is always constant changing. While I was with Mr. Hart he was constantly changing and I guess he is changing yet. 30

(Objected to.)

Q. Do you know whether from time to time any changes were made in the inside partitions of the

factory building?

A. Yes, sir, they made the buffing room larger and the nickeling room smaller when they moved that partition.

Q. Do you know of any other changes that they made in partitions in the inside of the building?

A. Yes, sir, made the tool room larger, moved the partition down in the shop further.

10 Q. Do you remember some rubberoid being furnished sometime in the spring of this year?

A. No, sir.

Q. Do you know what was used to cover the roof of the extended buffing room?

A. No, sir.

Q. Do you know anything about a circle thirteen inches in diameter, another seven inches in diameter and another fourteen inches in diameter

20 furnished by William W. Bell? Do you know where they were used?

A. No, sir.

Q. You don't know?

CROSS EXAMINATION

BY MR ACTON:

30

Q. Mr. Booz, do you know where the tool room is?

A. The present tool room?

Q. Yes.

A. Yes, sir.

Q. Isn't there a circle there which the tools are handed out through?

A. No, sir.

Q. What is it?

A. A half circle.

Q. And two half circles makes a whole one?

A. Two halves makes a whole, yes, sir.

Q. Mr. Booz, did you ever complain to Samuel Bell on account of the partition in the engine room not being finished and let the dust in?

A. Yes, sir.

Q. That wasn't finished, was it? 10

A. I complained because it wasn't finished, but they fixed it for us.

Q. Now, Mr. Booz, did you ever call Mr. Clayton Wistar's attention to the fact that the ventilator was open?

A. Yes, sir, I did.

Q. Since the factory was closed?

A. Yes, sir, it was me that left it open.

Q. Told him that it ought to be fastened? 20

A. No, sir. Told him he ought to loosen the rope and I went down and loosened the rope.

Q. Did you tell him it ought to be nailed?

A. No, sir.

Q. Who nailed the windows after the plant was closed?

A. I did.

Q. There wasn't any of them fastened?

A. There wasn't any fastened and I had orders to nail them so that nobody could get in. 30

Q. And there were no fastenings on them, nothing until after April the 21st, 1906?

A. No, sir, I nailed the windows.

Q. And they wern't finished, were they.

A. I don't know. If I was building a plant and wanted them that way, I would - -

Q. Well, would you want them that way?

(Objected to.)

Q. You say there were work benches there?
A. Yes, sir.
Q. What were they used for?
A. Sometimes have you made bins and made
10 benches over them?
Q. Weren't they nailed?
A. Nailed?
Q. Weren't they nailed to the building?
A. Yes, sir.
Q. Mr. Carr asked if they were moveable?
A. Ho wmoveable?
Q. By pulling the nails out?
A. Yes, they were nailed to the floor.
Q. Now these stands, who made them?
20 A. I made some of them.
Q. What were they made from?
A. What were they made from?
Q. Yes.
A. Well the bodies of some of them were made from new lumber.
Q. What do you mean by new lumber?
A. Lumber that Al Giles had hauled there and placed in the new foundry, parts that they used
30 sheathing the roof.
Q. Weren't they the ends of new lumber, waste?
A. No, sir, I used some ends and I used some good ones.
Q. Do you know anything about the sizes and kinds of materials used in the construction of the building?

A. Sizes and kinds?
Q. Yes.
A. No, sir.
Q. What were sand troughs used for?
A. For the moulders to keep sand in.
Q. Where werethey?
A. In the foundry.
Q. Part of the equipment of the foundry?
A. Part of the equipment. 10

(Objected to.)

Q. Well, do you know whether or not they were a part of the equipment of the foundry?
Q. Yes.
A. I do.
Q. Well, were they?
A. Yes. 20
Q. Are you a carpenter?
A. No indeed.
Q. Do you feel yourself qualified to say whether or not a building is finished?

(Question withdrawn.)

Adjourned to 1.30 P. M.

30

Afternoon session, 1.30 P. M.

CHARLES H. MUCKENHIRN, Sworn.

DIRECT EXAMINATION

BY MR. CARR:

Q. Mr. Muckenhirn, where do you live?
A. Salew, New Jersey.
Q. How long have you lived here?
A. Four years last month.
Q. What business were you in?
A. Manufacturing brass goods.
Q. Where was your factory located?
A. On Fifth Street and the railroad.
10 Q. In this city?
A. Yes, sir.
Q. When did you originally commence?
A. In November, 1904.
Q. What building, if any, did you erect with reference to the sketch P 1 filed in this matter?
A. 100 feet back from Fifth Street.
Q. Commencing at Fifth Street and running a hundred feet west?
20 A. Yes, sir.
Q. After that building was erected what wae the next building being built?
A. The foundry on leased ground.
Q. The large building marked foundry on exhibit P 1?
A. Yes, sir.
Q. When did your men get into the foundry,
A. We moved from the old foundry to the new foundry on Labor Day 1905.
30 Q. Now from that time on what use was made of the foundry building?
A. As a foundry.
Q. Continuously?
A. Continuously.
Q. How many men did you have employed in there from time to time?

A. We had, first I - first twelve moulders, I believe.

Q. Any other men?

A. A furnace tender and five or six helpers in the foundry building proper and sometimes as many as six or eight foundry helpers not skilled labor.

Q. A total of about how many?

A. Twenty to thirty.

Q. And from the fifth of September until April twenty-first what was about your force working in the foundry building? 10

A. It increased constantly until about April there were forty or forty-five in the foundry department, that is core makers and helpers and so on.

BY MR. ACTON:

Q. April of what year?

A. April of 1905.

BY MR. CARR: 20

Q. Now what work was being carried on in this foundry building?

A. The work was in moulding of brass goods.

Q. Now was it or wasn't it pursued from November 1905 until April 1906?

A. With the possible loss of a day or two if metal didn't come.

Q. Now after September what was the condition of the foundry building?

A. The foundry was completed with the exception of the sash for the ventilators on the roof. 30

Q. And were they put in?

A. They were put in within a month after that.

Q. Those sash were in the ventilators?

A. Yes, sir.

Q. Are you familiar with this plant - with its

physical aspects?

A. I am.

Q. Could you recognize a correct delineation of it?

A. I could.

Q. I show you a picture marked underneath, "Plant of Reliance Brass Company, Salem, New Jersey," and ask you whether you can say whether
10 or not it is correct delineation and portrayal of your plant.

(Objected to. Question allowed.)

A. I should say that is a half tone reproduction of a photograph.

Q. Say whether you can tell whether it correctly portrays?

A. It does.

20 Q. You say it correctly portrays your plant?

A. Yes, sir.

Q. Have you examined it previously, the picture?

A. I have.

MR.CARR: I will now offer the picture in evidence.

(Objected to. Offer refused.)

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

Q. Now Mr. Muckenhirn, when did you say the sash were put in the foundry building in the ventilators?

A. I'm not positive, but I said they were put in

within a month after the factory was occupied as such.

Q. The factory was occupied September 5th, you say?

A. Yes, sir.

Q. Now how were those ventilators - how was that ventilating sash put in?

A. It was hung on a swivel above the centre of the sash. 10

Q. What was the purpose of having it above the centre of the sash?

A. So that the sash would remain normally closed.

Q. By what force would it remain normally closed?

A. The force of gravity.

Q. What else was done to the sash in order to manipulate it, if anything? 20

A. There was a screw eye connected with a cord which came within reach of the moulder who wanted to open or close the sash.

Q. By what means could the sash be operated from the ground?

A. By pulling on the rope and by releasing the rope its own weight would close it.

Q. Does your answer apply to all the ventilators in the foundry?

A. Yes, sir. 30

Q. When the sash were put in what else did you contemplate doing to the sash, if anything, in order to complete them?

A. Nothing at all.

Q. Were or weren't these sash put in in accordance with the way you wanted them put in?

A. They were in one sense and in another sense they weren't.

t Q. In what sense were they not?

A. The swivels on which they were hung were too low. If they were higher they would remain shut no matter if the wind blew on them or not.

Q. Now after the foundry building was completed what other buildings were erected, if any?

10 A. The building connecting the original building erected in 1905 - -

(Objected to as conclusion. Objection sustained.)

Q. After the foundry building had the roof on, the side walls on, the ventilating sash in and had everything which you intended to put in it, what was the next building erected?

20 A. The one between the main building and the foundry.

Q. Now for what purpose was the building erected between the foundry and the original machine shop?

A. As an extension to the original building.

Q. For what purpose was it actually used?

A. It housed the machines that were used for tooling brass.

Q. And when was it first used as a machine shop

30 - I am referring now to the extension?

A. About middle of November, 1905.

Q. How was it used then?

A. For the purpose for which it was constructed, manufacturing brass goods.

Q. What did you have in it generally speaking?

A. Turret lathes for making brass goods.

Q. What actuated the lathes?

A. Steam power.

Q. Driven how -fed how?

A. The engine drove the main shaft and the main shaft in turn drove countershaft's over each machine.

Q. And was all that machinery in operation from November until April of this year?

A. No, sir. 10

Q. What was in operation?

A. In April all of it was in operation, in November part of it was.

Q. Now in November, what was in operation?

A. I believe the first machines we run were four small turret lathes and one large one.

Q. Now from time to time what did you do in the way of adding to the machines in operation, if anything? 20

A. We added machines as the patterns were finished and the castings were ready for them every period.

Q. Now what remains to be done to that middle building that you had originally intended to do in order to complete the building?

A. What remains to be done?

Q. Yes, sir.

A. Nothing.

Q. How many hands, approximately, were employed in the machine shop beginning in November of last year? 30

A. The moulder hands probably twenty-five.

Q. Yes.

A. They were increased from that to about ninety in April 1905.

Q. And was that force constantly at work in the buildings represented on exhibit P 1 ?

A. They were some of them working there all the time, yes, sir.

Q. Were you ever compelled to close down or abandon any part of the building being incomplete?

A. No, sir.

Q. Did you work continuously?

10 A. Yes, sir.

Q. Now Mr. Muckenhirn, in the plaintiff's case, there seems to have been a water-closet that got away somewheres or is now missing. Won't you tell the jury about that water-closet, please?

A. All the water-closets that were there when I left were still there when it was sold, I believe.

Q. Had you in the plan all that you intended originally to put in?

20 A. No.

Q. Now as to the other water-closets, what have you to say?

A. We intended to put in five or six water-closets.

Q. When?

A. When we got around to it.

Q. Had you fixed any definite time for doing that?

A. No, sir.

Q. And in the mean time were your force or

30 were they not actually provided for?

A. They were.

Q. Was there any original plan or sketch which showed these proposed water-closets?

A. There isn't yet such plan or sketch.

Q. Yes, well I will make it plain?

A. No, sir.

Q. Now, Mr. Muckenhirn some work wae done, I believe in March or April in connection with the buffing room, what was that, do you know?

A. The buffing room was enlarged in March or April or started I believe. I ordered it enlarged in March.

Q. March of 1906?

A. 1906, yes, sir.

Q. And the effect of that - what effect had that upon the amount of ground occupied by the room? 10

A. It increased the floor space of the buffing room.

Q. Did it increase the ground space occupied by the factory?

A. Yes, sir.

Q. While the foundry building was in course of erection did you carry a special form of insurance upon it?

A. Yes, sir. 20

Q. As builder's risk?

A. Yes, sir.

Q.And when was that terminated?

A. I believe it was terminated in September.

Q. And what form of insurance was then placed upon it?

A. The form that I believe is usual to be placed upon completed buildings.

(Objected to. Question allowed.) 30

Q. Now, Mr. Muckenhirn, during the erection of the centre building here, did you carry insurance?

A. I believe so.

Q. And what form of insurance was that?

Objected to. Question allowed.)

A. We carried builder's risks, I think.

Q. Then after November, after November was there any change made in the form of insurance?

A. The builder's risk was discontinued and the regular policy took its place.

Q. Was that done at your direction?

A. Yes, sir.

Q. Do you know whether it was done after an
10 inspection by the insurance people?

A. The insurance people called my attention to the fact that I ought to change from builders' risk to straight insurance.

(Objected to. Answer stricken out

Q. What lumber or material, if any, was furnsubsequent to December 23rd, 1905 for the erection of this building?

20 A. None.

Q. From December the 14th until April the 20th, there appear by the bill of particulars to the lumber furnished at various times can you say in a general way what this lumber was used for?

A. It was used for various purposes.

Q. Name those purposes?

A. Largely for putting up work benches, constructing bins, partitioning off the stock room, and
30 the tool room, for putting up stringers to fasten the countershaft to to run the machines as they were put up.

Q. Now for what other purposes, Mr. Muckenhirn?

A. Oh, such as making master patterns, boxes for the purpose of carrying raw and partly finished material from one machine to another.

Q. What, if anything, stood underneath the lathes?

A. What we called work benches; when the work was completed or partly completed it was dropped into the box and, if another operation was required, it was taken to the machine where the work was performed and the box taken back to the machine.

Q. Was there a box to each machine?

A. Yes, sir. 10

Q. How many machines?

A. Fifty-two turret lathes.

Q. Were the boxes fastened to the building?

A. No, sir.

Q. What was fastened to the side of the lathe, if anything?

A. Each lathe had a stand for the purpose of carrying the castings or partly completed castings to make it convenient for the men handling the machine to do his work. 20

Q. And what were they made out of?

A. Lumber.

Q. What kind of lumber?

A. I suppose they were nearly all new. I know that part of them were made of new lumber.

Objected to.)

Q. You saw them yourself, didn't you? 30

A. I did.

BY MR. ACTON:

Q. While they were being made or afterward?

A. While they were being made and afterward.

BY MR. CARR:

Q. Now what was used to construct the sand troughs in the factory?

A. A good clean white pine plank.

Q. New or old?

A. New.

Q. Where was that gotten?

10 A. Wistar and Woodnut.

Q. Were these troughs fixed or moveable?

A. Moveable.

Q. How many of these are there?

A. I'm not certain, ten or twelve.

Q. What dimensions?

A. Eight or ten or twelve feet and ten inches deep.

Q. What was in the foundry building made of wood?

20 A. They were what we call spill troughs and they were set so that the metal could be poured into them.

Q. How many spill troughswerethere?

A. There was one for each man, ten or twelve.

Q. Of what material were they made?

A. Four or five of them.

Q. New or old lumber?

A. New mostly.

30 Q. Where did it come from?

A. Wistar and Woodnut.

Q. How large were these spill troughs?

A. About twelve feet long.

Q. Now what else was there made of new lumber in the foundry building?

A. Fallow boards or bottom boards that we

placed under each flask as it was taken up.

Q. How many of them were there

A. I should say one hundred and fifty.

Q. Of what were they made?

A. One inch lumber.

Q. From where did it come from?

A. Wistar and Woodnut.

Q. What else, if anything, was there made of wood in the foundry building that is moveable? 10

A. Oh, there were always tote boxes out there that were part of the foundry and remodeling barrels, tubs, all which were made of new lumber.

Q. From where did the new lumber come?

A. Wistar and Woodnut.

Q. What, if anything, was there in the nickleing room made of new lumber?

A. The rests under tubs and under nickeling vat.

Q. Was it not moveable? 20

A. Yes, sir

Q. From where did that lumber come?

A. Wistar and Woodnut.

Q. What, if anything, was there in the foundry moveable and made of new lumber?

A. There were tote boxes or work stands or tool boxes under the machines and the metal bins.

Q. Was or was there not any carpenters moveable carpenter's table or benches? 30

A. There was.

Q. How many?

A. One that I positively know of.

Q. What was that made of?

A. One inch lumber with two by four legs.

Q. Where did that come from?

A. Wistar and Woodnut.

Q. Can you say whether or not any lumber was was purchased from Wistar and Woodnut between December the 14th and April the twentieth for pattern purposes?

A. Yes, sir.

Q. What was purchased do you know?

A. Quite a little lumber.

Q. Did you ever have any conversation with
10 either Mr. Wistar or Mr. Woodnut about November 15th with relation to the completion of the building?

A. I did.

Q. With whom did you have such conversation?

A. Mr. Wistar.

Q. Was or wasn't Mr. Woodnut present?

A. I don't think he was.

Q. Where was this conversation?

20 A. In Wistar and Woodnut's office.

Q. What was the conversation?

A. I asked them to render me a bill of the lumber that had been used up to the time Joe Bell quit and told them that lumber went into the building and whatever lumber was furnished after that was used for miscellaneous purposes.

Q. Now were the bills rendered monthly after that?

30 A. No, sir.

Q. I show you letter dated October 20th and marked exhibit D 4 and signed by Wistar and Woodnut and ask you whether you received that letter?

A. I did.

Q. Do you know how you received it?

A. Through the mails.

Q. Now after the receipt of the letter did you

receive a bill for the last building?

A. The one marked D 10/24/06.

Q. D 2 was received as the bill for the last building was it?

A. Not all of it.

Q. What do you mean by not all of it?

A. Two bills pasted together I didn't receive them all at once.

Q. What did you receive and how did you receive it? 10

A. Yes, sir.

A. I received the principal part of it.

Q. Of Exhibit D 2?

Q. And then how did the lower portion come to be fast, do you know?

A. Mr. Wistar and I had a talk about a final settlement and billing and he asked if I could let him have the bill that he had rendered because he didn't know just where he quit on his books and the next time I sawit it was pasted together as it is. 20

Q. And when was this handed back to you pasted together?

A. Oh, sometime in March, I believe.

Q. This last March?

A. Yes, sir.

Q. But as handed to you originally where did it stop - -where did the account stop?

A. I believe it stopped with November, $67.00. 30

Q. And that came to you after you had made a request for a final bill covering the entire building?

A. After I had made a personal request, yes.

Q. I see charge here under date of April the 20th for one pound or two pounds of nails, do you know what that was for?

A. No, sir.

Q. You weren't there then were you?

A. No, sir.

Q. When was the Reliance Brass Company incorporated, Mr. Muckenhirn?

A. I believe the papers were filed with the County Clerk here in December 1905.

Q. When did you organize?

10 A. I'm not certain as to the date.

Q. About when, do you know?

A. In February, I think, 1906.

Q. Now from February 1906 until the closing of the factory in April by whom was the plant operated?

A. Operated by me, under my direction.

Q. By yourself or by a company?

20 (Objected to as a repetition. Question allowed.)

A. We did business after that date as the Reliance Brass Company.

Q. Was anything ordered for your personal use there after February?

A. The orders that were mailed out of town were the Reliance Brass Company; all written orders for the Reliance Brass Company.

Q. And from February until April the 21st were

30 the materials furnished on these bills sent for your personal use or for the use of the Reliance Brass Company?

A. For the use of the plant - - -

(Objected to. Question overruled.)

Q. Between February and April 21st for whose

use were the materials on the bill of particulars in these two cases furnished?

A. For the use of the plant.

Q. And who was operating the plant?

A. The Reliance Brass Company.

Q. What personal interest, if any have you in this suit, Mr. Muckenhirn?

A. None whatever.

Q. Now do you know Mr. Samuel Bell? 10

A. I do.

Q. What did he do for you?

A. Pretty nearly everything I asked him to do.

Q. Where was he first employed by you?

A. I believe in January 1905.

Q. How long did he continue in your employ?

A. Till the place closed.

Q. What were his general duties?

A. He had charge of putting up the stringers for the countershafts for the machines, he helped move the machines around, he oiled the shafting and laced the belts and helped wherever he was to and did whatever carpenter work there was to be done. 20

Q. Did you employ him to - - -

(Objected to)

Q. Did or did you not employ him to erect a factory building for you?

A. No, sir. 30

Q. On November the 15th when Joseph Bell left did you or did you not employ Mr. Samuel Bell to finish the factory for you?

A. No, sir, I didn't.

Q. Did or did you not put in Samuel Bell's hands any plan for the finishing of the building after Nov-

ember the 15th?

A. No, sir.

A. No, sir.

Q. Did or did you not leave it to Mr. Samuel Bell's discretion as to when and how he should finish the building?

A. No, sir.

Q. How did Mr. Bell know what to do from time
10 to time?

A. When I determined it was time to put up a partition and where to put it and how high to make it and he finished that job and when he got through with that he asked for another.

A. Wouldn't you tell him work to be done for months in advance so that he might know how to finish the building?

A. No, sir.

20 Q. What proportion of his time was spent in carpenter work and what proportion on other duties?

A. I should say about fifty per cent of his time was using a hammer and saw and the rest of the time something else.

Q. And what was that something else?

A. Lacing belts, helping move machinery and oiling shafts.

Q. Mr. Muckenhirn, it has been testified that
30 that there were no casings around the windows. How did you come to omit such an important thing?

Q. Casings were never mentioned to me. Never heard of them until here.

Q. Did or did you not intend to put casings around the windows?

A. Never thought of casings.

Q. What necessity, if any, is there for casings?

A. None whatever.

Q. On November 15th, 1905, what further work, if any, had you in contemplation in order to complete the buildings the present buildings of the Muck-Muckenhirn plant?

A. The joining of the addition to the front building where they came together.

Q. And by that do you mean the joining between the original machine shop and the extension to the machine shop? 10

A. Th joining of the new addition to the original one hundred feet, yes, sir.

Q. The joining being made at what point according to the diagram here?

A. About there. (Indicating.)

Q. And when was that joining done?

A. Oh, posibly two weeks after that, maybe sooner. 20

Q. Now when that was finished what further work did you contemplate being done to your plant and the existing buildings in order to complete them?

A. We finished the buildings.

Q. Mr. Muckenhirn, during the time this—the two buildings, that is the original machine shop and the addition to it, were being connected, what, if anything, was used to separate the two buildings, what in the way of a temporary material was used? 30

A. When we tore out the west end of the original building it was a little cold and Sam Bell volunteered to get a piece of canvas and hang it in there to keep the stuff which we used in the original building in the original place as there was no steam

pipes in the original building.

Q. And is that the canvas about which Mr. Bell has testified?

A. Yes, sir.

Q. And when was that in point of time?

A. Oh, it was about two weeks in December or thereabouts until we got the steam heat going.

.Q Now, Mr. Muckenhirn, If I find on the claim of Bell and Company three circles under date of December 30th one of thirteen inches, one of seven inches and one of fourteen inches in diameter, do you know what they were?

A. Yes, sir.

A. They were circles to which was glued some emery paper and was used on the pattern maker's lathe so as to make patterns on them.

Q. Were the circles moveable?

A. They were part of the machine, they could be screwed on and off.

Q. And where were they kept?

A. In that original room.

Q. What were the circles made of?

A. Soft pine, I think, in one piece without knots.

Q. Now I notice on the same claim, the claim of Bell and Company charges for three lights of glass, ten lights of glass, six lights of glass, under date of January 6th, do you know for what purpose they were used?

A. I know some of them were used to replace broken lights.

Q.,Now I notice an item under January 6th of turning on pattern, do you know what that was?

A. I think so, yes sir.

Q. What was it?

A. It was a pattern for a top of the stringers in the brass foundry.

Q. Is that pattern moveable?

A. Yes, sir.

Q. I find a charge under the same date of gig sawing, what was that for?

A. I think it was to saw segments of circles to go in some chicken wire we had to separate a part of the tool room from the tool room proper. 10

Q. I see six lights of glass under date of January 13th, do you know what that was for?

A. No, I can't say what that was for.

Q. I haveunder date of November 25th one pattern twenty-two inches in diameter, do you know what that was?

A. I think that was the same thing as the last pattern you mentioned. It didn't prove just the right thing and we made a new one. 20

Q. Now I see an item of sawing 75c, one 1.30, do you know whether or not that was for work on the pattern?

A. No, sir.

Q. Do you know what that was for?

A. No, sir.

Q. I see one cypress board, do you know what that was for?

A. I knew they used cypress in the pattern room because - - - 30

Q. Did they use cypress anywhere else besides the pattern room?

A. No, sir.

Q. Was this cypress used in any other place in your building besides the pattern room?

A. No, sir.

CROSS EXAMINATION

BY MR. ACTON:

Q. Mr. Muckenhirn, you are familiar with the construction of this building, are you not?

A. I am.

Q. You are familiar with the materials that went into the erection and construction of this building, are you not?

A. I am.

Q. All of it?

A. I think so.

Q. Now from whom did you get the materials this building?

A. What particular materials do you refer to?

Q. To lumber?

A. The lumber from Wistar and Woodnut.

Q. All of it?

A. As I define the word lumber I say yes.

Q. Now under date of March 22nd 1905 there is a charge of 100 feet of hard pine scantling, do you know whether that went into the construction of this building or not?

A. It did.

Q. And after that there is 688 feet of hemlock plank, do you know whether that went into the construction of this building or not?

A. I think it did.

Q. Well, do you know?

A. I didn't see it go in; that is a pretty direct question, I don't like to say yes. It may have been used for something else in part, but I believe it went into the building.

Q. And after that there were 500 feet of filistered boards, do you know whether they went into the building or not?

A. I think so.

Q. And 250 feet of yellow pine boards?

A. I think so. The question is rather ambigious, I didn't measure it. There were some boards went in it.

Q. 200 feet of floor, do you know whether that went in the building? 10

A. I think so.

Q. 906 feet of hemlock boards, do you know whether that went into the building or not?

A. I think so.

(Objected to. Objection overruled.)

(Whereupon the defendant, by his counsel prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 20

Q. We have 748 feet of hemlock joists, do you know whether or not they went in the building?

A. What date is it, that bill?

Q. April the 10tth, 1905.

A. I believe so.

Q. Now 307 feet of boards, filistered boards, do you know whether they went into the building or not? 30

A. I believe so.

MR. CARR: What was that date, Mr. Acton?

MR. ACTON: That date was February 10th, 1906.

BY MR. CARR:

Q. Did the question indicate the date?
A. No, sir.

BY MR. ACTON:

Q. Now 3211 feet of long hard pine frame, do you know where that went?
10 A. What was the date?
Q. I am not asking you the date. I am asking you whether it was furnished and where it went. We are testing your knowledge of this bill to see whether you know it and what you know about it?
A. What was it?

(Question repeated.)

20 A. I believe it went into the building.
Q. What part of the building?
A. Foundry, I should say.
Q. 5905 feet of long pine frame?
A. I think that went into the building.
Q. What part?
A. Also the foundry.
Q. 2727 feet of long pine frame?
A. I should say that went into the building.
30 Q. What part?
A. Machine room
Q. 16421 feet of hemlock joists?
A. That went into the foundry.
Q. Were they building the foundry and the machine shop at the same time?
A. There was lumber delivered there for both purposes.

Q. At the same time?
A. Yes, sir.
Q. 10860 feet of yellow pine plank, where did that go?
A. How many thousand feet?
Q. 10860.
A.I think that went into the machine room.
Q. 10701 feet of sheathing?
A. I think that went into the foundry. 10
Q. 7132 feet of yellow pine joists?
A. I don't know where that went.
Q. 9123 feet of hemlock joist?
A. I don't know where that went.
Q. 1203 feet of frame?
A. I don't know where that went.
Q. 5614 feet of frame?
A. Same answer.
Q. 2118 feet of frame? 20
A. Same answer.
Q. 12000 feet of rubberoid roofing?
A. I believe that went on to the foundry.
Q. 1333 feet of filistered boards?
A. I don't know where that went.
Q. Go in repairs or construction?
A. I don't know.
Q. Did you use that amount of filistered boards in repairs? 30
A. I dont know.
Q. 757 feet of yellow pine boards?
A. I don't know where they went.
Q. They go in repairs or construction?
A. I don't know where they went.
Q. 997 feet of hemlock joists?
A. Hemlock joists?

Q. Yes, sir.

A. I should say they went into repairs or construction.

Q. Well which?

A. I won't say.

Q. Did you use that amount of joists in repairs?

A. All depends on how you figure it; you said seven hundred something?

10 Q. 997.

A. I should say so.

Q. Whereabouts?

A. It might have been used in the buffing room.

Q. Do you know?

A. No.

Q. 695 feet of filistered boards?

A. Don't know where it was used.

Q. They used in repairs or construction?

20 A. I don't know where it was used.

Q. Is that amount of lumber used in repairs, filistered boards?

A. I should say it could be used in repairs.

Q. Well, was it?

A. I don't know.

Q. 460 feet of yellow pine boards, do you know where that was used?

A. No, sir.

Q. 20 feet of filistered boards, do you know

30 where that was used?

A. No, sir.

Q. 130 feet of filistered boards?

A. No, sir.

Q. 267 feet of filistered boards, do you know where that was used?

A. No, sir.

Q. 290 feet of yellow pine, do you know where that was used?

A. No, sir.

Q. 22 feet of white pine boards, do you know where that was used?

A. No, sir.

Q. 76 feet of hemlock railing, know where that was used?

A. No, sir. 10

Q. 28 feet of hard pine plank, do you know where that was used?

A. No, sir.

Q. 128 feet of yellow pine boards, do you know where that was used?

A. No, sir.

Q. 192 feet of yellow pine boards, do you know where that was used?

A. No. 20

Q. 80 feet of scantling, do you know where that was used?

A. No.

Q. 80 feet of filistered boards, do you know where that was used?

A. No.

Q. 16 feet of planed white plank, do you know where that was used?

A. No. 30

Q. 307 feet filistered boards, do you know where that was used?

A. No.

Q. 280 feet yellow pine beaded boards, do you know where that was used?

A. No.

Q. 208 feet white pine boards, do you know where

that was used?

A. No.

Q. 20 feet of hemlock plank, do you know where that was used?

A. No.

Q. Pound of nails and caps, do you know where that was used?

A. No.

10 Q. Don't you know what they were used for, the caps and nails?

A. I don't know what you mean by caps.

Q. Go over nail heads, don't they, used to hold the rubberoid roofing down?

A. Caps don't go over those nails, they go under them.

Q. They go under the nails?

A. No.

20 Q. 36 filistered boards, do you know where that was used?

A. No.

Q. 146 feet of hemlock scantling, do you know where that was used?

A. No.

Q. 252 feet hemlock plank, do you know where that was used?

A. No.

30 Q. 107 feet filistered boards, do you know where that was used?

A. No.

Q. 161 feet yellow pine plank, do you know where where that was used?

A. No.

Q. 365 feet flooring, do you know where that was used?

A. On the floor, I suppose.

Q. Well, whereabouts?

A. What was the description?

Q. 265 feet of yellow pine flooring?

A. I should say that was used on the floor of the machine room.

Q. 160 feet of yellow pine joists, do you know that was used?

A. No. 10

Q. One pound of caps and two pounds of nails, do you know where they were used?

A. No.

Q. 75 feet of hemlock scantling, do you know where that was used?

A. No.

Q. 978 feet of hemlock joists, do you know where that was used?

A. No. 20

Q. You don't know much about the bill then do you?

A. Not where each little jag of lumber went into the thing.

Q. Call 978 feet of hemlock joists a little jag of limber?

A. It ain't so much, no.

Q.One team pull it?

A. I don't know. 30

Q. Now, how much of your time did you spend around there?

A. About eighty per cent.

Q. No wyou dispute these articles were furnished by Wistar and Woodnut?

A. Not at all.

Q. Do you dispute the fact that they went in the

construction of this building?

A. I don't know as I am qualified as to the construction of the building; if you want me to say.

Q. I am asking you?

A. You are asking me whether all of it went into the construction of the building.

(Question withdrawn.)

10 Q. For what purpose was the material ordered?

A. Some of it was used for the erecting the building.

Q. I didn't ask you that, I asked you for what purpose you ordered it?

A. For miscellaneous purposes,.

Q. Did you tell Wistar and Woodnut for miscellaneous purposes?

A. I did.

20 Q. When did you tell them that?

A. After Joseph H. Bell requested them to send me a bill and I went up and told that the lumber would be used for miscellaneous purposes, that the building was completed.

Q. To whom did you tell that?

A. Mr. Wistar.

Q. Then the buildings you conceived were completed after November 15th?

30 A. Practically so, yes.

Q. Did you or did you not tell Joseph H. Bell that he could leave a force of his men there to complete the building?

A. I didn't.

Q. Didn't you testify to that in the Casper trial?

A. You.—

(Objected to.)

A. ——Mr. Acton asked me whether I requested Mr. Joseph H. Bell to leave a force of his men there and I said no.

Q. What did you?

A. He offered to leave some men there to help Sam Bell.

Q. To do what?

A. To connect these buildings.

Q. And Sam Bell never did any carpenter work on these buildings after that date? 10

A. He certainly did.

Q. What did he do?

A. He finished them up.

Q. I thought so. Now where was the nickeling tub made that was used there?

A. The nickeling tub?

Q. Tub, yes, sir.

A. You mean the tub that the solution was in? I believe it was made in Newark, New Jersey, it was got from there. 20

Q. Now what were your sand boxes used for, Mr. Muckenhirn?

A. I assume from sand boxes you mean the mould boxes or tubs.

Q. The sand boxes you have testified about?

A. The moulders used them.

Q. Part of the equipment of the factory?

A. It was what I would call part of the equipment of the factory, yes. 30

Q. Now, Mr. Muckenhirn, isn't it true that the foundry part of this factory isn't completed, that there are boards there inside the window lights?

A. Boards where?

Q. On one of the ventilators; the front ventila-

tor?

A. The front ventilator of what building?

Q. Well I think the machine shop there?

A. Not that I know of, it ought not to be there.

Q. Don't you know that there never has been any window put in there, just boarded up until such time as they could get time to put a window in?

A. I don't know it, no, sir.

10 Q. Did you ever examine the plans of this building in the presence of Joseph Bell?

A. I think it would be well if we understood ourselves as to the word plan. What do you mean by the word plan?

Q. I mean a plan of the ground floor and side elevations of this building?

A. There never was any plan of the ground floor and the side—

20 Q. What do you call it, a sketch?

A. Well you might call it—

Q. Well was there something of the kind?

A. Never to show the side of the building.

Q. What was it?

A. It was a sketch something with like of the showing the floor plans and the ground on which the building was to be erected.

Q. Do you deny that Mr. Bell showed you the plan?

30 A. Might have showed it to me, was a part, but I wouldn't call it a plan.

Q. Do you deny that Mr. Bell worked by them?

A. I assume that Mr. Bell had to have something to work by.

Q. Now Mr. Muckenhirn, when the stringers were put up didn't they have to be reinforced or

didn't you have to reenforce the truss girders?

A. We had to strengthen it, yes, sir.

Q. What did Groscop do?

A. I believe he helped Sam Bell at that.

Q. When was that done?

A. In what building are you referring?

Q. In any of them, in all of them.

A. That was done at various times. In the front building it was done in the fall of 1904 and 1905. 10

Q. In the other buildings?

A. And in the other buildings we put a stiffner where the main belt connected with the main shaft.

Q. Wasn't that in 1906?

A. No, sir.

Q. In the winter of 1906?

A. No, sir.

Q. When was it? 20

A. It was in the winter of 1905 and 6.

Q. 1905 and 6, yes.

A. TThat was before 1906, in December, I should say.

Q. Now Mr. Muckenhirn, in January 1906 didn't you give Mr. Wistar a check for a thousand dollars on acount of the bill you owed up to that time?

A. No, sir.

Q. What did you give him?

AA. Two five hundred dollar checks. 30

Q. But it was on account of the bill you owed up to that time, wasn't it?

A. Yes, sir.

Q. You know Mr. Charles Guest?

A. Yes, sir.

Q. Did you have him down there to do any pro-

jected work?

A. What do you mean, projected work?

Q. Any work you had in contemplation?

A. When?

Q. Any time?

A. Mr. Guest, I believe, layed the sewer.

Q. Where to?

A. From Fifth Street to the Creek.

10 Q. What to connect?

A. To connect with any discharge that we wanted to use in the building and we had to run to the front of the building and made two water-closets there.

Q. What discharge?

A. There was a discharge from the buffing room, there was a running stream of water all the time.

Q. Was that to be connected up?

20 A. Yes, sir.

Q. What was it connected with?

A. I think it ran down below the floor with iron pipe.

Q. Now did you ever see Mr. Guest with reference to making the new addition to the closet that you have testified to was contemplated to be put in this building?

A. Yes, sir.

Q. What is that?

30 A. Yes, sir. The sewer ran from the front of the building down under the foundry to get into the creek.

Q. Well it ran under this contemplated closet, didn't it?

A. It ran there because - -

Q. The closet was put there in view of the fact

that the sewer ran under there?

A. Yes, sir.

Q. And then you contemplated putting the closet there?

Q. Did you ever finish the sewer?

A. No, sir.

Q. What remains to be done on the closet?

A. I don't know.

Q. Any seats in? 10

A. I don't know.

Q. When did you see it last?

A. In April.

Q. This year?

A. Yes, sir.

Q. Have you been in there since?

A. No, sir.

Q. Don't you know that the partition is up and all done but the door and connecting? 20

A. No, sir.

Q. Who worked on that closet?

A. I think Sam Bell did most of it whatever there was done.

Q. Were you in Salem in April?

A. I was.

Q. What time in April?

A. I think I left there on the eleventh.

Q. What time did you get back? 30

A. Twenty-fifth or twenty-sixth.

Q. When were you away from Salem prior to the eleventh of April?

A. I don't believe I was out of Salem for four or five weeks before that.

Q. Didn't you go to Pittsbrug in the meantime?

A. No, sir, went to Pittsburg on the eleventh.

Q. Now did you have stops made for the windows in the ventilators?

A. No, sir.

Q. Did you order fastenings for the windows?

A. You are asking me whether I had these things made, no, sir.

Q. Did you authorize them to be made?

10 A. I think Sam Bell said they ought to have stops on to keep them from opening in the wind and I told him to get them.

Q. What did you do by reason of what he said?

A. Why he called my attention to the fact that the windows were flapping and he told me that would make it quite cold in the foundry and I told him to put it on.

Q. And I suppose they're now to be put on?

20 A. I don't know.

Q. You don't know that they are not there do you?

A. No, I don't know that they are not there.

Q. Mr. Muckenhirn, wasn't that in April that they were delivered of 1906?

A. I don't know. I don't know just what you mean by stops. In the Casper case they were metal stops and in the W. W. Bell case they were wooden stops, what do you mean?

30 Q. Well, take up the metal stops first?

A. I don't know whether they were or not.

Q. You told Sam Bell to get them?

A. I told Sam Bell to get them, but I didn't think he wanted two kinds.

Q. That is you authorized him to get the stops?

A. I don't deny that I authorized him to get

whatever he wanted; get six stops if he wanted to.

Q. Now, Mr. Muckenhirn, in regard to the claim of W. W. Bell and Company, are you acquainted with the material that was - went into the erection or construction of this building that was gotten from that firm?

A. Not as to all of it.

Q. Well did you get any material of the nature furnished by Mr. Bell from anywhere else or did he furnish all? 10

A. I understand that Mr. Joseph Bell ordered all he wanted from him.

Q. By whose authority?

A. Mine.

Q. How about Samuel Bell?

A. Same.

Q. Fifteen window frames, do you know where they were gotten? 20

A. I believe they came from W. Bell.

Q. And where were they used?

A. Some of them I think were used in the foundry and some in the machine shop.

Q. Under the same date, 15 windows ten lights, do you know from whom they came?

A. Yes.

Q. From whom?

A. W. W. Bell and Company.

Q. Where were they used? 30

A. Some of them I think were used in the foundry and some in the tool room and I believe some were left over.

Q. Now August 15th, 56 window frames, 8 x 10, do you know where they came from?

A. I believe they were delivered by W. Bell.

Q. And where were they used?

A. I think those are the ventilators in the foundry.

Q. And August the 26th, two windows, 12 light, six by twelve, where were they used?

A. Two windows?

Q. Yes.

A. I think they're the tool windows in the foundry building fronting toward the W. W. Bell plant.

Q. 56 sash, 12 light, 8 x 10, do you know where they were used?

A. I think they were the sash that went into the frames of the foundry, for the foundry.

Q. 24 window frames 8 x 10, do you know where they were used?

A. Either the foundry or the machine room.

8 x 10, do you know where they were used?

A. They were over the window proper in the tool room and they were used for ventilating purposes, I think.

Q. Now, Mr. Muckenhirn, on November 2nd did or did you not order or authorize to be ordered 125 feet 1/2 in. x 7/8 in. stops?

A. I don't recall the item, Mr. Acton.

Q. Do you recall two sash six light eight by ten?

A. I don't want to deny that I authorized these things ordered, but I do want to say that I have no specific information as to the date that they were ordered.

Q. Do you know where they were used?

A. Not positively, no; some portion of the building, I presume.

Q. 890 feet of strips 1/2 x 7/8, do you know where they were used?

A. 890 feet of strips 1/2 x 7/8?

Q. Yes, sir.

Q. Yes, sir.

A. I believe they were used at the edge of the floor where the wall comes down.

Q. What did you say sir?

A. Along the edge of the floor where the wall comes down.

Q. Do you know whether or not the building was complete? 10

A. There should be no necessity of putting them there.

Q. What was their use?

A. To close up a gap between the floor and the wall.

Q. Then the building with a gap between the floor and the wall you considered complete?

A. No, I didn't, Joe Bell did. 20

Q. Joe Bell?

A. Yes, he called that putting the floor down.

Q. And you deemed that was necessary to complete the building, did you?

A. No.

Q. Now three lights of glass ten by fourteen, seven lights of glass eight by twelve, and six lights of glass eight by ten, have you any recollection of getting them?

A. Not those particular items, no. 30

Q. Are they odd sizes?

A. Oh from the fact that they were only a few panes of odd sizes I should say they were, yes.

Q. Don't know where they were used?

A. Not positively, no.

Q. You don't know then whether they were nec

essary or not in the completion of the building?

A. I don't know, no.

Q. What was that, sir?

A. I didn't know.

Q. You don't know whether or not — —

A. I will tell you what I think if you want to know.

Q. One sash six lights eight by ten have you any
10 recollection of that?

A. One what?

Q. One sash six lights eight by ten?

A. No, not that particular sash.

Q. Do you know whether or not that was necessary to the completion of the building?

A. No, sir.

Q. What was that sir?

A. Not knowing where it was used, I can't an-
20 swer that one way or the other.

Q. Five pounds of putty, do you know where that was used?

A. Where it was used, no, sir.

Q. Do you know whether or not that was necessary for the completion of the building?

A. No, sir.

Q. Two sash, six lights, eight by ten, do you know where they were used?

30 A. No, sir.

Q. Know whether they were necessary or not to the completion of the building?

A. No, sir.

RE-DIRECT EXAMINATION.

BY MR. CARR:

Q. Mr. Muckenhirn, in response to a question of Mr. Acton's you stated that you didn't dispute the bill. Is your information exact as to the amount of it all concerning the various items in the bill of particulars? 10

A. No, sir.

Q. Do you know whether in fact each item in the bill of particulars was furnished at the time and in the quantity specified?

A. No, sir.

Q. Mr. Acton inquired of you with reference to eighty feet of yellow pine under date of December - of January 10th and of 978 feet of hemlock joists under date of February 20th, did you understand in what year this lumber was furnished? 20

A. The first item I asked him what year he meant and he said 1905; then he passed on to the next item without mentioning the year at all.

Q. Now in view of that do you desire to say whether or not you know whether these items were furnished in December - January 10th, 1906 and for what purpose they were used?

A. Do I desire to state for what purpose they were used. 30

Q. Can you state?

A. I can state positively that they weren't used in the erection of the building.

Q. What items on the bill of particulars from December the 14th to the conclusion of the bill in the case of Wistar and Woodnut were furnished for

the erection and construction of the building?

(Objected to as repetition and not re-direct examination.)

THE COURT: I think both sides have interrogated him as to that.

10 MR.CARR: The only thing I want to do is to ask him if he understands the questions in the manner they were asked.

THE COURT: There was a period in his examination when he might have corrected his testimony. The witness may now do that, if he desires.

BY THE COURT:

20 Q. Is there anything in your testimony you desire to correct or explain?

A. There is.

Q. Well proceed.

A. I would like to define my understanding of the words erection and construction, can I do that?

Q. Yes, sir.

A. Erection and construction to my mind is the sides of the building, the floors of the building and 30 the roof to put it in shape for occupancy for the purpose for which it was built. If any of the items of lumber that Mr. Acton asked me about were billed subsequently to December first, I don't believe they went into the erection and construction of the building.

D. H. SMITH, Sworn.

DIRECT EXAMINATION

BY MR. CARR:

Q. Mr. Smith, where do you live?
A. Salem.
Q. And your business or profession? 10
A. Real Estate and Insurance.
Q. You know Mr. Muckenhirn?
A. I do.
Q. You know the Muckenhirn plant?
A. I do.
Q. Ever placed any insurance on it?
A. I have.
Q. Ever place any insurance on it while it was in process of erection? 20
A. I have had insurance almost from the beginning to April 27th.

BY MR. ACTON:

Q. What year?

BY MR. CARR:

A. 1906. 30
Q. You know whether a short term insurance was placed during the construction?
A. There was.
Q. And afterward was - sometime in September or November was any change made in the insurance - November the 15th?
A. I was carrying insurance from time to time

and from month to month until November 11th.

Q. Yes.

A. Then Mr. I. O. Acton took a block of it and he took the larger part of it and I took the smaller part.

Q. Now what change was made in the form of insurance about that time, November 11th or 15th?

A. It was a general policy covering machinery
10 and buildings and fixtures.

Q. The usual form was it?

A. Yes, and made also to cover material on car on track on the premises.

Q. And what form of insurance preceeded that?

A. Practically the same.

Q. Is there any special form of insurance covering a building in course of construction?

A. There was.

20 Q. Was that the form used in this case in short term insurance?

A. No.

Q. Did it have in it a clause known as builders' risk?

A. Yes.

Q. And that is the form used for buildings in erection, is it not, in construction?

A. Yes.

30 Q. Did the insurance after November 15th have?

A. November 11th.

Q. Eleventh?

A. No.

Q. Now did Mr. Muckenhirn ask you to insure it as a completed plant?

A. He did not.

Q. Did Mr. Taylor?

A. Simply said he wanted so much insurance, so much, I think it was forty-six thousand.

Q. Yes.

A. No.

(Objected to. Last question strickenout.)

MR. CARR: I would like to state that Mr. Taylor was the book-keeper. 10

Q. Who was Mr. Taylor?

A. I think he was book-keeper.

Q. Sir?

A. Book-keeper.

Q. Employed by whom?

A. Mr. Muckenhirn, I presume.

(Objected to unless he knows.)

Q. Don't you know? 20

A. Yes, I think he was.

Q. Now Mr. Taylor then asked you for the usual form of insurance?

(Objected to. Objection sustained.)

Q. What form of insurance did Mr. Taylor apply for?

A. He didn't apply for any, just brought me a slip with some figures. 30

Q. And consequence what form of insurance - -

(Objected to. Objection sustained.)

Q. Mr. Smith, you did place insurance, didn't you, at Mr. Taylor's request?

A. Yes.

Q. And afterward you saw Mr. Muckenhirn in

regard to it?

A. Never.

Q. Mr. Muckenhirn from time to time made the payments on account of the policies, didn't he?

A. Not after that time.

Q. Didn't make payments on the earlier policies?

A. The first policies.

Q. Placed by Mr. Taylor, were they not?

10 A. I don't know whether that came from Mr. Muckenhirn or Mr. Taylor, I think. The situation of the insurance is this, that Mr. Acton first had six thousand and I had twelve. That is on the original plant, Fifth Street front.

(Ordered stricken out.)

Q. You rendered this bill dated eleventh month sixteenth to Mr. Muckenhirn for the insurance in ac-
20 count, in consequence of what Mr. Taylor had said, didn't you?

A. Yes.

Q. And in consequence what Mr. Taylor said you issued the policies of insurance, some of them did you not?

A. I did.

Q. And mailed them to Mr. Muckenhirn did you not?

30 A. No, gave them to Mr. Taylor.

Q. Handed them to Mr. Taylor all in the name of Mr. Muckenhirn, however?

A. Yes.

(Bill offered in evidence marked D 8)

Q. Did you ever speak to Mr. Muckenhirn about

insurance?

A. Not on the new plant.

Q. Only on the old?

A. Yes.

Q. You went down there and made an examination, did you, of the plant?

A. In September, I did.

Q. September or November, which was it?

A. September. 10

Q. How late?

A.Think it was the eighth or ninth.

Q. At that time what was the general condition of the foundry building—the new foundry building, I mean?

A. I don't remember that. I know it was a chaotic condition before that, lumber there, there were carpenters there and I know they were digging and excavating for the engine. I saw the general plan 20 for the connecting the building or the machine shop.

Q. What was the condition of that foundry building?

A. I don't remember.

Q. Were you in it?

A. Yes.

Q. It was in operation?

A. I don't remember that.

Q. Under roof was it?

AA. Yes there was a roof over it, I should judge. 30

Q. Do you know what the conditions were when you placed insurance on it on November 15th?

A. I don't because I relied on Mr. Acton, Mr. I. O. Acton.

NO CROSS EXAMINATION.

I. O. ACTON, Sworn.

DIRECT EXAMINATION.

BY MR. CARR:

Q. Mr. Acton what is your business or profession?

A. Well I am a member of the bar and also in the insurance business.

10

Q. And where are you located?

A. Ninety three Market street, Salem.

Q. Do you know Mr. Muckenhirn?

A. I do.

Q. Are you familiar with his plant?

A. Yes, sir.

Q. Do you recall the original building beginning on Fifth street and running back about a hundred feet?

20

A. Yes I made a survey of it at the time it was first completed.

Q. Did you ever place any insurance upon that building?

A. Yes, I placed on December 28th, 1904 about six thousand dollars on that building. I don't recall that there was anything on machinery because he had very little machinery in there but he had some office furniture there, but I believe the insurance was entirely on the building.

30

Q. Now at that time was the original building completed or uncompleted, if you know?

(Objected to as a conclusion.)

Q. How long have you been in the insurance business?

A. Since 1879.

Q. Have you had occasion to examine buildings with more or less frequency?

A. I have and also am a special agent for a company which inspects buildings and accepts leases.

Q. Can you say from your observation as to whether the original machine shop was a completed building at the time you placed your insurance?

A. I believe it was. 10

Q. Now afterward did you place any insurance upon the foundry and the addition to the machine shop?

A. There is one building between them sir.

Q. Will you tell what it was?

A. I did.

Q. When was that insurance placed?

A. That insurance was placed the thirteenth day of November, 1905. 20

Q. About that time did you make any examination of the buildings?

A. I did.

Q. Do you remember whether or not you make a survey?

A. I made a survey and made a map of it.

Q. Showing the location of the buildings?

(Objected to. Must produce the map.) 30

Q. Now in making this survey were you around and about the buildings?

A. I was through the buildings and all around it with a tape line.

Q. Did you examine the building with more or less care?

A. I did as to its physical aspect in relation to fire.

A. It was practically completed.

Q. As to the machine shop connecting the two what was its condition?

A. It was practically completed, but not at that time joined to the foundry.

Q. Now by the joining to the foundry can you in-
10 dicate. That wasn't at that time joined?

Q. Of what is that - that is this that you have dicated?

AA. It indicates a passage way I think now from the foundry to the machine shop.

Q. A covered passage way?

A. I believe so.

Q. Can you say whether or not the walls of the machine shop and that of the foundry join the main
20 walls?

A. I believe they do.

Q. Can you tell by reference to that map?

A. I think probably it will show more.

Q. Now you say that the foundry building was complete in November 1905?

A. I think the machine shop was nearer complete than the foundry building.

Q. What remained to be done with the foundry building?

30 A. Well, I can't say in detail at all. I know there were carpenters working around there and considerable hustle and bustle going on there.

Q. As to the machine shop?

A. As to the machine shop it was nearer completed.. There were rows of machinery set up down the whole length of the building. It was so near

completed that I thought I could insure it without requiring a builder's permit and didn't require it.

Q. So the insurance you placed on it was it in the usual form for a completed building?

A. It was.

Q. Now what are these papers which you have in your hand, Mr. Acton?

A. They are maps I made in pursuance to my survey at that time. 10

Q. Now referring to this map is this the machine shop?

A. That is the machine shop.

Q. And this building here is the foundry?

A. The whole thing because it was insured as one plant.

Q. Now between the machine shop and the foundry is there a special wall or is there not?

A. Between the machine shop and the foundry? 20

Q. Yes.

A. Well there is a passage way that joins on to it.

Q. Aside from the passage way are the buildings connected or disconnected?

A. Disconnected.

Q.And that passage way is about how wide?

A. Well I should judge - scale 50 feet to one inch, that is about a quarter of an inch - twelve feet and a half or probably thirteen. 30

Q. Now what, if anything, did you observe about the machine shop that would give you the idea that the building itself was uncompleted?

A. Well as I say I didn't particularly bring my mind to bear on these matters. I look more particularly to the physical aspects for burning. I ex-

20

amined the buildings more particularly for my business.

Q. Now Mr. Acton, as a result of your examination, you insured these buildings as completed buildings?

A. I did. I did as to part of them, I didn't have all the insurance.

Q. You mean by that that part was placed with
10 you and part with another agent?

A. Yes, sir.

CROSS EXAMINATION

BY MR. ACTON:

Q. Mr. Acton, can you tell me what time in Nov-
20 ember this was?

A. I can only tell by the date of my policies.

Q. What date are they?

A. Thirteenth day of November.

Q. Now what carpenters did you see around there?

A. Why I couldn't pretend to tell you. I'm quite sure Sam Bell helped me measure with the tape line. Sam Bell helped me measure these buildings.

30 Q. Now, Mr. Acton, you mean to say that these buildings were insurably finished?

A. Insurably finished, yes, sir.

Q. Do you know whether or not all of the windows had been put in at the time?

A. I don't.

Q. Do you know whether or not the casings to the windows had been put in at that time?

..A. I don't.

Q. Do you know whether or not the water-closets had been put in at that time?

..A. I don't.

Q. Do you know whether or not the connections had been made with the sewers at that time?

..A. I don't.

Q. Do you know whether or not the rafters had been completed at that time? 10

A. No.

Q. Did you examine the roof to see whether or not the roofing had all been put on at that time?

A. My belief is - - -

Q. Did you examine the roof to see if the roofing had all been put - - -

A. I didn't examine the - - -

Q. Then you don't know whether the roof was all on at that time? 20

A. It appeared to be on from nside.

Q. Have you a recollection that the roof was all on?

A. I have a recollection that there was no daylight showing through the roof.

Q. Have you a present recollection as to what kind of a roof was on the building?

A. My recollection is that it was rubberoid, because it was a new term to me.

Q. Was the big engine running at that time? 30

A. I think it wasn't.

Q. Was the engine room complete at that time?

A. I can't say, sir.

Q. Were the windows put in the water-closets at that time?

A. Water-closets?

Q. Stops put in the windows at that time?

A. I didn't examine the building as a builder.

Q. You know whether there were any fastenings on the windows at that time?

A. I don't.

Q. You notice how much lumber was laying around at that time?

A. No I didn't notice how much there was lay-
10 ing inside.

Q. There was lumber laying around?

A. Not a great deal, but the carpenters were working on it.

DEFENDANT RESTS.

20

PLAINTIFF'S REBUTTAL

CLAYTON WISTAR, Recalled.

DIRECT EXAMINATION

BY MR. ACTON:

30 Q. Mr. Wistar, do you know a man by the name of Mr. Booz who has testified in this case?

A. I do.

Q. Did you see Mr. Booz at the plant of Muckenhirn any time after the plant had shut down in April 1906?

(Objected to as not rebutal. Question allowed.

Question repeated.)

A. Yes.

Q. Now Mr. Booz has denied saying to you that certain ventilators should be fastened, is that true or not true - did he say anything in regard to the closing of those ventilators?

A. I might give a description of the conversation. 10

Q. What did he say?

A. Well he said that ventilator was open and I was down there with him, and said the ventilator was open and said it should be closed. It was the one back over - so he closed it up and said it should be nailed down to keep it from slamming and breaking the windows out.

Q. Now do you know whether or not there is an unfinished ventilator in that building? 20

(Objected to. Question overruled.)

Q. Now did Mr. Muckenhirn call on you at your office about November fifteenth and say to you that the building -1905 - and say to you that the buildings were no wcomplete and that the material hereafter ordered from you would go for repairs or miscellaneous purposes?

A. No, sir, he never said anything of the kind in any way, shape or form. 30

Q. Did he ever tell you to render a bill for the building, as it was completed?

A. No, sir.

Q. Did you ever have any such conversation with him?

A. No, sir.

Q. Did you ever receive word from Mr. Muckenhirn in any way that the building was completed?

A. No, sir.

Q. Did you ever receive any word from Mr. Muckenhirn to furnish lumber for miscellaneous purposes?

A. No, sir he never mentioned that in my
10 presence.

NO CROSS EXAMINATION

BOTH SIDES REST

20

———o———

MOTION TO DIRECT VERDICT.

MR. CARR: The defendant moves for a directed verdict in this case that the lands and buildings are not subject to the lien for the following reasons:-

First: That the plaintiff has failed to show that the labor and material were furnished within the
30 four months of the filing of the mechanic's lien in this case, to wit, April the 24th, 1906, furnished for the erection and construction of the buildings in question.

Secondly: Because the prooffs show that the claim contains inseparably blended items for construction and erection; items for alterations, additions and repairs as well as for items not used in

the erection, construction, alteration, or additions to the buildings. The latter being used in the operation of the plant, consisting of fifty-two wooden trays used under lathes, fifty-two wooden tool trays used alongside the lathes, from twelve to fifteen wooden sand troughs, some two hundred bottom boards, eight or ten spill troughs, some twenty-five or more tote boxes as well as patterns and other miscellaneous moveable chattels.

For the further reason that when such articles are blended, inseparably blended in a mechanics lien claim that the whole claim must be disallowed and

For the further reason that under Section sixteen of the Mechanics Lien Act of 1898 it is provided that when the bill of particulars contains any wilful or fraudulent misstatement of the matters directed by the mechanics lien act to be therein inserted, the buildings or lands shall be free of all lien for the matters in such claim, and that in this case it has been shown and not disputed that a number of the items shown in the bill of particulars went into chattels which are not the subject of a mechanics lien claim and that they were included; that they were of such a character; and that they were wilfully and knowingly included in the mechanics lien claim without investigation to ascertain whether such items were ordered for the purpose of erection or construction or were so used.

THE COURT: The motion will be refused.

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

COURT'S CHARGE TO THE JURY.

Gentlemen, you are hearing two cases as though there was but one; the evidence submitted being applied to each case so far as it is applicable; one case being that of William W. Bell and Company for sash and doors furnished and the other being that of Wistar and Woodnut for lumber furnished to Muckenhirn. Under the law of this state a mechanic or a material man may, in addition to a general judgment for labor performed or materials furnished, secure, under certain conditions, a special verdict against the land and the building erected on the land. That the materials sued for in this case was furnished by these plaintiffs to the defendant is not disputed. The defendant, however, denies that the plaintiffs are entitled to a lien upon the land and the building.

The plaintiff' claim is for materials furnished by them which they say they were used for the construction of the brass foundry.

I say for construction as distinguished from additions or repairs or alterations. To entitle the plaintiffs to a mechanics lien the claim should have been filed in the clerk's office of the county and the summons issued within four months from the date of the last material furnished; that is, within four months of the time the last material was furnished which was used or intended to be used in the construction of the foundry. I say intended to be used because it is no objection to the validity of the lien claim for the materials furnished for the erection of the building if such materials were not actually used in the erection of the building when it appears

that the materials were furnished for the building and delivered to the defendants or their agents in good faith, it is immaterial to the validity of the lien whether they were used in the building or not.

The right to lien depends upon the fact that the debt was incurred and the material furnished for the purpose of building.

To recapitulate what I have said: If the material furnished by the plaintiffs was intended to be used and was actually used in the construction of this foundry and if some of it was furnished within four months of April 24th, 1906, the time the claim was filed, the plaintiffs are entitled to a lien upon this property. If you believe from the evidence that the materials furnished within four months prior to April 24th, 1906 were used in the operation of the plant and were not intended for and did not enter into the construction of the building, your verdict must be for the defendant. If, in other words, the building was completed in November, 1905, as claimed by the defendant and the materials therefore were not intended for construction but to be used in the operation of a plant already completed, the lien claim of the plaintiffs must fail.

In the language of Justice Garrison in the Downingtown Mfg. Co. vs. Franklin Paper Mills, (Sixty-three New Jersey Law, page Thirty-four). "Two things must have concurred to draw the plaintiffs' claim within the benefit of the statute. A part of it must have accrued within the four months and such part must have been connected with the earliest part that together they make a single debt." The test is whether the evidence shows that either in the inception of the employment or during its

progress there was a unity of purpose between the parties to link together the items of the growing account into one aggregate indebtedness.

If the plaintiffs' bill of particulars contains any wilful misstatement of the items claimed to be furnished for the erection of the building, the building shall be free from all lien for all matters in such claim. But error in account filed does not invali-
10 date the lien when the error occurs by a mistake and without any fraudulent purpose, especially where no one has been injured by the mistake and the erroneous items are easily separable from the rest.

If, therefore, you find that certain of the items charged in this account did not enter into the construction of the building and that they were included in the account by inadvertence and mistake, you may still sustain the lien, if you find some of the
20 items furnished prior to April 24th, 1905 did actually enter into the construction of the building; and if you find certain items within the four months prior to April 24th 1906 were furnished not for construction but to operate the plant, such item must, by you, be deducted from the account.

What further I have to say to you will be found in the requests to charge. On behalf of the plaintiffs I charge you, first: The reason for the legislative enactment creating mechanics' liens is to
30 hold a lien on the estate of the owner of the building in the land, on account of the increased value given by the buildng to the land,, and the natural injustice there is in the owner of the land appropriating to his use, without compensation, the toil and capital of others.

Fourth: If the jury find from the evidence

that it does not appear that the materials were supplied for a designated building a lien claim is, nevertheless good if it does appear that they were supplied to the defendant who in fact did use them for the building specified in the lien claim.

Requests two and three I have already charged.

Upon the part of the defendant I am requested to charge you and I do charge you as follows:-

First: In order for the plaintiff to recover for the items sued for he must prove that the labor or materials which are here sued for were furnished for the erection and construction of the building described in the declaration.

Two: In order for the plaintifs to recover, they must show that the labor or materials were furnished as a continuous transaction and for the erection or construction of the building.

Three: A claim based in part for erection and construction and in part for alteration and repairs must be apportioned. If he failed to do this, there can be no recovery.

Four: If part of the work or material was used in the erection and part for reparation and alteration and part was used in the operation of the factory and in making of the moveable chattels and the parts are so blended as to be indistinguishable, there must be a verdict that the buildings or lands are not liable for the debt.

Six is refused and number five has been already charged.

There is one warning I want to give you, gentlemen. Reference was made in the argument to the effect your verdict might have upon the claims of other creditors of Muckenhirn. I feel it my

duty to warn you that you must not consider that. You are sworn to decide this case according to the evidence.

The apportioning of the assets of that bankrupt estate and the distribution of the moneys among the several creditors belong under the bankruptcy laws to the United States District Court and we have nothing to do with it, so that you must decide this
10 case according to the testimony that is before you without regard to its effect upon other creditors, whether their claims may be diminished or decreased

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DEFENDANT'S EXCEPTIONS.

MR. CARR: I would like to except to that part of the Judge's charge which says, "Error in account
20 filed does not invalidate the lien when the error occurs by a mistake and without any fraudulent purpose, especially where no one has been injured by the mistake and the erroneous items are easily seperable from the rest. If, therefore, you find that certain of the items charged in this account did not enter into the construction of the building and that they were included in the account by inadvertence and mistake, you may still sustain the lien, if you find
30 that some of the items furnished within four months prior to April 24th, 1906 did actually enter into the construction of the building."

(Which exception is hereby allowed and sealed accordingly."

I would also like to except to that part of the

Judge's charge which says, "If you find certain items within the four months prior to April 24th, 1906 were furnished not for construction but to operate the plant, such items must be by you deducted from the account."

(Which exception is hereby allowed and sealed accordingly."

I would also like to except to the refusal of the Court to charge the sixth request of the defendant." 10

Which exception is hereby allowed and sealed accordingly."

———o———

PLAINTIFF'S REQUESTS.

1. The reason for the legislative enactment creating mechanic's liens is to hold a lien on the estate of the owner of the building in the land, on account of the increased value given by the building to the land, and the natural injustice there is in the owner of the land appropriating to his use, without compensation, the toil and capital of others. 20

2. If the jury find from the evidence that the items furnished by the claimant within the limited period, are so connected with th earlier items furnished, that they constitute one debt, there should be a verdict for the plaintiff. 30

3. If the jury find from the evidence that the items in claimant's bill of particulars were furnished by claimants for the erection and construction of the building, but were not, in point of fact, used for that purpose, a lien was created on said

building.

4. If the jury find from the evidence that it does not appear that the materials were supplied for a designated building, a lien claim is nevertheless good if it does appear that they were supplied to the defendant, who, in fact, did use them for the building specified in the lien claim.

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DEFENDANT'S REQUESTS.

1. In order for the plaintiff's to recover for the items sued for he must prove that the labor or materials which are here sued for were furnished for the erection and construction of the buildings described in the declaration.

2. In order for the plaintiffs' to recover they must
20 show that the labor or materials were furnished as a part of a continuous transaction for the erection and construction of the building.

3. A claim based in part for erection and construction and in part for alterations and repairs must be apportioned. The claim must distinguish the amount of each. If he failed to do this there can be no recovery.

4. If part of the work or material used in the
30 erection and part for reparation and alteration and part was used in the operation of the factory and in making of moveable chattels and the parts are so blended as to be indistinguishable the claim is bad and there must be a verdict that the building or lands are not liable for said debt.

5. If the plaintiffs' bill of particulars contains any willful misstatement of the items claimed to be

furnished for the erection of the building, the building and lands shall be free from all liens for all matters in such claim.

6. The undisputed evidence shows that a part of the materials furnished went into the erection and construction; that another part went into the reparation and alteration; that another part went into the addition to the building and that still another part was used in the making of chattels for the operation of the plant and if these various items are inseparably blended then the building is not subject to the lien.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Clayton Wistar, et al, trading, etc., Defendants in error. vs. Charles Mecum, Trustee, etc., Plaintiff in error.	On Error To Salem County Circuit Court. Assignment of errors

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And now on this day the plaintiffs in error assigns as causes of error the following:-

1st. That the trial judge ruled out and rejected competent evidence.

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2nd. That the trial judge admitted incompetent and illegal evidence.

3rd. That the trial judge refused to non-suit the plaintiffs.

4th. That the trial judge refused to direct a verdict in favor of the defendant.

5th. That the trial judge refused to charge the jury as requested by the defendant in his sixth request to charge as follows: "The undisputed evidence shows that a part of the materials furnished went into the erection and construction; that another part went into the reparation and alteration; that another part went into the addition to the building; and that still another part was used in the making

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of moveable chattels for the operation of the plant and if these various items are inseparably blended then the building is not subject to the lien".

6th. That the trial judge charged the jury as follows. "Error in an account filed does not invalidate the lien when the error occurs by a mistake and without any fraudulent purpose especially when no one has been injured by the mistake and the erroneous items are easily separated from the rest. If however, you find that certain of the items charged in this account do not enter into the construction of the building and that they were included in the account by inadvertence and mistake you may still sustain the lien if you find that some of the items furnished within four months prior to April 24th, 1906 did actually enter into the construction of the building".

7th. That the trial judge charged the jury as follows: "If you find that certain items within the four months prior to April 24th, 1906 were furnished not for construction but to operate the plant, such items must be by you deducted from the account".

WILSON, CARR & STACKHOUSE,

Attorneys for Plaintiffs in Error.

The same assignment of error was filed in the case of William W. Bell, et al. trading &c., v. Charles Mecum, Trustee, &c., and each of the above a joinder in error in common form was filed.