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Amended Complaint.

(Filed September 23, 1924)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

PERTH AMBOY DRY DOCK COMPANY, a corporation, Plaintiff, vs. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	Action at Law.

Plaintiff, a corporation of the State of New Jersey, with its principal place of business at Perth Amboy, in the County of Middlesex, says that:

FIRST COUNT:

1. On December 20th, 1923, plaintiff entered into two certain contracts with the defendants, partly written and partly oral, whereby the plaintiff agreed to permit the defendants to use, as hereinafter specified, its plant at Perth Amboy, New Jersey (designed for and ordinarily used in conducting a general ship repair and dry dock business, and consisting, among other things, of piers and wharves), for scrapping two steep steamships known as the "Philippines" and "Black Arrow", and the defendants agreed to pay the plaintiff for said use in connection with the said vessels, respectively, the sums of $16,554. and $9,948. The

plaintiff agreed to berth both ships at the same time at its plant; to furnish the gas and oxygent for cutting up—by burning—such parts thereof as in the scrapping process were to be cut up; to furnish certain hose and burning outfits; to furnish a locomotive crane for handling such material as would leave plaintiff's yard by cars, lighter or trucks; to furnish the use of a floating derrick for lifting up to five tons, the same, however, not to include ordinary scrap material; to furnish general supervision of the work under defendants' representative; to furnish such stage planking as might be necessary; and to pay, in the first instance, for labor employed in the scrapping and removing of material from plaintiff's premises, including assistant foreman, timekeeper, and day and night watchmen in actual charge of the work. The defendants agreed, among other things, to weekly pay the bills, or reimburse the plaintiff for the moneys expended, for labor; to pay for the use of the plant monthly in proportion to the work done; and to complete the scrapping of the vessels so that they would be out of plaintiff's plant within a period of three months from the time they were brought there. It was mutually understood and agreed that the superstructures of the vessels were to be cut up in what are known as "charging box sizes", that is to say, pieces 22″ wide x 5′ 6″ long; that the boilers and engines were not to be cut up, but otherwise removed; that the piping, electrical fixtures, conduits and engine room auxiliaries were to be taken apart by hand and removed without being cut up; and that the remaining parts of the vessels were to be cut in what are known as "shipping sizes", that is to say, pieces not smaller than 20′ long x

5′ 6″ wide. Copies of the written parts of the said contracts are annexed hereto as Exhibit 1 and 2 and made a part hereof.

2. On December 22nd, 1923, defendants brought the steamship "Black Arrow" to plaintiff's plant, and on December 27th, 1923, brought the steamship "Philippines" there, the said vessels being moored to separate piers. The work of scrapping them was begun shortly afterwards.

3. Plaintiff has fully performed, insofar as defendants have permitted it so to do, all of the provisions of said contracts on its part to be performed

4. Although the time within which the said vessels should have been completely scrapped and out of plaintiff's plant, and the use of the plaintiff's said plant for scrapping them should have ceased, expired on or about the 1st day of April, 1924, the said defendants, in violation of the said contracts, did not complete the said scrapping or remove the said vessels, or either of them, from the plaintiff's plant at the time that they should have been entirely out of said plant, as aforesaid, but continued to keep the said vessels at plaintiff's said plant, and to use the said plant thereafter for the scrapping thereof until defendants ceased the work of scrapping said vessels as hereinafter stated; and thereafter, until the 7th day of August, 1924, defendants used said plant for the mooring of said vessels and for the storage of their material.

5. No work has been done in the way of scrapping the "Philippines" since the first of May, 1924,

at which time she had been scrapped to the extent of about 30%, and no work, except the cutting up of her boilers, has been done in the way of scrapping the "Black Arrow" since June 1st, 1924, at which time she had been scrapped to the extent of about 80%.

6. The presence of the said vessels at the plaintiff's plant after the time when, by the terms of the contracts, they should have been out of it, as aforesaid, and the continued use of the plaintiff's plant in scrapping them and its continued use, after the work of scrapping had ceased, for the wharfage of said vessels and the storage of defendants' material, caused the plaintiff sever damage, in that it was unable to use so much of the said plant as was occupied by the said vessels and material, and so much of its equipment as was employed in the scrapping of the said vessels while the scrapping was being carried on, for its regular and ordinary business, and was thus deprived of the gains and profits which it would have realized had it been able to use the said parts of its plant in its ordinary business.

7. On or about the 26th day of April, 1924, plaintiff notified defendants that from that time on it would charge them for the use of the piers to which the said vessels were moored, and the upland and wharfage space occupied by the said vessels and used by the defendants for the storage of material removed from said vessels, at the rate of $100. per day for each ship, which said sum was a reasonable charge or value for the use by the said defendants of the said piers, upland and wharfage space.

8. The defendants have refused, and still do refuse, to pay the plaintiff the said sum of $100. per day for each ship, or any part thereof, or any other sum, or in any way to compensate plaintiff for the use of said plant, the wharfage of said vessels and the storage of said material, after the time provided therefor by the terms of said contracts.

9. On or about the 30th of June, 1924, plaintiff filed a bill in the Court of Chancery of the State of New Jersey against the said defendants, wherein it prayed that the said court might order them forthwith to remove the said steamships and said material from plaintiff's plant. Such proceedings were had in said cause that the Honorable John H. Backes, one of the Vice Chancellors of the said court to whom the said cause had been referred by the Chancellor, after final hearing, determined that defendants had wrongfully occupied said plant beyond the time limited by said contracts and directed and ordered the said defendants to forthwith remove the said vessels and material from the plaintiff's said plant, with which said direction and order the said defendants undertook and agreed to comply.

10. Said defendants, in further violation of the said contracts, cut up large parts of both of said vessels, other than the superstructures, in charging box sizes, and also cut up the engines and boilers and the said miscellaneous parts of the vessels, which it had been agreed, as aforesaid, were to be taken apart and removed without being cut up, and thereby caused the plaintiff damage, in that it was thus compelled to expend for gas and oxygen (which, under the said contracts, it was required

to furnish) the sum of $4,000, more than it would have been necessary to expend had the cutting been done as the contracts provided, as aforesaid.

11. The defendants, in further violation of the said contracts, have neglected and refused to pay to the plaintiff all of the moneys expended by it for labor and in and about the scrapping of the said vessels, and for which the said defendants agreed to pay, as aforesaid, in the aggregate amount of $2,000.

SECOND COUNT:

1. On December 20th, 1923, plaintiff entered into two certain contracts in writing with the defendants, whereby the plaintiff agreed to permit the defendants to use, as hereinafter specified, its plant at Perth Amboy, New Jersey (designed for and ordinarily used in conducting a general ship repair and dry dock business, and consisting among other things, of piers and wharves), for scrapping two steel steamships known as the "Philippines" and "Black Arrow", and the defendants agreed to pay the plaintiff for said use in connection with the said vessels, respectively, the sums of $16,554. and $9,948. The plaintiff agreed to berth both ships at the same time at its plant; to furnish the gas and oxygen for cutting up—by burning—such parts thereof as in the scrapping process were to be cut up; to furnish certain hose and burning outfits; to furnish a locomotive crane for handling such material as would leave plaintiff's yard by cars, lighter or trucks; to furnish the use of a floating derrick for lifting up to five tons, the same, however, not to include ordinary scrap material;

to furnish general supervision of the work under defendants' representative; to furnish such stage planking as might be necessary; and to pay, in the first instance, for labor employed in the scrapping and removing of material from plaintiff's premises, including assistant foreman, timekeeper, and day and night watchmen in actual charge of the work. The defendants agreed, among other things, to weekly pay the bills, or reimburse the plaintiff for the moneys expended, for labor; and to pay for the use of the plant monthly in proportion to the work done. Copies of the said contracts are annexed hereto as Exhibits 1 and 2 and made a part hereof.

2. The allegations of paragraph 2 of the first count are made a part of this count.

3. It became the defendants' duty under the said contracts to complete the scrapping of the said vessels within a reasonable time after the same were brought to plaintiff's plant, as aforesaid.

4. The allegations of paragraph 3 of the first count are made a part of this count.

5. Although a reasonable time after the said vessels were brought to the plaintiff's plant, as aforesaid, expired on or about the first of April, 1924, defendants did not complete the scrapping of them, or remove the same from the plaintiff's plant, within the said reasonable time, but wholly failed and neglected so to do.

6. The allegations of paragraph 5 of the first count are made a part of this count.

7. The allegations of paragraph 6 of the first count are made a part of this count.

8. The allegations of paragraph 7 of the first count are made a part of this count.

9. The allegations of paragraph 8 of the first count are made a part of this count.

10. The allegations of paragraph 9 of the first count are made a part of this count.

11. The allegations of paragraph 11 of the first count are made a part of this count.

THIRD COUNT.

1. On December 20th, 1923, plaintiff entered into two certain contracts with the defendants, partly written and partly oral, whereby the plaintiff agreed to permit the defendants to use, as hereinafter specified, its plant at Perth Amboy, New Jersey (designed for and ordinarily used in conducting a general ship repair and dry dock business, and consisting, among other things, of piers and wharves), for scrapping two steel steamships known as the "Philippines" and "Black Arrow", and the defendants agreed to pay the plaintiff for said use in connection with the said vessel, respectively, the sums of $16,554. and $9,948. The plaintiff agreed to berth both ships at the same time at its plant; to furnish the gas and oxygen for cutting up—by burning—such parts thereof as in the scrapping process were to be cut up; to furnish certain hose and burning outfits; to furnish a locomotive crane for handling such material as would leave plaintiff's yard by cars, lighter or trucks; to fur-

nish the use of a floating derrick for lifting up to five tons, the same, however, not to include ordinary scrap material; to furnish general supervision of the work under defendants' representative; to furnish such stage planking as might be necessary; and to pay, in the first instance, for labor employed in the scrapping and removing of material from plaintiff's premises, including assistant foreman, timekeeper, and day and night watchmen in actual charge of the work. The defendants agreed, among other things, to weekly pay the bills, or reimburse the plaintiff for the moneys expended, for labor; and to pay for the use of the plant monthly in proportion to the work done. It was mutually understood and agreed that the superstructures of the vessels were to be cut up in what are known as "charging box sizes"; that is to say, pieces 22″ wide x 5′ 6″ long; that the boilers and engines were not to be cut up, but otherwise removed; that the piping, electrical fixtures, conduits and engine room auxiliaries were to be taken apart by hand and removed without being cut up; and that the remaining parts of the vessels were to be cut in what are known as "shipping sizes", that is to say, pieces not smaller than 20′ long x 5′ 6″ wide. Copies of the written parts of the said contracts are annexed hereto as Exhibits 1 and 2 and made a part hereof.

2. The allegations of paragraph 2 of the first count are made a part of this count.

3. That allegations of paragraph 3 of the second count are made a part of this count.

4. That allegations of paragraph 3 of the first count are made a part of this count.

5. That allegations of paragraph 5 of the second count are made a part of this count.

6. The allegations of paragraph 5 of the first count are made a part of this count.

7. The allegations of paragraph 6 of the first count are made a part of this count.

8. The allegations of paragraph 7 of the first count are made a part of this count.

9. The allegations of paragraph 8 of the first count are made a part of this count.

10. The allegations of paragraph 9 of the first count are made a part of this count.

11. The allegations of paragraph 10 of the first count are made a part of this count.

12. The allegations of paragraph 11 of the first count are made a part of this count.

FOURTH COUNT.

1. The allegations of paragraphs 1, 2 and 3 of the first count are made a part of this count.

2. On or about the 3rd day of January, 1924, while the said steamship "Philippines" was moored at one of the plaintiff's said piers, as aforesaid, and while the work of scrapping her was being done by and under the direction of the said defendants, a seacock was broken owing to the negligent manner in which the defendants required the scrapping to be done, which caused the water to run in and flood

the hold of the vessel, and in order to prevent her sinking immediately at the said pier, plaintiff was required to and did expend the sum of $1572.43, which said sum was in all respects reasonable; and the defendants then and there became and were under a duty to pay the same to the said plaintiff.

3. Defendants have refused to pay the said sum, or any part thereof, to the plaintiff.

FIFTH COUNT:

1. The allegations of paragraphs 1, 2 and 3 of the second count are made a part of this count.

2. The allegations of paragraphs 2 and 3 of the fourth count are made a part of this count.

SIXTH COUNT.

1. The allegations of paragraphs 1, 2 and 3 of the third count are made a part of this count.

2. The allegations of paragraphs 2 and 3 of the fourth count are made a part of this count.

SEVENTH COUNT.

1. The allegations of paragraphs 1, 2 and 3 of the first count are made a part of this count.

2. During the time that the defendants were engaged in scrapping the said vessels, the defendants insisted upon cutting up the boilers of the steamship "Black Arrow", although it had been agreed, as hereinabove set forth, that they were

not to be cut up but otherwise removed; and the plaintiff thereupon, in order that the work of scrapping the vessels should not be further delayed, agreed to furnish the gas and oxygen to cut up said boilers upon the agreement of the defendants that if a court of competent jurisdiction should thereafter decide that the plaintiff was not required by the contracts to furnish gas and oxygen for cutting up the boilers, the defendants would pay the cost thereof to the plaintiff.

3. In accordance with said agreement, plaintiff did furnish gas and oxygen for the cutting up of said boilers, and the total cost thereof to the plaintiff was the sum of $792.63.

4. The plaintiff was not required by the contracts to furnish gas and oxygen for cutting up the said boilers; and it prays that this court may so decide.

Plaintiff demands as damages under the first count the sum of $75,000; under the second count $75,000; under the third count $75,000; under the fourth count $3,000; under the fifth count $3,000; under the sixth count $3,000; and under the seventh count $1500.

Attorneys for Plaintiff.

Amended Complaint.

EXHIBIT 1.

Cable Address "Padrydock"
Western Union Code

Telephones

W. Parker Runyon, Pres't. Perth Amboy No. 6
Chas. D. Snedeker, Treas. Perth Amboy No. 7

PERTH AMBOY DRY DOCK CO.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks, capacity up to 10,000 Tons.

Perth Amboy, N. J., December 19, 1923.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

Any agreement made herein is contingent upon strikes, accidents, delays of carriers, or any other conditions beyond our control.

As per your request, we quote you Sixteen Thousand Five Hundred Fifty Four Dollars ($16,554.) for the use of our plant, for scrapping the S.S. "Philippines", as noted below:

1. We to berth ship at yard, taking two ships at one time.

2. We to furnish gas and oxygen for cutting, also use of hose and burning outfits required by Mr. Bernard.

3. We to furnish use of locomotive crane for handling such material as would leave our yard by cars or lighter or trucks.

4. We to furnish use of floating derrick for lifting up to 5 tons, it being understood that we are not to furnish derrick for handling ordinary scrap material.

5. We to furnish general supervision of work under Mr. Bernard.

6. We to furnish such stage planking as may be necessary to do the work.

7. You to pay roll costs, of all labor used in scrapping, including assistant foreman, time keeper and day and night watchman, in actual charge of this work only. Also labor in removing material from yard.

8. You to pay for services rendered by outside contractor for railroad.

9. Bills for labor to be rendered weekly. Bill for use of plant to be rendered monthly and to be proportioned to work done. All bills to be paid within thirty days.

10. We to assume liability for compensation to our employees for injury.

11. We agree to furnish a connection by rail from the dock to present tracks.

Hoping to be favored with your valued order, we remain,

Yours very truly,

PERTH AMBOY DRY DOCK CO.
(Signed) C. D. Snedeker, Treas.

Accepted Dec. 20, 1923.
H. L. CRAWFORD.

Amended Complaint.

EXHIBIT 2.

Cable Address "Padrydock"
Western Union Code

	Telephones
W. Parker Runyon, Pres't.	Perth Amboy No. 6
Chas. D. Snedeker, Treas.	Perth Amboy No. 7

PERTH AMBOY DRY DOCK CO.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks, capacity up to 10,000 Tons.

Perth Amboy, N. J., December 19, 1923.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

Any agreement made herein is contingent upon strikes, accidents, delays of carriers, or any other conditions beyond our control.

As per your request, we quote you Nine Thousand, Nine Hundred Forty Eight Dollars ($9948.00), for the use of our plant, for scrapping the S.S. "Black Arrow" as noted below:

1. We to berth ship at yard, taking two ships at one time.

2. We to furnish gas and oxygen for cutting, also use of hose and burning outfits required by Mr. Bernard.

3. We to furnish use of locomotive crane for handling such material as would leave our yard by cars or lighter, or trucks.

4. We to furnish use of floating derrick for lifting up to 5 tons it being understood that we are not to furnish derrick for handling ordinary scrap material.

5. We to furnish general supervision of work under Mr. Bernard.

6. We to furnish such stage planking as may be necessary to do the work.

7. You to pay roll costs, of all labor used in scrapping, including assistant foremen, time keeper and day and night watchman, in actual charge of this work only. Also labor in removing material from yard.

8. You to pay for services rendered by outside contractor for railroad.

9. Bills for labor to be rendered weekly. Bill for use of plant to be rendered monthly, and to be proportioned to work done. All bills to be paid within thirty days.

10. We to assume liability for compensation to our employees for injury.

11. We to agree to furnish a connection by rail from the dock to present tracks.

Hoping to be favored with your valued order, we remain,

Yours very truly,

PERTH AMBOY DRY DOCK CO.
(Signed) C. D. Snedeker, Treas.

Accepted December 20/23
H. L. CRAWFORD.

Answer to Amended Complaint and Counterclaim.

(Filed Nov. 24, 1924.)

NEW JERSEY SUPREME COURT.

PERTH AMBOY DRY DOCK COMPANY, a corporation, Plaintiff, v. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	Action at Law.

The defendants, Harden L. Crawford of Rumson, in the County of Monmouth and State of New Jersey, and James W. Decker, of the City, County and State of New York, partners trading as H. L. CRAWFORD & COMPANY, answering the amended complaint, say that:

FIRST DEFENSE TO ALL COUNTS.

1. They admit that on the 20th day of December, 1923, they, as such partners, entered into two certain written contracts with the plaintiff, true copies of which are annexed to the amended complaint as Exhibit 1 and Exhibit 2.

2. Except as just admitted, they deny the truth of the matters alleged in the complaint.

SECOND DEFENSE TO ALL COUNTS.

1. The plaintff failed and refused to perform the things by it to be performed under the contracts,

Exhibit 1 and Exhibit 2 annexed to the amended complaint, in the following particulars:

(a) The plaintiff failed and refused to furnish gas and oxygen for cutting, of the kind and quality required for the proper prosecution of the work.

(b) Plaintiff failed and refused to furnish the use of a locomotive crane for handling the material to leave the yard by cars, lighters or trucks within a reasonable time after the making of the contracts.

(c) Plaintiff failed and refused to supply necessary equipment for the doing of said work and in particular failed and refused to supply a manifold in connection with the use of gas, thereby causing greater expense and delay in the prosecution of the work.

(d) Plaintiff failed and refused to cut up the said steamships in sizes which would render the material taken therefrom commercially available for sale.

(e) Plaintiff failed and refused to cut any small pieces from the said steamships as it was obligated to do under its contracts.

THIRD DEFENSE TO ALL COUNTS.

1. The plaintiff broke the contracts, Exhibit 1 and Exhibit 2 annexed to the amended complaint, by failing and refusing to continue with the prosecution of the work contemplated thereby and by notifying the defendants that it would no longer continue with the performance of the said contracts.

Answer to Amended Complaint and Counterclaim.

COUNTERCLAIM.

By way of counterclaim against the plaintiff defendants say:

1. On December 20, 1923, defendants entered into certain contracts with the plaintiff, of which copies are annexed to the amended complaint as Exhibits 1 and 2.

2. Defendants, relying upon the said contracts and the obligations assumed by the plaintiff thereby, did deliver said steamships at the dry dock of the plaintiff at Perth Amboy, New Jersey.

3. The plaintiff thereupon entered upon the prosecution of the work as contemplated by said contracts and performed the same to an extent, but failed and refused to perform said contracts in the following respects:

(a) The plaintiff failed and refused to furnish gas and oxygen for cutting, of the kind and quality required for the proper prosecution of the work.

(b) Plaintiff failed and refused to furnish the use of a locomotive crane for handling the material to leave the yard by cars, lighters or trucks within a reasonable time after the making of the contracts.

(c) Plaintiff failed and refused to supply necessary equipment for the doing of said work and in particular failed and refused to supply a manifold in connection with the use of gas, thereby causing greater expense and delay in the prosecution of the work.

(d) Plaintiff failed and refused to cut up the said steamships in sizes which would render the

material taken therefrom commercially available for sale.

(e) Plaintiff failed and refused to cut any small pieces from the said steamships as it was obligated to do under its contract.

4. Plaintiff on or about the first day of July, 1924, and without any justifiable cause or excuse, abandoned the further performance of said contracts and failed and refused to carry on the same any further.

5. The defendants have fully performed all things by them to be performed in and by the said contracts.

6. By reason of the plaintiff's breach of said contracts, the defendants have been required to expend large sums of money in connection with the removal of said steamships and the scrapping thereof, and the defendants will be required to expend still larger sums of money in connection with the scrapping of said steamships in excess of the sums for which, under the said contracts, plaintiff undertook to scrap the same.

7. At the time the plaintiff ceased performing said contracts the plaintiff had cut 1500 tons of steel from said steamships, but the work done by the plaintiff had been prosecuted so tardily and inefficiently that the cost of said scrapping was largely in excess of what the cost should have been to defendants, such excess amounting to the sum of $4.70 per ton, or a total damage to the defendants of the sum of $7,050.00.

8. By reason of the failure and refusal of the plaintiff to further perform said contracts, defendants were required to remove said steamships from

the docks of the plaintiff at Perth Amboy to Kearny, New Jersey; were required to pay for the cost of towing said steamships from Perth Amboy, to Kearny, New Jersey, and said defendants have been required to pay, and will be required to pay until said steamships are scrapped, large sums of money for storage purposes in connection with said steamships, and watchmen's services in the protection of the same. Defendants have been put to great cost in making the necessary arrangements to themselves complete the scrapping of said vessels; will be required to pay a greater sum for freight on said scrap material than they would have been required to pay had said contracts been performed by the plaintiff; have suffered a loss of interest on the amount of their investment in said steamships; have been put to additional insurance charges and additional charges for the superintendence of the work of scrapping the said steamships, all to the damage of the defendants in the sum of $130,000.00.

9. Said steamships were purchased by the defendants from the United States Government and at the time of the purchase, defendants entered into a bond with the United States Government in the sum of $100,000, conditioned for the complete scrapping of said vessels on or before the 17th day of December, 1924. By reason of the plaintiff's failure and refusal to complete the said contracts, the defendants may not be able to complete the scrapping of said steamships by the 17th day of December, 1924, and may, therefore, become liable to the penalty of their said bond to their damage in the sum of $100,000.00.

Defendants demand damages on their counterclaim in the sum of $250,000.00.

McCarter & English,
Attorneys for Defendants.

Amended Reply and Answer to Counterclaim.

(Filed Jan. 13, 1925.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

PERTH AMBOY DRY DOCK COMPANY, a corporation, Plaintiff, vs. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	Action at Law

Plaintiff, by way of reply to the defendants' answer to the amended complaint, says:

FIRST REPLY

1. It denies the allegations of the second and third defenses to all counts.

SECOND REPLY

1. On the 30th day of June, 1924, plaintiff brought suit in the Court of Chancery of New Jersey against the defendants herein, wherein, among other things, it alleged the failure of the defendants to perform the same identical contracts set out in the complaint in this action and fraudulent evasion of representations inducing the said contracts, in the particulars set forth in said complaint; and by reason thereof, it prayed, among other things, for a mandatory injunction requiring the defendants

forthwith to remove from the premises of the plaintiff the same identical vessels mentioned in the complaint herein and in defendants' said answer thereto.

2. Defendants defended said Chancery suit, and by way of defense they set up and attempted to prove the same alleged breaches of said contracts and the same alleged refusals to perform the said contracts as are set forth in their said second and third defenses to all counts.

3. The said Chancery suit was prosecuted to final hearing; and said Court of Chancery after final hearing, found and adjudged that the said plaintiff had not broken the said contracts nor refused to perform the same in the respects alleged in said Chancery suit and in said second and third defenses to all counts, as aforesaid; and in conformity with said finding and adjudication, on December 30th, 1924, it was by said Court of Chancery ordered, adjudged and decred as of the 17th day of July, 1924, that said defendants should forthwith and as speedily as possible remove said vessels from plaintiff's plant at Perth Amboy, New Jersey. At the conclusion of the trial of said suit in Chancery the Vice Chancellor before whom the same was tried announced that the decree of the court would be as above set forth, and counsel for the defendants thereupon stated in open court that they would remove said vessels from plaintiff's plant as speedily as possible; and the defendants having thereafter removed said vessels in accordance with their said promise, it was thereupon in and by said decree further ordered, adjudged and decreed that the issuance of the mandatory injunc-

tion prayed for in the bill of complaint be suspended and withheld. And in and by said decree it was further ordered, adjudged and decreed that the defendants pay to the complainant the costs of said suit, to be taxed; that execution issue therefor according to the practice of said court, and that there be included in the complainant's taxed bill of costs the sum of $2,500, which by the decree in said suit was fixed and allowed to the complainant as a reasonable and proper counsel fee.

4. Said decree still remains of record in said Court of Chancery, and has not in any manner been reversed, changed or modified, as by said record (reference thereto being had) will more fully and at large appear.

Plaintiff, answering defendants' counterclaim, says:

FIRST DEFENSE

1. It admits that the parties hereto entered into two certain contracts, of which the copies marked "Exhibits 1 and 2" annexed to the amended complaint, constitute the written parts. It says that said written parts do not, and were not intended to, constitute the entire contracts entered into by the parties thereto, but that in addition to the terms and provisions contained in said written parts, said defendants agreed to the additional terms set out in paragraph 1 of the first count of the complaint herein, and also to finish scrapping the vessels mentioned in the complaint and the defendants' counterclaim, and remove the same and the scrapped material from plaintiff's premises within a reasonable time.

2. It denies paragraph 2, but says that the defendant brought said vessels to plaintiff's plant as alleged in paragraph 2 of the first count of the complaint.

3. It admits that it entered upon the performance of the terms and provisions of said contracts by it to be performed, and says that it performed said terms and provisions as fully and completely as the defendants permited it so to do. It further says that in due time it furnished to defendant all the equipment and material it agreed to furnish for doing the work specified in said contracts; that it did not agree to furnish a manifold or to cut up said steamships, or any part thereof. It denies all other allegations of paragraph 3.

4. It denies paragraph 4 and says that it did not at any time abandon the performance of any of the terms of said contract by it to be performed and it did not at any time refuse to perform the same or any part thereof.

5. It denies paragraph 5 and says that defendant neglected and refused to perform said contracts in the particulars set out in paragraphs 4, 5, 10 and 11 of the first count of the complaint, and in paragraph 5 of the second count of the complaint.

6. It denies paragraph 6.

7. Defendants, by their failure and refusal to continue the performance of the terms of said contracts by them to be performed, rendered it impossible for the plaintiff to continue the performance of said contracts on its part, although plaintiff was

at all times ready and willing to perform its part of said contracts, and tendered performance thereof to the defendants. It denies that it cut up any part of said vessels or that it was required by said contracts so to do. It denies all other allegations of paragraph 7.

8. It denies that by reason of any failure or refusal of the plaintiff to perform said contracts defendants were required to remove said vessels from the docks of the plaintiff, but says that defendants were required to remove said vessels therefrom by the decision and decree of the Court of Chancery of New Jersey, in a suit in said court wherein the plaintiff herein was complainant, and the defendants herein were defendants. It has no knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 8.

9. It denies that it at any time refused to perform the terms of said contracts on its part to be performed and says that any failure on its part so to perform was due to and caused by the failure and refusal of the defendants to perform their part of said contracts. It has no knowledge or information sufficient to form a belief as to the other allegations of paragraph 9.

SECOND DEFENSE.

1. On the 30th day of June, 1924, plaintiff brought suit in the Court of Chancery of New Jersey against the defendants herein, wherein, among the other things, it alleged the failure of the defendants to perform the same identical contracts set out in the complaint in this action and fraudu-

lent evasion of representations inducing the said contracts, in the particulars set forth in said complaint; and by reason thereof, it prayed, among other things, for a mandatory injunction requiring the defendants forthwith to remove from the premises of the plaintiff the same identical vessels mentioned in the complaint herein and in defendants' said answer thereto.

2. Defendants defended said Chancery suit and by way of defense set up and attempted to prove the same alleged breaches of said contracts and the same alleged refusals to perform the said contracts as are alleged in the third paragraph of the said counterclaim; and also set up and attempted to prove that the plaintiff, without any justifiable cause or excuse, had abandoned the further performance of said contracts and failed and refused to carry on the same further, as is alleged in the fourth paragraph of said counterclaim; and further that the defendants had fully performed all things by them to be performed in and by the said contracts.

3. The said Chancery suit was prosecuted to final hearing; and said Court of Chancery after final hearing, found and adjudged that the said plaintiff had not broken the said contracts nor refused to perform the same in the respects alleged in said Chancery suit and in the third paragraph of the said counterclaim, and that it had not, without any justifiable cause or excuse, abandoned the further performance of said contracts and failed and refused to carry out the same any further, as set forth in said paragraph 4 of the counterclaim, and that the defendants had not fully performed

all things by them to be performed in and by the said contracts, as alleged in the fifth paragraph of the said counterclaim; and in conformity with said finding and adjudication, on December 30th, 1924, it was by said Court of Chancery ordered, adjudged and decreed as of the 17th day of July, 1924, that said defendants should forthwith and as speedily as possible remove said vessels from plaintiff's plant at Perth Amboy, New Jersey. At the conclusion of the trial of said suit in Chancery, the Vice Chancellor before whom the same was tried announced that the decree of the court would be as abose set forth, and counsel for the defendants thereupon stated in open court that they would remove said vesssels from plaintiff's plant as speedily as possible; and the defendants having thereafter removed said vessels in accordance with their said promise, it was thereupon in and by said decree further ordered, adjudged and decreed that the issuance of the mandatory injunction prayed for in the bill of complaint be suspended and withheld. And in and by said decree it was further ordered, adjudged and decreed that the defendants pay to the complainant the costs of said suit, to be taxed; that execution issue therefor according to the practice of said court, and that there be included in the complainant's taxed bill of costs the sum of $2,500, which by the decree in said suit was fixed and allowed to the complainant as a reasonable and proper counsel fee.

Defendants removed said vessels from plaintiff's premises in obedience to said determination and decree of the said Court of Chancery and pursuant to its promise so to do, and not because of any alleged breach of said contracts by the plaintiff.

Amended Reply and Answer to Counterclaim.

WHEREFORE, plaintiff prays judgment in its favor on defendants' counterclaim.

OBJECTION IN POINT OF LAW.

Defendants in and by their counterclaim have failed to show any right to recover the alleged damages set forth in paragraph 9 thereof, and prior to or at the trial of this action, plaintiff will move to strike out said ninth paragraph.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Plaintiff.

Rejoinder to Amended Reply and Reply to Amended Answer to Counterclaim.

(Filed Jan. 14, 1925.)

NEW JERSEY SUPREME COURT.

PERTH AMBOY DRY DOCK COMPANY, a corporation, Plaintiff, vs. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	Action at Law.

The defendants, by way of rejoinder to the amended reply, say:

FIRST REJOINDER TO SECOND REPLY.

They deny the truth of the matters in the said reply alleged.

SECOND REJOINDER TO SECOND REPLY.

The issues in the said suit in Chancery were different from the issues in this action. The Court of Chancery was without jurisdiction to pass upon the questions at issue in this action. The suit in Chancery was heard and decided upon evidence not legal or admissible in this action.

THIRD REJOINDER TO SECOND REPLY.

They object that the said second reply is insufficient in law, and will, at the trial of the action move to strike out the same.

Rejoinder to Amended Reply and Reply to Amended Answer to Counterclaim.

By way of reply to the counterclaim, the defendants say:

FIRST REPLY TO SECOND DEFENSE.

They deny the truth of the matters in the said defense alleged.

SECOND REPLY TO SECOND DEFENSE.

They repeat their second rejoinder to the second reply.

THIRD REPLY TO SECOND DEFENSE.

They object that the said second defense is insufficient in law to answer the counterclaim, and will, at the trial of the action, move to strike out the same.

McCARTER & ENGLISH,
Attorneys for Defendants.

Sur-rejoinder to Defendants' Rejoinder and Rejoinder to Defendants' Reply to Amended Answer to Counterclaim.

(Filed Jan. 15, 1925.)

NEW JERSEY SUPREME COURT.

PERTH AMBOY DRY DOCK COMPANY, a corporation, Plaintiff, vs. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	Action at Law.

The plaintiff, as sur-rejoinder to defendants' rejoinder to amended reply, says that:

1. It denies defendants' second rejoinder to plaintiff's second amended reply.

The plaintiff, as rejoinder to defendants' second reply to plaintiff's second defense to counterclaim, says that:

1. It denies defendants' second reply to plaintiff's second amended defense to defendants' counterclaim.

OBJECTIONS IN POINT OF LAW.

Plaintiff objects to defendants' second rejoinder to plaintiff's second amended reply to defendants'

counterclaim, and to defendants' second reply to plaintiff's second amended defense to defendants' counterclaim, on the ground that the same are and each of them is insufficient in law to bar plaintiff's defense to defendants' counterclaim, and at the trial of the action plaintiff will move to strike out the same.

WALL, HAIGHT, CAREY & HARTPENCE,
Plaintiff's Attorneys.

Postea.

(Filed Jan. 16, 1926.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY.

PERTH AMBOY DRY DOCK COMPANY, a corporation, Plaintiff, v. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	Action at Law.

This case was tried before Hon. Peter F. Daly, Circuit Court Judge, at the Middlesex Circuit, on January 6th, 7th, 8th, 11th, 12th and 13th, 1926.

The jury returned a general verdict against the defendants and in favor of the plaintiff for Nineteen thousand four hundred Dollars ($19,400).

PETER F. DALY,
Circuit Court Judge.

Judgment.

(Filed Jan. 16, 1926)

NEW JERSEY SUPREME COURT.

PERTH AMBOY DRY DOCK COMPANY, a corporation, Plaintiff, vs. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	On Postea. Action at Law.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys.

$19,400.00	
90.87	
19,490.87	

Judgment entered this sixteenth day of January, A. D., nineteen hundred and twenty-six, in favor of plaintiff and against the defendants for the sum of nineteen thousand, four hundred dollars damages and ninety dollars and eighty-seven cents costs.

WM. S. GUMMERE,
C. J.

Notice of Appeal.

(Filed March 23, 1926)

NEW JERSEY SUPREME COURT.

PERTH AMBOY DRY DOCK COMPANY, a corporation, Plaintiff, vs. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	Action at Law.

TAKE NOTICE that the defendants appeal from the whole of the judgment entered in this cause on the sixteenth day of January, 1926, to the Court of Errors and Appeals, on the following grounds:

1. The Court admitted in evidence a certified copy of the Chancery record, Exhibit P-1.

2. The trial Court ruled that any oral agreement which was made to as to time of the completion of the contracts in suit, even though made at the time of the written contract, was admissible in evidence.

3. The Court admitted the following question to the witness Meurer "What will you say as to the time the vessels would be scrapped and the time they remained at the yard of the Perth Amboy Dry Dock Company".

4. The Court admitted the following question to the witness Meurer "What was said?"

5. The Court admitted the following question to the witness Meurer "In making up your estimate, were you in any way influenced by the length of time the vessels were to remain at the plant?"

6. The Court admitted in evidence the letter dated March 3, 1924, Exhibit P-5.

7. The Court admitted in evidence the letter dated March 6, 1924, Exhibit. P-6.

8. The Court refused to strike out, on motion of the defendants' counsel, as not responsive, the following answer to the following question put to the witness Meurer on cross examination: "Q. Can't a beam or a column or something be in shipping size too? A. Mr. Bernard at that time told us that most of those plates would go with the beams intact, left on to them."

9. The Court admitted the following question to the witness Meurer "And this affidavit that was shown to you, to which your attention was directed, it appears that you stated there "and the time the contracts were originally entered into, nothing was stated about manifolds."

10. The Court admitted the following question to the witness, Preacher, "Did he at that time state to you and Mr. Meurer the time within which the vessels would be scrapped and out of the Perth Amboy yard if they were brought there for scrapping?"

11. The Court admitted the following question asked by the plaintiff's counsel on his direct exami-

nation of the witness, Crawford: "You notice in that affidavit he says: 'I was employed to assist Mr. Bernard in and about the scrapping of two vessels being scrapped at the yard of the Perth Amboy Dry Dock Company, but I left the Perth Amboy yard and went to the Staten Island Shipyard, where other vessels of the defendant were being scrapped, sometime before the work which caused the accident resulting in the flooding of the Philippines.' You know that he made an affidavit to that effect, don't you?"

12. The Court admitted the following question to the witness, Peterson: "What did Mr. Bernard say to you when he introduced you to him?"

13. The Court admitted the following question to the witness, Preacher: "I mean this: Did Mr. Bernard tell you who Mr. Williams was and what he was going to do, and so forth?"

14. The Court admitted the following question to the witness, Preacher: "What was the conversation?"

15. The Court admitted the following question to the witness, Dendel: "Assuming that the 'Black Arrow' was 409½ feet long, 52.8 feet wide, 28 feet deep, and 8,000 tons dead weight, 602 gross tons, 3657 tons net, and that she lay alongside the pier which I have indicated on that map by the words 'BA', and which you saw a few days ago, and that the busiest time of the Perth Amboy Dry Dock Company is from April until November, what in your judgment is a fair and reasonable price for the wharfage of that vessel from April 1st to August, 1924?"

16. The Court admitted the following question to the witness, Dendel: "Now, I will put to you exactly the same question that I put to you in the respect of the 'Black Arrow' that I will ask you to assume that the 'Phillipines' was 500 feet long, 62 feet wide, had a depth of 34½ feet, net tonnage 7305, gross tonnage 11440, and dead weight tonnage of 13000."

17. The Court overruled the following question to the witness, Dendel: "Of course, I concede that; but isn't it a fact that the person—or, that I could find, as a matter of fact, a person whose idea of a fair and reasonable charge would be vastly less, at Perth Amboy, or along Staten Island Sound, than I could in the North River opposite New York City?"

18. The Court admitted the following question to the witness, Dendel: "Were the ship repair and dry dock yards in New York harbor, and we include in that Perth Amboy and Staten Island Sound, in a position where one could charge more for a repair job than the other could, in say the last three or four years?"

19. The Court denied the motions of the defendants' counsel to strike out the answers of the witness, Dendel, to the effect that $125 a day was a reasonable charge for wharfage for the S.S. "Philippines" and the same amount was a reasonable amount for the wharfage for the S.S. "Black Arrow."

20. The Court admitted the following question to the witness. Bonnett: "You never saw them.

Now, tell us the truth, please, that the 'Black Arrow' was a vessel 409½ feet long, 52.8 feet wide, 28 feet deep, with a dead weight tonnage of 8000 tons, gross tonnage of 6022 tons, net tonnage of 3657; and the 'Philippines' was a vessel 500 feet long, 62 feet wide, 34 feet deep, dead weight tonnage of 13,000 tons, gross weight tonnage of 11440, net tonnage 7305; and that those two vessels lay from April until August, 1924, at the places I have indicated on that map—namely, those that I have marked 'BA' and 'P'—and that the busiest time of the Perth Amboy Dry Dock Company for its ordinary work is from the first of April until November—and basing your answer on what you know, what you have charged yourself for the wharfage of vessels under conditions which I have mentioned, and what you know is charged generally throughout New York harbor for these same conditions, for wharfage for those same conditions, what would be a reasonable and a fair charge for the wharfage or berthage of the 'Philippines' and the 'Black Arrow' at the two piers of the Perth Amboy Dry Dock Company that I have indicated to you for the period from April 1 to August."

21. The Court admitted the following question to the witness Peterson: "What was the conversation?"

22. The Court permitted the witness Connors to testify to statements by Mr. Williams.

23. The Court permitted the witness Campbell to testify to statements by Mr. Williams.

24. The Court admitted the following question to the witness Goggin: "At the time that you were

employed did Mr. Morny say anything to you as to how long the job would last?"

25. The Court permitted the following question to the witness Patten: "What was the conversation you had with Mr. Bernard."

26. The Court permitted the following question to the witness Snedeker: "During that conference, did Mr. Crawford say anything as to the time these vessels would be at the plant?"

27. The Court permitted the following question to the witness Snedeker: "What did he say?"

28. The Court permitted the following question to the witness Snedeker: "In what way—why did it influence you?"

29. The Court permitted the following question to the witness Snedeker: "On the dock at which the 'Philippines' lay what had been the company's regular charge for the use of the derrick?"

30. The Court permitted the following question to the witness Snedeker: "How much do you charge for the use of that locomotive crane?"

31. The Court permitted the following question to the witness Snedeker: "Mr. Snedeker, when the offer was taken down by Mr. Meurer to Mr. Crawford, before the question of the compensation insurance arose, did Mr. Meurer tell you whether or not there had been any representations made to him as to the time the vessels were to remain in the plant?"

32. The Court overruled the defendants' motion for a non-suit on the first count.

33. The Court overruled the defendants' motion for a non-suit on the second count.

34. The Court overruled the defendants' motion for a non-suit on the count on which the plaintiff claimed for unpaid labor in connection with scrapping.

35. The Court overruled the defendants' motion for a non-suit on the seventh count.

36. The Court overruled the following question to the witness Nicol: "Now, does this book, this last book, show the amount of expenditure in preparing the plant where those ships are being scrapped for scrapping?"

37. The Court overruled the following offer of proof on the part of the defendants: "Mr. McCarter: Now, if your Honor please, in order that the full effect of your Honor's ruling may be plain on the record, and in order that in your Honor's own words, I may have an exception sufficiently broad enough to embody that, I wish to say that I offer to prove that the plaintiff refused to permit any part of either vessel below the superstructure to be cut up into charging box sizes. That in order to produce a marketable article, to scrap the ships in the ordinary course of trade done for the market, it was necessary to cut them up into charging box sizes; that as a result of such refusal of the plaintiff, the defendants were themselves forced to complete the scrapping of the ships, which caused the

scrapping of the ships to be much more expensive to the defendants than the contract prices payable by the defendants to the plaintiff, and I offer to prove what that expense amounts to."

38. The Court overruled the following question to the witness Mason: "How long did it take you to scrap her?"

39. The Court overruled the following question to the witness, Crawford: "I did not so much mean what was his past life, but who was he in connection with you, and on this job?"

40. The Court overruled the following question to the witness Morny: "What were they?"

41. The Court overruled the following question to the witness Morny: "What was the rate quoted by Downey to begin with?"

42. The Court overruled the following question to the witness Morny: "What was the rate at Port Johnson?"

43. The Court admitted in evidence the letter dated May 14, 1924, Exhibit P-33.

44. The Court permitted the plaintiff's counsel in his cross-examination of the witness Morny, to read from the letter of March 28, 1924.

45. The Court admitted the following question to the witness Morny: "Now, will you tell us why you didn't reply to that letter and state that there was no such proposition that had been made by you, until May 5th?"

46. The Court refused, although requested by the defendants' Counsel, to charge the jury as follows: "There is no evidence in the case from which you can find that the two vessels in question remained at the plaintiff's yards more than a reasonable time."

47. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover anything under its claim for berthing the two vessels in question."

48. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "There is no evidence that the defendants have neglected and refused to pay the plaintiff any moneys expended by and due to the plaintiff for labor in and about the scrapping of the vessels in question."

49. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: 'The plaintiff is not entitled to recover any damages under its claim for unpaid labor in and about the scrapping of the vessels in question."

50. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'deductions for labor in handling tanks'."

51. The Court refused, although requested by the defendants' counsel, to charge the jury as fol-

lows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'labor lost on account of lack of manifold'."

52. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'labor on account of lack of air'."

53. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'miscellaneous labor ordered by Bernard'."

54. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'labor lost on account of crane off track'."

55. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'labor making wrenches'."

56. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'labor on steam line'."

57. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'use of steam, 19½ hours, $117'."

58. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as 'use of air pump'."

59. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff, in support of its claim for the various items enumerated on Exhibit P-15, has the burden of establishing, and before it is entitled to recover any part of any of such items, must establish, by the preponderance of the evidence that the labor claimed was actually performed, and that it was such labor as, under the contracts in suit, would entitle the plaintiff to require the defendants to reimburse the plaintiff therefor."

60. The Court, although requested by the defendants' counsel, refused to charge the jury as follows: "The plaintiff is not entitled to recover any part of the amount claimed by it under the fourth count."

61. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the amount claimed by it under the fifth count."

62. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the amount claimed by it under the sixth count."

63. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff is not entitled to recover any part of the amount claimed by it under the seventh count."

64. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "In deciding what is a reasonable time in which both ships should be completely scrapped, you must bear in mind that the contracts between the parties put no limit except that of reasonableness upon the sizes of the pieces into which the vessels were to be cut, and that the defendants had the right to require as much of the ships to be cut into charging box sizes as the ordinary course of trade done for the market required."

65. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The contracts between the parties do not require the boilers to be removed intact, instead of being cut up, and you must bear this in mind in deciding what is a reasonable time in which the ships should be completely scrapped."

66. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "There is no competent evidence on which you can award the plaintiff more than nominal

damages on the claim for use of piers, upland and wharfage space."

67. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "The plaintiff has not established by the preponderance of the evidence that the labor claimed to have been performed and for which the plaintiff is asking reimbursement was in fact performed or was such labor as under the contracts in suit would entitle the plaintiff to require the defendants to reimburse the plaintiff therefor."

68. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "It is established by the evidence that it would have been impossible for the 'Philippines' and 'Black Arrow' to have been completely scrapped at the plaintiff's plant within the period of three months."

69. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: 'The plaintiff has failed to establish by the preponderance of the evidence that the two ships 'Black Arrow' and 'Philippines' could with reasonable diligence, have been completely scrapped at the plaintiff's plant within a period of three months."

70. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "You cannot find the defendants liable to pay for the sum claimed for salvaging the 'Philippines' unless you find there was some negligence by persons who were employees of the defendants."

71. The Court refused, although requested by the defendants' counsel, to charge the jury as follows: "If you believe that the fall of the pipe which broke the sea-cock that caused the flooding of the 'Philippines' was due to the breaking of a rope rather than to the dropping the pipe, as testified to by the plaintiff's witnesses, then you must find the defendants not liable to pay the sum claimed for salvaging that ship."

68. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "Every matter of law, or of fact, which was litigated and determined in the chancery suit between the parties to this action was there finally and forever settled, for all purposes, and cannot be litigated or disputed by either party in this action."

69. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "In the chancery suit, it was determined that Bernard was the defendants' agent and that they were bound by his actions. That determination is binding upon the Court and jury in this action."

70. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "In the chancery suit, it was finally and for all purposes determined that the work of scrapping the ships was stopped because of the fault and wrongful conduct of defendants and that by reason thereof, the presence of the ships on plaintiff's premises became wrongful, injurious to plaintiff's business, and a nuisance from which plaintiff was entitled to be relieved. That determination is binding upon this Court and jury."

71. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "In the chancery suit, it was finally and for all purposes determined that the work of scrapping the ships was not stopped by any wrongful act or conduct of the plaintiff and that determination is binding upon this Court and jury."

72. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "Because of the findings and determinations in favor of the plaintiff in the chancery suit, you must find that at the time of bringing the chancery suit, to wit, July 2, 1924, defendants' ships were wrongfully and unlawfully upon plaintiff's premises because of the wrongful and unlawful conduct of defendants, and you must determine defendants' damages therefor."

73. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "In ascertaining the damages of plaintiff arising out of the unlawful presence of defendants' ships upon its premises, you must determine two things. First, what was a reasonable time for the scrapping of the ships and when that reasonable time terminated. Second, what sum constitutes reasonable compensation for the wharfage made necessary because of the presence of the ships upon plaintiff's premises after the expiration of the reasonable time until the date of their removal."

74. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "In determining what was a reasonable time for scrapping the ships you are to consider all the evidence bearing upon that subject including any and all representa-

tions and admissions of the defendants and their agents as to the time the ships would be on plaintiff's premises."

75. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "The plaintiff let to defendants the use of its plant, to the extent only provided for in the contracts for scrapping the ships. The work of scrapping and the manner of doing the same was under the supervission and control of defendants."

76. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "By the terms of the contracts, defendants were required to reimburse the plaintiff for expenditures made by it for labor used in scrapping the ships. Defendants are also bound to pay the plaintiff a reasonable price for those things, such as steam, the use of pumps, and other things and implements, if any, which it was not required by the contracts to furnish, but which it did furnish and which defendants ordered or accepted. If you find that defendants have not reimbursed plaintiff for expenditures made by it for labor properly used in scrapping the ships, or that defendant has not paid plaintiff a reasonable price for steam, the use of pumps and other things ordered by defendants or accepted and used by them in scrapping said ships, then you should include in your verdict a proper amount to reimburse plaintiff for labor so paid for by it and not repaid by defendants, and also a proper amount for the reasonable price of the steam and other things including the use of implements, if any, which defendants ordered or accepted and used in connection with the scrapping of the ships."

77. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "Plaintiff was not required by the contracts to furnish manifolds. The deductions made by defendants from plaintiff's bills for labor for handling tanks, for labor used because of lack of manifolds and for labor used in repairing tools were improper, and plaintiff is entitled to recover the amount of these deductions. Plaintiff is also entitled to recover for the use of its pumps in pumping out the vessels, and for the steam supplied for their operations. That is true, with the exception so far as the removal of the tanks and labor that under the written contract it was clearly their duty to furnish, such tanks as were used and known to the defendants, were used by the plaintiff as part of the plant which the plaintiff rented to the defendant, or which uses it let the defendant have."

78. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "By reason of the findings and determinations of the Court of Chancery there can be no recovery by defendants on their counterclaim."

79. The Court, at the request of counsel for the plaintiff, charged the jury as follows: "By reason of the findings and determinations of the Court of Chancery, the alleged breaches of the contracts by plaintiff are disproved and they constitute no defence to plaintiff's action in this court."

80. The Court charged the jury as follows: "As I have already charged you, whatever that Court of Chancery held, as a matter of law, or as a matter of finding of fact, is conclusive upon us in the determination of this case".

Notice of Appeal.

81. The Court charged the jury as follows: "That Court of Chancery found, among other things, as I have already charged you in the requests to charge, that Bernard was not only the supervisor of the defendants in the prosecution of the work of scrapping the vessels, but he was also their agent and representative in the preliminaries which led up to the making of the contract, and as the Vice Chancellor stated in his opinion, when he spoke to the plaintiffs, or the plaintiff's representative, it was with just the same effect as though Mr. Crawford himself has spoken."

82. The Court charged the jury as follows: "If you find that a reasonable time in which this work was to be done was such or such a date prior to July 2nd, when, the Vice Chancellor says, those vessels had no right to any longer continue there, if it is any time prior to July 2nd, then the plaintiff is entitled to compensation for the damages and loss that he suffered, as I will explain it to you, for the time that those vessels were kept there beyond what was a reasonable time in which the defendants should have completed the job of scrapping those vessels."

83. The Court charged the jury as follows: "But if you find that they should have completed their task, from the standpoint of what was reasonable time, on a date before July 2nd, then you are to consider what was a reasonable charge, or what was the reasonable value of the use of the wharf, of the piers, upland, and wharfage space which they continued to use after a reasonable time."

84. The Court charge the jury as follows: "Then there is another item charged by the plain-

tiff and that is that when they presented their pay rolls to the defendants, that the defendants struck out some of the items which the plaintiff paid. You will remember that under the terms of the contract, the plaintiff was to furnish the man power, which man power was to be under the supervision of Mr. Bernard, and they were to present their pay rolls weekly to the defendant, and the defendant was to reimburse them for such pay rolls. It is claimed that when they presented these pay rolls that the defendants struck out some of the money which they had paid, and improperly struck that out, and if you find that is so, according to the terms of this contract, that they had no right to do that, of course, the plaintiff is entitled to be reimbursed for that."

85. The Court charged the jury as follows: "As to July 2nd, 1924, that I have mentioned, that was the date on which the Chancery proceedings started, and, of course, the decree held that that proceedings was justified, but, if you find at all that there was unreasonableness on the part of the defendant in the time it took in keeping the vessels there, then from the time you find unreasonableness began, until the time the vessels were removed, the plaintiff would be entitled to compensation."

Yours respectfully,

McCarter & English,
Attorneys of Defendants.

To:

Messrs. Wall, Haight, Carey & Hartpence,
Attorneys of Plaintiff.

Case.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT.

December Term, 1925.

PERTH AMBOY DRY DOCK CO.

vs.

HARDEN L. CRAWFORD, *et al.*, as H. L. CRAWFORD & CO.

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the sixth day of January, A. D. 1925, at 10 A. M.

APPEARANCES:

Messrs. WALL, HAIGHT, CAREY & HARTPENCE. William H. Carey, Esq., Thomas G. Haight, Esq., John E. Toolan, Esq., Counsel for Plaintiff.

Messrs. MCCARTER & ENGLISH. George McCarter, Esq., Clifford I. Voorhees, Esq., Parker Silzer, Esq., Counsel for Defendants.

A jury being empanelled and found satisfactory they were sworn.

Mr. Haight opens the case for the Plaintiff.

Mr. McCarter opens the case for the Defendant.

Mr. Haight: I offer in evidence a Certified copy of the record in the Court of Chancery consisting of the Bill, the Answering Affidavit of the Defendant, which by stipulation in the chancery suit or constituted the Answer, a stipulation between the parties as to the Amendment of the Complaint, in accordance to the directions of the Vice-chancellor, and as to the Answering Affidavits being considered to be the Answer, the opinion of Vice-Chancellor Backes, the decree of the Court of Chancery, the Decision of Appeal, and the Remittitur of Affirmance by the Court of Errors and Appeals.

Mr. McCarter: I object on several grounds: In the first place an inspection of the record in that case, by comparison with the record in this case, will show the issues were entirely different.

In the second place, because the decree of the Court of Chancery was entered after the commencement of this action, and it is not pleaded by way of a supplemental answer, but it is pleaded in bar of the action, as if it were something arising prior to the commencement of this action.

Referring to the first ground, of course, it is obvious that a record of another case between the parties is admissible only if it is conclusive. In other words, it must be on the grounds of res adjudicata.

Your Honor has not inspected the record in that case but I can tell you very briefly from Vice-Chancellor Backes' opinion in that case what the issues in that case were, as he saw them.

Mr. Haight: I suppose the issues are those created by the pleadings. The matters decided are those decided by the court, or those which must necessarily have been decided by the court. I do

not want to interrupt Mr. McCarter, but I make that suggestion.

Mr. McCarter: Rather than reading the pleadings to your Honor, I am reading a summary of the issues by the Judge who decided that case. He says in the first place: "The bill does not plead the cause made by the proofs, and must be remoulded from one setting up so-called two contracts contemporaneously, written and oral contracts, to one charging representations inducing the written contract, and fraudulent evasion of representations." That is the amended plea. There was never any amendment filed, but this is the amended plea on which Vice-Chancellor Backes made his decree, and by stipulation in the cause the plea was admitted or the bill was demitted to be amended in that form, although no amended bill was ever filed. Now, stop right there. The complaint in this case charges exactly what Vice-Chancellor Backes says the complaint must be amended away from in that case. The complaint in this case charges two contracts, partially written and partially oral. That is the first difference between the pleadings in that case and the pleadings in this case. The equity suit was decided on that ground, in Vice-Chancellor Backes' expressed words, although at law the evidence would not be admissible he would in equity admit evidence of representations made before and concurrently with the execution of the written contracts. As I say the complaint in this case goes right back to what the bill of complaint was amended away from in Vice-Chancellor Backes' case; and in this case he said also this: "When two parties enter into a written agreement the law says they are bound by the written agreement, but equity says you are not

bound by the written agreement if the agreement was procured by false representations made to induce the contract, or where represenations are not false, but are thereafter violated, in other words, fraudulent conduct in the execution of the contract. He admitted certain evidence on that theory, and decided the case on that theory. Now, in this case the issues are not framed on that theory, very probably because they realized the force of Vice-Chancellor Backes' opinion that it could not be done. That is difference number one.

That difference number one goes all through the case. There was no answer filed in that case but by stipulation answering affidavits were allowed to stand as the answer. The answering affidavits were directed solely and exactly to that issue, and the case was tried out whether certain oral statements made by this man Bernard—your Honor will find all that by inspecting the record, that is why I have a right to read it—were admissible in evidence, binding upon these defendants, and he held that such was the fact and went ahead on that basis.

The second reason why the issues are different is that the relief demanded, the cause of action is entirely different. They did include in their pleadings there a claim for these damages for the sinking of the "Philippine" but that was ruled out by the Vice Chancellor, and the sole question before him was, as he said, the question of whether the continuation of these vessels in that plant constituted what he said was a nuisance. He said their presence there now is a nuisance and I will order their removal. That issue being so narrow, it is not the same issue which is before the court now, and it cannot be used by this court to bar or conclude the issues here in any

way. I can refer you to two cases in support of that. In the first place I refer your Honor to the case of Logan vs. Flattau, 73 Equity, pg. 222, a decision by Vice Chancellor Bergen. That was a suit for specific performance by a purchaser who knew that the vendor could not remove the encumbrances.

(Citing from case.)

Now, they held that we are not aggrieved because the ships had been moved already. If this decree could have been of any conclusive force and effect or any force and effect whatever in this case, then we must have been aggrieved. If the only bearing that decree had was on the removal of the ships, which was an accomplished fact already, then, of course, we were not aggrieved and that is the necessary effect of the Court of Errors and Appeals' decision.

Now, to show how that is, I will cite to your Honor another case, a very recent decision of the Court of Errors and Appeals, the case of Fellmesser v. Lemberger, 127 Atlantic, page 815.

(Citing case.)

I submit, therefore, if your Honor please, that this record now offered in evidence, being although between the same parties on different issues, on matters which the Court deciding it so far as they referred to this court, had no jurisdiction, must be excluded.

Mr. Haight: I think, if your Honor please, that we might as well go into this thing quite thoroughly at this time because the question is going to arise undoubtedly in several phases.

I might state at the outset that Mr. McCarter's idea seems to be that nothing that the Court of Chancery decided in this case is of any effect or bear-

ing upon this case. That would be a very strange doctrine and one startling, I think, when it is considered that the subject matter of the two suits were exactly the same, namely, these vessels and the contracts under which they came into our plant.

Now, let us see whether the issues in that case and the questions that were decided in that case or in any respect, because if they are in any respect the same, the record is admissible. In that case we alleged in our bill of complaint that there were two contracts, both of which were partly written and partly oral. The written part was represented by these two letters, written by business men without regard to technicalities of any kind, legal technicalities of any kind. We said that those papers were not on their faces completed because they did not show two material factors, namely, the time that the vessels were to be at our plant and the method in which they were to be cut up, and as Vice-Chancellor Backes tells, when your Honor comes to read his opinion, you will see the parties must have contemplated some time within which the vessels were to be removed from the plant and the way in which they were to be cut up, because in the way in which they were to be cut up depended the amount of gas and air we would be required to furnish, and that was a very expensive proposition; and the time when they were to come out of our plant must have been contemplated because it could not be presumed that an active ship-building plant was going to have two of his best docks tied up.

That is what Vice-Chancellor Backes said. He said, I won't consider those oral representations that I found were made as part of the contract, but I will consider them as representation inducing the contract, and I will consider that the contract

stands, just the written part, and the others as representations inducing the contract, and I will grant relief on that basis. Now, then, Mr. McCarter is wrong in stating—

The Court: Did he hold that as to both of the questions which you suggest, the one as to the time of completion of the work and the other as to the sizes that the cut-up pieces were to be?

Mr. Haight: Yes, sir. He held in addition that as to the time it was not necessary that there should be any stipulation in this contract, because the law would provide a stipulation of reasonable time, and he held in effect that the reasonable time, as I understand it, was the time that the parties had agreed upon. Now, Mr. McCarter is wrong in stating—

The Court: I don't quite understand that.

Mr. Haight: If I don't make anything clear, I wish that your Honor will interrupt me.

The Court: If he held that that was a representation inducing the contract and also held that the law itself fixed the time on the basis of what was a reasonable time to do the work, then just what did he hold?

Mr. Haight: This is what he said, page 409.

(Citing case.)

Then he goes ahead and discusses the representations.

I think that his decision was based eventually on the two things, both the reasonable time and the representations. Now, we did plead in the bill of complaints alternatively that this was a contract which was to be performed within a reasonable time, and also that it was to be a contract, which by specific agreement was to be performed within

three months. Now, what the Vice-Chancellor held was that he wasn't going to say that those contracts were not complete on their face, but he said there were representations and the bill would have to be amended to make out a cause of action based upon these written contracts, plus oral representations. Now, then, Mr. McCarter is wrong in stating that we did not plead in this case the very kind of contracts that the Vice-Chancellor held he would adjudicate to be the contracts in the case, because in the second and third counts, I have forgotten which it is now, we allege exactly that contract; and we allege these contracts in the alternative in order to be on the perfectly safe side, whatever it should be determined by this court was the proper way to proceed.

Now, if your Honor will turn to the second count you will see that we allege, number 1, the written contract and nothing but the written contract.

The Court: The second count?

Mr. Haight: Yes.

The Court: I have it. In the amended complaint?

Mr. Haight: Yes, Now, take the second page of that, the first part, the first paragraph alleges nothing but the written contract. The second allegation is the allegation number 2 of the first count, which reads as follows: "That the vessels were brought to the plant at a certain time." And then the third paragraph of the second count, we say, "it became the defendant's duty under the said contracts to complete the scrapping of the said vessels within a reasonable time after the same were brought to the plaintiff's plant as aforesaid." And then we allege, in paragraph 5 (reading from pleadings).

So, under that count there is made the exact contract that the Vice-Chancellor found to be the contract between the parties in this case.

Now, the issues in that case so far as that count was concerned were identical with the issues in this case. Crawford & Company there made exactly the same statements, and exactly the same claims, and produced exactly the same testimony, as Mr. McCarter in his opening to this jury stated that they intended to prove in this case. And your Honor will find that is the situation of who are responsible for the sinking of the "Philippines" and possibly as to what damages we are entitled to, because the vessels remained there beyond a reasonable time, that the Vice-Chancellor has disposed, that are directly in his opinion, or must have disposed in order to have decided the case in regard to the fundamental principle of equity, every question that is in this case now with the exception of those that I have mentioned and possibly the question of what was a reasonable time.

Now, as to the extent which the doctrine of res adjudicata goes and in its effect on subsequent hearing, let me read you from one or two cases in this state. Take the City of Paterson against Baker, which has been approved by the Court of Errors and Appeals in subsequent cases.

(Citing case.)

Mr. Haight: There are two different situations in which a prior judgment can be set up; one is between the same parties in the same cause of action, and the other between the same parties and a different cause of action. As to the first, this is what Vice-Chancellor Van Fleet says is the rule (reading).

In this particular case Vice Chancellor Van Fleet was dealing with,—Mr. Carey asked me to make it clear again, there was a suit at law, the judgment in the suit at law was pleaded in the equity suit, which sought an entirely different remedy than was sought in the action at law. There is simply a reversal of the situation presented in this case. Therefore, I do not think I need to go further than to read what Vice Chancellor Van Fleet says, having been approved, as it has, by the Court of Errors so recently.

We have the same parties in this case. I am not so sure that we have not the same cause of action in this case, but we certainly have the same subject matter as was present in the other case, namely, the vessels, the question as to whether or not they were properly or improperly in our plant at the time we went to the Court of Equity for relief. The question of whether or not we were at fault, or they were at fault, who was responsible for the conditions which found our plant tied up by these vessels and only partially scrapped. The same subject matter, the same questions are presented in this case, and under all of the authorities from the time of Chief Justice Shaw down to the present time, that question determined by the Court of Chancery, whether rightly or wrongly, has been set at rest forever. Now, that is the law.

Mr. McCarter says that we could not show, in law, fraudulent representations. Well, his own belief in the Court of Errors was to the contrary. Of course, we can show fraudulent representations in an action for deceit, but we have not pleaded an action for deceit in this particular case; I am very frank to say to your Honor the reason why we did not plead an action of deceit was because when

those pleadings were drawn and the amended pleadings were drawn I was not as familiar with the law of res adjudicata as I am at the present time. We have not pleaded deceit, so far as the cutting up of the vessel is concerned, but we have pleaded exactly what Vice Chancellor Backes found was this contract, namely, that it was a contract for the use of our plant for a reasonable time. Then we will endeavor to show to the jury that reasonable time was contemporaneous with the expiration of three months.

He has referred to the opinion of the Court of Errors and Appeals. It makes no difference upon what ground the Court of Errors and Appeals based their decision. The fact is that the judgment upon which we rely stands of record unreversed; that is what the cases say; and the determinations made by that court stand unreversed. Now, this is what happened: I do not know whether it was designedly, or whether it was not designedly; when the Vice Chancellor announced his conclusions, and he did not take any time to decide this case, because the minute they got through summing up the case, he decided it and announced his reasons; he said, "Come before me in Trenton tomorrow and fix the decree," something or other to that effect, wasn't it? At any rate we went down there to fix the decree, and they expressed themselves as willing to remove those vessels out of there, and he said, "All right, go ahead, and I will not make the decree." At that particular time Mr. Carey who tried the case in the Court of Chancery, was going away on his vacation; the very day that had been fixed for the trial, we having applied for a preliminary injunction, I was going over to try to make the Amer-

ican Bar Association make a good impression upon the Bar of England, and although I had prepared the papers in the preliminary injunction, I could not be present at the trial; and when I came back we amended the pleadings, and immediately applied for the settlement of a decree. Mr. McCarter was then over in Europe chasing the Gould millions, representing some of the Gould Estate, and he did not get back until the middle of October and, of course, we did not quash the settlement of the decree then. The question of the settlement of the decree came up, and he objected, they having removed the vessels out of the plant, they should not have a decree which would be res adjudicata against them in this action, which had been brought immediately after the equity action was finished. Well, the Vice Chancellor said he would hold the decree open. Then they filed their answer and in the answer they attempted to justify their actions, to put in a counterclaim against us on the very same claims or the very same contentions that they had raised in the Court of Chancery, and which had been decided against them; and then I went to Vice Chancellor Backes and I said, "Under this situation, aren't we entitled to a decree?" And he said, "Yes." And he signed the decree, not a decree of the time it was signed, but as your Honor will see, it is on this 30th day of December, 1924, as of the 17th day of July, 1924, that was the day that he pronounced his judgment in this case.

The Court: What was the decree?

Mr. Haight: The decree was that they remove the vessels. (Reading decree.)

That was all the relief we asked for in there, except the question of the assessment of damages,

and that I understand there was no evidence offered on whatsoever and it was not, manifestly, a proper thing for the court to decide.

I thought I stated at Trenton, they said the next morning, "We will remove them."

This decision of Vice Chancellor Backes, Mr. Carey asked me to call your Honor's attention to this, as a specific answer to Mr. McCarter's proposition that there was a difference between the two actions: "The only difference between the suit in equity decided in the action at law pending is the form of the remedy and the nature of the relief. (Reading.)

I think there can be no question, if your Honor please, that every question that was litigated in that case, which your Honor can find litigated and determined, either directly or by necessary inference, is set at rest for all time between these parties, in reference to the same subject matter. That is unquestionably the rule of law, and it is a rule of law of ancient origin and of sound foundation, and that is what there is in this case. I intend, so far as the time in which these contracts were to have been performed, that is to say, the time those vessels were to have been removed, to rely upon what Vice Chancellor Backes has held, namely, that the contract was the written contract plus the legal incident of reasonableness, and then I will offer evidence to show what was reasonable time, and the jury will be asked to assess damages from the expiration of the reasonable time to the time these vessels were taken out of the complainant's plant.

As to the other question as to whether or not we can recover any damages or not recover any damages, if we amend our complaint on the basis of the

difference between the cost of cutting and shipping sizes, if our contention regarding the effect of Vice Chancellor Backes' decree in other respects is correct, then we cannot contend that in this case.

Mr. McCarter: Just a few words in reply. I have not and do not intend to take your Honor's time in establishing to your Honor the principle which, of course, you know that any fact which has been decided between the parties, and decided by judgment or decree, is conclusive between them. I would not be here contending that if the real true effect of Vice Chancellor Backes' decree was that there were certain representations made, and that those representations were false, and that by reason of those false representations we must remove the ships, that if that were his decree, and Judge Haight were here in an action for deceit claiming adamages on those same representations, I would not be on my feet urging that the findings of those representations already to have been made, and to have been false, would not be binding on us here.

But where I want to lay my emphasis, and what I tried to do before is simply on this point, to narrow it down to this case: namely, that what was decided in that other case is something different from what is here, and that what we are trying to do here is something not only beyond the jurisdiction of that court to decide, but that which he expressly said would have to be decided differently in this court.

Thirdly, that the necessary meaning of the opinion of the Court of Errors and Appeals is exactly as I say, as to the effect of that decree in this suit. Let me take up that last:

At the conclusion of the argument before Vice Chancellor Backes he said this: "It may be that after both sides have considered the view I have ex-

pressed, they can arrive at some amicable arrangement. The only thing for me to do now is to fix the time within which the boats are to be removed. Counsel may appear before me 10 o'clock tomorrow morning at Trenton, unless they can agree upon the time." All right. Pursuant to that information Mr. Carey, I think, and I, did appear the next morning before Vice Chancellor Backes at Trenton and I said on behalf of my client that we would remove the vessels. That was in the middle of July and the vessels were removed by the 2nd of August, long before any delay in my return from Europe was material, because we were all of us still on our vacations on the 2nd of August. This action was then started and Mr. Carey made application to Vice Chancellor Backes to enter a decree. I opposed it on the ground that there was nothing for the decree to operate on, and I said the only reason now why they should have a decree is that they will want to use it,—I did not say it would be—I said they will want to use it in some way to conclude us in the action at law, and Vice Chancellor Backes refused to make the decree. Subsequently, I might say without offence to Mr. Carey, apparently more Silver-tongued Judge Haight renewed the application, the decree in question was made, and as your Honor very aptly asked, what does that decree do. And this is what it does: After the usual recital, it simply adjudges and decrees on this 13th of December, as of the 17th of July, 1924, it adjudges and decrees that the defendants forthwith and as speedily as possible remove the said vessels referred to in the bill of complaint, and counsel for the defendant having announced in open court that the defendants would remove the said vessels from the said plant as

speedily as possible, therefore, ordered and decreed that the mandatory judgment be stayed.

Well, now, these vessels have been out for six months, and that is the decree that I took an appeal from, and, of course, the only reason I let my client spend the money to print the record of this court, the decision was we weren't aggrieved because the boats were out.

But the necessary implication from that opinion of the Court of Errors in this particular case is that the only effect of that decree can be on what had already happened; namely, to remove the boats that were out.

The Court: If the Court of Errors and Appeals were negative in their conclusion, as to whether they were negative on that point, it leaves the Vice Chancellor's decrees as finally held so far as the questions already raised.

Mr. McCarter: No doubt, your Honor.

The Court: I don't understand, Mr. McCarter, what you mean that they didn't decide your appeal.

Mr. McCarter: The question you have got to decide here is the effect and meaning of the Vice Chancellor's decree. Had there been no appeal taken that decree would have had the effect it is entitled to under the doctrine of res adjudicata. Now, I am simply arguing to you and citing to you authorities and arguing to you reasons to show what is the limited effect of Vice Chancellor Backes' decree. I say if the Court of Errors say we weren't aggrieved by that decree then necessarily the only effect that decree would have is on those facts which were already ancient history and had already been done; namely, the boats were out; because if this decree could be used against the action of law I

still had a grievance. My clients still had some ground of appeal, some reason of complaint.

Now, I don't say that Vice Chancellor Backes' decree is ineffective. Why, no, it stands firm. But I say this; it stands firm because we had no standing to complain, we weren't aggrieved, and, of course, only a person aggrieved can appeal.

Now, in looking at the decree and in looking at the authorities to determine what should be the effect of that decree, I cited to you the opinion of the Court of Errors and Appeals not on the doctrine of res adjudicata but simply as an authority, because it is on these very facts, and I say that the effect of that opinion must be because it can only be that our reason for not being aggrieved is because the decree had fully operated.

There was nothing else left for it to operate on, and you see, therefore, the necessary result of that is that they cannot use it to hamper us in the case still pending because if that were the case we would be aggrieved and the Court of Appeals would be forced to consider the ground I urge against the validity of Vice Chancellor Backes' decision.

The Court of Errors and Appeals has never passed on the validity of Vice-Chancellor Backes' decision. Now, we are going to raise all that so far as it can be brought into this case.

My next point is that those things cannot be brought into this case, and you will, therefore, have to look at Vice-Chancellor Backes' opinion, and I want to read to you some parts of that. Now, in the first place he says this. I am reading on page 409 about the middle.

(Citing case.)

As to those two items—that is the time and the method of scrapping—as to these two items, which

have become very important in the case, the contract must be read in the light of what the law says. And what does the law say? That the Dry Dock Company and the defendants agreed, understood that the work was to be done within a reasonable time, and in the ordinary course of trade open for the market.

(Reading case.)

I am prepared to stand flatly, and squarely on that, namely, in this court both parties are absolutely bound by those written contracts, and that the meaning of those contracts which you will have to tell the jury is that the time within which the boats were to be scrapped is a reasonable time, which they will have to find under the evidence, and the method by which they were to be scrapped was in the ordinary course of trade open for the market, and we will adduce evidence tending to show, which we believe will convince the Court and jury, that they required so much of the boats as was necessary to be cut-up into what we call "charging box sizes." Now, that is what the meaning of the contract is.

Now, let us go on and see what Vice-Chancellor Backes stated.

(Reading case.)

Now, he goes on to discuss the representations and he decides the case, not as Judge Haight would lead you to believe, on the question of reasonable time, but on the contract representations that he says were made, that he says we were responsible for. And the questions that among others I argued in the Court of Errors and Appeals were those questions; namely, whether these representations as alleged were, in fact, made, whether they were material, and whether they were representations which

in the first place, he had the right to say, and in the second place, which we were bound by, and those are the questions which the Court of Errors and Appeals refused to decide because the boats had been moved.

Now, the effect of Vice-Chancellor Backes' decision, just as it is in so many words, he says that in it at law, those contracts meant those things, and at law you would be limited and bound by that. But he says in equity it is something different. Now, those "something differents" in equity are representations. Now, if this case were one of deceit brought against us on those same alleged representations, it might be that this decree would be *res adjudicata* of those representations having been made and being binding, but when this action—it is an interesting thing that the original unamended complaint has some things about representations in it, but when he amended this complaint he left that out and he relies simply on two counts, one on a contract which he says is both written and oral, and in the second count, on the written contracts, on which he claims the boats were not put out in a reasonable time. Now, that is his case and that is all his case.

Now, he having put himself squarely in the facts that Vice-Chancellor Backes says are not the facts he decides the case on, facts which he says at law the rule would be entirely different, why, he just calmly gets himself right out from under that chancery decree and the case is within those cases which I read to you where the decree of the Court of Chancery, for example, on a point which is beyond the scope of it, beyond the scope of the action at law, is not binding on an action at law. It is like that case of Logan against Flatto that I read to you, and

there are other cases like that. But the principle of *res adjudicata*—I am not taking my time and your time to go into that. It is just as true, and if the facts are these, and if the decree there is right, if the decree in chancery is to be the very affirmance of the things which you look at when you go further, because it is only on going further, your Honor, that you can get any effect on that decree in chancery at all, because that decree, as you can see, is simply for the moving of the boats. Now, that doesn't mean anything in this case, but when Judge Haight, in order to show what the decree was based on, goes into the opinion and you look at the opinion you find that Vice-Chancellor Backes in so many words says that "I am doing something that a court of law can't do."

Now, then, if he wanted to avail himself of some peculiar doctrine of equity and prevent us from recovering something the law can't do, if Vice-Chancellor Backes is right, then his relief is to file a bill to enjoin this action and go where this peculiar and extraordinary doctrine prevails. That is the logical position for him to take. But by the very terms of the chancery decision the law court has got the rule and must act on different evidence then the decree is not binding. Now, the reason it must not be in evidence is because if it is in evidence it is conclusive. The only basis of *res adjudicata* for that being in evidence is *res adjudicata,* and if it is *res adjudicata,* it judges the whole case, and there can be no evidence adduced against it. That is not like a witness form or anything like that, but it either binds or does not bind. If it binds it is conclusive, and there can be no evidence produced in support of our contention in the case. For that reason I go

back at the commencement, because the issues are different, because the facts which we are now seeking to have determined in this face were beyond the jurisdiction of the Court of Chancery to pass on, because the legal questions were beyond the jurisdiction of the Court of Chancery to pass on, because taking Vice-Chancellor Backes' decision at its face value, the evidence on which he could act is evidence which is inadmissible in the action at law, and because the decree relied on was not made until after this case was commenced—for all those reasons I submit that the offer of the record in evidence should be excluded.

And I have one more reason, because a reference to the record offered in evidence will show that the bill of complaint which is part of the pleadings offered was not the bill of complaint on which the decree was made, and that there was an amendment, this amendment embodying the testimony and that is not in evidence.

The Court: Why do you say, Mr. McCarter, that the issues involved here are issues that were beyond the jurisdiction of the Court of Equity?

Mr. McCarter: Because the Court of Equity cannot judge which of two parties should pay damages, for example.

The Court: I understand that, but talking about the point that is really at issue is an injunction, a mandatory injunction to the defendants to take their ships out. Suppose the Vice-Chancellor had said that he found, as a matter of fact from the evidence that they were being kept there an unreasonable time, couldn't he have issued a mandatory injunction for them to get it out? What I can't understand is why the Vice-Chancellor said that, practically said that in all contracts where there is no

time fixed for the consummation and completion of the work that the law puts in there that it is to be done within a reasonable time.

Mr. McCarter: Yes.

The Court: He says that, and that is true.

Mr. McCarter: Surely.

The Court: That is elementary, but he says that is not controlling. Why isn't it controlling? Why couldn't he as a Court of Equity on that ground say, "That must be done within a reasonable time. You haven't done it in a reasonable time."

Mr. McCarter: Possibly he could have.

The Court: I don't know what you meant by saying that they didn't have jurisdiction.

Mr. McCarter: But you see, your Honor, he didn't decide on reasonable time.

The Court: I know he didn't.

Mr. McCarter: On page 412 he decides it:

"Now, as to the time in which the work was to be done, I think there is not a shadow of a doubt that it was represented that the work was a winter's jobs, a three-months' job, not necessarily the work must be done within three months, but approximately three months.

The Court: That is coming back to witin a reasonable time again.

Mr. McCarter: On the representation he didn't say he thought that three months was a reasonable time.

The Court: Just read tat again, will you?

Mr. McCarter: "Now, as to the time in which the work was to be done, I think there is not a shadow of a doubt that it was represented that the work was a winter's job, a three-months' job, not necessarily the work must be done within three months, but approximately three months."

The Court: The effect of his injunction was that at the time the injunction was given the situation was such that the ships should be put out of there right away. That is as I got it from what has been explained to me this morning and what has been read. And the question of convenience was not involved because the situation was such at the time that they were entitled to no convenience, the defendant. And so far as that decree is concerned why it is binding upon this court on the question as to whether at the time of the decree the ships had a right to be there. They had not, according to that decree. It was unreasonable and unjust for them to continue there, and he found it to that effect and no matter what his reasons might be as to why he found that is the final decree of another court, and that I must recognize. But the question is under these pleadings when did the condition arise that it was unreasonable for the defendant to continue the vessels at these docks? Does he say that?

Mr. Haight: No, he says nothing about it. I beg your Honor's pardon.

The Court: Then how does this help us in these pleadings? The pleadings charge among other things that the plaintiff company was injured by the delay of te defendant in the work of scrapping of these ships, unreasonably delayed, and that while there was not time mentioned in those contracts in which the work was to be completed, yet that there was the ordinary understanding that it was to be done within whatever was a reasonable time in the circumstances of the character of the work and the surroundings. Now, when was that time? Isn't that still a jury question for the plaintiff to prove as to when it became unreasonable for them to continue the vessel in the docks? It seems so to me,

and if that is so how is this record going to help the jury on that point?

Mr. McCarter: Of course, it is for us to determine or to submit to the jury what is a reasonable time, because I don't think that the Vice-Chancellor has said what that is.

The Court: That goes to the question of damages. It depends on how long that unreasonable time was, if the jury should know what is the proper damages upon that particular item, if there is any damages.

Mr. Haight: That is very true.

The Court: What will we prove by this record?

Mr. Haight: That will prove every fact that was litigated and determined in that representation, and it will prove a number of facts that are necessary for the substantiation of our case, and it will prove that the defendant's execution and their attempts now to recover damages against us are not open, because the law is that every question that was litigated and determined in an action between the same parties is forever set at rest.

The Court: Do you mean that you offer it on this particular point? That under their counterclaim for damages because they were compelled to remove their vessels from these docks, this precludes them from recovering anything.

Mr. Haight: Yes, sir.

The Court: I am going to agree with you on that. Why not?

Mr. McCarter: I think a complete answer to that is the case I have cited to your Honor, Fillmeyer against Lemberger, where the plaintiff recovered in an action at law.

The Court: I know, but this is substantially and practically what is presented under that item. Vice-

Chancellor Backes says in his decree that on a certain date—what was that date that he put it back to?

Mr. Haight: July 17.

The Court: July 17, and your vessels have no right here, and you are not even entitled to convenience in removing them because the condition is such that ordinarily we would allow conveniences especially on preliminary injunctions, but the situation is such that you are not even entitled to convenience to get together and agree on what you will do. If you don't, I will give the decree tomorrow, or I will give the decree at once, I will sign the decree. He orders those vessels away. The Court of Chancery says that. Now, you come in and expect to get from a court of law and from this jury a verdict because there was damages resulting from the carrying out of a Court of Chancery decree on that point?

Mr. McCarter: Yes.

The Court: I would like to know, Judge, how much further you offer that record?

Mr. Haight: I offer it further for the purpose of establishing that we are not in fault. Now, of course, it is fundamental that a Court of Equity would not have ordered those vessels out if he had not been in fault, because there is no principle to equity more firmly established than that he comes into equity must come with clean hands, and if we had been responsible for a condition that made it unquestionably for us to come there and ask for that extraordinary relief, the Vice-Chancellor, of course, would not have given it, but he specifically finds that we were not in fault; that they were in fault. Now, the fact is established from that and it cannot be controverted either in a court of law

or in a Court of Equity; it makes no difference. The fact is established that we were not in fault and they were.

The Court: Well, you have offered this record. You have offered this decree.

Mr. Haight: I offer the records.

The Court: You offer the records, and that includes the decree, doesn't it?

Mr. Haight: Yes, sir.

The Court: I am going to definitely pass on it, but you have made the offer, but I am saying right now that I am going to recognize the Vice-Chancellor's decree as far as it goes. I have got to.

Mr. Haight: You mean by that his opinion?

The Court: His opinion will help to determine just what was passed upon.

Mr. Haight: That is it exactly.

The Court: Through the decree. I will act on the offer later, the offer of this record.

Mr. Haight: I submit to your Honor this: The acceptance or rejection of the offer may in some way change the proof that we may put in. If the offer is accepted then we are willing to stand on what our conception is of what is proven by the record, and I think that the acceptance—may I suggest to you this—that the offer should be accepted and then you deal with it in the charge to the jury as to what effect it has, and possibly later as to the admissibility of some evidence that may be offered? May I read?

Mr. Haight: Possibly I should read to you what Justice Pitney in the United States Supreme Court in the recent case of Oklahoma vs. Texas, decided shortly before he left the bench (reading).

Vice-Chancellor Backes in this case I referred to a while ago, Psyke versus somebody, took and picked

the whole record to pieces in the Court of Errors and Appeals by another case, and decided it upon the testimony and everything else as to what was decided in the previous case. It seems to me that there can be no question, under the law and the authorities, when your Honor comes to examine them, that in this case every fact that was determined in the Court of Equity was determined once and for all.

The Court: I know but you are suing for damages. That was not determined.

Mr. Haight: That is a different thing. Let me make this clear. We will have to submit, under our theory of this case, to the jury, as we intend to do, the question as to what was a reasonable time. Second, what was a reasonable charge to be made. Then there comes another issue, namely, the sinking of the "Philippines," who is responsible for that, and if they are responsible what they should pay for it.

And then the other question, were they justified in deducting from the bills of labor which we paid, the items which they did deduct, amounting to something like $1200. None of those issues were passed upon directly by the Vice Chancellor. Every other issue in this case was passed upon by the Vice-Chancellor, either mentioned in this oral opinion that he delivered at the conclusion of the case, or they were passed upon inferentially and must have been passed upon in order to have given the relief which he gave.

The Vice-Chancellor knew the effect his decree was going to have, because when I went there—and I think Mr. McCarter's reference to Silver-tongued does not apply with Vice-Chancellor Backes because

he is more liable to recognize the weight of silver hairs than silver tongues—when I went there Mr. McCarter had pleaded that we had broken this contract in various particulars, and had pleaded that they were entitled to damages, and it was upon that plea that we should have the benefit of the adjudication of the Court of Chancery, that the Vice-Chancellor signed the decree. And it was over Mr. McCarter's protest that it would be *res adjudicata,* and the reason we offered it was for the lawsuit, and that was all there was. I do not know why they voluntarily removed those vessels. I have always thought that it was because they felt that if there was a decree entered it would be *res adjudicata,* and if they could get away without a decree, when we came to an action at law there would not be any *res adjudicata* against them.

The Court: I think Judge you can go on with your case and if I find any question raised that I should distinctly pass on that record, I will do so. The offer is open.

Mr. Haight: I do not know exactly how that leaves us, if your Honor please.

The Court: It seems to me that it only leaves the questions which you have stated, or the questions you admit you have to cover by evidence. The question of the damages.

Mr. Haight: Yes, that is all. But if that record goes in, it establishes some preliminary facts.

The Court: What does it establish?

Mr. Haigt: If it goes in, I think it establishes this, that cannot recover except in an action for deceit for the difference between the cost of cutting up charging box sizes, and shipping sizes. I think if that decree goes in we cannot recover on that ex-

cept in an action of deceit. And as the Vice-Chancellor has held that the contract was the written contract, and that the obligation in respect to the sizes in which the vessels were to be cut up was dependent upon representation, and not upon a contract per se.

The Court: I see.

Mr. Haight: The next thing it decides is that we have performed this contract on our part, and relieves us from the obligation of offering any proof on that part, except in one particular, that bears on the question of the reasonableness of the time. That is so far as our case is concerned. I do not suppose I need to come to the defendant's case until he proceeds to offer evidence.

It decides also, and this is a very important thing that Mr. Carey calls my attention to, that Bernard was the agent of Crawford & Company in the negotiation of these contracts, and in the execution thereof, a fact which Mr. McCarter denies in his opening to the jury. The Vice-Chancellor said: "Bernard was sent by them to get prices, the estimates from the Dry Dock Company to Crawford were procured by Bernard, Crawford & Company acted upon what Bernard procured; they took the benefit and advantage and must be charged with the responsibility. He was their agent, their representative and his acts were as chargeable to Crawford & Company as though Mr. Crawford himself had made the representation."

This was what they were contending in the Court of Chancery, and what they are contending here. However, this beautiful theory, notwithstanding that Bernard went down to look at these boats with our men, sent down there by Crawford, had a con-

ference in Crawford's office at which Crawford was present, for the purpose of having us bid on those boats, they said, "Whatever Bernard said does not bind us because Bernard did not become our agent until after you had put in your bid, and then we entered into a contract with them." That is exactly the same thing they were trying to tell the jury here this morning. That is an essential fact necessary for the proof of our case. And that has been established once and for all.

The Court: I will admit this record in that so far as it contains any finding, or the determination of any question applicable to this case, that it is conclusive on us in the determination of this case. The record is admitted to that extent.

Mr. McCarter: Prays exception.

The Court: Certainly.

That means, Judge Haight, on that very last question you raised, if it becomes a question of whether or not Bernard represented the defendants, and you can show me that in that record Vice-Chancellor Backes held that he was, then I shut off testimony on that.

Mr. Haight: Yes, sir. That is the purpose we want.

Mr. Haight: Now, it has been stipulated by counsel that the testimony which was taken in that case might be proven by the use of the printed record which was used in the Court of Appeals, rather than by calling the Vice-Chancellor's stenographer who took it and who transcribed it. The stipulation, however, is limited to any purpose for which the testimony given by the stenographer would be admissible. And now, for the purpose of enabling your

Honor to see exactly what was decided in that case, the questions raised in the case, I offer the testimony in the case as contained in this printed book. Of course, it is not a part of the record in the files of the Court of Chancery and could not be certified to by the Court of Chancery.

Mr. McCarter: I object. I think it is incompetent, irrelevant and immaterial. It may be, during the course of the trial, it may be proper to use that testimony in confronting witnesses, and things like that. But this case has to be tried on evidence brought here, and we cannot put in this—

Mr. Haight: I am not offering it for that purpose.

Mr. McCarter: If it goes in, it goes in. The whole evidence is there. He cannot call witnesses at the other trial and now contend the testimony shows thus and so.

Mr. Haight: I only offered it for the purpose of permitting your Honor to examine the testimony, if it becomes necessary to do so, as I think it may on some questions, whether or not that fact was litigated before the Vice-Chancellor, and my authority for offering the testimony is the opinion of the Court of Errors and Appeals I referred to before, where they examined the testimony in an opinion by Justice Dixon, and the opinion of the United States Supreme Court written by Justice Pitney, where he said what was involved and determined in the former suit is to be tested by an examination of the record and proceedings therein, including the pleadings the evidence submitted, the respective contentions of the parties, and the findings and opinions of the court. And then there is a decision in the Court of Appeals of New York, which deals

with that question exclusively, and hold that in those cases the evidence is proper. I do not offer it to prove any of the facts there, and they cannot be used to prove any of the facts there. It is simply for the purpose of,—I mean any of the facts testified to here,—it is simply offered for the purpose of determining what was before that court and what was decided. Under the weight of the authority which I mentioned, and all the authorities, so far as I know, it is admissible.

Mr. McCarter: The authorities which Judge Haight refers to, I do not dispute. The court may look at the testimony to determine the effect of the decree which he relies on. That means your Honor may look at it; but it does not mean that the testimony may be offered in evidence. Anything in evidence goes to the jury and it goes for all purposes, and your Honor knows how the effect of the testimony cannot effectually be limited. The cases which Judge Haight cites to you do not go any further than to say you may look at and see. But I submit it cannot be made an exhibit or put in evidence in the cause.

Mr. Haight: I do not know how your Honor can look at it unless it is in evidence.

The Court: The offer upon the ground upon which it is offered, is admitted, and it is admitted simply for the purpose of enabling the court, so far as it may be necessary for the court to make inquiry as to just what was passed upon by the Vice-Chancellor. It does not go to the jury at all.

Mr. McCarter: Prays exception.

The Court: Do you object even on that ground? I thought you simply objected to it going to the jury.

Mr. McCarter: If your Honor will keep it from the jury, I have no real objection.

The Court: I have said that it does not go to the jury.

Mr. Haight: I have no objection under that.

May I have the cord marked as Plaintiff's Exhibit P-1.

(Chancery Record entered in evidence and marked Exhibit P-1.)

(Testimony entered in evidence and marked P-2.)

Mr. Haight: Now, will it be stipulated that this suit is between the same parties as the suit referred to in Exhibits P-1 and P-2?

Mr. McCarter: Yes.

Mr. Haight: And that the contracts upon which this suit is based are the same contracts which were attached to the bill of complaint and offered in evidence in the chancery suit which is referred to in Exhibit P-1 and Exhibit P-2?

Mr. McCarter: I will phrase the stipulation a little differently. I will agree that Exhibits 1 and 2 annexed to the amended complaint of this action, are the same documents as are Exhibits 1 and 2, annexed to the bill of complaint in Exhibit P-1 in this action.

Mr. Haight: That is all.

Edward J. Meurer. Called by Plaintiff. Direct.

EDWARD JOHN MEURER, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Maurer, where do you reside? A. 48 Ward Avenue, Tompkinsville, Staten Island.

Q. What is your business? A. Building supply business at present.

Q. Are you now in the employ or in any way connected with the Perth Amboy Dry Dock Company, the plaintiff in this action? A. No, sir.

Q. Were you ever in their employ? A. Yes, sir.

Q. When? A. From 1922 to 1925.

Q. Do you know James L. Bernard? A. Yes, sir.

Q. Did you know him in December, 1923? A. Yes, sir.

Q. What were your duties at that time, December, 1923, with the Perth Amboy Dry Dock Company? A. Soliciting.

Q. Soliciting what? A. Soliciting work for the dry dock company.

Q. Did you receive any communication from Mr. Bernard in which he asked you to submit bids for some work? A. I did through our office manager, yes. When I came into the office on afternoon our office manager informed me that—

Mr. McCarter: It is hearsay. I object to that.

Q. Well, as a result of what the office manager told you, what did you do? A. I went to New York and interviewed Mr. Bernard in H. L. Crawford's office.

Edward J. Meurer. Called by Plaintiff. Direct.

Q. H. L. Crawford & Company, the defendants in this suit? A. Yes, sir.

Q. Where was their office? A. 50 Broad St.

Q. Whom did you see there besides Mr. Bernard? A. Mr. Crawford and Mr. Mornay.

Q. Do you see Mr. Crawford and Mr. Mornay in court? Are they in court now? A. Yes, they are in court now. I do not see Mr. Mornay. Mr. Crawford is.

Q. Well, did you have a conversation with them? A. Yes, sir.

Q. What did they want you to do? A. They wanted me to give them a figure to work up an estimate for them so they could bring two ships which they were about to purchase from the Shipping Board, into our plant and scrap them. They wanted to know what we would charge them for the use of our plant and our equipment for them to scrap these vessels.

Q. Did you give them any figures? A. Not right then and there I didn't; no, sir.

Adjourned until 2 P. M.

AFTERNOON SESSION.

2:00 P. M.

Q. Did Mr. Crawford participate in that conversation? A. Yes.

Q. As the result of the conversation, what, if anything, did you do? A. Why I made arrangements with Mr. Bernard to come down to Perth Amboy to go over those two steamers which were moored there in the kills right near our plant.

Q. Which were the steamers? A. "Philippines" and "Black Arrow."

Q. Was that arrangement made in the presence of Mr. Crawford? A. Yes, sir.

Q. Did you carry out that arrangement? A. Yes, sir.

Q. When? A. Why I don't remember the exact date. I think it was either the 16th or 17th.

Q. Well, was it the following day? A. Yes, sir; the following day.

Q. Did anyone from the Perth Amboy Company go with you? A. Yes, Mr. Preacher, the Master mechanic.

Q. Of the Perth Amboy Company? A. Yes, sir.

Q. He belonged to that company with Mr. Bernard? A. Yes, sir.

Q. Was anything said by Mr. Bernard at that time as to how long the vessels were to remain at the Perth Amboy Company plant?

Mr. McCarter: I object.

A. Yes, sir.

Mr. McCarter: I object.

Mr. Haight: I have not asked what it was.

Q. I ask what it was?

Mr. McArthur: I move to strike out the answer. The answer came before my objection.

The Court: It does not amount to anything.

Mr. Haight: I want to prove, not for the purpose of adding to the written part of this contract, that Mr. Bernard said the vessels would

be out in a certain time, and scrapping would be completed at a certain time. I offer that proof as evidence to show what was a reasonable time, because I think it is established beyond any question that one of the very best ways of showing what is a reasonable time for something to be done is what the parties themselves have estimated—or the time within which the parties themselves have estimated that it could be done. This exact question arose in exactly the same way in the case of Croker vs. Franklin Hemp and Flax Manufacturing Company, 5 Federal Cases, pg. 1152, where Justice Story, than whom there is no greater Justice in the United States ruled that the conversation was admissible, not for the purpose of establishing the specific time when the contract was to be performed, for that would be to add to the contracts, but to show the circumstances under which the contract was made, and what the parties themselves thought was a reasonable time for finishing. That is stated to be the rule in 22 Cyp at 1076. That is all that the evidence is offered for.

Mr. McCarter: In the first place Mr. Haight has not brought this case within the authorities cited by him. They go to show that what the parties themselves say is the stated time is evidence of what is a reasonable time. The question was to Mr. Bernard, and there is nothing in the case yet to make what Mr. Bernard says in this case binding upon the defendants. That alone disposes of it.

The Court: I am holding that if it is admitted that Vice-Chancellor Backes in his deter-

mination of the case held that Bernard could speak for the company, that that is conclusive in this case.

Mr. McCarter: Well, but your Honor, the question is to what extent he can speak. That must be established. A conductor on a railway can speak for some purposes, but he cannot speak for others. The same way about Mr. Bernard, assuming it is established.

The Court: Well, what does he say about that?

Mr. Haight: Page 412: "He was their agent, their representative, and his acts were as chargeable to Crawford & Company as though Mr. Crawford himself had made the representation."

The Court: Vice-Chancellor Backes in his opinion says: "Now, it is proven, and I think to the satisfaction of everyone in this room, including Mr. Crawford, that Bernard, his agent, represented to Meurer and Preacher, of the Dry Dock Company, how the ships were to be cut up, and instructions to the effect where the ships could be cut up conveniently in shipping sizes they were to be so cut up, and where the parts of the ship were so small that shipping sizes could not be cut up, then in charging box sizes."

Mr. McCarter: If I am not interrupting your Honor, I might say that my objection is on the ground:

First, that it is not established by anything in this case that what Bernard said—Bernard is the agent of the defendant for any purpose; and further it is not established that Bernard is the agent of the defendants for the purpose

of binding them as to facts mentioned in this question.

The Court: He further states: "Crawford & Company acted upon what Bernard procured. They took the benefit and advantage and must be charged with the responsibility. He was their agent, their representative, and his acts were as chargeable to Crawford & Company as though Mr. Crawford himself had made the representation."

I hold that in view of that language of the Vice-Chancellor, that he held that Bernard was the agent of the company when he talked to Mr. Meurer, about the character of the work that was to be done, and particularly with reference to the sizes in which the material was to be cut. That was the basis of the work, the cutting up of the mettle, and if the Vice-Chancellor has held that Bernard was the agent and could speak for Crawford & Company as to the character of the work that was to be done, then properly the question of what time the work was to be done was one on which he could also speak for the company. So much for the agency of Bernard in this respect.

Now, as to the objection that he cannot testify to anything that was said with reference to the time, because that would be putting in an oral contract that was made at the same time as the written contract. It is offered on the ground that the question of what was a reasonable time to do the work, it is pertinent and admissible. I think it is on that ground.

But further than that here is a question that comes up. Here is a contract in which time for completion is not mentioned, and yet the time

that this work was to be done, when it was to be done for a flat price, was one of the essentials to the making of an intelligent contract. And it is a question in my mind whether it does not come under the rule that where there is something that is necessary to the interpretation of a written contract that has been omitted, whether what is not agreed to orally at the time of the written contract, is not admissible; not for the purpose of showing a contract that is different from the written contract, or something that would vary the contract; but where two parties enter into a written agreement, and one of the items necessary to an intelligent contract has been absolutely omitted, isn't it the rule that in such a case as that, if there has been an agreement orally, even though made at the same time, as to that necessary and essential item, whether or not such evidence of an oral agreement is admissible. That is what is disturbing me. The Vice-Chancellor, of course, not only says that there cannot be two contracts contemporaneous, written and oral contracts; that, of course, is elementary; there cannot be. But, where there is a written contract that is a necessary part of a real sanity of contracts, but that has been agreed to orally, even though done at the same time, whether that is not proper to be proved. I do not know whether you understand the question that is working in my mind.

Mr. Haight: That was exactly the theory upon which we filed the bill, but the Vice-Chancellor, I think, held differently. I think he held differently simply because there was a vigorous contention made that the evidence was not ad-

missible for the purpose of supplementing the contract, and he said, "What is the use of my deciding a question, when I have an easy one on the question of representation." But, however, I think that he decided it, but that has been my thought from the beginning.

The Court: I am holding that any oral agreement that was made as to time, even though made at the time of the written contract, is admissible, both on the ground of what was a reasonable time, and also on the ground, if there was such an oral agreement, that it was supplying that which was a necessary part of an effective and sane contract. You may take an exception.

Mr. McCarter: Prays exception.

Q. What will you say as to the time the vessels would be scrapped and the time that they remained at the yard of the Perth Amboy Dry Dock Company?

Mr. McCarter: I want to object so that my record is right. That is a little different question, I may object to that on the same ground: and on the further ground that it tends to vary a written instrument.

The Court: How can it vary a written instrument when the written instrument does not state anything?

Mr. McCarter: Because, your Honor, the law says that when a contract is made to do something and there is no time limit put, a reasonable time is the time within which it must be done. If I enter into a contract with a man to build a house and there is nothing said about

the time, that doesn't mean I can afterward sue the contractor because he has not got the house done by the 1st of February, if he has not had a reasonable time. The silence is filled by the law.

The Court: The exception is noted. You may have your objection.

(Last question read by the stenographer.)

Q. What will you say as to the time the time within which the vessels would be scrapped and the time they would remain in the yard of the Perth Amboy Dry Dock Company? A. Mr. Bernard told both Mr. Preacher and myself that the vessels would have to be scrapped within three months in order to make any money on the proposition, so it had to be within three months.

Q. Did he tell you they would be done in three months? A. Yes, sir.

Mr. McCarter: I object to that as leading.

The Court: That is leading.

Q, Did he make any statement to you as to the time they would be scrapped? A. Yes, sir.

Q. What did he say? A. He said within three months the ships would be out of our way, because when we went over the whole thing I explained it to Bernard we would have to have these docks. They occupied the two most important wharves, and he said they would be completed within that time.

Q. At the conference at Mr. Crawford's office was anything said as to who was to have charge of the cutting up of the vessels, the scrapping of them? A. Yes, sir.

Mr. McCarter: I object to that on the ground it tends to vary a written instrument. The contract expressly provides who was to do the work and all that sort of kind.

The Court: Does it?

Mr. McCarter: Turn to page 8 of that printed record.

Mr. Haight: The contract says, "We to furnish general supervision of the work under Mr. Bernard, the contract is as per your request, $16,554 for the use of our plant for the SS. 'Philippines.'" All I want to show is that the work is under the direction of Mr. Bernard.

Mr. McCarter: It is in the contract already.

Mr. Haight: Then it won't take you any.

Mr. McCarter: It is in the contract and that is part of the contract. I can't see what his answer is going to be. I object to the question.

The Court: He may answer it yes or no.

(Last question read by the stenographer.)

A. Yes, I was told that Mr. Bernard would be in full charge.

Q. What was said?

Mr. McCarter: I object.

The Court: I will allow it. You may take an exception.

Q. What was said? A. That Mr. Bernard would be in charge of the scrapping of these vessels and we would have to work under his jurisdiction.

Q. Who said that? A. I don't remember whether it was Mr. Crawford or Mr. Meurer.

Q. Was Mr. Crawford there when it was said? A. Yes, sir.

Q. Now, then, you did go down to the place as you have testified? A. Yes, sir.

Q. And you and Mr. Crawford and Mr. Bernard went over them? A. Yes, sir.

Q. Did they show you how the vessels were to be scrapped? A. Yes, sir.

Q. After you inspected these vessels did you make up an estimate for the submission to the officers of your company as to what you should charge? A. Yes, sir.

Q. For the use of your plant for scrapping of these vessels? A. That is, with Mr. Preacher. He and I together.

Q. Prior to making up your estimate at Mr. Crawford's office had anything been said as to what you would do and furnish in respect to the use of the plant?

Mr. McCarter: I object to that on the same ground.

Mr. Haight: I will withdraw that.

Q. You did make up an estimate, did you? A. Yes, sir.

Q. And did you submit that estimate to Mr. Snedeker, the treasurer of the Company? A. Yes, sir, and a Mr. Runyon.

Q. Mr. Parker Runyon? A. Yes, sir, the president.

Q. What position did he hold in your company? A. President.

Q. In making up your estimate were you in any way influenced by the length of time that the vessels were to remain at the plant? A. Yes, sir.

Mr. McCarter: I object to that as incompetent, immaterial, and as leading.

Mr. Haight: I think it comes under exactly the same ruling that it connects the reasonable time that they said they would be used to cut the vessels up with our understanding.

The Court: I am allowing you an exception to it. The objection is overruled.

Q. And you say that you were influenced in so doing? A. Well, Mr. Bernard told us that from the appearance that he had—

Q. I don't want that. I want to know if in making up your estimate you were influenced in fixing the figure by the time that Bernard told you that the vessel would be scrapped and at your plant. A. Yes, sir.

Mr. McCarter: We may save time. It is understood that my objection and exception goes to all questions asked of this witness as to statements made by the defendants or Mr. Bernard prior to the making of these written contracts.

The Court: Yes.

Mr. McCarter: Very well, sir.

Q. Now you say you submitted that estimate to Mr. Preacher and Mr. Runyon at the time you submitted them, was anything said by you as to the time the vessels were to remain at the plant? A. Yes, we explained to both Mr. Snedeker and Mr. Runyon how long they were to stay at our plant before they were to be done scrapping.

Q. As a result of this conference that you had were the figures agreed upon to be submitted to Crawford? A. Yes, sir.

Q. Did you submit these figures to Crawford? A. The following day.

Q. Whereabouts? A. In Mr. Crawford's office.

Q. Was there a conversation at that time? A. In reference to whether or not the terms of the contract were satisfactory; yes, sir.

Q. Do you know whether one particular point that you had covered in the contract was contested by Mr. Crawford? A. Yes. sir; there was one point. It was in reference to the compensation, the money which the firm would have to pay, which we added in our contract, and it was objected to by Mr. Crawford.

Q. You mean the compensation insurance? A. Compensation insurance; yes, sir.

Q. That was the only objection? A. That was the only objection.

Q. During the course of the conversation in reference to that did Mr. Crawford call up any one on the telephone? A. He asked me to call up the office.

Q. Did you call the office? A. I did, and then I turned Mr. Snedeker over to Mr. Crawford.

Q. Whom did you speak to? A. Mr. Snedeker.

Q. He was the treasurer of the company? A. Yes, sir.

Q. Did Mr. Snedeker and Mr. Crawford then have a conversation on the telephone? A. Yes, sir.

Q. Did you hear Mr. Crawford say anything in that conversation— A. No, sir.

Q. Wait a minute. Did you hear Mr. Crawford say anything in that conversation as to the time that the vessels were to remain in your plant? A. I don't remember.

Q. Did you finally draw up a contract? A. Yes, sir.

Q. Was it signed by Mr. Snedeker? A. Yes, sir.

Q. Was it in your presence signed by Crawford & Company? A. Yes, sir.

Edward J. Meurer. Called by Plaintiff. Direct.

Q. How many contracts were there? A. Two, one for the "Philippines" and one for the "Black Arrow."

Q. I show you two papers purporting to be—

Mr. McCarter: Judge Haight, those are copies of the ones annexed to the bill of complaint. We will admit that.

Mr. Haight: I offer these in evidence.

The Court: There being no objection they are admitted.

(Contract entered in evidenced and marked Plaintiff's Exhibit P-3.)

(Contract entered in evidence and marked Plaintiff's Exhibit P-4.)

Q. Now, then, after these contracts were signed do you know whether the vessels were brought to the plant or not? A. Yes, sir.

Q. When were they brought there? Can you give us those dates? A. The "Black Arrow" on the 22nd of December and the "Philippines" on the 27th.

Q. And these contracts were signed on the 19th of December? A. Yes, sir.

Q. The date that they bear? A. Yes, sir.

Q. Where were they moored? A. The "Black Arrow" was moored on the south side of pier 5, and the "Philippines" on the north side of pier 3.

Q. Were these piers ordinarily used for carrying on your ordinary business? A. Yes, sir.

Q. Those piers were ordinarily used for your ordinary business? A. Yes, sir.

Q. In what way? A. Mooring ships alongside of them, to repair them.

Q. Do I understand you correctly to mean that when a ship is brought in for repair when she is not

brought into dry dock she is moored alongside the pier? A. Yes, sir.

Q. Now, do you know how soon the scrapping proceed after they were brought to the docks, or how soon it was begun? A. It began within a week. I cannot tell you the exact date. I don't remember the exact date.

Q. Was Bernard there? A. Yes, sir.

Q. Did he take charge of the scrapping? A. Yes, sir.

Q. Did he have anybody working under him? A. Yes, sir.

Q. Who, in the first instance? Do you remember the man's name? A. No, I don't remember his name. I know who he is, though.

Q. Well, was he superceded by somebody else later? A. Yes, sir.

Q. The other person was Mr. Gilbert? A. Mr. Gilbert.

Q. Now, did the scrapping continue right along after it was started? A. For some time, yes.

Q. Had the vessels been scrapped by the 1st of April? A. No, not completely.

Q. Had they been scrapped by the 1st of May? A. No, sir.

Q. Do you know when work on the "Philippines" was stopped? A. No, I can't tell you the exact date.

Q. Do you know when the work on the "Black Arrow" was stopped? A. No, sir.

Q. Do you know that work was stopped on both of these vessels? A. Yes, sir.

Q. And that was before the suit was brought in the Court of Chancery? A. Yes, sir.

Q. Now, going back to the mooring of these vessels once more, did they in any way interfere with

the ordinary work of the Perth Amboy Dry Dock Company by their presence in the plant? A. Not during the months of January, February, and March, because those were the slack seasons of the plant.

Q. How about after? A. After that they were beginning to crowd us.

Q. Could you use the docks to which they were moored for your ordinary purposes? A. Yes, we could, if they had been out of the way.

Q. I mean while they were there? A. No, not while they were there.

Q. Do you know whether one of the docks had a derrick? A. Yes, one dock had a derrick, stiff-leg derrick on it, and the other dock had a locomotive crane.

Q. Did any of your other piers have derricks or locomotive cranes? A. No, sir.

Q. Those were the only two piers that had that equipment? A. Yes, sir.

Q. Do you know whether the place that was occupied by the "Black Arrow" had been formerly occupied by any other equipment useful in your plant? Did I say "Black Arrow"? I mean the "Philippines." A. I don't understand your question.

Q. I mean this: Do you know whether the "Philippines" occupied a berth which was used ordinarily in your business for some other purpose? A. Yes, sir.

Q. Was there any other part of your equipment moored to that pier? A. Yes, sir; at the head of that pier there was moored a small dry dock which we had to remove out of there in order to get that vessel in there.

Q. Did you use that dry dock afterwards? A. It was rigged up temporarily; yes, sir.

Q. Could you use it as expeditiously and as economically?

Mr. McCarter: I object as leading.

A. No, sir.

Mr. McCarter: I move to strike out the answer.

The Court: It is stricken out.

Q. Did the fact that this dry dock was not in its ordinary place in any way interfere with the operation of your business?

Mr. McCarter: I object as leading.

Mr. Haight: I do not thing that is leading.

The Court: I will allow that.

A. Yes, because the dock could not be handled as easily as it was where the place was originally built for that dock to fit into, and that was where the "Philippines" was tied up.

Q. Did it affect the company financially in any way? A. Yes.

Mr. McCarter: Wait a minute now. I object to that. In the first place it is leading. In the second place it does not show that the witness, or that the answer is based on the witness' own knowledge. Did it affect the company financially? This man has not shown that he knows anything about the finances of the company.

The Court: I will strike out that answer.

Q. There were controversies between the parties, were there not, arose during the time this work was being completed? A. Yes, sir.

Q. Do you recall a conference between some of the parties at the Bankers' Club in New York? A. Yes, sir.

Q. Who were there? A. W. Parker Runyon, Mr. Crawford, Mr. Mornay, Dr. Decker, Bernard and myself.

Q. Who is Mr. Mornay? You have referred to him before? A. He is a gentleman associated with H. L. Crawford & Company.

Q. That conference had to do with some of the disputes that had arisen between the parties? A. Yes, sir.

Q. Do you recall that there was a conversation on the street, after the conference in the Bankers' Club, between Mr. Parker Runyon, the President of the Perth Amboy Company, and Mr. Mornay? A. Yes.

Q. Will you state what that conversation was? A. Well, there were four of us in the party, Mr. Bernard and myself Mr. Runyon and Mr. Mornay. Mr. Runyon at that time said to Mr. Mornay, he said, "Gosh," he said, "I forgot to bring up one thing, and that is the salvage of the 'Philippines.'" Is that what you have reference to?

Q. Yes. A. And Mr. Mornay at that time said, "Well, if we get this other thing straightened out," he said, "you need not worry, that Mr. Crawford will take care of the 'Philippines' all right."

Q. Had a bill been submitted at that time? A. I don't know.

Q. What was the occasion of this conversation about the "Philippines"? What had happened to the "Philippines"?

Mr. McCarter: If he knows.

Q. Yes, if you know? A. Yes. Why, that was the occasion at the time when the seacock was broke and the salvage, that time they had the vessel salvaged at our plant by Merritt & Chapman, although I was not at the plant at the time that happened.

Q. Now then, one time during the execution of this contract they wanted some manifolds put in, or a manifold put in, didn't they?

Q. Just tell us what a manifold is. A. A manifold is a fitting whereby you can hook more than one gas and oxygen tanks to at one time, to supply a line leading to a ship, which line will lead off into separate burning outfits.

Q. Did you have any manifolds in your plant? A. No, sir.

Q. Did you have any there at the time Bernard came down to look over you plant? A. No, sir.

Q. Did he go through your plant at the time that you and Preacher and Bernard were there? A. Yes, sir.

Q. Look all over it? A. Yes, sir.

Q. Was anything said about a manifold? A. No, sir.

Q. Did he ask for one then? A. No, sir; not to me.

Q. Did you ever make any voluntary offer to furnish one then? A. Later on.

Q. No. At that time? A. No.

Q. Nothing was said in the contract about a manifold? A. No, sir.

Q. Did they subsequently ask for a manifold? A. When?

Q. I mean Crawford & Co.? A. When?

Edward J. Meurer. Called by Plaintiff. Direct.

Q. Afterward during the execution of the work? A. Yes, sir.

Q. Did you get them one? A. We made one.

Q. You made one? A. Yes, sir.

Q. At your expense? A. Yes, sir.

Q. And you installed it? A. Yes, sir.

Q. Where? A. At the head of the dock where the "Philippines" lay and one at the head of the dock of the "Black Arrow." 10

Q. How soon after it was asked for did you begin to make one? A. That I can't tell you.

Mr. Haight: May I have the original letter of March 3, 1924, or shall I use a copy?

Mr. McCarter: Use a copy if you want to. I would just as leave have you use a copy.

Mr. Haight: I think I will have to use the original. 20

Q. I show you what purports to be a copy of a letter written to H. L. Crawford & Co. under date of March 3, 1924.

Mr. Haight: I think the original of that was offered by you subsequently.

Q. Did you write that letter? A. Yes. 30

Q. Did you receive a reply? A. Yes, there was a reply received.

Q. I show you a letter purported to be signed by H. L. Crawford & Company dated March 6, 1924, and purporting to be a reply to that letter which you have just identified, and ask you if that is the reply that you refer to? A. Yes, sir.

Mr. Haight: I offer those letters in evidence. 40

Mr. McCarter: I object to the first letter on the ground that it is immaterial to the issues in this case, and I would like to have your Honor look at it. Your Honor will see that it refers: "Mr. Bernard at that time informed us that he intended scrapping the ships in the following manner." In view of the fact that the written contracts are in evidence, and I submit comprise the entire contracts, the evidence in this letter is immaterial and irrelevant, and on those grounds I object to that letter. Of course, if that letter goes out, the whole relevancy and competency of the answer falls.

The Court: I will hear you.

Mr. Haight: I offer it for the purpose of establishing the fact, which it seems to me may be of some materiality in determining what was a reasonable time for the scrapping of these vessels. Now, there is our statement, if your Honor please, as to how they represented that these vessels were to be scrapped; there is their reply, written, as the evidence will demonstrate, as was proven in the other case, by Mr. Crawford himself stating that there had been no change in their plans for scrapping these vessels. Therefore, they are bound, it seems to me, by that to a certain extent at any rate in the determination of the reasonableness of the time within which the vessels were to be scrapped, because the method in which they were to be scrapped, must, of course, enter into the reasonable time.

The Court: What is your objection to these? On that ground alone it is offered as to what was a reasonable time to do the work.

Mr. McCarter: I do not think it tends to prove that. I think on that it is irrelevant and immaterial. You cannot prove a reasonable time within which a contract should be performed by our saying there has been no change our plans. The contract has a certain meaning, and that contract as made had a certain reasonable time within which to be completed. There is no contention on our part, on either side, or their side, that the contract was changed or modified by subsequent contracts. We are both of us relying on a contract as made; and there is no change of plans, it does not have any meaning, it does not help the jury at all. It is absolutely irrelevant. I understand your Honor is now asking with reference to the letter from us, not on the letter from them.

The Court: The letter from them.

Mr. McCarter: I have the reasons that I urged before, that has embodied in the letter certain statements by Mr. Bernard, which were made by Bernard. I submit those statements cannot be competent in view of the written contract. They vary the terms of the written instrument, for example, about cutting up boilers, and shipping boilers to Germany, or not cutting them up. That is put in the letter here. Those written contracts are very specific, very detailed, they are quite liberal as to what is to be done, and how it is to be done, and who is to have the say. There is nothing in there showing that the boilers shall not be cut up. Or that certain plates shall go to China.

The Court: There is nothing like that, of course.

Mr. McCarter: Nothing in there at all as to the sizes into which the vessel is going to be cut. No declarations either in writing or oral varying that, and I submit it is incompetent, irrelevant and immaterial.

Mr. Haight: We are not attempting, if your Honor please—

The Court: I understand. This is a suit which makes a claim for an item of damage arising from an alleged failure upon the part of the defendants to do the work they were to do within a reasonable time. The contract itself asserts it is a contract for the scrapping of a vessel, and it does go into some details as to what that scrapping means. I am holding them on the question of whether or not there was unreasonable delay upon the part of the defendant company, that this jury is entitled to full information as to what scrapping a vessel meant; provided, of course, that there cannot be any contradiction between what is contained in the contract and any evidence that may be given. What do they know about scrapping a vessel? How can they intelligently pass upon whether the time was reasonable or not, unless they know what scrapping a vessel meant? Now, as between the parties, of course, they knew, or should have known, what scrapping a vessel meant. But the jury does not know and I do not know. And how can they intelligently pass upon whether or not there was reasonable time?

Mr. McCarter: I agree absolutely with what your Honor has just said, and there must be evidence to explain to this jury what scrapping a vessel means in the ordinary course of busi-

ness. But to have to put in evidence something that Mr. Bernard is supposed to have said about boilers or about what they specifically intended to do with such plates of a ship, and that sort of thing, is not what scrapping a vessel means.

And furthermore, may I invite your Honor's attention to this, that under the written contracts, properly construed, it is not the defendants who are to do the scrapping; it is the Perth Amboy Dry Dock Company who is to do the scrapping. It is their employees all the way through, they are the people who are doing the work.

Mr. Haight: The Vice-Chancellor has decided that against you.

Mr. McCarter: I do not think so. He specifically said that he did not have to decide that.

Mr. Haight: He said the scrapping was yours; not their's.

The Court: I am going to allow evidence that will assist this jury, so far as it may be necessary and reasonable for them to be assisted, as laymen, as distinguished from experts, for those immediately familiar with this kind of work, in being informed of just what was to be done under this contract. And, of course, within the language of the contract. But any explanation of these business or technical terms, they must know it, in order to intelligently decide this case. On the point of where this material was to be sold after it was cut up, we have nothing to do with that. I am afraid there are some things in that letter which make it inadmissible.

Mr. Haight: For instance?

The Court: About his claim where they were going to dispose of this material after the material was cut up.

Mr. Haight: That was only for the purpose of showing that the boilers and engines were not to be cut up. That is quite as important as to the sizes in which they were to be cut up.

The Court: I will allow the letter and I will allow the answer. You may take an exception. One the ground that it informs the jury of just what work was to be done under the contract.

(Letter dated March 3, 1924, entered in evidence and marked Exhibit P-5.)

(Letter dated March 6, 1924, entered in evidence and marked Exhibit P-6.)

The Court: For the purpose of them determining whether or not there was any unreasonable delay on the part of the defendant.

Q. Now, what are charging box sizes of steel? A. A. Plates 22 inches wide, by 5 feet 6 inches long.

Q. And what are shipping sizes? A. Plates 5 feet 6 inches wide, and length averaging around 18, 20, 25 feet in length. It is all according to what your export calls for.

Q. Now, would it make any difference as to the time of performance, time in which a vessel could be scrapped, as to whether it was to be cut up in charging box sizes, or shipping sizes? A. Yes, it would take longer to cut up a vessel in charging box sizes than it would to cut it up in shipping sizes.

Q. Why? A. Because you will cut out one big plate, whereas if you cut it into charging box sizes, you have then got to cut that plate up into small sizes.

Q. Of course, it costs more to cut it in smaller sizes? A. Yes, sir.

Mr. Haight: That is all.

CROSS EXAMINATION BY MR. MCCARTER:

Q. Where do you live Mr. Meurer? A. 48 Ward Avenue, Tompkinsville, Staten Island.

Mr. Haight: I want to call one witness whom I have positively promised to get back to New York State today, and Mr. McCarter has agreed to postpone the cross examination of Mr. Meurer until I can call this witness and complete his direct and cross examination.

Mr. McCarter: It is understood, of course, that Mr. Meurer will be retained for cross examination.

Mr. Haight: He will be right along.

(Witness withdrawn from the stand.)

JOHN P. GILBERT, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Gilbert, where do you reside? A. Catskill, New York.

Q. Catskill, New York? A. Yes.

Q. What is your business? A. Superintendent in the Acme Cement Corporation.

Q. At Catskill? A. At Catskill, near Catskill.

John P. Gilbert. Called by Plaintiff. Direct.

Q. How long have you been with the Acme Cement Company? A. Eighteen months.

Q. Have you ever been employed by the Perth Amboy Dry Dock Company? A. Well, I was employed at the Perth Amboy Dry Dock Company.

Q. Plant? A. Plant.

Q. But you never had been an employee of the Dry Dock Company? A. No.

Q. What were you employed at the Perth Amboy Dry Dock Company as? A. I went to work there on the 16th of January, 1924.

Q. By whom were you employed? A. Mr. Bernard.

Q. The James L. Bernard referred to in this case? A. Yes, James L. Bernard.

Q. What were your duties as outlined by Mr. Bernard? A. I was in charge of the work in the yard.

Q. What work? A. Cutting up the "Philippines" and the "Black Arrow," scrapping them.

Q. From whom did you take your orders? A. From Mr. Bernard.

Q. At the time Mr. Bernard employed you did he tell you whom he was representing? A. Yes, he told me he was with H. L. Crawford & Company.

Q. When you went there on the 16th day of January, 1924, as I understood you to say, you found those two vessels there? A. Yes, sir.

Q. Where were they moored? A. Well, the "Black Arrow" was moored at the north dock and the "Philippines" at the south dock.

Q. At that time had the scrapping started? A. Yes, sir.

Q. How far had it gotten on the way, would you say? A. In the joinery work was pretty well cleaned down to the "Black Arrow," and some work

had been done down to the "Philippines"; not a great deal.

Q. Something was going on? A. Yes, they were just starting it.

Q. Did you take any directions or instructions whatsoever from any of the employees of the Dry Dock Company? A. No.

Q. Were any of their officers? A. No.

Q. You acted solely under the direction of Mr. Bernard? A. I was working for Mr. Bernard.

Q. How long did you stay there? A. 16th of May.

Q. You had charge of the scrapping of these two vessels during that time? A. Yes, sir.

Q. Under Mr. Bernard's direction. After you came there who directed the manner in which the vessels should be scrapped? A. Well, Mr. Bernard had charge of the work. He gave me my instructions.

Q. What did you do? A. I went ahead and did them, carried out his orders.

Q. You passed them on to the men? A. I passed them on to the men.

Q. What did you do in connection with the Perth Amboy Dry Dock Company? I mean by that, did you apply to them for equipment or things of that kind? A. Yes, I got the burning equipment, and the use of the floating derrick, and the locomotive crane, we used practically exclusively.

Q. Will you explain to the jury exactly what you mean by the burning equipment? A. Well, the torches and hose, and ordinary equipment that is used in cutting steel.

Q. An the hose carries the gas and oxygen? A. Yes, from the tanks.

Q. That is in the burning equipment? A. Yes.

Q. Just explain to them how you scrap a vessel. That is to say, how you cut steel? A. Well, the steel is burned. It is a combination of gas and air and generates heat enough to burn steel. It is cut up into sizes that are merchantable.

Q. How about the laborers that were employed on this job? Did you get them through the Perth Amboy Company? A. No, I hired them myself, at the gate.

Q. Did you hire a foreman? A. Why, I don't think I did. I don't remember hiring any. I may have hired one. One, I think, I did hire.

Q. How about the burners? A. The burners, I would make a requisition on the boss boiler maker.

Q. Was that Mr. O'Hagen? A. Mr. O'Hagen, for what burners I needed.

Q. Did he furnish them to you? A. Yes, he furnished them to me.

Q. By burners, when I use that expression, I mean the men who used these burning outfits spoke to you directly for employment. A. Why, at times they come down there looking for a job and I send them up to him.

By the Court:

Q. Up to who? A. Boss boiler maker.

By Mr. Haight:

Q. Why did you send them to the boss boiler maker? A. I was told whenever I needed men or equipment that I would get it from the boiler maker.

Q. Now, did you ever apply for equipment or apply for men from the boss boiler maker or any-

body else connected with the Perth Amboy Dry Dock Company and couldn't get what you applied for? A. No, I couldn't say that I did. There might have been times when there was a little delay, but never—I got it eventually as soon as I could get it.

Q. Were you ever asked or told to lay off men? A. Oh, yes, I was told to cut down the expense.

Q. By whom? A. Bernard.

Q. On how many occasions, if more than one? A. Oh, I don't know that. I couldn't say, but a number of times I was told that the expense was running too high, and labor was running too high, and cut it down.

Q. You did so? A. Yes, sir.

Q. You stated that you left on the 16th of May? A. Yes, sir.

Q. Will you please state the circumstances under which you left? A. Under which?

Q. You left. A. I was laid off.

Q. By whom? A. Mr. Bernard.

Q. What reason did he give? A. He said they were cutting the work down, they wouldn't need me.

Q. Did he state why?

Mr. McCarter: I object to that as immaterial.

The Court: I will allow it.

Mr. McCarter: I pray an exception.

Q. State your reason why. A. Why, he said the market was slowing up on steel and that they were going to shut the work down, or practically shut it down.

Q. Now, while you were there was the work of scrapping the vessels ever delayed to any appre-

ciable extent by any failure of the Perth Amboy Dry Dock Company to supply them or facilities?

Mr. McCarter: I object to that as leading.

The Court: Yes, it is leading, but I will allow it. You make take an exception.

A. I dont think it was materially delayed, no.

Q. Weather delays? A. I think there were at times trivial delays that would come up on any work of that sort, but couldn't be avoided. I couldn't say there never was any delay, but I don't think there was any delay that amounted to anything.

Mr. Haight: You may cross examine.

CROSS EXAMINATION BY MR. MCCARTER:

Q. When you arrived was the locomotive crane in operation? A. No, sir.

Q. How long before you got there was it before that was in operation? A. Well, the erector was just finishing up. I imagine it was three or four days afterwards. I wouldn't say exactly.

Q. Do you recall that the crane was not put in operation till January 25? A. No, I don't recall that.

Q. The crane frequently broke down and ran off the track, didn't it? A. No, it went off the track twice, I think.

Q. Do you recall the crane broke down on January 31? A. I don't recall.

Q. You say it didn't break down on that date? A. No, I don't say that.

Q. Do you recall the crane breaking down on February 3? Do you recall the crane went off the

track on February 26? A. No, I don't recall the dates.

Q. Do you recall when the crane broke down on March 19, blocking the pier? A. No.

Q. Do you recall when the crane was laid up for repairs on March 25? A. Well, one of those dates in March, I remember. I don't remember which one it was.

Q. Do you recall on April 21 the crane was away so the crane could not be used? A. No.

Q. And you left, you say, on May 16? A. I think it was on May 16.

Q. Who is Mr. Preacher? A. Mr. Preacher?

Q. Yes, who is he? A. Master mechanic.

Q. Employed by the Perth Amboy Dry Dock Company? A. Yes.

Q. Do you recall any times when he took men off the job of scrapping these boats? A. Took them off?

Q. I don't say "all." Some or all. A. Well, do you mean—what do you mean, labor, burners, or what?

Q. Either one, Mr. Gilbert? A. I don't know of any time he took them. He may have, but I don't recall.

Q. Do you recall on February 25 Preacher knocked off the men working on the winches on account of another job on which he wanted them? A. On what date?

Q. February 25. A. No, I don't.

Q. You don't recall that. Do you say you didn't occur? A. I don't say it didn't occur. He may have taken them.

Q. Do you recall any times when Mr. Meurer turned off the gas and air? A. Well, it seemed to me he turned off the gas and air once during some controversy about cutting up a boiler.

Q. Do you recall any other time? A. No.

Q. Now, you say you got the burners from Mr. O'Hagen? A. Yes.

Q. Did the burners—and I mean by that the men who do the burning. You got the torches from him, too, didn't you? A. Well, after the first issue I think they came from him right along. They were turned in at night.

Q. But the common laborer you say you select yourself from the crowd at the gate? A. Yes.

Q. And they were, however, put on the pay roll of the Perth Amboy Dry Dock Company, weren't they? A. Well, I don't know. I had nothing to do with that.

Q. What did you do in employing a laborer, what did you do? A. I simply took the gentleman and put him to work in the gang, and the timekeeper took care of him as far as his money went.

Q. It wasn't up to you at all to see that he was put on the pay roll? A. No, it was up to them.

Q. Who was the time keeper? A. Well, there was Ackerman and Gardans.

Q. Wasn't there another timekeeper? A. Why, yes, there was another timekeeper in the office.

Q. Mr. Patten? A. Yes.

Q. Wasn't he a timekeeper? A. Yes.

Q. He was the timekeeper for the Perth Amboy Dry Dock Company, wasn't he? A. That is what I understood.

Q. That is what you understood. You didn't have anything to do with calling these men to his attention at all? A. I never called his attention to anybody.

Q. Do you recall any times when any of the burners—when I say burner I always mean men; I will call the others torches—were taken off the work by the Perth Amboy people?

(Last question read by the stenographer.)
A. I dont' recall any specific case, but I know that there were times when they had a rush job or something that needed a couple of burners, they used to come down and get them.

Q. They used to come down and get them? A. Yes.

Q. And how frequent was that? A. Oh, it wasn't anything regular about that. It just depended on the volume of work they had.

Q. Depended on their needs? A. Well, yes, certainly, depended upon their needs.

Q. How many burners were working on these two ships? A. Varying every day. We started out with a very few, and I guess we got up to as high as, oh, I think we must have had fifteen on the "Philippines" and it may be ten on the "Black Arrow."

Q. More burners on the "Philippines" than on the "Black Arrow." A. One time.

Q. What was the maximum number of burners on the "Philippines", fifteen? A. I wouldn't say positively. It is quite a while ago. I never kept a record.

Q. What was the maximum number of burns on the "Black Arrow"? A. I couldn't say.

Q. There were more on the "Black Arrow" than there were on the "Philippines"? A. Sometimes, ordinarily, there were.

Q. More work was one on the "Black Arrow" than the "Philippines"? A. Yes, considerably.

Q. The "Black Arrow" was in the pier on which the locomotive crane ran, wasn't it? A. Yes.

Q. Do you know the lifting capacity of that crane? A. I think that is a twenty ton, and fourteen feet. Or it may have been twenty-five ton.

Q. It may have been twenty-five? A. It was either twenty or tewnty-five ton, on a fourteen-foot radius.

Q. On which point of the radius could it lift that? A. Fourteen feet.

Q. At fourteen feet? A. I think that was it, it may have been twelve foot.

Q. Of course, as the radius increases the lifting power got less, didn't it? A. Yes.

Q. How wide is the "Black Arrow"? A. About forty feet, I think. It may have been forty-five, I don't say exactly.

Q. Wasn't it fifty-six feet? A. I wouldn't say whether it was fifty-six feet.

Q. You don't remember? A. That is it exactly. I don't remember.

Q. You are not here under subpoena, are you? A. No.

Q. Your expenses paid? A. I expected to.

Q. Expect to. Anything over and above your expenses, do you expect? A. No, I don't.

Mr. Haight: Well, I will tell you, Mr. McCarter. We expect to pay him for his time. He has not been told that, but we expect to pay him.

Mr. McCarter: I guess you should, judge.

Q. Do you know, Mr. Gilbert, what the lifting capacity of the crane at the far side of the "Black Arrow" was? A. What do you mean, "the far side"?

Q. The "Black Arrow" lay alongside the pier on which the crane was, didn't it? A. Yes.

Q. And alongside of the "Black Arrow" was nearear the crane than the other side, wasn't it? A. Yes, sir.

John P. Gilbert. Called by Plaintiff. Cross.

Q. And what was its lifting capacity at the side of the "Black Arrow" farther from the crane? A. It was nothing, but it would not reach there.

Q. That is right, isn't it? A. Yes.

Q. How far across the "Black Arrow" would it reach? A. And lift what?

Q. Anything at all. A. Well, it would lift seven tons amidship.

Q. Lift seven tons amidship? A. Yes.

Q. How long was the boom of the crane, do you recall? A. Fifty feet.

Q. Fifty feet? A. Yes.

Q. How much would it lift at its fullest extent? A. I imagine it would lift about two ton.

Q. Two ton? A. Boom down.

Q. Boom down. The boom couldn't go all the way down owing to the height of the sides of the "Black Arrow", could it? A. Not until it was cut below that level.

Q. Now, there was some sort of a derrick alongside of the "Philippines," wasn't there? A. Yes.

Q. That was an immovable derrick, wasn't it? By that I mean, it couldn't move from its position. A. Yes, stationary.

Q. Stationary. That is the word I want. How long was the "Philippines"? Do you recall? A. Well about six hundred feet.

Q. And stuck out beyond the end of the pier, didn't it? A. Yes.

Q. And this derrick could only reach a small portion of the "Phillippines," couldn't it? A. Comparatively small.

Q. Were you delayed much on the job by weather? A. Well, I don't think, not unusually. We had come bad storms that we lost time on.

John P. Gilbert. Called by Plaintiff. Cross.

Q. Now, I will ask you if you remember certain weather delays as I see them here. Before I come to that, do you remember when the manifold was set up and completely working? Wasn't it on March 8 or thereabouts?

Mr. Haight: What is that?

Mr. McCarter: When the manifold was first in operation.

Mr. Haight: I object to that, if your Honor please. It doesn't seem to me that there can be any delay charged to us, or any delay on what is a reasonable time, by reason of the manifold. There is nothing in the contract providing that a manifold should be furnished under the evidences we furnished it voluntarily where they asked for it.

The Court: I will allow it. You may have an exception.

(Last question read by the stenographer.)

A. I don't know when it was set up.

Q. What say? A. I don't know when it was set up about that time, I imagine, but as far as that date, I don't know.

Q. Do you remember it was after that trouble with the manifold when it was out of operation for one reason or another? A. Do I remember the trouble?

Q. Yes. I am not asking you specific dates, but do you remember the fact. A. I think we broke some manifold a couple of times.

By the Court:

Q. Is that part of the burning outfit, the manifold? A. Yes, sir.

John P. Gilbert. Called by Plaintiff. Cross.

Q. A necessary part of the burning outfit? A. No, sir, not necessary. You didn't have to have it.

Q. Why do you have it? A. Why, I think the reason it was put in there was to cut down the cost of handle tanks by hand, because—

By Mr. Haight:

Q. Will you tell what a manifold is? A. Well, it is a connection, a pipe connection whereby a number of burning outfits can be worked from a series of tanks, or a number of outlets put on. Up to the time we got the manifold we carried the tanks on board. Each burner had two tanks. Afterwards we piped the one line of gas and air up to the boat.

Q. Isn't this a fact? Before the manifold was installed the heavy tanks containing gas and air had to be carried out of the boat or boats for use by each burner? A. Yes.

Q. Isn't this fact, before the manifold was installed, the heavy tanks containing the gas and air had to be carried on the boats, for use by each burner? A. Yes.

Q. And that after the manifold was installed the tanks were hooked up ashore? A. Yes.

Q. And pipes were run from the series of tanks hooked up to the burners? A. Yes.

Q. Am I correct? A. Yes.

Q. Now, do you recall that on March 15th, the manifold was frozen, causing a delay? A. Well, it froze. I don't know whether it froze on the 15th of March or not.

Q. Do you recall that on March 18th the manifold was leaking? A. No, I don't recall it.

Q. Do you recall that on March 22nd there was trouble with the manifold and that there was only

1800 pounds pressure? A. No. I don't remember it.

Q. Do you recall that on March 24th, the manifold blew out? A. The manifold blew out?

Q. Yes. A. No.

Q. You don't recall that? A. I don't recall that at all.

Q. Do you say it did not happen? A. No, I don't say it didn't happen, but it is queer I don't remember it.

Q. Would that be an unusual thing? A. Yes, I should say it would.

Q. Do you recall that on March 25th, the manifold burned? A. It seems to me we did have a fire in one of those manifolds once.

Q. Was there more than one manifold? A. One for each ship.

Q. Now, getting back to the question of weather, do you recall that on the day you got on the job, which you say was January 16th, there was heavy rain? A. I don't recall it.

Q. And on January 21st, it was cold, so cold the laborers quit? A. We had a good deal of trouble with cold weather and the like.

Q. And that on January 22nd, it was extremely cold? A. I don't remember it. I have no occasion to remember these dates. I don't know whether it was January 22nd, or when it was. I know it was plenty cold enough.

Q. And it was plenty cold enough at different times so that the men could not work? A. Yes. We have had them knock off.

Q. And there were times when the men could not work on account of the snow on the ships? A. Yes. We had sometimes snow.

John P. Gilbert. Called by Plaintiff. Cross.

Q. And you don't recall, and there is no use my calling your attention to the specific dates? A. Not at all.

Q. I will not do it then. Do you think those vessels could have both been scrapped three months after their arrival at that plant?

Mr. Haight: I object. This witness has not been called by us as an expert on the time in which the vessels could be scrapped, and he has not been shown to have any knowledge as to whether they could have been scraped then, or whether they could not have been scrapped then.

The Court: I know, but you were permitted to ask him, Judge, whether there was any appreciable delay in this work upon the part of the Perth Amboy Dry Dock Company.

Mr. Haight: That is not this question. This question is addressed to him, for his opinion as to whether or not they could have, under ordinary circumstances, have been scrapped within three months.

The Court: If he can tell whether or not there was appreciable delay on work of this particular character, why can't he tell how long it would take? He has to know how long a thing will take in order to tell whether or not there is appreciable delay.

Mr. Haight: I submit this: He could say whether or not the things we did, or things we did not do, if we did anything, or we failed to do anything that should have been done, or should not have been done, as the case may be, and how long we took. But to qualify him as an expert as to whether or not these vessels

could have been scrapped within three months is quite a different thing, and it is not within the perview of the direct examination. And before the question ought to be admitted, it would seem to me it would have to be by making Mr. Gilbert their own witness, and in that event I would like to cross examine to ascertain whether or not he is competent to testify how long it would have taken to scrap the vessels.

The Court: Yes. I will allow it just the same, in view of the fact that he was allowed to say whether or not there was any appreciable delay in this work.

(Question repeated by stenographer.)

A. I don't think so.

Q. No matter what force of men you had? A. No, I don't think they could have scrapped them in three months.

By the Court:

Q. What experience have you had along this line of scrapping vessels? A. None up until the time I went down there.

Q. None until the time you went down there? A. No.

Q. Then upon what do you base your answer as to how long it would take to do this kind of work? A. Just from what I saw there.

By Mr. McCarter:

Q. What is your regular business, Mr. Gilbert? A. Construction work.

Q. Railroad construction? A. Yes.

Q. Describe these tanks that the gas and air come in, as to size and weight. A. Well, they are about 4½ feet high, about 8″ in diameter, weigh about 150 or 160 pounds. Different size tanks different companies use, with different materials. But that is somewheres near the tanks we were using down there, I should say.

Q. And it was those things, that before the installation of the manifold, had to be carried on and off the vessels by hand? A. Well, sometimes they were carried on by hand and sometimes they were put on with derricks.

Mr. McCarter: That is all.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Gilbert, did you first decline to come down her and testify? A. Down here?

Q. Yes. A. I did.

Q. Were you told at that time that your testimony could be taken outside of New Jersey? A. Yes.

Q. Under what circumstances did you come down? How did you happen to come down after you said that you would not come down? A. Well, I don't know. Mr. Runyon was rather insistent, and so I came.

Q. That wasn't Mr. Parker Runyon? A. Yes, W. Parker Runyon.

Q. Now, you said that times during the time you were there this locomotive crane got off of the track. You were there about four months, weren't you? A. Yes.

Q. A locomotive crane went on, as I understand it, on the pier about four days after you came there?

Was it started in operation? A. Well, it seems to me it was about four days.

Q. In the four months time was it an unusual thing for a locomotive crane to get off the track twice? A. No, not at all.

Q. Did the fact that the locomotive crane got off of he track twice indicate any defect in the locomotive crane? A. Why, no, not at all.

Q. Do you know whether that was a new crane or a second hand crane? A. It was a new crane.

Q. A new crane? A. Yes, sir.

Q. Come on that job new? A. Yes, sir.

Q. Did the fact that it got off twice delay the work to any extent? A. No, not to any extent.

Q. Well, what would you say? A. Well, I think probably—one time I think it took about an hour to get it on, or maybe an hour and a half, or something like that, maybe two hours. It had to be jacked up and swung over.

Q. There were a number of things Mr. McCarter asked you whether you remembered them happening, to which you replied that you did not. Let us assume all of those things had happened that he detailed to you, which you haven't any recollection of, let us assume they all happened, how long would they have delayed the work? A. The weather and all, do you mean?

Q. Yes. A. Why, it is pretty hard to say. I couldn't tell, unless I sat down and figured it up. But we lost after some of those storms down there, we may have lost a day, men may have knocked off during the day, but I don't think we lost any great amount of time from weather down there particularly.

Q. Well, did you lose a week altogether? A. We may have, with all the delays put together, it might have been a week, eight hours a day, I don't know.

Q. Did you lose any more than that? A. Why, I shouldn't think so. That is quite a lot of time to lose.

Q. When this crane was brought on there, was any objection made to it by Bernard? A. No.

Q. Was it adequate for the purpose for which it was supplied? A. Why, I always thought it was myself. It was a very good crane.

Q. Would it have been feasible to have put on that pier a locomotive crane that would have lifted from the farside of the "Black Arrow"? A. I don't think you could have, no. I don't think it would have been feasible. That is, that would have lifted any weight over there. You could have gotten boom enough on there, I imagine, to have reached over there, but it would not have been much advantage to you.

Q. Could the pier have held a locomotive crane? A. Well, I don't know about that, but it was a pile timber pier, and I would not have wanted to put much more weight on it than we did.

Q. There was some question about Mr. O'Hagen occasionally asking for one or two burners to go up to the boiler shop? A. Yes.

Q. Did that happen frequently or just occasionally? A. Just occasionally a vessel would come in the stream and have a rush job on it or something like that, that they had to get out.

Q. How much delay was caused by that, if any? A. Oh, a small amount. I don't know. Very little.

Q. Half a day? A. Well, it would not shut down the job. Take a couple of burners off it would not

shut the job down. It was just a question of reducing the amount of tonnage, that was all.

Q. How long do you think that whole thing took? A. I don't know. I couldn't tell you.

Q. Would it all be within that period of a week that you mentioned? Would you include that was in the period of the week? A. Well, I suppose so, but that is a pretty wild guess. I don't know how near—

Q. I suppose it is. Now, the time Mr. Meurer shut off the gas, about when you started to cut up the boilers, do you recall how long that gas was shut off? A. No. He and Mr. Bernard were there together, and I know that he shut it off, but how long it was shut off, I don't know.

Q. It wasn't shut off very long, was it? A. No.

Q. Would you say it was a day? A. I don't think it was a day.

Q. Let us go back to this manifold. Did the fact that you had a manifold there in any way hasten the work, or do anything other than lessen the expense to Crawford & Company of doing the work? A. Why, I should not say it hastened the work. We had plenty of gas and air before. It was a question of—it took more labor possibly. Although we kept a man steady on the manifolds handling the tanks on the manifolds.

Q. Then the manifolds, am I right in understanding, supplied some of the work that had been done by hand theretofore, by manual labor theretofore? A. No. The manifold was this collection of tanks that were put in together on the shore, and the gas and air was piped from that manifold out to the ship.

Q. Out to the ships? A. Yes. Well then, when the air and gas line came on the ships it was di-

vided up there to the different small duct manifolds where the burners took their supply from.

Q. When you didn't have the manifold how did you get the gas and air to the burners? A. Each burner had a tank of gas and air, and we would run a truck load out on the dock and load it, pick it up and put it on the ship as they needed it.

Q. Could you do the work any quicker by the use of a manifold than you could have done it the other way, provided you had the labor to do it? A. Well, yes. Very probably was a little saving or a little speed gained inasmuch as the burners didn't have to change their lines on their tanks.

Q. Well, how much speed? A. Well, it probably takes about three or four minutes, five minutes to change them. It would probably depend on how much gas and air they were using. It might happen a half a dozen times a day .

Q. This manifold freezing. How long did that delay things? A. Well, until we got it thawed out.

Q. How long did it take to thaw it out? A. Oh, I don't know. Fifteen minutes.

Q. Then they spoke about a fire being in one of the manifolds. Did that delay? A. I don't know how long that took.

Q. Well, you—would you put that in the fifteen minute class, or four minutes? A. I guess that would be all right. I guess we will make that fifteen minutes.

Q. Now, then, did you cut up all of these vessels that were cut up, other than the superstructure, in shipping sizes? A. What was that question?

Q. Did you cut up all these vessels that were cut up, except the superstructures and the boilers and things of that kind, in shipping sizes? A. No. We cut them up in charging box sizes.

Q. You cut them up in charging box sizes? A. Yes.

Q. When did you start cutting them in charging box sizes? A. Well, we started cutting charging box when we started the work, or when I was there they were cutting charging box.

Q. Did you cut any shipping sizes at all? A. Yes. We cut shipping sizes before I left.

Q. When did you start cutting shipping sizes? A. Well, I think it was about—I think it must have been along about the middle of April, maybe the third week in April.

Q. Third week in April? A. I think that is about the time of it.

Q. Before that you hadn't cut any shipping sizes? A. No, I don't think so.

Q. You had cut more charging box sizes? A. Yes.

Q. Does it take longer or shorter to cut a charging box than a shipping size? A. It takes—it is just a question of the number of feet to be cut. It takes less time to cut a piece 22 x 5′6″ than it does 5′6″ x 22 feet.

Q. Let me see if I understand that. Did you express that properly? A. Yes, sir. 22″ by 5′6″, compared with 5′6″ by 22 or 20′ in length.

Q. Do you know why they started cutting in shipping sizes when they did? A. I don't know why, no.

Q. Do you know whether they were having a controversy about it? A. Yes, I remember there was argument.

Q. That argument had been going on for some time, hadn't it? A. Well, I had heard rumblings of it.

John P. Gilbert. Called by Plaintiff. Recross.

RECROSS EXAINATION BY MR. MCCARTER:

Q. What have you to say with respect to the efficiency of the crane operator, the engineer on the crane? A. Well, he was not an experienced crane operator when I came there, or when he went to work there. He broke in on that crane. He was a hoisting engineer, a steam engineer, he understood steam and understood boilers. But he wasn't a crane operator, I don't think. At least he never said he was.

Q. The crane was used to load steel into the freight cars, wasn't it? A. Yes, into the gondolas.

Q. Yes, gondola cars. They are these open top freight cars, aren't they, you just dump flat—not a flat platform car, but a car with no roof to it? A. Yes.

Q. That is it, isn't it, that you mean by a gondola? A. Copper bottom gondola, that is the name of them.

Q. The crane would pick up steel from the "Black Arrow" and dump it into the car, wouldn't it?

Q. The crane was on the same track with the car, wasn't it? A. Yes, sir.

Q. So the crane had to reach in over the end of the car, not over the side of the car, isn't that correct? A. Well, yes. We load ahead of us all the time.

Q. The crane could not pick up a piece of shipping size steel over the far side of the "Black Arrow", could it? A. No.

Q. The crane also was used as a locomotive to move the cars along the pier, wasn't it? A, Yes.

Mr. McCarter: That is all.

Mr. Carey: I would like to ask Mr. Gilbert a few questions on another phase of this case

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which we have not reached yet, inasmuch as he is to leave tonight, and he will not be available when we reach that stage of the case.

Mr. McCarter: I submit we ought to observe the rule that one counsel ought to examine the witness. I don't see why we have this shifting of counsel.

Mr. Carey: It is merely because this is on another phase.

Mr. McCarter: Very well, go ahead.

By Mr. Carey:

Q. Mr. Gilbert, while you were on the job there, do you recall any occasion when it became necessary for you to ask for steam in connection with operating pumps on the "Philippines"? A. Yes, sir.

Q. To whom did you apply for steam? A. Well, I probably went to some of the Perth Amboy people.

Q. I show you a memorandum dated April 9, 1924, which you signed with your name. Did you sign that? A. Yes, sir.

Q. I show you another memorandum of time, under the same date. Did you sign that memorandum? A. Yes.

Mr. Carey: This is an application for steam.

Mr. McCarter: I do not see its relevancy, Mr. Carey. That is my only objection to that.

Mr. Carey: The relevancy is this: That a charge was made for this and was disallowed by your people.

Mr. McCarter: Very well.

Mr. Carey: I offer these two slips in evidence.

The Court: If there is no objection they are admitted.

(Two slips entered in evidence as one exhibit and marked Exhibit P-7.)

Q. What was the necessity for using the pumps on the "Philippines"? A. Why, after we opened her up, got the hatches up and the decks, whenever it rained, we used to get considerable water in her, and we used to keep her pumped out.

Q. Was that necessary? A. Absolutely.

Q. Do you recall whether or not you made more than one request for steam? A. Oh, yes, I am sure I did.

Q. And always of the Perth Amboy people? A. Always.

Mr. Carey: That is all.

By Mr. McCarter:

Q. Are you sure, Mr. Gilbert, that this steam which was applied for on these two documents, Exhibit P-7, was for pumping out the "Philippines"? A. That is what I wrote on there.

Q. These fire pumps were used only for pumping out water that had accumulated in the bottom of the ship? A. Yes, that is all.

Q. They were not used in running those derricks on the ships? A. No. The pumps were not used for running the derricks.

Q. Not for the derricks? A. That is another proposition.

Mr. McCarter: That is all.

Mr. Haight: I want to prove the tonnage and the size of the "Black Arrow" and the "Philippines" and I want to offer in evidence Government Publication, and I have a man here to prove it. It is a publication under the direction of the government, the record of American Department of Shipping, published by the American Bureau of Shipping, with the approval of the United States Naval Department.

Mr. McCarter: Let me see it. Probably we will admit it. We will admit the book without holding the man here.

Mr. Haight: I will not offer it now.

Mr. McCarter: All right.

EDWARD JOHN MEURER, recalled as a witness by the plaintiff and having been previously sworn, saith:

CROSS EXAMINATION BY MR. MCCARTER:

Q. Mr. Meurer, you said you saw Mr. Crawford and Mr. Mornay on the first occasion, that was in their office in New York? A. Yes, sir.

Q. And do you recall how long before the date of these contracts, which is December 19, that was? A. No, I don't recall the exact date. It was three or four days before that.

Q. Now, just what did Mr. Crawford say that day? Give us his words, now, as you can remember. A. He told me, as I remember it, that they had purchased five ships, two of them which they

were contemplating putting into Staten Island ship, one in Philadelphia, and the other two that were tier up down at our plant.

Q. Were tied up at your plant? A. Excuse me, not down at our plant. At Kill von Kull, near our plant, and that Mr. Bernard was his representative, was going to look after the scrapping of these ships.

Q. Did he say Mr. Bernard was his representative? A. That is the way I remember it.

Q. Those are his words? A. Those are his words, and would like to make arrangements to go down and look over the two ships with Mr. Bernard so as to give them an estimate on the scrapping of these ships, the use of our plant for scrapping of these vessels.

Q. Did Mr. Crawford estimate on the use of your plant? A. For scrapping.

Q. Did he use the words "use of the plant"? A. As nearly as I can remember, yes, sir.

Q. As near as you can recall? A. Yes, sir.

Q. You are sure of that? A. Positive.

Q. Go ahead. What else did he say? A. Those things we talked over in general about the sizes and what they had planned on doing, and how quick we wanted to get them out.

Q. That is what he said? What did he say? As well as you can recall it, now, give us Mr. Crawford's words. A. I can't remember that now any more. That is over two years ago.

Q. Well, as nearly as you can recollect. A. No. I don't remember the words that he used that time.

Q. You don't remember the words that he used? A. No.

Q. And does that apply to all his conversation at that time? A. I beg your pardon?

Q. Does that apply to all his conversation at that time, you don't remember his words? A. I don't remember his exact words, no.

Q. I don't mean his exact words. Give us the substance of his words and as he said it, not as you say it. Give us the substance. A. He wanted me to arrange to go down on those ships with Bernard. He would tell us how he intended to cut-up these vessels, and then what was done the following day Bernard—

Q. I am not asking you about that. I am asking you what was said on the day before. A. I just told you that.

Q. That is all he said? A. All I remember.

Q. Now, this locomotive crane was bought for this particular ship, wasn't it? A. Yes, sir.

Q. Do you recall when it came on the job? A. No, sir.

Q. Which one of the dry docks of the company was the one that used to be in where the "Philippines" afterwards lay? A. You mean which number dock?

Q. Yes. A. I can't tell you that. I don't remember.

Q. What size was it? A. Small dock.

Q. The smallest dock?

Mr. Haight: He didn't say that. He said the small dock.

Q. I am asking him was it the smallest dock? A. I don't know whether it was the smallest. There are two or three of them about the same size there.

Q. You had this first conference with Mr. Crawford and then you went down and looked over the ship? A. Right.

Q. And that was the following day? A. Yes, sir.

Q. And then you did some estimating? A. Yes, sir.

Q. How long after the estimating did you bring in your first written proposition to Mr. Crawford's office? A. I think two days after that.

Q. Two days after? A. Yes.

Q. And on that day Mr. Crawford had some telephone conversation with Mr. Snedeker? A. Right.

Q. It was the day after that that you brought in the contract in its final form? A. Correct.

Q. Which was December 19, according to its date? A. Yes, sir, as I remember it, yes.

Q. And it was December 18th, then, that you brought in the estimate in its form and Crawford and Snedeker had their telephone conversation? A. Yes, I think that is right.

Q. Yes, December 18. And was it the night before that that you and the others in the Perth Amboy Dry Dock Company got that estimate into final shape? A. Yes, not the night before, the morning. The morning before I went into the office.

Q. That same morning? A. That same morning. I went into the office that afternon.

Q. In how many hours was that estimate made from when you first saw the ship until you made it up finally?

Mr. Haight: I object to that, if your Honor pleases. It is immaterial.

(Last question read by the stenographer.)

Mr. Haight: It can't possibly make any difference how long it took him to make up the estimate or whether he made up a proper esti-

mate or whether he made up an improper estimate. That is not in this case.

Mr. McCarter: Yes, your Honor, it is in this case. You may recall I said to the jury in opening that the whole secret of this case is that these defendants made a blind estimate—I didn't use those words—they guessed at the price, and having guessed wrong they are now, as I said to the jury, trying to sell their mistake to us. If we assume that this estimate was based on reason or facts or its a mere guess on the part of the Perth Amboy Company, it will be something to our advantage in this case, and, of course, that is what this question is directed to. Naturally, the contract is a contract. I am not going back to the contract to say that they estimated, either making the contract higher than the estimate or lower than the estimate or anything like that, but I am cross examining him on the validity and basis of his estimate.

Mr. Haight: You see the question is whether we are trying to sell, to use the expression of my learned adversary, our mistake to Crawford & Company has been determined by the Vice-Chancellor, and he says that wasn't so, that he was with Crawford & Company and not with us.

The Court: This witness, as I recall, has given testimony along the line of whether or not there was an unreasonable delay. He evidently was the man in full charge of the physical side of the work of the Perth Amboy Dry Dock Company. He has given evidence which tends to show that there was an unreasonable delay on the part of the defendants, and any

probing of the reasons upon which he bases his claim that there was an unreasonable delay is entirely admissible. Now, the question of price—he is the man who fixed it—so far as the Perth Amboy Dry Dock Company is concerned, according to his own estimony, was taken into serious intimacy with the time that the dock would be held there. I think on the ground of the credence to be given to his testimony generally, his interest because of the mix-up of that estimate, and also for the reasons upon which he bases his testimony that there was unreasonable delay, that this question is a perfectly proper one under cross examination. I will allow it.

Mr. Haight: Your Honor will allow me an exception.

(Last question read by stenographer.)

A. Oh, roughly, about a day and a half.

Q. About a day and a half? A. Yes.

Q. How many working hours do you include in a day? A. That is hard to tell. It is all according to how busy I am.

Q. How busy were you then? A. Well, we worked late the first night on it. I don't know how many hours.

Q. You don't know how many hours? A. No, I don't know exactly how many hours. Mr. Preacher worked quite late on it the first night. Roughly, say about sixteen hours.

Q. How did you make the estimate up? A. Through information given to us through Mr. Bernard.

Q. What information did Mr. Bernard give you? A. As to the approximate amount of feet of mate-

rial that would be cut, and we then found out from the different carbon and hydrogen people as to about how much material it would take to cut a foot of material.

Q. You say you got from Mr. Bernard how many feet there were to cut, is that the idea? A. Yes.

Q. How many cutting pieces did Mr. Bernard tell you there were? A. I don't remember now.

Q. You don't remember? A. No, sir.

Q. Did you make a record of that? A. I did at that time.

Q. Where is that record now? A. I don't know. Since I left the dry dock I destroyed everything I had in my desk at that time.

Q. Did you destroy that record? A. I probably did, with everything else.

Q. Do you know what was the tonnage of the "Black Arrow"? A. I think about seven thousand tons.

Q. Did you know at that time what tonnage the "Black Arrow" was? A. Yes.

Q. You did? A. Yes.

Q. Did you know how many decks she had? A. Yes.

Q. You did? A. Yes.

Q. Did you measure the length, of each deck? A. No, sir.

Q. You didn't. Do you know how many bulkheads she had across? Did you know this? A. At that time, I did, yes.

Q. You did? A. Yes.

Q. Did you measure the width of those bulkheads? A. And the height, yes.

Q. You measured them? A. Yes, sir.

Q. When did you measure them? A. When Mr. Preacher and I went back there again to check up our figures to go over the job.

Q. When were you back on the ship again? Before the estimate, now, of course? A. Yes, yes.

Q. When was that? A. Bernard came down that morning, the following morning we went over there again, Preacher and I, to check it.

Q. The following morning? A. Yes.

Q. What day of the month was that, bearing in mind the contract was first taken on the 18th? A. Morning of the 17th.

Q. Morning of the 17th? A. I think.

Q. Preacher and you went over the "Black Arrow" and the "Philippines" a second time? A. Yes.

Q. And on that second time what did you do besides measure the bulkheads? A. Looked over the whole ship in general and kind of got an idea as to how long—the best way to handle the whole thing, and how much material it would take for us to—how much material we would have to furnish the H. L. Crawford & Company.

(Adjourned until tomorrow, Wednesday, January 7, 1925, at 10:00 A. M.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT,

DECEMBER TERM—1925.

PERTH AMBOY DRY DOCK CO.

vs.

HARDEN L. CRAWFORD, *et al.*, as H. L. CRAWFORD & CO.

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the seventh day of January, A. D. 1925, at 10 A. M.

APPEARANCES:

MESSRS. WALL, HAIGHT, CAREY & HARTPENCE,
WILLIAM H. CAREY, Esq.,
THOMAS G. HAIGHT, Esq.,
JOHN E. TOOLAN, Esq.,
Counsel for Plaintiff.

MESSRS. MCCARTER & ENGLISH,
GEORGE MCCARTER, Esq.,
CLIFFORD I. VOORHEES, Esq.,
PARKER SILZER, Esq.,
Counsel for Defendants.

Edward J. Meurer. Called by Plaintiff. Cross.

EDWARD J. MEURER, recalled as a witness for the Plaintiff, and having been previously duly sworn, saith:

CROSS EXAMINATION (continued)

BY MR. MCCARTER:

Q. Now, Mr. Meurer, I want to go back to the question of estimating on these ships and ask you about the dates you went on the ships and saw Mr. Crawford and so forth. Isn't it a fact that your first communication from Mr. Bernard, as the result of which you first got into the matter at all, was on December 16th? A. Yes, I believe it is.

Q. And isn't it a fact it was on the following day, December 17th, that you first called at the office of H. L. Crawford & Company and had your first talk with Mr. Crawford and the others there? A. Yes, it was the following day.

Q. And isn't it a fact that it was the day after that, namely, December 18th, that you, Mr. Preacher and Mr. Bernard went over the ships? A. Yes, sir.

Q. And isn't it a fact that it was the day after that, the 19th, that you took into Mr. Crawford's office the contracts in their first form and that Mr. Crawford had his telephone conversation with Mr. Snedeker? A. Yes, sir.

Q. And isn't it a fact that it was the day after that, the 20th, that the contracts were signed? A. Yes, sir.

Q. Now, weren't you mistaken then when you said that you went on the ship the second time before the signing of the contract? A. No, sir. If I remember I went on there twice before the final signing of the contract.

Q. All right, when did you go on the second time, which one of those days, remembering now that you went on the first time on the 18th? A. Went over there again the morning of the 19th, if I remember correctly.

Q. Went over there morning of the 19th? A. Yes, sir.

Q. What time in the morning of the 19th? A. About 9 o'clock.

Q. And how long were you on? A. I don't think I was on more than an hour.

Q. Weren't on more than an hour? A. No, sir.

Q. When did you go to Mr. Crawford's office on the 19th, what time of day? A. I don't remember. I think it was after lunch.

Q. You think it was after lunch? A. Yes, sir.

Q. Now, what did you do when you were on the ships the second time? A. I just checked up some of my figures.

Q. Checked up some of your figures? A. Yes, sir.

Q. Why couldn't you have done that in your office? A. Well, there were some thing I wanted to look over again on board the ship.

Q. What did you look over? Tell the jury. A. Well, looking over some of the bulkheads and things.

Q. You looked over some of the bulkheads? A. Yes.

Q. Some of the bulkheads? A. Yes.

Q. Not all of them? A. No, I couldn't look at all of them in that time.

Q. Did you look at anything besides bulkheads? A. There were different things. I don't remember what they were now, Mr. McCarter.

Q. You don't remember now? A. No, sir.

Q. Did you measure anything? A. No, not that time.

Q. How did you get on the ships the second time? A. In a motor boat from the yard.

Q. Who was with you? A. Why Mr. Preacher went over with me the second time.

Q. Mr. Preacher? A. Yes.

Q. Anbody else? A. No, sir.

Q. Just you two? A. Yes.

Q. Sure of that? A. Positive.

Q. Was there any watchman on the boats? A. Yes, sir.

Q. How did he come to let you on? A. Why I told him I was back to check up some of my work from the day before.

Q. Did you ask for a pass from anybody? A. No, sir; I did not.

Q. Did you have a pass from anybody? A. No, sir.

Q. Now, you didn't do any measuring that second trip? A. No, sir.

Q. Did you at any time measure the decks of the "Black Arrow"? A. The first time we went aboard with Mr. Bernard we measured up some of the pieces and he showed us how large they were going to be that they were going to cut out.

Q. That is not answering my question. Did you measure any of the decks, I said? A. Yes.

Q. You measured the decks? A. Yes. Not all.

Q. When? A. The first time when we went over with Mr. Bernard, here and there we measured out a plate that he would show us that he was going to cut out.

Q. I don't know whether you do not understand me, or whether it is on purpose.

Mr. Haight: I object to that. That is unwarranted. And may I press an objection to all of this line of testimony again. It seems to me we are going far afield in this case as to what this man may have done, as to what Mr. Preacher may have done in the way of making the estimates in connection drawings to determine the question as to whether the time in which these people should have scrapped these vessels expired April 1st or at some other time. The witness was not, as I read in your Honor's reason in the transcript of the testimony, called as an expert on the reasonableness of the time in which the vessels were to be scrapped. He only testified that Bernard told him that they were to be scrapped within three months, and that evidence was offered, Bernard's statement, to show what was a reasonable time, not what this witness estimates as a reasonable time. It seems to me we are going quite far afield and getting nowhere in testimony of this kind, because it has all been decided by Vice-Chancellor Backes, that it was not any fault of ours, that this situation came about, but that it was due to the fault of Crawford & Company, and what they are attempting to show now is, that is, Mr. McCarter is, that we made a mistake in the estimating and then we changed our whole course of procedure and tried to do something differently than we had agreed to do, because of a mistake that we had made. The Vice-Chancellor has held right to the contrary, that the fault was with Crawford & Company, and not with us, and anything that this witness says cannot in any way affect that question.

The Court: What has the Vice-Chancellor held? You say that the Vice-Chancellor has held that fault was—

Mr. Haight: The Vice-Chancellor has held this: "Now, it is plain who is responsible for the distressing condition at the complainant's dock. The defendants should have and were in duty bound to comply with the request to pay the additional cost of gas. That was justly due the complainant. The complainant properly refused to do that which the defendant had no legal right to require them to do. The defendants have since and for a long time refused to go on with the cutting under the terms legally laid down by the complainant, and that refusal is an abandonment of the performance of the contract. Their ships are unlawfully in the yards of the Dry Dock Company and the Dock Company has a right to call upon this court for their removal."

The Court: But he doesn't say how long such a situation as that existed.

Mr. Haight: No, he doesn't say that.

The Court: Now, then, this jury ought to pass upon when it became unreasonable for the continuance of the location of those ships in those docks. That is what you are suing for.

Mr. Haight: Yes, sir.

The Court: Now, this witness was permitted to testify that Crawford & Company said that three months' time was the time.

Mr. Haight: Yes.

The Court: And that he, in making his estimates, made his estimates upon the basis of three months' time, use of the docks.

Mr. Haight: Yes.

The Court: Now, on the ground of testing the credence of the witness as to whether or not that was so, why he is being examined along this line, as I understand it, as to whether or not it was probable that there was any such conversation as to three months' time in view of what he knew or what he did not know as to the condition of the vessels. It is on that ground that I am allowing this probing.

Mr. Haight: I didn't understand that it was offered for that purpose. I understand that it is offered for the purpose of showing, as was said in the argument of Mr. McCarter in asking for the admission of testimony —

Mr. McCarter: I can say right now, Judge, it is offered for any legitimate and proper purpose.

Mr. Haight: You may recall I said to the jury in opening that the whole secret of this case is that these defendants made a blind estimate—I didn't use those words—they guessed at the price, and having guessed wrong, they are now, as I say to the jury, trying to sell their mistake to us. If we can establish that this estimate was not based on reason or fact or is a mere guess on the part of the Perth Amboy Company, it will be something to our advantage in this case, and, of course, that is what this question is directed to. Naturally, the contract is a contract. I am not going back to the contract to say that they estimated their making the contract higher than the estimate or lower than the estimate or anything like that, but I am cross examining him on the

validity and basis of his estimate, on which he was asked on cross examination.

The Court: Well, notwithstanding any specific claim narrowing itself as to any specific reason for a cross examination, yet if the Court feels that it is proper cross examination on matters that assist in arriving at the truth of the questions, why, the Court has the duty of allowing it to go on; and I am telling you the direction that it is having with me so far as its pertinency is concerned.

Mr. Haight: I couldn't see it, if your Honor please, but I thought it was my duty to submit it to you because of the time it was taking. I don't care. They can go ahead as long as they please. It may result in a place where we may have to go into rebuttal on it. But, if your Honor feels that it has any pertinency at all, of course, we bow to your Honor's judgment.

Q. Did you at any time measure the length of any deck? A. No, sir.

Q. Did you at any time estimate how many lineal feet of cutting that would have to be made? A. No, sir.

Q. Did you at any time estimate the tonnage of the vessels? A. No, sir.

Q. You said yesterday that you thought the "Black Arrow"—the tonnage of the "Black Arrow" was seven thousand tons? A. Yes.

Q. What kind of tonnage do you refer to, dead weight or what? A. Yes, sir.

Q. Dead weight. What is dead weight tonnage? A. That is what Mr. Bernard told me. That is where I got my information from.

Q. What is dead weight tonnage? A. The dead weight of the steel, weight of the ship, actual weight.

Q. The actual weight of the steel? A. Yes.

Q. In the ship? A. Yes, sir.

Q. Is that what you mean? A. Yes.

Q. I am trying to get your understanding. A. That is right, Mr. McCarter.

Q. It is the actual weight of the steel in the ship? A. Yes, sir.

Q. Did you figure your price in estimating the cutting of the "Black Arrow" on there being seven thousand tons of steel in the ship? A. No, sir, I did not.

Q. How many tons in the ship did you figure on? A. I didn't figure on the tonnage.

Q. You didn't figure on the tonnage at all? A. No, sir.

Q. Did you figure on the footage of cutting? A. Yes, sir.

Q. Why did you tell me a minute ago that you didn't figure the lineal feet? A. I didn't estimate that because Mr. Bernard told me. He had it all doped out, and those were his figures. I never had any experience in that line before. I relied on his figures.

Q. You never had any experience in scrapping ships before? A. No, sir.

Q. You say Mr. Bernard told you how many lineal feet of cutting he estimated that would be? A. Yes, sir.

Q. You took that without any check? A. Yes.

Q. Why? A. Because I wouldn't have ever got it finished in time if I had to check the whole thing, and it was just in the slack season in the yard, and that is why I took the gamble to get work in there, because it was the dull season.

Q. You took the gamble to get the work in there because it was your dull season? A. Yes.

Q. In figuring that the ships would be out of your yard, of what time did you figure that would be? A. Around the 1st of April.

Q. Around the 1st of April? A. Yes, three months Mr. Bernard said.

Q. And you relied simply and solely on what Mr. Bernard said as to the time? A. Yes.

Q. You didn't check that up by how long it would take to burn a ship of that size, working it out yourself? A. No, sir.

Q. What proportion of the "Black Arrow" was burned on April 1st, do you recall, roughly? A. Roughly speaking, I would say about eighty per cent.

Q. Eighty per cent. the "Black Arrow" was burned on April 1st? A. Yes, sir.

Q. And how much of the "Philippines"? A. About thirty.

Q. About thirty per cent? A. Yes, sir.

Q. Have you any idea what quantity of steel or material of any kind from the "Philippines" had been cut by April 1st? A. Yes, roughly speaking.

Q. What? A. Her whole superstructure was cut down.

Q. The "Philippines," now. A. I am taking the "Philippines."

Q. Her whole superstructure? A. Yes, and part of the decks were cut adrift ready to be shipped.

Q. What part of the ship is the superstructure? A. All above the main deck.

Q. All above the main deck? A. Yes, sir.

Q. And what is the main deck? Which of the decks is the main deck? A. Why, the main deck is where your—well, I will explain that. From where

you start going down into your first hold. That main deck of your vessel before you go down in the cargo space, or into the quarters—that is what they call the main deck.

Q. Do you mean by that the lowest deck of the ship? A. Oh, no.

Q. Do you mean the highest continuous deck that goes all the way from bow to stern? A. Yes, sir, from bow to stern.

Q. That is the main deck, the highest continuous deck? A. All the way through.

Q. And everything above that is the superstructure? A. Yes, sir.

Q. And you say everything above that was cut down on the "Philippines" on April 1st? A. Yes, I believe it was.

Q. On the "Philippines"? A. Yes, sir.

Q. And how much of the "Black Arrow" was cut, referring not to the tonnage, but to superstructure, and so forth, on April 1st? A. Why, it was quite —let me see. I believe the main deck was out of the "Black Arrow."

Q. You believe the main deck was out? A. Yes. I am not sure, though, Mr. McCarter. I wasn't there all the time, you know.

Q. And was all the superstructure of the "Black Arrow" cut on April 1st? A. I don't remember.

Q. You don't remember? A. No, sir.

Q. Now, there hadn't been any appreciable delays, had there, in either of the ships up to April 1st, in the cutting? A. I couldn't answer that question.

Q. You couldn't answer that? A. No, sir, because I was in New York most of the time, not at the plant.

Edward J. Meurer. Called by Plaintiff. Cross.

Q. Wasn't it a fact that the "Black Arrow" was the ship that lay at the dock where the locomotive crane was? A. Yes, sir.

Q. And the "Philippines" at the other dock? A. Yes, sir.

Q. And wasn't it a fact that the plan of scrapping the ships was to cut the "Black Arrow" to the water's edge first and then put her on dry dock and then move the "Philippines" from the berth where she lay to the place where the "Black Arrow" was at first and then proceed with her? A. Yes.

Q. Yes? A. Yes, sir.

Q. The facilities for scrapping were very much more efficient at the berth where the "Black Arrow" lay than the were at the berth where the "Philippines" lay? A. Yes, sir.

Q. So that the scrapping could naturally proceed more rapidly at the berth where the "Black Arrow" lay than they could at the berth where the "Philippines" lay? A. Yes, sir.

Q. How long did it take you to make this estimate which you embodied in these contracts?

Mr. Haight: I object to that as having been answered at least three times. A day and a half, the witness said over and over again.

Mr. McCarter: I have a right to repeat this question this morning, if your Honor please. It is of advantage to the witness, if anything.

Mr. Haight: I don't think it is of any advantage to the witness.

The Court: Well, you may answer it again. It has been answered at least twice.

A. About sixteen hours' time.

Q. How much of that sixteen hours' time was spent on the ships? A. I should say, roughly speaking, about five hours altogether.

Q. What did you do in the other eleven hours? A. Tried to get figures from the different hydrogen people for the supplying of material, and information they had in regard to the amount of material it would take to cut a foot of metal.

Q. To cut a foot of steel? A. To cut a foot of steel. And then figure up with our office manager in regard to what we would require for the use of our plant during that dull season.

Q. Now, the figure on the "Black Arrow" quoted for use of plant and gas and air, was $9,948. How much of that was for gas and air, and how much for the use of the plant, other than gas and air? A. I don't remember, Mr. McCarter.

Q. You don't remember? A. No, sir.

Q. Have you any record which you could look at to refresh your recollection? A. No, sir, I have not.

Q. What did you pay for gas and air, do you remember? A. No, sir.

Q. Per bottle or tank, whatever you call those things? A. No, sir; I don't remember.

Q. Do you remember how many tanks— A. It was a contract which the company in Perth Amboy entered into with the Carbo-Hydro people; I don't remember what that price was.

Q. Was the contract for a flat rate for all the gas necessary for cutting up those ships, or was it so much per bottle? A. No. It was a contract by the year.

Q. By what? A. By the year.

Q. To supply all the gas and air they might require during the year? A. Yes, sir.

Q. I want to be sure I understand you right now; so that it made no difference how many tanks of gas and air were consumed by the Perth Amboy Company, they would not be required to pay any more to the — A. Oh, yes.

Q. Then the contract was at some rate per bottle? A. Per bottle.

Q. But you don't remember what that was? A. No, sir; I do not.

Q. Do you remember how many bottles you estimated on for the "Black Arrow"? A. No, I do not, Mr. McCarter.

Q. And you are not able to tell us at all today how much of the $9,948 was for the actual gas and air, and how much was for the use of the plant? A. No, sir.

Q. And I suppose the same is true about the $16,554. for the "Philippines"? A. That is correct.

Q. Did you make any checks on what you learned from the gas and air people as to how much gas was required, or did you just take their word for it? A. No. I took that up with our Master Mechanic in the shop and asked him if he had any idea of it, and we figured out, doped that their figures were pretty nearly right, and we used their figures.

Q. What did you do in doping out, as you say, that their figures— A. They told me it would take, how many feet approximately a bottle would cut.

Q. Yes? A. And we tried it out to see whether it would, on a certain thickness of material.

Q. What kind of gas and air did you figure on? A. Carbo-Hydro Manufacturing Co.

Q. As a matter of fact, the gas and air that was used was acetylene, wasn't it, or the gas was, rather, acetylene, wasn't it? A. I don't remember.

Q. You don't remember? Did you figure at all on how many burning outfits would be required on each ship? A. Yes, sir.

Q. You did? A. Yes.

Q. How many? A. Mr. Bernard told us he would need at the most fifteen on each ship, and that is what we purchased, and after a while when he required more, I believe we had as many as 50 outfits for him.

Q. Now, in estimating the time, did you take into consideration the number of burning outfits that were to be used, and how many feet per day each burner would cut? A. No.

Q. You relied solely and simply on the fact that Bernard said the job would be done in three months? A. Yes.

Q. And made absolutely no check or estimate yourself based on the time? A. No.

Q. Did you figure on the crane being able to remove the material from the ships as fast as the pieces were cut? A. Why I don't see how I could, because that was up to Mr. Bernard, the way he handled the crane after he got it. That was up to him to handle his material.

Q. Your company was to furnish the crane, wasn't it? A. Yes, sir.

Q. What size pieces did you figure the steel being cut into? A. The charging box sizes, 22 inches by 5 feet 6 inches, and the shipping sizes, 5 feet 6 inches by approximately 20 feet in length.

Q. And what proportion of the ships did you figure would be cut into charging box sizes and what proportion of the ships did you figure would be cut into shipping sizes? A. Figured that most of the superstructure would be cut in the charging box sizes, the rest of the ship into shipping sizes.

Q. Did you estimate what proportion of the ship would be in the superstructure, and what proportion would be in the other part of the ship, whatever the technical term is for that? A. Mr. Bernard showed us how far he would cut the small material.

Q. How— I say did you figure what proportion of the whole ship that was? Did you figure that in your estimate? A. No, I didn't figure it exactly. I would say about one-third.

Q. You would say it was about one-third? A. Yes.

Q. Well, isn't it a matter of fact, Mr. Meurer, that your whole estimate was based on what other people told you? What Bernard told you as to the time and the pieces into which it was to be cut, and what the gas and air people told you? A. Yes, sir.

Q. As to the cutting of those with the gas? A. Yes, sir.

Q. That is so. Now, is that your practice in making estimates in your business? A. No, but I had never had the experience in that line before.

Q. You never had the experience in this line before? A. No, not of cutting up a ship in three months.

Q. And you didn't know at that time yourself whether or not those ships could be cut up within three months? A. No, sir.

Q. Did you figure at all on the method of how you would handle to get out of the yard the cut material after it was cut? A. That wasn't my business. We had nothing to do with that.

Q. It had a great deal to do with how soon the job would be done? A. Yes, but that was up to Bernard.

Q. You relied on Bernard for that? A. Sure, he was handling the material.

Q. Did you take into consideration at all the facilities existing at your yard, by which the material could be removed? A. Well, in what way, Mr. McCarter?

Q. In making up your estimates and deciding how soon the ships should be completely scrapped? A. No.

Q. You did not? A. No.

Q. You understood, of course, that the ships were to be scrapped at that yard? A. Yes, sir.

Q. And with the facilities existing and furnished by the Perth Amboy Dry Dock Company? A. Yes, sir.

Q. I show you a little photograph which has on it the word, "Philippines," Mr. Meurer, and ask you if you recognize that as a photograph of the "Philippines"? A. Yes, sir.

Q. Do you know when that picture was taken? Don't pay any attention to what is written on it. Do you remember? A. No, I don't remember.

Q. Do you recognize whether or not the "Philippines" was cut down as much or more than that on the 1st of April? A. I do not.

Q. You do not know? A. No.

Q. Do you see any of the superstructure in that photograph? A. Just this little bit here. That is our main deck there, isn't it?

Q. You see some superstructure there? A. Yes.

Mr. McCarter: I would like to have that marked for identification.

(Photograph marked "D-1" for identification).

Q. I show you another picture that has the word "Philippines" on it and ask you if you recognize that as a photograph of the "Philippines"? A. Yes. That is a photograph of the "Philippines."

Q. Do you know whether or not the "Philippines" was cut down more or less than that on April 1st? A. I don't know.

Q. Do you see anything above the main deck in that picture? A. A mast and part of the funnel.

Mr. McCarter: I ask that be marked for identification.

(Photograph marked "D-2" for identification).

Q. Now Mr. Meurer, yesterday you identified Exhibit P-5. You recall that, don't you, which I now show you? A. Yes.

Q. That P-5 was a true statement as you then understood it, was it not? A. Yes, sir.

Q. You say there: "Mr. Bernard at that time informed us that he intended scrapping the ships in the following manner. The entire superstructure to be cut up into charging box sizes, and the rest of the hull cut up into large size plates for shipment to China." Is that correct? Is that what Bernard told you? A. That is what he told us; yes, sir.

Q. Therefore, do you want to correct your testimony given a moment ago to the effect that the rest of the ship, other than the superstructure, was to be cut up into shipping sizes? A. What did I say before?

Q. Do you want to correct your testimony that the rest of the hull, other than the superstructure,

was to be cut up into shipping sizes, according to what Bernard said?

Mr. Height: I think that the witness does not understand the question. What should be submitted to him is that any inconsistency between that statement and what you stated a moment ago, that they were to be cut up into shipping sizes.

Mr. McCarter: I submit the question as proper cross examination and that counsel should not, in the guise of an objection, help the witness.

The Court: The witness evidently does not understand the question.

Mr. Haight: That is exactly.

(Question repeated by stenographer).

BY THE COURT:

Q. Do you understand it yet? A. No, sir; I don't.

The Court: Then you do not have to answer it if you do not understand it.

BY MR. MCCARTER:

Q. Do you understand what you meant when you wrote this letter "And the rest of the hull cut up into large size plates for shipment to China?" A. Yes, sir.

Q. What did you mean by "A large size plate"? A. Well, what he explained to us, plates 5′ 6″ x 20′ long, or 18′ long or 25′ long.

Q. Plates? A. Yes, sir.

Q. Any other specifications or qualifications about those plates to China? A. No.

Edward J. Meurer. Called by Plaintiff. Cross.

Q. What do you understand by shipping size? A. I just gave it to you, 5′ 6″ wide by 20′ long, or over.

Q. And it must be a plate? A. Beg pardon?

Q. And it must be a plate, a shipping size? A. Yes.

Q. So you—if you cut a beam or something, it has to be cut down to charging box sizes, is that so? A. Well no, not exactly.

Q. Can't a beam or a column or something be in shipping size too? A. Mr. Bernard at that time told us that most of those plates would go with the beams intact, left on to them.

Mr. McCarter: I ask that be stricken out as not responsive.

Mr. Height: I think it is responsive.

The Court: I think it is. I will allow it.

Mr. McCarter: Prays exception.

Q. Don't you understand—please listen to my question and answer my question,—don't you understand, and didn't you understand then that a beam or a column or something other than a plate might be in a shipping size? A. No.

Q. You did not? A. No. Because you will never find a beam 5′ 6″ wide in those ships.

Q. A beam then could not be cut out of that ship unless it was cut down into a length no more than 5′ 6″? A. Yes it could.

Q. It could? A. Yes, sir.

Q. Well, if it were more than 5′ 6″ it would not be a charging box size, would it? A. No.

Q. What would it be? A. I don't know. Whatever you might want to use it for. I don't know

whether it would even be shipping size, unless it is within that length.

Q. You don't know then how the beams were to be cut up? A. No, sir.

Q. So your testimony as to how the rest of the ship, other than the superstructure, was to be cut up, is limited to the plates of the ship? A. Yes, because those beams, just as I told you before, Mr. McCarter, he told us that those beams would stay intact onto those plates that were going to be shipped, and when I say hull, I mean all the steel that is below the superstructure of the vessel.

Q. So that you say there is nothing below the superstructure but plates and beams, is that right? A. Why, yes, engines and boilers and everything else is below that.

Q. Let us eliminate the engines and boilers for a moment. There is nothing below the superstructure then but lates and beams, is that right? A. Why, yes, there might be woodwork down below there too, woden floors below the superstructure.

Q. Let us eliminate everything but steel then?

Mr. Haight: Everything but the hull, and you have got nothing but the hull left.

Q. Eliminate everything but steel, then your statement is that nothing below the superstructure in that ship in steel existed except plates and beams, is that right? A. Eliminate all the auxiliaries, yes, that is right.

Q. Do you know what a tank top is? A. Yes.

Q. Is that a plate? A. Yes.

Q. Could that be cut up in shipping sizes? A. I don't believe it is heavy enough for them to ship. That material as I understood at that time had to

be five-eighths in thickness. I don't remember whether those tank tops were that thick.

Q. You never saw the tank tops cut, as a matter of fact, did you? A. Oh, yes, when I went over on the dock I have seen them cut them.

Q. You never saw the tank tops on those ships cut, did you? A. No, not on these ships.

Q. You don't know how thick they were? A. No, sir; I do not.

Q. They were not cut when the ships left the Perth Amboy Dry Docks? A. I don't think so.

Q. What are the tank tops, so the jury will know? A. The tank tops are plates that go across almost the bottom of a ship, about 12 to 14 inches from the keel of the vessel, where the fresh water is carried in for the supply of the ship, either for drinking water, or boilers, besides tanks they might have placed around in the ship.

Q. And your statement is, and you want us to understand that the shipping sizes and ship plates for China was exactly the same thing? A. As what?

Q. As each other. Was exactly the same thing? A. Oh, yes.

Q. No distinction? A. No.

Q. That any piece of steel from this ship which is not too big to be of shipping size can be defined as a large size plate for shipment to China, as represented by Mr. Bernard? A. Yes, sir.

Q. You didn't say in this letter anything about beams being attached to the large size plates, did you? A. No.

Q. Why didn't you mention that? A. Why should I?

Q. I am asking you. A. I don't know.

Q. You don't know? A. No.

Q. Why did you write the letter anyway? A. Why did I write the letter?

Q. Yes. A. Why because they were continuing on cutting plates below the superstructure in the charging box sizes.

Q. Because they were doing that what did you want to accomplish? A. What I was trying to accomplish, to find out whether they were going to continue doing that, because some arrangement would be made, because if more of the superstructure would be cut in the charging box sizes and the rest of the hull in the shipping siezs.

Q. Then your letter was written on March 3? A. Yes.

Q. Which ship was being cut below the superstructure on March 3? A. The "Black Arrow".

Q. The "Black Arrow," and what part of it was being cut below the superstructure on March 3? A. Why, some of the sides of the hull, as I remember correctly.

Q. And they were taking out these Chinese plates? A. I don't know whether they were going to China, but they were cutting them.

Q. Whether they were going to China or Jersey City, they were cutting out plates? A. Yes, and some of it in small material, which we objected to.

Q. But wasn't the small material merely material that was incidental to the cutting out of these plates? A. No, sir.

Q. You are sure of that? A. Positive.

Q. How much of your time did you spend down around these ships? A. Oh, I probably go over there. When I was in Amboy, I would go over there for maybe a half an hour or an hour. When

I was in Amboy that day I would be around the ships all the time in the yard.

Q. While you were in Amboy you were around the ships? Maybe the jury have some idea as to how much time you spent around the ships, but I haven't any idea. A. You haven't?

Q. Tell us how much of your time you were on the ships, on or about them, on the ships looking at them? A. Oh, I would say about an hour or so when I was in Amboy.

Q. Every day? A. Yes.

Q. About an hour per ship every day? A. Yes, maybe longer.

Q. But that is a fair average? A. That would strike a fair average, yes.

Q. You mean then, Mr. Meurer, that between the two ships you spent on an average of two hours a day? A. When in Amboy, I would say that, yes, sir.

Q. How much of your time were you in Amboy? A. I can't tell you that.

Q. You don't remember how much of your time you were in Amboy and how much of your time you were elsewhere? A. Why, between Amboy and New York most of the time. I couldn't tell you that exactly; no, sir.

Q. Not exactly, but what proportion that you can remember of your time were you in Amboy? A. I don't know. I would like to answer it.

Q. Do you recall when the manifold was installed, Mr. Meurer? A. No, sir, I don't recall the date.

Q. The manifold hastened the work, didn't it? A. I don't know. I never check that part of it.

Q. You don't know? A. No, our Mr. Preacher made the manifold and took care of it.

Q. Didn't you ever know that a manifold hastens the work? A. I know it saved labor for Crawford & Company for handling the tanks.

Q. Didn't you know that the manifold hastens the work? A. No.

Q. You never knew it? A. No.

Q. You made an affidavit in the chancery suit, didn't you? A. I don't remember. That is a long time ago.

Q. You don't remember? A. No, sir.

Q. You don't know whether you made an affidavit in the chancery suit? I have got the original here. I remember the signature of it.

Mr. Haight: You have no right to make a remark like that.

Mr. McCarter: I am going to use this, Judge Haight.

Mr. Haight: All right, use it, but you won't find anything about a manifold hastened the work.

Q. Now, I show you the reply affidavits in the chancery suit filed—it is marked filed January 13, 1925. How it got that file mark I don't know. And I show you an affidavit headed Edward J. Muerer consisting of four pages and a fraction, with the signature on the fifth page, and ask you whether that is your signature. A. That is my signature, yes.

Q. Now, I ask you in the course of that affidavit if you didn't swear—on page 116. I ask you if you didn't say at the top of the page 2 of this affidavit: "Subsequently and after the work got under way you were asked to install manifolds in order to hasten the work." A. Yes.

Q. You did? A. I said that in order to hasten the work, but I don't know whether it ever did hasten the work.

Q. You don't know whether it ever hastened the work? A. No, sir, I don't.

Q. You have heard Mr. Gilbert testify yesterday that it did? A. I did not. I wasn't here when he testified.

Mr. Haight: I beg your pardon. He didn't testify to that. Mr. Gilbert said it didn't hasten the work. He said it may have possibly a little bit, at least in the saving of the men in attaching the hose, and that would take about three or four minutes, and they would probably use six or seven tanks a day, and altogether it would save twenty-three or twenty-four minutes a man.

Q. Going down a little bit in your affidavit, didn't you say on the same page, next sentence but one: "We did build them merely for the purpose of hastening the work, not because there was any obligation on our part to do so." A. Yes.

Q. Didn't you say that? A. Yes, but still that doesn't say that I know whether it did hasten the work or not. That is something Mr. Bernard said it would hasten the work along.

Q. That is your own affidavit here, isn't it? A. Yes.

Q. And you were interested in hastening the work, weren't you? A. Yes.

Q. And that is why you put the manifolds in? A. We put the manifolds in because they requested us to put them in so they could hasten the work

and put the material in and cut down the price of the labor.

Q. Then you didn't put it in there in order to hasten the work, did you? A. I said I put them in there to hasten the work, but I don't know whether they ever did hasten the work along.

Q. But the purpose of putting them in was to hasten the work? A. That is what it was, yes.

Q. Do you remember when the magnet was put in? A. No, sir.

Q. Do you remember it was put in? A. Yes, sir, I know it was put in.

Q. And you knew the purpose of putting in the magnet was to hasten the work, didn't you? A. Yes, sir.

Q. Do you know whether that did hasten the work? A. No, sir, I couldn't tell you.

Q. You don't know? A. No, sir.

Q. Now, you know that the contract provided for the use of a floating derrick for lifting up five tons? A. Yes.

Q. Is that the same thing as the car float or not? A. No, sir.

Q. What was the car float? A. The car float is an old car float that he had there at the plant that they used at times. The floating derrick is a short barge, a flat scow with a derrick on to it.

Q. What was the car float used for in the process of this work? A. Why, they threw scrap lumber and material on to it when they were cutting out the superstructure, and then it was taken on the car float over there to another place and dumped off?

Q. Dumped off? A. Yes.

Q. You thought at first, didn't you, that it would be possible to push the car float loaded with mate-

rial right up to the bulk head, and you so spoke to Mr. Bernard, didn't you? A. Up against which bulkhead?

Q. Any one of the bulkheads of the Perth Amboy Dry Dock Company. A. Yes.

Q. And you tried to do that, didn't you? A. Yes.

Q. And you found it impossible because the ground was too soft and the trucks couldn't come down? A. Oh, I see what you mean. Yes.

Q. Do you remember that? A. Yes.

Q. Of course, that— A. But there are other bulkheads there in a different part where we did put it up against the bulkhead and they unloaded them.

Q. What was the reason that you in the first instance expected and planned to use the bulkhead where the fill was too soft? A. Why, that was the most handy place to get a truck in. Mr. Bernard wanted to get trucks back up on that car float. He was going to sell a lot of that lumber. Then, we did finally get it up to the bulkhead, and the truck could not get aboard.

Q. So it wasn't possible to get the material carried away as fast as you hoped or expected in that respect? A. In that respect, yes.

Q. Could trucks go down on the pier against which the "Philippines" was tied up? A. Not heavy trucks, no, sir.

Q. How was the material removed from the "Philippines" after it was cut or broken off? A. Why, they put, as I said before, a lot of the lumber material on this car float and then they went to work and rigged up a derrick on the ship near one of the winches and lowered some of the steel platings on to the little steam derrick or floating

derrick or five-ton derrick, and they took the derrick from there over to the pier where the "Black Arrow" was and loaded it on the cars some of it, I believe, was put on to something—on another bulkhead and taken around to Staten Island for export shipment.

Q. How well did you know Mr. Bernard at the time these contracts were made? A. Why, I knew him fairly well. I have met him several times before. I know his whole family, his brothers.

Q. Did you know him in a business way at all? A. Yes, I did business with him one time I worked in Hoboken with the Fletcher Company.

Mr. McCarter: That is all.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Meurer, I understood you to say that you relied upon what Mr. Bernard told you as to the number of lineal feet that would have to be cut? A. That is correct.

Q. You didn't attempt to measure it yourself? A. No, we didn't Judge.

Q. Did you have any reason to believe that Mr. Bernard would misrepresent to you the number of lineal feet that he would cut? A. No, I had no reason.

Q. I understand you to say he told you how the vessels were to be cut up? A. That is correct.

Q. Now, at the time you and Mr. Preacher went to the vessels did he make any physical demonstration to show you the sizes that the vessels would be cut up? A. Yes, sir.

Q. What did he do? A. He took a piece of chalk and marked off the size of a piece, and said it was

to be cut off there. I believe he showed us a piece between the decks for a charging box size.

Q. Did you attempt to measure that? A. I didn't attempt to measure it. I think Mr. Preacher measured it. I know, yes, he did measure it to get twenty feet, and the height.

Q. What did you mean by saying in your cross examination replying in respect to this testimony that you took Bernard's figure as to the lineal feet that there were in this vessel of steel, and you said you took a gamble. What did you mean by that? A. I mean I took his word for it because I trusted him that much that he wouldn't do anything that wasn't right. I have always found him to be an honest man.

Q. Now, you testified yesterday, as I recollect it, that you didn't know when these vessels stopped, when the work on these vessels was stopped completely? A. No, completely. I don't know.

Q. Well, between the 1st of April and the time that the vessels, the work was completely stopped, was any material amount of work done in the way of scrapping? A. I don't remember, Judge.

Q. Have you got these dates fixed clearly in your mind? A. Between the 1st of April?

Q. Yes. A. There was considerable work done on the "Black Arrow", but I don't remember how much was done on the "Philippines" before the work was entirely stopped.

Q. Well, to what extent had your vessel been scrapped? A. Which vessel?

Q. The "Black Arrow", at the time the work was stopped. A. I said before I figured about thirty per cent.

Q. About thirty per cent? A. Yes, sir, I mean —"Black Arrow", I mean, eighty per cent.

Q. Now, you said in answer to Mr. McCarter's question that it was scrapped eighty per cent. on the 1st of April? A. No, when the work was entirely completed.

Q. It was some eighty per cent. when the work was entirely completed? A. Yes, sir, when they stopped work entirely on those vessels the "Black Arrow" was completed about eighty per cent.

Q. Then, to what extent was she completed about April 1st, do you know? A. No, I can't tell you honestly, Judge.

Q. To what extent was the "Philippines" scrapped when that work was stopped? A. About thirty per cent.

Q. To what extent was she scrapped about April 1st? A. I don't know exactly.

Q. Then, when you stated in answer to one of Mr. McCarter's questions that she was scrapped to about thirty per cent. on April 1st— A. I meant when they quit work on the vessels.

Q. Now, you mentioned something about the facilities that the pier where the "Black Arrow" was moored was better than the facilities at the pier where the "Philippines" was moored? A. Yes, sir.

Q. In what respect were the facilities better? A. Well, there is a railroad track on the pier where the "Black Arrow" was, and there was no railroad track on the pier where the "Philippines" laid so they could load truck from the ship into the car.

Q. Both had derricks, however? A. Yes, there was a big stiff-leg derrick on the pier where the "Philippines" laid, but that didn't travel the full length of the pier the way the locomotive crane did.

Q. In making up this estimate, am I correct in understanding that you took Mr. Bernard's statement as to the number of square feet? A. Lineal feet.

Q. Lineal feet that there were of steel to be cut up and that you got an estimate from the manufacturer of the carbon and hydrogen gas that you intended to use, the cost per lineal feet? A. Yes, sir.

Q. And then calculated what the total cost would be? A. Yes, sir.

Q. In making up your estimate were you guided with what Mr. Bernard said to you as to the sizes in which the vessels were to be cut up? A. Yes, sir.

Q. You say yes? A. Yes.

Q. You said that you, in making up this estimate, didn't take into account the facilities that were in your yard for handling material after it had been scrapped? A. No.

Q. Why didn't you? A. Because Mr. Bernard was handling the material, not the Perth Amboy Dry Dock Company. He saw the yard before the ships ever came there. He knew what our facilities were.

Q. Now, the question was asked you why you didn't mention beams in your letter of March 3, that has been referred to. Do you know of any reason why you should have mentioned beams in that letter? A. No, sir.

Q. Answer, don't nod. The stenographer can't hear you. A. I said, "No, sir."

Q. Why not. A. Why, I had no reason. It was all laid out when we went aboard the ship.

Q. Did Bernard indicate that these beams—

Mr. McCarter: I object to that as leading.

Edward J. Meurer. Called by Plaintiff. Redirect.

Q. In the sizes that Bernard chalked off did he include beams?

Mr. McCarter: I object to that as leading.
Mr. Haight: I don't think that is leading.
The Court: I will allow it. Go on.
(Last question read by stenographer.)

A. Yes, sir.

Q. And this affidavit that was shown to you, to which your attention was directed, it appears that you stated there: "And the time the contracts were originally entered into nothing was stated about manifolds."

Mr. McCarter: I object, if your Honor please.

A. That is right.

Mr. McCarter: On redirect examination he can't be questioned or have his recollection refreshed by other parts of his affidavit.

Mr. Haight: It is all part of the same paragraph. I want to show the whole context. Just picking out one little bit of a piece does not give a proper comprehension of what the witness was talking about, and Mr. McCarter very conveniently left off the beginning and the end. It seems to me that it is proper.

The Court: I haven't said it wasn't. Go on.

Mr. McCarter: Your Honor will allow me an exception.

Q. Did you say that? A. Yes, sir, I did.

Q. Then you went ahead "At the time the contracts were originally entered into nothing was said about the manifolds subsequently and after the work got under way we were asked to install manifolds in order to hasten the work." A. Yes, sir, I did.

Q. "This we agreed to do, but as we had no manifolds we had to build them and it took some time." A. Yes, sir.

Q. "We did build them merely for the purpose of hastening the work, not because there was any obligation on our part to do so." A. Yes, sir.

Q. "The effect of installing the manifolds also decreased the cost of the work for H. L. Crawford & Company." A. Yes, sir.

Q. Did you swear to that? A. Yes, sir.

Q. I understand you to say that Bernard said if you built these manifolds it would hasten the work? A. Yes, sir.

Q. You don't know whether it would or it would not? A. I don't know whether it did or not, no, sir.

Q. There has been a lot of talk about manifolds. Suppose you just make a little drawing. Can you make a little drawing of a manifold to explain to the jury what it is? A. I can make a rough sketch.

Q. Will it take much time? A. Yes, it will take quite a little time.

Q. Now, you were asked on cross examination about a scheme which you originally had of bringing the car float up to the pier heads and having the automobile trucks load from the car float. Am I correct in understanding that that was the plan? A. Yes, sir.

Q. The car float was to go alongside of the vessels? A. Yes, sir.

Q. And upon which the material on the vessel was to be put? A. On to the car float, yes.

Q. Your original plan was to have the car float go to certain bulk heads? A. Go up against the bulk heads, so that a truck could back up onto the float, so they could load the truck from the float instead of handling it so many times.

Q. Certain bulkheads was that? A. Beg pardon? It was the bulkhead right alongside of the "Philippines," where Mr. Bernard was trying to work that scheme out.

Q. You said on your cross examination that you did use other bulkheads for that purpose? A. Yes, sir.

Q. What other bulkheads did you use? A. On the north side of the dry dock pier.

Q. On the north side of the dry dock pier? A. Yes, sir. The car float was pushed up against the bulkhead and then they removed the material there, but not on the trucks.

Q. Not on the trucks? A. No.

Q. Where the trucks get it then? A. Well, what they had on the car float when they moved it around there was a lot of galvanized iron that they threw into a pit.

Q. Didn't take it away then? A. No, sir.

Q. Didn't try to take it away? A. No. It was left there for filling in.

Q. Did you load any material on automobile trucks from the lighter? A. That I cannot tell you. Not directly off the car float. The trucks didn't back up to the car float and take it off.

Q. Did any delay that there might have been caused by not being able to lighter directly up to

the bulkhead where the "Philippines" was, produce any delay in the scrapping of the vessel? A. I don't think so, because that was nothing but scrap material that was thrown on this car float. Wood and stuff. There was no heavy plating, that I remember, was put onto this car float. That mostly went onto the little floating derrick.

By Mr. McCarter:

Q. I forgot to ask you, Mr. Meurer, isn't it a fact that during the progress of the work H. L. Crawford & Company complained of the kind of gas that you were using? A. Yes, sir.

Q. And asked you to substitute another kind of gas called calorine? A. Yes, there were three or four kinds of gas asked to be substituted, and the test was made at the time.

Q. You did not make the substitution? A. Yes, we made a test of calorine and different gas.

Q. You did not make the substitution? A. No.

By Mr. Haight:

Q. Why didn't you make the substitution? A. Because we found at that time, Mr. Bernard and I checked that pretty carefully with the foreman, that the carbo-hydrogen worked better with the men and they made better time at cutting.

Q. Better time than what? A. Better than with the calorine. The men claimed at that time that the calorine gas affected the tips. Our Mr. Campbell, who is here, would probably be better able to explain that than I can.

David C. Preacher. Called by Plaintiff. Direct.

BY MR. MCCARTER:

Q. You say that the objection to the calorine was that it affected the tips of the torches? A. I believe so, Mr. McCarter. I don't know that exactly.

Q. You don't really know just was was the trouble? A. No. Our boiler man is here and he will probably be able to explain that better than I can.

Mr. McCarter: That is all.

DAVID C. PREACHER, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Preacher, where do you reside? A. Miami, Florida.

Q. How long have you been in Florida? A. Since the 20th of August.

Q. Last? A. Yes.

Q. Prior to the time that you went to Florida, where did you live? A. Perth Amboy, N. J.

Q. Prior to the time that you went to Florida, where did you reside? A. Perth Amboy.

Q. How long had you resided at Perth Amboy? A. Oh, over twenty years.

Q. During any part of the time that you resided at Perth Amboy, were you in the employ of the Perth Amboy Dry Dock Company? A. Yes, sir.

Q. For how long? A. For over twenty years I worked for them. All the time I resided in Perth Amboy.

Q. In 1923 and 1924 what was your position with the Perth Amboy Dry Dock Company? A. Master mechanic.

Q. Do you remember the steamships "Philippines" and "Black Arrow"? A. Yes, sir.

Q. When did you first have anything to do with those vessels? A. On the 18th of December.

Q. 18th of December, what year? A. 1923, I think it was.

Q. Give us the circumstances under which you first saw them or had anything to do with them. A. Why, Mr. Meurer, Mr. Bernard and myself walked up aboard the vessels, they laid off Kreiserville, in the Staten Island Sound, and we went aboard the "Philippines" and Mr. Bernard took us all around the vessel; that is, we went aboard and went on the main deck from stem to stern, and then we went down between decks and examined the hull between decks, and he explained to us how he was going to—

Mr. McCarter: I object to that.

Q. You were going to state that he explained to you how the vessels were going to be cut up?

Mr. McCarter: I object. That is the very thing he was going to say and I object to it. I object to the question counsel now asks.

Mr. Haight: I will withdraw the question.

Q. Did he at that time state to you and Mr. Meurer, the time within which the vessels would be

scrapped and out of the Perth Amboy yard, if they were brought there for scrapping?

Mr. McCarter: I object to that as incompetent, irrelevant and immaterial, and vraying the written instrument.

The Court: I will allow it. You may take an exception.

Mr. McCarter prays exception.

A. Yes, sir. Mr. Bernard said that they had to have the vessels finished in three months' time.

Q. After you went over the vessels, did you and Mr. Meurer make up an estimate? A. No, I didn't make up any estimates. Mr. Meurer was looking after that end of it. He was our estimator.

Q. Did you assist him in making up the estimates? A. I looked the estimate over after he had made it up, and consulted with him on it.

Q. Did you approve of the estimate after it was made up? A. Why, I looked it over and I thought it was all right. I consulted with Mr. Runyon and Mr. Snedeker afterwards.

Q. When did the vessels come there, I mean by there, to your plant? A. Why the "Black Arrow" came in there on the 22nd.

Q. Of what? A. Of December.

Q. Yes? A. And the "Philippines" on the 27th, I think. I am not very certain on that.

Q. How soon after they came there did the work of scrapping begin? A. Why, almost immediately.

Q. Are you familiar with the layout of the Perth Amboy plant? A. Yes, sir.

Q. I show you what purports to be a diagram of it and ask you if you recognize it as that? A. Yes, sir.

Q. Is that a diagram of the plant as it was at the time these vessels were brought there?

Mr. Haight: I offer this in evidence.

Mr. McCarter: No objection.

(Blue print entered in evidence and marked Exhibit P-8.)

Q. You started to say something about the railroad tracks not being in. Point out what railroad tracks were not in there. A. This track here wasn't in (indicating).

Q. We will call the first one you say was not there as "A". Where is the other one? A. Right there (indicating).

Q. The second one is "B"? A. It runs to about there (indicating).

Q. Between the two red lines which we will mark "C", is that right? A. Yes.

Q. Was this in? A. This track here (indicating).

Q. Then I was wrong there. Whereabouts was it? A. Here. All the tracks were there (indicating).

Q. We will call that "C". In other respects the plan is a correct diagram of the Perth Amboy Dry Dock Company's plant at the time that these vessels were brought in there, is that right? A. Yes, sir.

Q. Now, please show us where the "Philippines" was moored? A. She was moored in here (indicating).

Q. We will put a capital "P" there for the "Philippines". Do you know how far she stuck out beyond the pier? A. Approximately 150 feet.

Q. There is a red line there running up into here. Do you know whether that indicates when drawn to scale of this map— A. No, I do not.

Q. You did not make that? A. No.

Q. What is this here, alongside of the "Philippines"? A. That is the pier.

Q. That is the pier? A. Yes.

Q. To which she was moored? A. Yes.

Q. Apparently the place she was moored is marked "Dry Dock No. 3"? A. Yes.

Q. Was that dry dock there when she was brought in? A. No, sir. It was taken out of there.

Q. When was it taken out? A. Just a day or so before she came.

Q. Why was it taken out? A. So as to allow the ship to come right up here.

Q. Where was she put? A. Over here (indicating).

Q. Where was the "Black Arrow"? A. The "Black Arrow" was put in here (indicating).

Q. I will mark that "B & A". Now, did she extend to the end of the pier? A. Extended a little over the end of the pier.

Q. Is this marking here, right alongside of the "Black Arrow," the pier to which she was moored? A. That is the edeg of the pier.

Q. On the other side of that pier marked "Dry Dock No. 5", what is that? A. That is the dry dock. A sectional dry dock.

Q. Comparatively speaking, with your other dry docks, what was the size of that? A. This dock here?

Q. Yes. A. 10,000 ton dry dock.

Q. Was she larger or— A. Largest dock we had.

Q. Now, after the vessels were brought there, who took charge of the scrapping of them? A. Mr. Bernard.

Q. Did you have anything to do with the scrapping of them? A. Nothing, only furnishing men and burners, burning outfits and tools, necessary tools to do the work.

Q. Tools? A. Yes.

Q. Was requisition made on you, or someone else, for the tools? A. Why, sometimes made to me and sometimes made to the foreman of the various shops. Different tools they required, why they made requisitions for them and got them.

Q. When you speak of burners, do you mean men, or burning outfits? A. I mean burning outfits; apparatus.

Q. Did you have anything to do with the furnishing of the men who operated the burning outfits? A. We did furnish men to operate the burners to them, as many as they required.

Q. How about the laborers? A. The laborers? At times we furnished the laborers, too, and then they hired whatever labor they could pick up besides that.

Q. Did Mr. Bernard have anyone there with him working under him? A. Why, yes; he had Mr. Williams there in the first place.

Q. How long did Mr. Williams remain? A. Why, that I am not certain. I haven't got the date. He wasn't there very long.

Q. After Mr. Williams, did he have anyone there? A. Mr. Gilbert, yes.

Q. How long did Mr. Gilbert remain, do you recall that? A. Why, he remained, oh, I haven't got the date.

Q. Quite a while? A. Quite a while, yes. He was there pretty near all the time.

Q. Did anyone of these three people give you directions as to what to do? A. No. They done all their work themselves, all their ordering.

Q. Do you know whether or not either Mr. Gilbert or Mr. Williams employed men on their own account? A. Yes. They used to hire men themselves.

Q. Did you have a foreman, did you furnish a foreman on either of these vessels? A. Yes.

Q. At the request of Mr. Bernard? A. Yes.

Q. At that time? A. Why, right after the vessels first came in I furnished Mr. Peterson.

Q. Was he an employee of the Perth Amboy Dry Dock Company? A. Until he went with them.

Q. How long had he been with the Perth Amboy Dry Dock Company? A. Why I couldn't tell that. He was with us quite a while.

Q. What was his job in the Perth Amboy Company? A. He was foreman of the machine shop.

Q. What did he do on board the vessels? A. He took directions from Mr. Bernard, and put the men at the various places and tried to push the work along.

Q. Did he stay there? A. He stayed there until Mr. Bernard requested him to be taken off.

Q. When was that? A. Why, I couldn't say. It was probably along right after—

Q. Before Mr. Gilbert came or after Mr. Gilbert came? A. I think it was after Mr. Gilbert came.

Q. How long after? A. Very shortly.

Q. Why did he ask to have him taken off? A. That I don't know.

Q. Did he give you any reason? A. No.

Q. Was Crawford & Company paying for him? A. Yes.

Q. Now, during the time that the scrapping of these vessels was in progress, did you ever decline or neglect to furnish materials, equipment or men that they requested you to furnish? A. I don't understand that question.

(Question repeated by stenographer).

A. No, sir.

Q. You always furnished everything they asked you to? A. Yes, sir.

Q. How many burners did you furnish? A. Why I believe at one time we had 38 burners, 37 or 38 burners. I am not quite certain now. Approximately that.

Q. Did you always have sufficient burning outfits to supply all that they asked you for? A. Yes.

Q. Do you know when the work on these vessels stopped? A. No, I don't recollect the date when they stopped.

Q. Well, can you give us the month? A. I can't now. I don't recollect the dates.

Q. Well, was it April, May, June or when? A. Why, I think it was May that they stopped on the "Philippines."

Q. And how long after they stopped on the "Philippines" did they stop on the "Black Arrow"? A. That I am not certain.

Q. At the time the work was stopped was there any steel that had been cut from the vessel on board the "Black Arrow"? A. Yes.

Q. Can you estimate about how much? A. Well, I didn't pay much attention to that, because I have

nothing to do with the cutting and, theretofore, I didn't pay any attention to it.

Q. Well, was it a large amount or a small amount? A. Well, it looked to me to be approximately about 800 tons. They had quite a lot.

Q. About 800 tons? A. Yes.

Q. What sizes was that cut up in? A. Why, that I don't know. I didn't pay any attention to the sizes they were cutting at that time. I don't recollect.

Q. Was there any on the "Philippines"? A. Yes, there was some on the "Philippines". I don't know just how much.

Q. Can you estimate that? A. No I couldn't because I didn't pay much attention.

Q. How long had the 800 tons that was on the "Black Arrow" when the work stopped on her, been there? A. Why, that I couldn't say.

Q. Have you any idea as to what extent these vessels had been scrapped when the trial was held in Newark before Vice-Chancellor Backes? A. Why I should say approximately, the "Black Arrow" would be approximately 80 per cent cut down, and the "Philippines" about 30 per cent.

Q. You made an estimate at that time, did you? A. Why I think so. It is so long since that I don't remember. These things I haven't put in my mind.

Q. There was a locomotive crane provided for the pier next to the "Black Arrow," was there not? A. Yes, sir.

Q. Was that bought new? A. Yes.

Q. How much did you pay for it? A. I don't know. I haven't got that in my head now either.

Q. Have you got any idea?

Mr. McCarter: I object to that. It is immaterial. It is not the way to prove the cost, if the cost was material.

Mr. Haight: What do you mean, that the question is not proper? A witness of this kind would probably be influenced by a question of that kind, if he had to give it in dollars and cents. I just want to know approximately what it cost, if he knows. If he does not know, well and good.

Mr. McCarter: My point, your Honor, is simply that "approximately" can have no possible relevancy or competency in the case.

Mr. Haight: I will not press it.

Q. Let me take you back to the "Philippines." Do you recall an occasion when the sea cock of the "Philippines" was broken? A. Yes, sir.

Q. And after the sea cock was broken what happened to her? A. Why, she started to sink.

Q. Just tell the jury what was done in the way of attempting to prevent her from sinking? A. Well, in the first place we got all the men we could around there and tried to get some tarpaulins down around the sea cock, the opening in the side of the hull, to prevent the water flooding the boat. At the same time we got down in the hold and tried to wrap the sea cock where it was broken, and we done very good until the tide turned, and when the tide turned, then we was helpless. Mr. Bernard said the best thing, he said we had better hustle and get a wrecker; so we went to the telephone and called up Merritt & Chapman, and we got a wrecker right down, I think it arrived there in the morning, I don't know just what time in the morning, and we burned some holes in the side of the ves-

sel and got the wrecking pump connections in and pumped her out, and a diver went down on the side—outside and plugged up the hole and saved the boat from going down.

Q. How were you notified of the fact that the sea cock was broken? A. Why, I was over at No. 5 dry dock at the time and someone came over there and said the "Philippines" is sinking. I went over there and found that the sea cock, they had dropped a pipe from up above—

Mr. McCarter: I object to that.

Q. You don't know yourself what happened, do you? Do you know yourself what happened? A. Why yes, I saw the pipe down there, because the pipe dropped down on top of the sea cock, and that is the only thing that held it there from coming off altogether.

Q. What kind of pipe? A. Copper pipe.

Q. Do you know where that pipe had come from? A. Up in the upper engine room.

Q. Up in the upper engine room? A. Yes, sir.

Q. Was Mr. Bernard there? A. Yes.

Q. When you got there, or did he go there with you? A. That I could not say. I know he was there very shortly after.

Q. Did you say anything as to how it had happened? A. No.

Q. Prior to this occasion when the sea cock was broken, did you have any conversation with Mr. Williams as to the manner in which the pipe that was cut from the boiler or engine room should be lowered or taken out? A. Yes.

Mr. McCarter: No.

Q. Now, where did you say that this copper piping that you saw on the sea cock had come from? A. From the upper engine room.

Q. Upper engine room? A. Yes.

Q. Had you had any conversation with Mr. Williams as to how the pipe in the upper engine room should be taken out after it was cut? A. I protested—

Mr. McCarter: I object.

Q. Say yes or no. A. I protested—

Q. Wait a minute. Yes or no, did you have a conversation? A. Yes.

Q. Please state what it was?

Mr. McCarter: I object to any conversation with Mr. Williams on the ground that Mr. Williams' statement cannot bind this defendant. It is not shown and it is not the fact that Mr. Williams is an employee of this defendant.

The Court: What evidence is there that Williams could speak?

Mr. Haight: The Witness has testified to that. I am not sure whether Mr. Meurer did or not. But Williams was there under Bernard, and that Williams took charge of the job.

The Court: I do not think there is sufficient proof as yet.

Mr. Haight: May I withdraw this witness a moment?

The Court: Yes.

Mr. Haight: Just step aside, Mr. Preacher.

(Witness withdrawn from the stand).

Hardin L. Crawford. Called by Plaintiff. Direct.

HARDIN L. CRAWFORD, one of the defendants, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Crawford, you are one of the defendants in this case? A. I am, sir.

Q. Do you know whether there was employed on the scrapping of the steamship Philippines, or Black Arrow, or either of them, at the Perth Amboy Dry Docks Company, a man by the name of Williams? A. I believe there was a man so employed.

Q. You know it is so, don't you? A. Yes, sir.

Q. He is here in court, isn't he? A. I don't think he is, sir.

Q. He was here yesterday, wasn't he? A. No; at least I have not seen him.

Q. You expect to have him here as witness for you, don't you? A. I hope so.

Q. And he was under Mr. Bernard, wasn't he? A. Mr. Williams was in—

Q. Can't you answer that question? Wasn't he there under Mr. Bernard? A. Later he was; yes, sir.

Q. Wasn't he under Mr. Bernard at the Perth Amboy Dry Dock Company? A. After a certain time he was.

Q. Well, what time? A. After Mr. Peterson had left.

Q. That was before the sea cock of the Philippines was broken, wasn't it? A. Peterson was there at the time the sea cock was broken.

Q. Wasn't Williams there then? A. No, sir.

Q. Wasn't he there before that? A. He had been there before that.

Q. Wasn't he there up until the very morning that the sea cock was broken? A. He was there, I think—I dont know my own self.

Q. He was your employee, wasn't he? A. He was the—

Q. Well now, you know that, Mr. Crawford, whether or not he was your employee, don't you? A. Not at that time, sir.

Q. He was not in your employ then? A. Not at that time.

Q. Bernard employed him, didn't he? A. Not that I know of.

Q. Didn't you pay the bill for him? A. I paid the Perth Amboy.

Q. Well, you paid them for everybody, didn't you? A. I paid the Perth Amboy, and Williams among all the other employees, was on the bill.

Q. You know that Williams was employed by Bernard as his representative in the scrapping of these vessels, don't you? A. No, sir.

Q. You don't answer? A. No, sir.

Q. He wasn't your employee there? A. No, sir; not at that time. We didn't so consider him.

Q. What? A. We didn't so consider him until later on, when Peterson was taken off.

Q. You presented affidavits in the chancery suit, didn't you? A. Yes, sir.

Q. You had affidavits presented by others, didn't you? A. Yes, sir.

Q. I show you what purports to be a copy of an affidavit made by Mr. Edwin T. Williams? A. Yes, sir.

Q. Did he make that affidavit for you? A. He made that affidavit, I take it. He signed it, sir.

Q. For you? A. Not for me.

Q. For your side, wasn't it? A. Yes, sir.

Q. You notice in that affidavit he says: "I was employed to assist Mr. Bernard in and about the scrapping of two vessels being scrapped at the yard of the Perth Amboy Dry Dock Company, but I left the Perth Amboy yard and went to the Staten Island Shipyard, where other vessels of the defendant were being scrapped, some time before the work which caused the accident resulting in the flooding of the Philippines." You know that he made an affidavit to that effect, don't you?

Mr. McCarter: I object to that as absolutely immaterial and incompetent. The affidavit of another witness cannot be shown to contradict the testimony of this witness.

The Court: I will allow it. You may take an exception. This is the defendant, and here is an affidavit that he says he knew about.

Mr. Haight: They were produced in the case.

The Court: I understand. It is admitted it was produced in the case.

Mr. McCarter: Exception.

The Court: Certainly.

Q. He was under Bernard, wasn't he, Williams took his orders from Bernard, didn't he? A. I don't know whether he did or not.

Q. Don't know anything about this? A. Not at that time.

Q. When did you suddenly wake up to learn something?

Mr. McCarter: I object to that question.

The Court: Objection sustained.

Q. When did you know that Williams was there? A. Probably the first time I went down to the yard.

Q. When was that? A. Some time in the first part of January.

Q. What time in January? A. I should say probably the first two or three days of January, or it may have been the first week in January.

Q. It was before the Philippines started to sink, wasn't it? A. I think I was not down prior to that time.

Q. Before the Philippines started to sink? A. I think I was not down there.

Q. You said a moment ago that Williams had left before the Philippines started to sink? A. Yes, sir.

Q. Now, you said you saw him the first time you went down there? A. No, sir.

Q. Didn't you say that? A. I didn't intend to say that.

Q. What did you intend to say? A. That I knew that Williams was in the employ about the time I went down there in January. He was then over at the other plant.

Q. He was over at the other plant? A. Yes, sir.

Q. But you didn't know that he was in the employ before that? A. No, sir.

Q. Well, you claim that he wasn't under Mr. Bernard and taking Mr. Bernard's direction at the time before the sinking of the Philippines? A. I don't claim, because I don't know, sir. I didn't know Mr. Williams any more than I knew any other person—

Mr. Haight: You have answered by question. That is all.

Hardin L. Crawford. Called by Plaintiff. Cross.

CROSS EXAMINATION BY MR. MCCARTER:

Q. You knew, of course, that there were numbers of men employed in and about the scrapping of these ships? A. I certainly did.

Q. And did you know that Mr. Williams was one of those men, prior to the sinking of the Philippines? A. Yes. He appeared on the bills.

Q. His name appeared on the labor bills rendered to you by the Perth Amboy Dry Dock Co.? A. Exactly.

Q. The labor of all of the men employed in and about the scrapping of these ships was paid for, in the first instance, by the Perth Amboy Dry Dock Company, wasnt it? A. Yes, sir.

Q. And they rendered bills to you? A. Weekly.

Q. In accordance with the contract? A. Exactly.

BY THE COURT:

Q. Did they include Bernard? A. It did, sir.

Q. You paid Bernard through the Perth Amboy Dry Dock Co.? A. We did, sir.

BY MR. MCCARTER:

Q. Did you pay compensation insurance on Mr. Bernard? A. We paid no compensation insurance on the employees of the Dry Dock Company.

Mr. Haight: I object to that, because there is nothing to show that anybody was an employee of the Perth Amboy Dry Dock Company. Vice-Chancellor Backes has disposed of that proposition.

Hardin L. Crawford. Called by Plaintiff. Cross.

Mr. McCarter: That is what he expressly did not dispose of. In expressed words he said, "I do not decide that."

Mr. Haight: For all legal purposes he has disposed of it.

Mr. McCarter: If there is anything plain in the opinion, that is the one thing that he expressly did not decide. He said he did not have to.

Mr. Haight: In legal effect he has disposed of it. Let it go ahead. I do not care about it. That does not affect the legal situation. Let the question stand.

The Court: You do not hold that the Perth Amboy Dry Dock Company ever employed Bernard, do you?

Mr. McCarter: Certainly not.

The Court: If they did not employ him, then he was not their representative.

Mr. McCarter: I do not claim Bernard was their representative, but I claim Williams was, and I claim that the Perth Amboy Dry Dock Company was paying for the work of these men, except Bernard, and that they were employees of the Dry Dock Company, including Williams.

The Court: He is being asked whether or not Mr. Williams was not the agent or the representative of Bernard. That is, he was asked that question.

By Mr. McCarter:

Q. Whose employee was Mr. Williams?

Mr. Haight: I object.

The Court: That might call for a conclusion. You may ask him who employed him.

Q. Was Mr. Williams one of the men who were paid by the Perth Amboy Dry Dock Company?

The Court: He has already said he was.

A. Yes, sir.

Q. Did Bernard have any authority from H. L. Crawford & Company to employ anybody on your account?

Mr. Haight: I object to that. Cannot bind us whether he had authority or not. Bernard was held out as their agent, he was found to be their agent, and if he brought a man down there and put that man to work and said that that man was to work under him and his representative, it does not make the slightest bit of difference whether Crawford & Company gave him authority, or whether they did not give him authority. He was clothed with apparent authority, and that is the only thing we had to deal with.

The Court: That is entirely true, but at the same time I consider this question entirely relevant.

Mr. Haight: All right, sir.

(Question repeated by stenographer.)

A. He did not, sir.

Q. Do you know what work Mr. Williams did at Perth Amboy Dry Docks plant while he was working there? A. No, sir.

Hardin L. Crawford. Called by Plaintiff. Redirect.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. You know that Williams was subsequently on your payroll, don't you? A. No, sir; he was not. He was never on our payroll.

Q. Why here is his affidavit again: "I was but am not now employed by H. L. Crawford & Company, the defendant in this case." A. I didn't make that affidavit.

Q. You presented it in the chancery case, didn't you? A. It was presented.

Q. And you wanted the court in the chancery case to believe the statement in that affidavit to be true, didn't you? A. I had noting to do with the affidavit.

Q. Do you know that your lawyer presented it? A. I see it there now.

Q. Didn't you see it there then? A. Yes, sir.

Q. You heard it read to Vice-Chancellor Backes, didn't you? A. Yes.

Q. You didn't say then, did you, that Williams was not in your employ? A. I don't remember whether I did or not. Possibly not.

Q. Probably not. Why didn't you lift your voice and say the affidavit I have presented to Williams is untrue? A. I probably was not asked.

Q. So you say there, let your counsel put in an affidavit that you knew was untrue, and did not protest? A. Are we to believe that? A. I hope so.

Mr. Haight: That is all.

Mr. McCarter: That is all.

Walter Peterson. Called by Plaintiff. Direct.

WALTER PETERSON, a witness called in behalf of the Plaintiff, and being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Peterson, were you in the employ of the Perth Amboy Dry Dock Company in January of 1924? A. Yes, sir.

Q. How long had you been in their employ? A. 15 years.

Q. What was your position there in January, 1924? A. Foreman of the machine shop.

Q. Did you have anything to do, or did you receive any instructions from Mr. Preacher or anyone else in respect to these two vessels the Philippines and the Black Arrow? A. I don't understand.

Q. Well, did Preacher tell you to do anything in respect to the scrapping of these vessels? A. No, sir.

Q. You were foreman on one of the vessels for a period, weren't you? A. Under Mr. Bernard, yes.

Q. Well, who places you there? A. Why, I was taken over aboard the Black Arrow and introduced to Mr. Bernard as foreman of the Perth Amboy Dry Dock Machine Shop, and that I should—

Q. Never mind that. Do you remember a man named Williams that was down there? A. Yes, sir.

Q. Who introduced you to Williams? A. Mr. Bernard.

Q. After you came on the job was that? A. Shortly after.

Walter Peterson. Called by Plaintiff. Direct.

Q. What did Mr. Bernard say to you when he introduced you to him?

Mr. McCarter: I object to that. The argument Judge Haight made to your Honor before, it was not necessary for me to answer, because your Honor ruled my way. The extent of Vice-Chancellor Backes' ruling as to the agency of Bernard, carrying it to its limit, was only as to representations made at the time the ship contracts were made. Now, the only other connection of Bernard with this job is that, as it appears in the contract, the general superintendent. And I do not feel that that agency makes his statements binding upon the defendants in all respects and to any extent, and I submit therefore, that the question asked here calls for an answer which would not be binding on this defendant.

The Court: Is there any question that Bernard was the direct representative of the defendants, in the work that was to be done?

Mr. McCarter: There is not the slightest question that Bernard, as I just said to your Honor, was the general superintendent, in accordance with the contract. The contract was, we were to furnish general supervision under Mr. Bernard. Bernard was, I call it, a general superintendent, it is as good a name as any other, I take it. But that does not make him the alter ego of these defendants.

The Court: It made him the representative as to how the work was to be done, so far as Crawford & Company were concerned.

Mr. McCarter: Yes. That is what it did.

The Court: All supervision of the work was under Bernard. Who picked Bernard? Not the Perth Amboy Dry Dock Company, but Crawford & Co. I will allow it. You may take an exception.

Mr. McCarter: Prays exception.

Q. What did he say to you about Williams? A. Why, he introduced me to Mr. Williams and says, "Walter, this is my superintendent," and he says, "I want you to work under him just the same as you did under me."

Q. And you did so? A. Yes, sir.

By the Court:

Q. When was that? A. I could not say. I don't know just when it was.

Q. Do you know when there was this bursting of—or breaking of a sea cock? A. I couldn't tell the date; no, sir.

Q. Well, do you know the fact of that? A. Yes.

Q. Well, was it before that happened or afterwards? A. Oh, it was long before.

Mr. Haight: That is all. I want to call this witness back for other purposes, but I do not want to interrupt now.

Mr. McCarter: No questions now.

Mr. McCarter: Before Mr. Preacher takes the stand, if I may interrupt Judge Haight, Mr. Crawford tells me he would like to correct an answer he made to a question of mine which he misunderstood. I don't know whether it is the appropriate time to do that now or wait until he takes the stand in his

own case, but I submit it is more appropriate to do it now.

The Court: Oh, of course.

Mr. Haight: I suggest to save time he stand right there and make the correction. It is only one.

HARDIN L. CRAWFORD, recalled.

CROSS EXAMINATION (continued) BY MR. MCCARTER:

Q. Mr. Crawford, I asked you did you pay the compensation insurance on Mr. Bernard. Do you wish to correct your answer to that question, and if so, why? A. We did pay the compensation of Bernard, insurance compensation of Mr. Bernard.

Q. Why did you answer the question the way you did when I put it to you before? A. I thought you were referring to Williams, of whom you asked me. We didn't pay the compensation of Williams or any other of the dry dock employees. We did pay the compensation of Mr. Bernard and of Mr. Ackerman, Mr. Morny, of our representatives.

Mr. McCarter: That is all.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. Wasn't it a fact that a lump sum of $800 was paid into these contract to cover compensation insurance, and didn't that include Bernard? A. I haven't any way of knowing.

Q. Did you pay directly compensation insurance for Bernard? A. We paid for Bernard's insurance.

Q. Whom did you pay? A. The insurance company.

Q. You paid the insurance company?

DAVID C. PREACHER, resumed.

DIRECT EXAMINATION (continued)

BY MR. HAIGHT:

Q. At the time Mr. Williams came there did you have any conversation with Mr. Bernard as to his status? A. I don't understand you.

Q. I mean this: Did Mr. Bernard tell you who Mr. Williams was and what he was going to do, and so forth? A. Yes, he introduced me to Williams and told me Mr. Williams was going to take full charge.

Mr. McCarter: I object to that on the same ground I objected to it before, that Mr. Bernard's agency to bind the defendants in this action is not established.

The Court: I will allow it. You may take an exception.

Q. You may proceed. What did he say? A. Mr. Bernard introduced me to him and told me that he was to take full charge of the breaking up of these two ships, the scrapping of the ships.

Q. Had you ever seen Williams before that time? A. Never.

Q. Was he employed by you? A. No.

Q. Did you have charge of the employment of the men who occupied the positions of foreman or superintendents in the Perth Amboy plant? A. Yes.

Q. Did anybody else have charge of that? A. Well, the foreman generally—

Q. No. A. Not for a foreman, no.

Q. Did the foreman ever employ foremen? A. No.

Q. Or superintendents? A. No.

Q. That was all under you? A. Yes.

Q. You didn't employ Williams? A. No.

Q. You had never seen him before until Bernard introduced him to you? A. No.

Mr. Haight: I offer in evidence the affidavit of Mr. Williams which was presented in the folder marked "Answering affidavits, McCarter & English, Solicitors, for the defendants in chancery suit."

Mr. McCarter: I object to that as entirely incompetent. He can make Mr. Williams testify. He has got to bring him here.

Mr. Height: It is an admission against interest.

The Court: The only point I am thinking about is how can you introduce that if this man is occupying the witness-chair?

Mr. Haight: I was simply introducing it as a prelude to the question that I am going to ask Mr. Preacher, or the question I did ask him and which was objected to and which caused the breaking in of his testimony.

The Court: I won't admit it just now. You may form your question and then I will see whether I want to do it now.

Mr. Haight: My question as I recollect it was this:

Q. Had you had any conversation with Mr. Williams as to how the piping which was being taken out of the upper engine-room, the brass piping which you say you found on the sea-cock, when you went down to examine the broken sea-cock—Did you have any conversation with Mr. Williams as to how that should be taken out prior to the breaking of the seacock? A. Yes, sir.

Mr. Haight: Yes, I assume Mr. McCarter is going to object.

Mr. McCarter: Ask the question.

Q. What was the conversation?

Mr. McCarter: Now, I object to this question on the same ground I objected to the question before.

The Court: I am overruling the objection. You may take an exception.

Q. What was the conversation, Mr. Preacher? A. I went to Mr. Williams when I happened to be going around the boat and discovering whether they had all the operators they required or not, and I found that the men were throwing part of the pipes off the boat and letting the pipe drop down without taking the proper care—

Q. Don't say without taking the proper care. Without doing what? A. Without putting tackle on same and holding it firm so that they would not fall down when they got the pipes down. He said, "Oh, I have scrapped lots of ships before, and that is the way I am going to do it."

I said, "You will kill somebody," and I protest against the manner you are doing it."

Q. Did he say anything about the breaking? A. He said he didn't care, everything had to be broken anyway.

Q. Did you say anything about breaking anything?

Mr. McCarter: Don't lead, please.

Q. Was that all you said that might happen, that somebody might be hurt? A. No, I told him he might break something down below, because there were men working down below, and if they dropped anything down it was bound to be picked up somewhere.

Q. Did you say anything about the sea-cock? A. I didn't say anything about the sea-cock, no.

Q. Did you do anything in the presenting of the "Philippines" sinking, which ordinary and reasonable care required that you should not do?

Mr. McCarter: Now, Judge Haight, let us shorten this thing here. We will do this, disagreeing with you entirely on the responsibility for what happened to the "Philippines," I can say what was done to save it from sinking was proper and reasonable.

Mr. Haight: And that the charges are reasonable and proper?

Mr. McCarter: Yes, and that the charges are reasonable and proper.

Mr. Haight: All right.

Q. Now, then, let us go to the presence of these vessels in the dry dock in the plant of the com-

pany. Do you know when the major part of the company's business ordinarily is done? I refer to the time of the year. A. Why, about June to November.

Q. And from June until April what about the business? A. Well, from June to April is very busy.

Q. June to April you are very busy? A. Yes.

Q. From April back to November, how about it? A. Well, it begins to slack up a little bit.

Q. Slacks up when? A. The trade.

Q. When? A. From June to November.

Q. Well, then, do I understand that your busiest time is between April and June? A. No, I say April to November is our busy season.

Q. Then from April to November is your busy season? A. Yes.

Q. What about from April to June? You said something a moment ago about April to June. A. April to June the business starts in. It gets busy until June, then after that the rush of the season is on.

Q. Did the presence of these vessels in the berths that they were in after the 1st of April interfere with the ordinary business which the Perth Amboy Dry Dock was carrying on? A. Yes.

Q. Please state to the jury exactly how. A. Well, because these vessels laying out toward the end of the pier line, you would have to move a vessel from one dock to the other, you would have to get tugboats and pull them out of the slips along there and take them to the other slips; whereas, you could take them right across and that wouldn't interfere.

Q. What do you mean, winch them across? A. Yes.

Q. How did these piers at which these two boats were moored compare in usefulness to the other piers? A. Well, they were used more for general repairs than the other piers, because they were longer and they were more adapted for the work.

Q. What do you mean by saying they were more adapted? A. Well, because where the "Black Arrow" laid, we had a railroad there, a track, and we could always take stuff up and down on the track.

Q. You didn't have the railroad there? A. We had the railroad there, yes, we had a small car, a hand car. We could always take stuff up and down.

Q. How about the one where the "Philippines" lay? A. You could drive down there with a light truck, but not a heavy truck.

Q. How about the work on the "Philippines"? Was a derrick there? A. Yes, we had a twenty-five-ton derrick.

Q. Did you have any derricks anywhere else? A. No.

Q. That was the only pier you had a derrick on? A. That was the only pier we had a derrick on.

Q. How was the derrick used in repairing ships? A. Taking a mass up, and run the boilers, and tanks, and so forth. Any kind of machinery that was necessary to be removed and be replaced.

Q. Now, did the fact that you had to move the number 3 dry dock from the place where the "Philippines" was over to some other place that you appointed, in any way interfere with the use of that dry dock? A. Well, it interfered with it in this manner. It was quite a ways from the center of the yard where our machinery is located, and so on and so forth. It was quite away from the base of supply, and it was a little more difficult to get down

to it, and it required a little bit more steam because the pipe was much longer. We had to lay special piping across the end of the piers to connect that dry dock where we had placed it.

Q. Now, all these matters that you mentioned, these interferences with your ordinary business, did they interfere with the business in the financial sense? A. Well, yes, because where we put that little dock, why it was a good long berth and we could lay a long vessel in there.

Q. How about the winching around, the use of the tugs? Did you pay for the tugs that you had to use? A. At times we did, yes. Not all the time.

Q. Did the presence of the "Black Arrow" at the pier at which she lay interfere in any way with the use of the big dry dock which you marked number 5 there, I think it is? This one here (indicating,) dry dock number 5. A. Why, yes, it did, because the stern of the ship stuck out beyond the pier line, and we always had to be very careful in putting vessels in there. We had to completely clear that stern of the vessel, her overhang hung over so that if you got a high-sided boat it would hit it.

Q. Did her presence there prevent you from winching vessels around? A. Yes.

Q. Tell the jury how. A. Well, because the stern of the vessel stuck beyond the end of the pier line, and instead of winching them around the end of the pier, which was piled up and down straight, the overhang of the vessel would not permit us to pull them around.

Mr. Haight: That is all.

David C. Preacher. Called by Plaintiff. Cross.

CROSS EXAMINATION BY MR. MCCARTER:

Q. You say you live in Miami. Did you come up specially to testify in this case? A. I did and I didn't. I had some business here and Mr. Runyon asked me if I would come here if he wanted me, and I told him yes, because I had other business to attend to.

Q. At the time of this accident to the "Philippines," this man Peterson was foreman on the "Philippines," wasn't he? A. Yes, sir.

Q. How long before was he in the employ of the Perth Amboy Dry Dock Company, how many years? A. He had been quite a number of years. I don't recall how many years.

Q. He was in charge of the work that morning, wasn't he? A. No, sir, Mr. Williams was. He gave him instructions.

Q. You say Mr. Williams was in charge of the work on the "Philippines" the morning this accident happened? A. He left that morning, he gave Mr. Peterson orders and left that morning.

Q. He wasn't there when the accident happened? A. No, sir, he was not.

Q. Mr. Peterson was the man in charge when the accident happened, wasn't he? A. Under direction of Mr. Williams, yes.

Q. He was the man in charge on the spot, wasn't he? A. Yes.

Q. He was still on the pay roll of the Perth Amboy Dry Dock Company? A. No, sir, he was taken off the yard pay roll and put on the pay roll belonging to Crawford & Company.

Q. Do you mean to tell me that on the day this happened this man Peterson, who testified here this morning, was not on the pay roll of the Perth

Amboy Dry Dock Company? A. Well, he was swung off as soon as any one went on these vessels, they were taken off our pay roll and put on a special pay roll for that account.

Q. I don't care what your bookkeeping was, but wasn't Peterson still on that morning on the pay roll of the Perth Amboy Dry Dock Company? A. Yes.

Q. And so were all the men under him working on the "Philippines"? A. Yes.

Q. You said in your direct examination that Mr. Bernard and possibly somebody else sometimes hired labor for work on these scrapping jobs. Those laborers so hired were put on the Perth Amboy Dry Dock Company's pay roll, weren't they? A. Yes.

Q. And the Perth Amboy Dry Dock Company had a timekeeper, a man named Patten who kept their time, didn't they? A. Yes, sir.

Q. Now, referring to this map, Mr. Preacher, at which the "Philippines" lay is marked with a "P" here. A. That is not the pier where she was first berthed.

Q. When she was first brought there, is it (indicating)? A. Yes.

Q. Wasn't it moved? Wasn't she first brought somewhere else and then moved to that pier? A. I don't recollect.

Q. You don't recollect that? A. Isn't it also a fact, in changing to the pier where the "Black Arrow" lay, that the end of that pier projects further into the stream than the end of the big dry dock number 5? A. Yes.

Q. Yes, it does? A. The pier, yes, sir.

Q. The pier does, yes. I show you, Mr. Preacher, a photograph which is the protograph of a steamer

with the word "Philippines" on the bow and ask you if that is a photograph of the ship "Philippines" which we have been discussing. A. Yes.

Q. And isn't that also a picture of her as she lay in your plant? A. Yes, sir, number 4 pier.

Q. You want to correct your testimony then, don't you? A. Yes, sir.

Q. You had forgotten about that? A. I forgot about that entirely.

Q. So that when she first came to your plant she was at a different pier from the one where the "P" is on this exhibit, exhibit P-8, this blue-print?? A. Yes.

Q. Will you indicate the pier at which she first lay? A. Up in here (indicating).

Q. That pier? A. Yes.

Q. Namely, the pier first to the left as we look at the map, of the pier where the letter "P" is? A. Yes.

Mr. McCarter: May we have this marked for identification, please?

(Photograph marked Defendant's exhibit D-3 for identification).

Q. Did I understand you to say, Mr. Preacher, that a truck could drive down the pier alongside of which the "Philippines" was eventually moored? A. Yes.

Q. I could? A. Yes, sir; a light truck, not a large truck.

Q. What do you mean by a light truck? How large a truck do you characterize as light? A. We had a ton truck.

Q. A one-ton truck? A. Yes.

Q. I show you another photograph, Mr. Preacher and ask you to look at that and tell me whether that represents a picture of the "Philippines" lying at this second berth? A. Yes, sir.

Q. It does. And is that the pier along which you would say a truck can drive? A. Yes, a truck drove down there. We have had it down there. We have had tanks down there.

(Photograph marked defendant's exhibit D-4 for identification).

Q. Now, you have said that the fact that these steamers projected beyond the ends of the piers made it impossible for you to winch vessels around. How would you move them, by a tug? A. Yes.

Q. You had your own tug, didn't you? A. Yes, but our tug wasn't large enough to handle the large vessels.

Q. How large a vessel would your tug handle? A. Handle a vessel, two-masted, three-masted schooner at times.

Q. Handle a three-masted schooner? A. Yes.

Q. So, if you moved a ship larger than a three-masted schooner you had to get an outside tug? A. Not always. It depends on the time of the tide, the stage of the tide, and the wind.

Q. Sometimes you could move with your tug, a larger vessel? A. Yes.

Q. Now, you just testified by reason of the fact that the "Black Arrow" lay where she did you always had to be very careful in bringing in vessels into the large dry dock, number 5. Well, you had to be very careful in doing that anyway, didn't you? A. Yes.

Q. Now, going back for a minute to your conversation with Mr. Williams with reference to cutting the pipes in the "Philippines" did not say anything about cutting the pipes so they would fall on sea-cocks, did he? A. No, he didn't care where they fell.

Q. Well, did he say anything which would indicate to you that he didn't care if pipes fell on sea-cocks? A. He told me that everything—he said that everything—I protested about the way he was handling them. He told me it was all right and they were going to scrap them anyway. Let them drop.

Q. Let them drop? A. Yes.

Q. What is a sea-cock, so the jury will know? A. A sea-cock is a main valve on the bottom of the ship for to let the water through.

Q. How big a thing is it? A. That was a ten-inch valve that broke.

Q. Ten inches in diameter? A. Ten inches in diameter, yes, sir.

Q. How many of them approximately are there in the ship? A. Generally four, three or four, sometimes only two. Depends on the size of the ship.

Q. Were there four in the "Philippines"? A. I think there was. I am not dead certain about that.

Q. So they were on the bottom of the "Philippines"? A. Yes.

Q. Four different valves ten inches in diameter? A. Not all ten inches in diameter. No, sir; the main valves are larger.

Q. This one was ten inches? A. About ten inches; I am not dead certain.

Q. How large were the larger ones? A. I never measured them, because I didn't have any occasion to do so.

Q. Well, at any rate, there were only four of them in all? A. Well, there might have been more. There may have been some in the boiler room. I don't know.

Q. How many were there altogether? A. I don't know.

Q. You don't know? A. No.

Q. What is the most you have ever seen in any ship the size of the "Philippines"? A. Size of the "Philippines"?

Q. Yes. A. Well, I never worked on many ships as big as the "Philippines."

Q. What is the most you have ever seen on any ship you have worked on? A. I have seen five of them.

Q. Mr. Preacher, isn't it a fact that the pier head on which this accident happened you had instructed the men to flange off the sea-cocks on the "Philippines" so that if anything should drop on them they wouldn't break off as this one did? A. I spoke to Mr. Bernard about that. I didn't direct the men. Mr. Bernard told the men after we had talked about it, and he ordered the men to go to work and do that.

Q. You had a conversation with Mr. Morny the day after this accident happened, didn't you? A. I beg your pardon?

(Last question read by stenographer.)

A. I don't know. I talked with Mr. Morny quite often.

Q. Don't you recall a conversation you had with Mr. Morny shortly after this accident, referring to the accident? A. No, I don't.

Q. You don't? A. No.

Q. You didn't show to Mr. Morny a piece of this sea-cock and say substantially, "of all the hard luck we had, this is the only sea-cock we missed in flanging them off," or words to that effect? A. No, sir; not to my knowledge.

Q. Not to your knowledge? A. No.

Q. Or anything like that? A. Not that I know of.

Q. Not that you know of? A. No.

Q. You don't remember having a piece of the sea-cock in your little office and showing it to Mr. Morny and saying this, or substantially that? A. I had a piece of sea-cock in the office. I don't remember saying anything like that.

Q. Will you say you didn't say it? A. No.

Q. You won't say you didn't say it? A. No.

Q. Isn't it a fact this is the only sea-cock which had not been taken care of, as you had instructed them to be taken care of?

Mr. Haight: I object to that. He says that he has not instructed how they would be taken care of. He says that Mr. Bernard told the men to do something. Therefore, the question is improper because it contains an unwarfanted statement of fact.

The Court: He has not admitted that he instructed anybody to do it, as I remember this testimony.

By the Court:

Q. Had you instructed anyone to flange those sea-cocks? A. No, sir.

By Mr. McCarter:

Q. Isn't this the only one of the sea-cocks in the "Philippines" that wasn't flanged? A. That I don't know.

Q. You don't know? A. No, sir.

Q. Mr. Preacher, if my memory is wrong on this just correct me. Did you testify on direct examination that there was eight hundred tons, as you estimated, of steel lying on the deck of the "Black Arrow" when she was moved away? A. I say approximately that, I thought.

Q. Approximately that? A. Yes.

Q. What makes you think it was as much as that? A. Well, because there is quite a pile of it there. I didn't go over it and measure it or anything of that kind. It was just seeing it roughly when I walked past. I never had nothing to do with the steel and I never made any estimates on the weight of it.

Q. It was just your rough estimate made from walking by and looking at it? A. That is all.

Q. Did you say that the "Philippines" was cut down below her superstructure at any time while she was there? A. The "Philippines"?

Q. Yes. A. Well, some parts of them.

Mr. Haight: If your Honor please, I object to the question because it is not proper cross examination. We didn't go into the question here based on the question of the weight.

Mr. McCarter: You asked him later on.

Mr. Haight: All right; go ahead.

(Last question and answer read by the stenographer.)

Q. What parts do you mean? A. Well, all the housing and bridge, and so forth.

Q. All the what? A. The housing above the main deck.

Q. Is it a fact that part of the superstructure remained at all times while the "Philippines" was in your yard? A. Yes.

Q. So that the superstructure of the "Philippines" was never completely cut and removed at your yard? A. I don't think so. It has been so long since I have seen it, I don't recollect now.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. When did you change the location of the "Philippines" from the pier at which she was first put, to the pier where No. 3 dry dock is, where she was eventually left? A. Well, just a few days. I overlooked that in the first case.

Q. How long after she was brought there did you change her location? A. I couldn't say. It wasn't very long, because she stuck out so far.

Q. Not very long does not mean anything. Give us an estimate in days? Was it a matter of weeks, or not? A. No. I think three or four days.

Q. You speak about the flanging of the sea-cock. I do not know what that means and I am going to assume that the jury does not. Just tell us what you mean by flanging the sea-cock? A. Well, you remove the pipe from the sea-cock and then take and put a blind joint on it, and, no matter whether they open the sea-cock or not, they can't flood the vessel. That is what these gentlemen mean.

Q. You say that you protested to Williams about the manner in which he was letting the piping drop? A. Yes, sir.

Q. Did you bring it to Bernard's attention also? A. That I am not quite certain. I don't recollect whether I spoke to Mr. Bernard or not about it. I spoke to Mr. Williams about it.

Q. You said something on cross examination about Mr. Bernard stating that he had told, or was going to tell the men, or something or other to that effect, about flanging the sea-cock? A. Yes; well, I spoke to him about that and he ordered the men to go and flange the sea-cock.

Q. Did you hear him give the orders? A. Yes.

Q. Who did he order to do it? A. Mr. Peterson. When did he give that order to Peterson? A. Why, that was along—no, I am wrong, I beg your pardon. That is a mistake. It wasn't Peterson. It was Connor.

Q. Who is Connor? A. Connor is a machinist that went there after Peterson left.

Q. A machinist that went there after Peterson? A. Yes.

Q. When did he tell him that? A. I couldn't tell you the date, but I just recollect the conversation.

Q. You don't know whether Connor did it or not? A. I am not sure whether it was Connor or Peterson. Either one or the other. I am not sure.

Q. Well, do you know whether they did it or not? A. That I didn't pay any attention to, because it was up to them to scrap the ships, and I wasn't particularly interested in it any more than give them the apparatus.

Q. This photograph, D-4, which has been shown to you, does that show the complete width of the pier? A. No. I hardly think it does. I think

there is a little bit of the pier off on this side. It is not a very wide pier.

Q. It seems to indicate that the pier goes down to a point. Is that so? A. No. The pier is somewhat wider until it gets down on this side of the derrick and then it widens out.

Q. What do you mean, this side of the derrick, the shore side of the derrick? A. No, the outer end of the pier is wider than the inner end.

Q. The outer end is wider than the inner end? A. Yes. There is a job on it.

Q. Then if that photograph seems to indicate that the outer end is smaller than the inner end, it does not correctly portray the situation, is that right? A. No; that is right.

Q. Do you recall when his conversation that you had with Bernard was? A. No, not now.

Q. Whether it was before or after the sea-cock was broken? A. As to that I am not certain about. I couldn't say.

Q. You don't know whether it was before or after? A. No, I am not certain.

Mr. Haight: That is all.

Mr. McCarter: That is all.

(Adjourned until 2:00 P. M.)

AFTERNOON SESSION.

2:00 P. M.

DAVID C. PREACHER, recalled as a witness on behalf of the Plaintiff, and having been previously duly sworn, saith:

Mr. McCarter: I forgot to ask Mr. Preacher a question.

BY MR. MCCARTER:

Q. Mr. Preacher, isn't it a fact that at different times during the progress of this scrapping you took burners away from the job and put them on other work around the yard? I mean the men, I do not mean the torches? A. There were men taken from the job occasionally.

Q. And put to work on other jobs around the Perth Amboy Dry Dock Company's yard? A. Yes, sir.

Q. Do you recall any of the dates when that was done? A. No, I don't.

Q. They were taken off at times by you, weren't they? A. No, not by me.

Q. Not by you? A. By the Boss Boiler Maker, Mr. O'Hagan.

Q. He was an employee of the Perth Amboy Dry Dock Company, wasn't he? A. Yes, sir.

Mr. McCarter: That is all.

BY MR. HAIGHT:

Q. How often did that occur? A. Well, that I am not certain.

Q. Were they taken off for any length of time? A. No.

Q. Why did you take them off or why were they taken off? A. Well, because when Mr. Bernard would require more burners than he had, rather than wait until there were burners came along so as we could give him then, we took the men out of the boiler shop and put them down there. Sometimes he would get up against a place where he would want a burner for an hour or two only and we would accomodate him that way, and he would in turn let us have men if we got pinched. That was all.

By Mr. McCarter:

Q. Do you recall that on January 25, 1924, of course, you took off or directed to be taken off some burners, and put them on another job? A. I don't recall the date; no, sir.

Q. But you—do you recollect that you did that at one time, the date of which you forget? A. Why not that I recollect, no. I know we took burners off, that is Mr. O'Hagan took burners off occasionally for to do other work.

Mr. Haight: I am calling this next witness a little out of order, but they have been here two days and I would like to get them out of the way.

ERNEST H. DENDEL, a witness produced on behalf of the Plaintiff, being duly sworn according to law, on his oath, saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Dendel, where do you reside? A. Weehawken, N. J.

Q. What is your business? A. I am in the repair business.

Q. What kind of repair? A. Ship repair business.

Q. Are you connected with the Tietjen & Lang Dry Dock Company? A. I am.

Q. What position do you hold in that company? A. Vice President and Superintendent.

Q. How long have you been in the ship repair business? A. About 31 years.

Q. How long have you been connected with the Tietjen & Lang Co.? A. About 31 years.

Q. Where is the plant of the Tietjen & Lang Company located? A. At Seventh Street, Hoboken.

Q. On the Hudson River? A. Yes, sir.

Q. What kind of a business do you do there? A. We repair all the various kinds of vessels that are really afloat and that come up and down the North River, from canal boats up to the largest steamships that are afloat today.

Q. Have you any dry docks? A. We have.

Q. How does your plant compare in size with the other ship repair and dry dock plants along the Hudson River, or in New York harbor? A. We are about the third largest concern in New York harbor.

Q. Are you a larger concern, or is your plant larger than that of the Perth Amboy Dry Dock Company? A. Yes, sir.

Q. Have you seen the plant of the Perth Amboy Dry Dock Co.? A. I have, yes.

Q. Many times? A. Many times, yes.

Q. Have you seen it recently? A. I have.

Q. When did you see it last? A. I saw it Monday.

Q. Last Monday. Assuming that in 1924, the winter of 1924, the steamship "Black Arrow" was being scrapped alongside of the pier here at the place indicated by the words "BA" on this exhibit P-8, and the "Philippines" at the place indicated where we marked a "P," did you examine those two places? A. I did.

Q. And the equipment on them? A. I did.

Q. Now, what is the time of the year when the shipyards and dry dock concerns are the busiest? I mean the shipyards and the dry dock concerns in New York harbor.

Mr. McCarter: I object to that. I think it is absolutely immaterial. Whether this shipyard is busy is the question we are concerned with, and it may or may not be that the others are the same or different.

Mr. Haight: All right, I will withdraw it.

Q. Have you made charges for vessels which have been berthed at your yard after the repair work or what not that you were required to do on her has been finished? A. We have.

Q. Vessels situated alongside of the piers? A. Yes, sir.

Q. Piers which you used for repair purposes? A. We have, yes.

Q. Do you know the size of the "Black Arrow"? A. I do.

Q. Do you know the size of the "Philippines"? A. I do.

Q. Assuming that the "Black Arrow"—let me ask you this. Where did you get your information as to the sizes of these vessels? A. I personally worked on them, and then looked at the sizes from the British Lloyd. That is a book that use all the descriptions of the various vessels.

Q. Assuming that the "Black Arrow" was 409½ feet long, 52.8 feet wide, 28 feet deep, and 1,000 tons dead weight, 6022 gross tons, 3657 tons net, and that she lay alongside the pier which I have indicated on that map by the words "BA," and which you say you saw a few days ago, what in your judgment would be a fair charge, fair and reasonable charge, for wharfage from the 1st of April on to the 2nd of August, of 1924?

Mr. McCarter: I object for several reasons. In the first place, the tonnage of the "Black Arrow" is not in evidence, and I don't see it in the book there.

Mr. Haight: I am going to prove that.

Mr. McCarter: In the second place, this witness has qualified by experience in the Hudson River, and he shows no basis for his opinion as to the wharfage down here on Arthur Kill. You might just as well have the manager of the Waldorf-Astoria testify to room rent in the Perth Amboy hotel.

Q. Is there any difference in wharfage charges in and about New York harbor, including Kill von Kull and the plant of the Perth Amboy Dry Dock Company, and any other part of New York harbor? A. There is not.

Mr. Haight: That is the first objection. Now, what is the other?

The Court: As to the tonnage, I thought that book was admitted.

Mr. Haight: I am going to offer the book in just a minute. I was a little ahead of my story, but I will follow that by stating I will offer the book.

The Court: It was stated that there will be no objections to the offer of the book.

Mr. McCarter: There will be no objection to the book.

Mr. Haight: It is stipulated on the record that the "Black Arrow" was a vessel 409½ feet long, 52.8 feet wide, 28 feet deep, that her net tonnage is 3657, her gross tonnage 6022, her dead weight tonnage, 8000.

(Question read by stenographer as follows):

"Assuming that the "Black Arrow" was 409½ feet long, 52.8 feet wide, 28 feet deep, and 1,000 tons dead weight, 6022 gross tons, 3657 tons net, and that she lay alongside the pier which I have indicated on the map by the words "BA," and which you say you saw a few days ago, what is your judgment would be a fair charge, fair and reasonable charge, for wharfage from the 1st of April on to the 2nd of August, of 1924?

Mr. McCarter: Wait a minute. I would like to cross examine this witness on his qualifications before he answers.

Mr. Haight: I have no objection.

SPECIAL CROSS EXAMINATION BY MR. MCCARTER:

Q. Have you ever been connected with a dry dock company on Staten Island Sound? A. I have not.

Q. Have you ever paid wharfage for any vessels berthed on Staten Island Sound? A. I have not.

Q. Where do you get your information on which you say that you know the wharfage on Staten Island Sound then? A. General practice, that is throughout the entire New York harbor.

Q. Am I to understand that if I wish to berth a steamer anywhere in New York harbor, I pay the same rate? A. Not necessarily so.

Q. You include Perth Amboy in New York harbor, don't you? If a person—for present purposes, anyway, you do, don't you, or not? A. I include all dry docks in New York harbor today.

Q. Well, I don't quite understand that. Do you include, when you are talking about New York harbor, do you include the plant of the Perth Amboy Dry Dock Company as being in New York harbor? A. I do, yes.

Q. You do? A. Yes.

Q. Then you say that the price is not necessarily the same for berthing? A. It is not.

Q. Well, how do you reconcile that answer with your previous answer that the rate is the same in the Perth Amboy Dry Dock Company and at Tietjan & Lang? A. It depends on where the vessel lies, whether it interferes with the working of a plant which depends on the fair profit in order to carry its business along, and also where it pertains to the general movement of vessels that you have paying in the plant, while the vessel is laid up.

Ernest H. Dendel. Called by Plaintiff. Cross.

Q. At Tietjan & Lang plant you told us you can take and do take vessels up to the largest steamships afloat today, don't you? A. We cannot berth them to the largest size, but we do work on them to the largest size.

Q. You do work on them to the largest size? A. Yes.

Q. You know that steamships of such size cannot be worked on at the plant of the Perth Amboy Dry Dock Company, don't you? A. I do, yes.

Q. You also know that you can berth larger steamships at Tietjan & Lang's than they can at the Perth Amboy Dry Dock Company, don't you? A. Yes.

Q. You know that water front property in Hoboken is more valuable than in Perth Amboy? Do you or don't you know that?

Mr. Haight: I object to the question.

A. I would not want to go into that.

Mr. Haight: The question to the witness was based on the use of wharfage in ship repair yards. Now, of course, we know that it costs more to take an ocean liner and berth it on the North River than it does to take a ferry boat and berth it down on Arthur Kill, or something of that kind. But that is not what the witness was asked about. What the witness was asked about was the wharfage charges made by dry dock companies when vessels are left in their dry docks, and when they are not doing any work there. There is a very different situation, as you can readily see, and it will not help us to know whether

it costs more to buy waterfront in Hoboken than it does down in Perth Amboy. It may give the jury an entirely wrong impression.

Mr. McCarter: I think it is the existing testimony of the witness that may give the jury an entirely wrong impression.

Mr. Haight: We will take a chance with that.

Mr. McCarter: To me it is perfectly ridiculous to say that the reasonable value of occupying a certain number of square feet in the Perth Amboy Dry Dock Company's yard is the same as occupying the same number of square feet in a yard at Hoboken on the Hudson River, capable of doing work on the Majestic or the Acquitania. And I am bringing out from this witness, or I am going to if I am allowed, the components which go into the value of the yard, the value of the place occupied by the ships, and all that sort of thing. To say that the Perth Amboy Dry Dock Company can get away with any such charge as a yard in the North River seems to me to be absurd, and I am just trying to cross examine him on the details that go to make up this conclusion.

The Court: Go on.

Mr. Haight: The Witness has said he could not go into a discussion of front foot values.

Mr. McCarter: Did he answer that question?

Mr. Haight: Yes.

Q. Do you know that the land under water in the berths and slips at the Tietjan & Lang plant, in Hoboken, is far more valuable than similar land under water in the berths of the Perth Amboy Dry

Dock Company? A. I would say not, when you make repairs to a steamship, that you expect to make a profit on. I should say that the profit would be worth as much to one concern as it would be to the other.

Mr. McCarter: I move to strike out that answer as not responsive.

The Court: That is his argument. You are asking him for his opinion.

Mr. Haight: I submit that is a very proper answer.

The Court: I do not know how proper it is, but I will allow it to stand.

Q. Then I will ask you this question: Don't you know that the land under water occupied by the Black Arrow and by the Philippines, when they lay at the plant of the Perth Amboy Dry Dock Company, is not nearly as valuable as the same amount of land under water that they would occupy if they lay at the plant of the Tietjan & Lang Company, or any other plant on the North River? A. I would give the same answer as I did before.

Mr. McCarter: I insist that question be answered. I am entitled to an answer to my specific question and not have him hedge on it.

BY THE COURT:

Q. Do you understand the question? A. I do, yes, your Honor.

Q. For example, if a dock on Hudson River cost $500,000, and a similar dock, of similar area of land

under the water in Perth Amboy only cost $100,000, would the wharfage be the same in the dock that cost $500,000 on the Hudson River and the dock that cost $100,000 on Kill von Kull, or the Staten Island Sound? A. I would have to again answer that it would have to be the same amount into a shipyard on account of taking up a space which is not built and put there for the purpose of wharfaging vessels.

Q. I do not think you quite understand yet. If you owned a dock and it cost you $500,000, and you owned another dock that cost $100,000, in a different place, same size, wouldn't you expect to get more wharfage charges from the use of the dock that cost you $500,000 than from the one that cost you $100,000? A. I would say not.

The Court: All right. Go on.

By Mr. Haight:

Q. May I just ask: In answering the court's question, do you refer to the docks of a ship yard, or the docks used primarily for the wharfage of vessels? A. Primarily for the purpose of wharfaging a vessel.

Q. Are you referring when you are answering the court's question to wharves such as the steamships tie up to on the Manhattan side of the North River, or are you referring to the wharves or berths of vessels in shipyards? A. I am talking entirely from piers and wharves in shipyards.

By Mr. McCarter:

Q. Well, now, I want to ask you a question. Is it not a fact that the land under water occupied by

berthing the "Black Arrow" and the "Philippines" at the Tietjan & Lang yard is worth more, is more valuable than the same amount of land in the Perth Amboy yard, whatever effect that may have on the water storage—isn't that difference in value a fact? A. I should say not.

Q. It is not? A. No.

Q. Am I to understand that the land under water, the riparian rights, whatever you may choose to call it, can be bought at the same price in front of Tietjan & Lang than it can on Arthur Kill in front of Perth Amboy? A. They could not.

Q. Could not. A. No.

Q. The Tietjan & Lang land is very much more value? A. It sure is.

Q. And the amount of that land under water occupied by the steamship "Black Arrow" and the steamship "Philippines" is the same in both places, isn't it? A. Yes, sir, it is.

Q. Doesn't it then follow necessarily that the amount of that land under water occupied by the "Black Arrow" and the "Philippines" if they are in the Tietjan & Lang yard is more valuable than the amount of land covered by those same ships in the Perth Amboy Dry Dock Company's yard? A. It is not.

Q. It is not? A. No.

Q. Just what form of higher mathematics leads you to that rash condition?

Mr. Haight: I object to the question.

The Court: Yes, you had better reframe that.

Mr. Haight: It contains an unwarranted slur on the witness.

The Court: I said he had better reframe that question.

Q. What form of computation makes you arrive at your last conclusion, that the land you have just said is more valuable at Hudson River, and the two steamships naturally cover the same amount of land in both places? How do you arrive at the conclusion that the land covered by the steamships in the Hudson River is not more valuable than the land covered by them in Perth Amboy? A. It is not a question whether the land of Tietjan & Lange is worth more—

The Court: Let him go on.

A. (Continuing) It is not a question of whether the land is worth mor money in Tietjan & Lange's than it is in Perth Amboy.

Q. That is my question.

Mr. Haight: Have you finished?

The Witness: No. It is a question of where the berth is worth as much to Perth Amboy as it is to Tietjan & Lange.

Q. Are you through? A. Yes.

Q. Now, Mr. Witness, you have told me probably three or four times, and I am asking you again, and with the Court's permission I am going to keep asking you until I get the answer. Is it not a fact regardless of what your opinion or basis for computing the charge, is it not a fact that the land under water covered by these two vessels were they in the Tietjan & Lange yards is worth more, is more valuable land than the same land covered by them

in the Perth Amboy yards? A. I didn't deny that. I said before it was.

Q. And notwithstanding that difference in value you say that the charge for keeping those vessels in one yard should be the same as in the other? A. I should say that.

Q. You should say that. That is all.

DIRECT EXAMINATION (CONTINUED) BY MR. HAIGHT:

Q. Why do you say yes? A. Because every yard has a certain right to a profit on the job, and when you berth a vessel in any repair yard, especially on such piers as we have mentioned before in Perth Amboy, which are the principal piers of a company, you are depriving them entirely from the profits which they are entitled to.

Q. You mean by the use of those piers? A. Meaning by that they cannot use the piers which they should use when they have a vessel at their yard that they are doing contract work on.

Q. Now, then, you say that the price of wharfage in the Perth Amboy Dry Dock would be just the same as the price of wharfage in the Tietjan & Lange Dry Dock because the Perth Amboy Company could make just as much profit by the use of those piers as the Tietjan & Lange could by the corresponding piers in its dry dock or plant. Is that what you mean to say? A. I meant that, yes.

Mr. Haight: I submit that the questions should be answered.

Q. Assuming that the "Black Arrow" was 409½ feet long, 52.8 feet wide, 28 feet deep, and 8000 tons

dead weight, 6022 gross tons, 3657 tons net, and that she lay alongside the pier which I have indicated on that map by the words "BA," and which you say you saw a few days ago, and that the busiest time of the Perth Amboy Dry Dock Company is from April until November, what in your judgment is a fair and reasonable price for the wharfage of that vessel from April 1st to August, 1924?

Mr. McCarter: I object, if your Honor please, on the additional ground that it now appears from the testimony of the witness that his opinion that they are the same in New York and Perth Amboy is based on the assumption that the loss of profit will be the same, and there is no evidence in the case whatsoever to support the fact that there was any loss of profits by the Perth Amboy Company or that the loss of profit of the two docks would, in fact, be the same as the witness assumes; therefore, because the basis is on a false assumption and because the witness is not qualified to testify on a proper basis, I object to the question.

The Court: The Court feels that the witness is qualified to express an opinion. As to the weight to be given to his opinion the jury will remember that they are to take into consideration all of the testimony that has been given by this witness as to his qualifications to give an opinion, and as to the reasoning upon which he bases his opinion, as to what the wharfage is worth. You may take an exception.

Q. Will you answer the question? A. A fair and reasonable charge in my opinion would be about $125 a day.

Mr. Haight: It is stipulated that the "Philippines" was 500 feet in length, 62 feet in width, 34½ feet depth, net tonnage 7305, gross tonnage 11440, dead weight tonnage 13000.

Q. Now, I will put to you exactly the same question that I put to you in respect of the "Black Arrow," that I will ask you to assume that the "Philippines" was 500 feet long, 62 feet wide, had a depth of 34½ feet, net tonnage 7305, gross tonnage 11440, and dead weight tonnage of 13000.

Mr. McCarter: I make the same objection to this question that I made to the two questions that were asked in respect to the "Black Arrow."

The Court: The objection is overruled and an exception may be noted.

Q. You may add this in order to make it clear, that you assume that the "Philippines" lay at the pier which on this map I have marked "P." I am afraid that my other question indicated "BA." Do you understand that? A. Yes.

Q. Now, then, what in your judgment was the fair and reasonable wharfage charge for her from the 1st of April, 1924, until August, 1924?

Mr. McCarter: It is understood that my objection—

The Court: Yes, certainly.

A. I also would say about $125 a day.

Q. Why do you make no difference in the two vessels? A. Well, one vessel was a little longer than the other. My opinion is that she didn't oc-

cupy the pier which was as valuable to the dry dock company as the one where the "Black Arrow" lay alongside of, for one was entirely equipped with a traveling crane, which is a very essential thing in a shipyard, and the other one—and also laying close to the largest dry dock which the concern had, that would save them a good many dollars in bringing vessels off the dry dock or bringing them to the dry docks if they wanted them put alongside of that pier.

Q. Have you or your company in recent years, in the last four or five years, or so on, had any award made to you by a court for wharfage of a vessel which had been brought to your plant for repairs and which remained there after the repairs were completed?

Mr. McCarter: Yes or no.

A. Yes.

Q. By what course was such an award made, do you recall? A. District Court in Brooklyn, before Judge Chatfield.

Q. What was the vessel? A. The steamship "Trinidad."

Q. Steamship "Trinidad"? A. Steamship "Trinidad."

Q. Do you know what the size and dimensions of the steamship "Trinidad" were? A. Can I refer to my paper that I have?

Q. How did you come to make the paper up? A. I checked the size of the "Black Arrow" and the "Philippines" against the size of the "Trinidad."

Q. Where did you get your figures from? A. Out of both books, British Lyold, and American Bureau of Shipping.

Q. The one I had last in my hands? A. Yes.

Q. What was the length of the "Trinidad"? A. 310 feet long.

Q. What was the width? A. 37.1, depth, 19.8, gross tonnage 2592.

Q. Compare the berth which she occupied in the plant of the Tietjan & Lange Company with the berth that the "Black Arrow" occupied, the berths that the "Black Arrow" and the "Philippines" in the Perth Amboy Dry Dock's plant. A. The pier that the "Trinidad" laid alongside of was a good deal shorter pier. It was a pier that was away from the large dry dock and was only used for the purpose of tying up more vessels. It wasn't equipped with any derrick of any kind and wasn't equipped with a traveling crane, simply one of our piers that was clear of the large dry docks, so it didn't interfere with any movement of vessels to and from the dry dock.

Q. Was it as valuable a pier to the Tietjan & Lang Company as the two piers to which the "Philippines" and the "Black Arrow" were moored, or were valuable to the Perth Amboy Dry Dock Company?

Mr. McCarter: I object to that.

The Court: Objection sustained.

Q. Don't answer this question until the Court has passed upon the objection. What was awarded you for that wharfage of that vessel, after the time you had completed repairs on her and while she remained pending litigation over the amount of repair bill?

Mr. McCarter: I object to that as being incompetent, irrelevant and immaterial and

based on facts which are not the same as the facts before the Court and jury here. If your Honor desires to hear any argument—

The Court: No, I do not think so. I would like to hear you, Judge Haight, upon that.

Mr. Haight: Well, I thought, if your Honor please, that it simply went to fix the price that was prevalent for wharfage of this kind in and about New York harbor. I thought when parties had litigated the matter before a court, and the court had rendered a judgment on it, that this witness knew about, and knew what the award was that was made, that it was a circumstance that would be a very material circumstance in weighing the creditability to be given to this witness' estimate of value.

The Court: I am afraid a specific, concrete case, that may have been surrounded with circumstances entirely different from the situation here, is not properly admissible in evidence. I will have to sustain the objection.

Mr. Haight: Will your Honor note an objection.

The Court: Certainly.

Mr. Haight: That is all.

CROSS EXAMINATION BY MR. MCCARTER:

Q. You said that you would allow $125 a day for the "Black Arrow," although she is smaller than the "Philippines," because the pier alongside of which she lay was a more useful and valuable pier than the pier alongside of which the "Philippines" lay, is that correct? A. I would charge $125. I didn't say I would allow it. But I would

charge $125 a day if it was either in my plant or Perth Amboy's.

Q. All right. Now, I am asking you this question: The reason you give for charging as much for the "Black Arrow" as you do for the "Philippines", a larger vessel, is because the pier alongside of which the "Black Arrow" lay was a more useful and valuable pier than the pier alongside of which the "Philippines" lay? Is that the reason why? A. That is one reason why, yes.

Q. One reason? A. Yes.

Q. And the presence of the locomotive crane on the pier alongside of which the "Black Arrow" lay is an important factor in making the pier more valuable than the other pier, isn't it? A. It sure is.

Q. You were not informed, and are not aware, are you, that that locomotive crane was supplied for this job of scrapping this particular steamer?

Mr. Haight: I object to that. It does not make any difference. It was there, and if the steamer had not been there we could have used it for other work.

The Court: I think that is true. He may answer the question; I do not see—

By the Court:

Q. Did you know the crane had not been there until after these ships had been moored to these docks? A. I did not.

By Mr. McCarter:

Q. And you did not know that the crane was supplied pursuant to the specific contract between these parties, did you? A. I did not.

Q. Would that fact alter your opinion as to the relative value to be assigned to the charges for each of the vessels? A. It would not.

Q. Now, you know that the "Philippines" stuck out away beyond the end of the pier, don't you? A. I did.

Q. Her sticking out beyond the end of the pier did not any more completely occupy that pier than if she only went to the end of it, did it? A. It did not.

Q. So the size of the vessel has not much effect, so long as it is large enough to prevent the use of the pier by any other vessel? A. That is right.

Q. You said that the value to your company of a pier like the pier alongside of which the "Black Arrow" lay, would be the same as the value to the Perth Amboy Company of the pier alongside of which she did actually lay, didn't you? A. I did, yes.

Q. You know, don't you, that the interest on the investment represented by such a pier up there in the North River, in Hoboken, is far greater than the investment represented by that pier at Perth Amboy, don't you? A. I do, yes.

Q. The interest on the investment is an important matter to be taken into consideration in finding whether or not a profit is made on a job, is it not? A. I doubt that is a question today.

Q. You doubt that is a question today? A. Yes.

Q. In other words, if I wish to buy a shipyard of a certain acreage, and had to invest say $500,000 in your shipyard on the Hudson River, whereas I could get the same acreage and same facilities for only $100,000 at Perth Amboy I could make the same profit in both yards, charging the same rates? A. You could.

Q. So that if you in the $500,000 yard, were competing with me in the $100,000 yard, and meeting my prices, you could make the same profit that I could? A. I could.

Q. How do you explain that to this jury when in one case you would have five times the interest on the investment to meet than you have in the other? A. At the present time there is a question in the shipyards, and has been for the past years, whether a shipyard will exist, no matter what their investment has been. It is just a question of living and existing. The profits has been so small, and the majority of the work for the past years back has been contract work, so that it affected one as much as the other, whether it was an expensive plant or whether it was a cheaper plant; and if I had the $500,000 plant I would try to get more money out of that plant when I sold it than I would try to get out of the $100,000 plant, if I bought it for $100,000. That would just the opposite way again. So one would offset the other.

Q. The shipyard business has not been profitable in recent years? A. It has not.

Q. Is that true of all shipyards in and about New York harbor, so far as you know? A. As far as I know of.

Q. They have not made a profit? A. They have not.

Q. And the effort has been to do almost any work, just to keep the overhead down and the force together and the yard occupied? A. That is so.

Q. Well, now, if the interest on the investment in one yard is very much greater than the other, why doesn't it necessarily take more gross income to carry that yard than it does the cheaper yard?

Mr. Haight: The witness has not said anything to the contrary about gross income. You are talking about profits.

Mr. McCarter: I am cross examining him.

Mr. Haight: Frame your question so that it does not make the witness appear to testify to something he has not testified to.

Mr. McCarter: I do not intend to make him appear that way. I am simply asking a question which stands on its own legs, and it is proper cross examination.

Mr. Haight: I object to the question because it contains an unwarranted assumption of fact, namely, that the witness has testified that one did not have to have more gross work than the other to make the same profit.

Mr. McCarter: I do not assume that the witness said that. I am asking the question as an original question on cross examination. Not assuming he said anything other than he has said.

Mr. Haight: Well, as long as we understand it I will not waste any more time on it.

BY THE COURT:

Q. As I understand this witness' testimony it is substantially to this effect: That conditions now are such, and have been for some time past, that when you want repair work done at any of these dry docks, that you can get it done just as cheaply at one dry dock as you can at another. Is that what you mean? A. Yes.

Q. No matter whether one dry dock costs five times what the other dry dock cost? A. That is right.

Q. As long as it is a similar dry dock? A. That is right.

Mr. McCarter: Of course, we are not talking about dry docks. We are talking about wharfage.

BY THE COURT:

Q. Dry docks are for wharves, and if the wharves are taken away, so that they cannot be used as dry dock, you can get the wharfage just the same whether the wharves cost $500,000 or $100,000, is that what you mean? A. I mean that, yes.

BY MR. MCCARTER:

Q. Then you also mean, Mr. Dendel, that wharfage at Perth Amboy is just as expensive as wharfing on the North River is or opposite New York City? A. Just as expensive to one plant as it is to another, where it interferes with the working of a plant.

Q. Just as expensive to the person who is going to pay wharfage in one place or another. A. Just as expensive.

Q. In other words, if I have a steamer the size of the Black Arrow, I can't berth it any cheaper at Perth Amboy than I can on the North River? A. That would depend entirely on what charges the person who owns the plant would feel would be a fair and reasonable charge.

Q. Of course, I concede that. But isn't it a fact that the person—or, that I could find, as a matter of fact, a person whose idea of a fair and reasonable charge would be vastly less, at Perth Amboy, or

along Staten Island Sound, than I could in the North River opposite New York City?

Mr. Haight: Are you referring to shipyards, or repair yards, or just ordinary wharves?

A. That is what I was going to ask you.

Mr. McCarter: I ask the question be answere as it.

Mr. Haight: I object to the question.

The Court: Objection sustained.

Mr. McCarter: Prays exception.

The Court: Certainly. It might mean that it would cost just as much for such repairs as an oceangoing liner in the North River, as though it were at Perth Amboy, if that were possible. We are talking about the use of wharves that are part of dry docks.

Mr. McCarter: I know we are and I am trying to cross examine this witness to bring out the reasons for his opinion. He has given an opinion and I am trying to find out the component of it.

Q. In the last analysis your reasons simply are that the same profit can be made by the Perth Amboy Yard as can be made by the Tietjan & Lange yard in the North River? A. It can.

Q. You do not know how efficient a yard the Perth Amboy yard is, do you? A. I do.

Q. Have you ever examined their books, and do you know what profits they have or have not made? A. I have not.

Q. You don't know what profits they made during 1924? A. I do not.

Q. You do not know what business they did during 1924? A. I do not.

Q. You, of course, do know that in connection with your own yard? A. I do.

Q. Your testimony is based on the assumption that the Perth Amboy yard could make the same profit from the use of the space and piers occupied by these two vessels, as your yard could have made, had your yard had such piers at its place? A. I do.

Q. And it is not based at all on the reasonable value of the space occupied by those vessels?

Mr. Haight: I object to that. The profit, of course, is a thing that is going to determine the value of the space. All value of property, except the sentimental value, is predicated upon what it will produce in money. I go and buy a stock in a company, it may have a par value of $100 a share, and I am able to buy it for $5 a share, but the reason I buy it for $5 a share is because it will not produce any profit. The same here applies here.

Mr. McCarter: That is not so. Lots of things are bought and sold—

The Court: I will allow the question if the witness can understand the question.

(Question repeated by stenographer.)

A. It is not.

Mr. McCarter: That is all.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Dendel, you referred to profits awhile ago that one could make as much profit as another.

When you used the word "profit", did you refer to net profit, or operating profits? I mean net profit after deducting a reasonable return on the investment and the overhead based on investment, and things of that kind, or did you refer to operating profits? A. Operating profits.

Q. You mean to say when a vessel comes into your plant to be repaired that the profit to you and the Perth Amboy Company, if you charged the same for the job, would be the same, because the material that went in and the labor that went in would be the same in both cases?

Mr. McCarter: I object to the question as leading.

Mr. Haight: It is leading. There is no doubt about that. I was just trying to make clear what the witness meant.

Q. Were the ship repair and dry dock yards in New York harbor, and we include in that Perth Amboy and Staten Island Sound, in a position where one could charge more for a repair job than the other could, in say the last three or four years?

Mr. McCarter: I object to that.

A. They were not.

Mr. McCarter: I object to that as absolutely immaterial, one yard charging the same as another yard for a repair job.

Mr. Haight: That is the same thing you brought out from him. I am simply bringing it out in another way so that the jury can possibly get it a little clearer.

The Court: All right. He has answered.

Q. Did you answer yes? A. The answer was, it will not.

Mr. McCarter: I did not hear your Honor rule on the question.

The Court: He had answered before you objected, but even if he had not I would have overruled the objection and you may have an exception. This witness, to my mind, I do not know whether I understand him or not, he was very closely questioned as to his opinion whether it would be altered by the fact that in one yard, or one dry dock, with an investment of $500,000, for illustration, and a similar one at a different location, costing $100,000, whether the profits would be the same. He has been repeatedly asked that question. He said yes. And I asked him whether he meant that the charges would be the same for a repair job whether it was done at a dry dock that cost $500,000, or one that cost $100,000, and he said yes.

Mr. Haight: Yes.

The Court: Now, he is asked whether he means that the profit on the operating charges of a repair job would be the same at one dry dock as at another, irrespective of what the dry docks cost. He said yes.

Mr. Haight: That is right.

Mr. McCarter: I move to strike out this witness' answer as to the $125 a day for the Black Arrow, and his testimony as to $125 a day for the Philippines, on the ground that it now appears from all the testimony, that his estimate and basis for his answer totally eliminate the difference in capital value of the plants which he compares, and is based only, as Judge

Haight phrases it, on operating profit. Eliminating wholly interest on investment and overhead.

Mr. Haight: I think your Honor has already ruled on that.

The Court: Yes. The motion is denied.

Mr. McCarter: Prays exception.

The Court: Certainly.

JOHN BONNETT, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Where do you reside? A. 266 86th Street, Brooklyn.

Q. Did you have anything to do with the Robbins Dry Dock & Repair Company? A. I have.

Q. How long have you been connected with that concern? A. With that concern and with the Tebo Yard concern about 20 years.

Q. Is that concern operated by the Todds Shipyards Corporation? A. It is.

Q. How long have you been connected with the Todds Shipyards Corporation? A. About six years.

Q. When was it formed? A. In 1916.

Q. When did it take over the Robbins Dry Dock? A. Well, I am a little wrong there in dates. The Todds Shipyards Corporation was formed in 1916 and took over the Robbins at that time. But I was with the Robbins and only came over with the Todd at the time as a whole, as a unit, about six

years ago, in about 1918 I went with Todd. Get this straight now. I was with a subsidiary and went with the parent company, you see, in 1918.

Q. Where is the Robbins Dry Dock & Repair Company located? A. Erie Basin, Brooklyn.

Q. That is its place of business? A. That is our office. We have an office at 25 Broadway.

Q. What was it you had there in the way of plants? A. We had six dry docks and the necessary amount of piers for berthing purposes alongside of those dry docks.

Q. What kind of business are you engaged in? A. Ship repair.

Q. How does your business compare with that conducted by the Perth Amboy Dry Dock Company, if you know what kind of business the Perth Amboy Dry Dock Company does? A. They both do a similar business, a ship repair business.

Q. A dry dock business? A. A dry dock.

Q. Your connection with the Robbins Dry Dock & Repair Company, have you had occasion to make charges and to fix a price for the berthage or wharfage of vessels alongside of piers used by you for repair work ordinarily when such vessels are not being repaired or worked upon by your company? A. We have.

Q. And have you had occasion to do so on more than one occasion? A. We have, on several occasions.

Q. Now, are you familiar with the plant of the Perth Amboy Dry Dock Company? A. I am.

Q. I direct your attention to this blueprint, which has been marked Exhibit P8, and ask you if you are familiar with the slip alongside of the dock where I have marked the words "BA," and I ask you the same question in respect to the slip where I have marked "P." A. I am.

John Bonnett. Called by Plaintiff. Direct.

Q. Do you know the vessels "Philippines" and "Black Arrow"? A. I don't know the vessels. I never seen them.

Q. You never saw them. Now, tell us the truth, please, that the "Black Arrow" was a vessel 409½ feet long, 52.8 feet wide, 28 feet deep, with a dead weight tonnage of 8000 tons, gross tonnage of 6022 tons, net tonnage of 3657; and the "Philippines" was a vessel 500 feet long, 62 feet wide, 34 feet deed, dead weight tonnage 13000 tons, gross weight tonnage of 11440, net tonnage 7305 tons; and that those two vessels lay from April until August, 1924, at the places I have indicated on that map—namely, those that I have marked "BA" and "P,"—and that the busiest time of the Perth Amboy Dry Dock Company for its ordinary work is from the 1st of April until November—and basing your answer on what you know, what you have charged yourself for the wharfage of vessels under conditions which I have mentioned, and what you know is charged generally throughout New York harbor for these same conditions, for wharfage for those same conditions, what would be a reasonable and a fair charge for the wharfage or berthage of the "Philippines" and the "Black Arrow" at the two piers of the Perth Amboy Dry Dock Company that I have indicated to you for the period from April 1 to August.

Mr. McCarter: I would like to cross examine, as I have cross examined the other witness.

The Witness: Shall I answer that question?

John Bonnett. Called by Plaintiff. Cross.

SPECIAL CROSS EXAMINATION BY MR. MCCARTER:

Q. Mr. Bonnett, you have visited the Perth Amboy Dry Dock Company's yard? A. I have.

Q. When? A. Last Monday.

Q. Last Monday. In company with the last witness, Mr. Dendel? A. Yes, sir.

Q. And you have never been connected with a dry dock ship repair company on State Island Sound? A. Not on State Island Sound; no, sir.

Q. Your business has been limited to Brooklyn? I mean your place of business has been limited to Brooklyn. A. Our plants are in Brooklyn, New York and Brooklyn. Our main office is in New York.

Q. But your yards are in Brooklyn? A. Our yards are in Brooklyn, yes, sir.

Q. Your business experience about which you are testifying is based about your connection with that yard? A. And also at Tietjan & Lange's in Hoboken.

Q. When were you with them? A. I have been in their plant a good many times and are familiar with their conditions as we handle it in our business.

Q. Have you ever been employed by Tietjan and Lange? A. It is one of our companies. Our ship companies.

Q. That is one of your companies? A. Yes, sir.

Q. That is another part of this Todd shipbuilding, whatever it is, combine, company you referred to? A. Yes, sir.

Mr. Haight: Tebo Shipyards Company.

Q. And you are familiar, then, with the charges and so forth that are made at the Tietjan & Lange

yard as well as those that are made at the Brooklyn yard? A. Yes, sir.

Q. You know, of course, do you not, that the land under water in Brooklyn is far more valuable than the same land under water in Perth Amboy? A. I do.

Q. You do. And I suppose you agree with Mr. Dendel that it makes no difference in the wharfage charges? A. Yes.

Q. On what do you base your opinion, then? A. What opinion?

Q. As to the reasonable value of the charge to be made for berthing the "Black Arrow" and the "Philippines." A. I haven't given any opinion, have I?

Q. Haven't you got an opinion? A. I have one, but I haven't given it.

Q. What do you base it on? A. I base it on what that plant is worth to each particular concern.

Q. On what, what is worth? A. On what it is worth to them.

Q. On what it is worth to them. You say that it is worth the same thing to the Perth Amboy Dry Dock Company at Perth Amboy as it is to this Robbins Dry Dock & Repair Company in Brooklyn? A. Yes, sir.

Q. The Perth Amboy Dry Dock Company has a far smaller interest on its investment, hasn't it? A. Possibly. I don't know what the interest is on the investment.

Q. You don't know the comparative values of the plant, then? A. Why, I know the value of the Perth Amboy plant is not in proportion to the value of the Tietjan & Lange and Robbins plant. I know that.

Q. You necessarily know then that the interest on the investment is far less in connection with the Perth Amboy yard? A. I realize that.

Q. You also know that the overhead at the Perth Amboy Dry Dock Company is therefore far less? A. No, not necessarily, no.

Q. Well, the interest on the investment is less, isn't it? A. The interest on the investment is less.

Q. The taxes are less, aren't they? A. If you say so they must be.

Q. Thank you. A. I don't know. I don't know the taxes.

Q. Have you any doubt? A. No, I haven't.

Q. No? A. No.

Q. The taxes and the interest on the investment are two very large items going to make up the overhead, aren't they? A. They are two considerable items.

Q. Have you any doubt that the overhead of the Brooklyn yard, the Robbins Dry Dock & Repair Company, or the Tietjan & Lange, is far greater than at Perth Amboy? A. They may not be.

Q. They may not be? A. No.

Q. You don't know that they are the same, do you? A. No, I have no way of knowing what the overhead in any of the Perth Amboy plants might be.

Q. You don't take the overhead into consideration, do you? A. I certainly do.

Q. Well, then, how can you take it into consideration if you don't know what it is? A. We take it in our own. We don't take Perth Amboy's, we don't take their overhead. We don't use theirs. They use their own overhead, you know.

Q. In coming to your opinion as to the reasonable value of the charge made for berthing the

"Black Arrow" and the "Philippines" at Perth Amboy, do you or do you not take into consideration the overhead of the Perth Amboy Dry Dock Company? A. Certainly.

Q. You do? A. We do.

Q. In arriving at your opinion? A. No, certainly not. I don't know what their overhead is.

Q. You therefore don't take it into consideration at all in arriving at your conclusion? A. I haven't given an opinion.

Q. Well, you have it, whether you have given it or not? A. I haven't it until I give it.

Q. You haven't an opinion now? A. Not until I give it, I haven't answered that question.

Q. As we are talking now, this moment—

Mr. Haight: The question is: Assuming that that you are going to answer that question he wants to know in making up your opinion whether you take into account overhead or the difference in overhead between the two places; is that right?

Mr. McCarter: That is true. He may answer your question.

The Witness: He puts it where I can answer it, pardon me. The overhead would not have any bearing on what that berthing space would be worth. It would be as Mr. Dendel said, what the facilities, or what facilities were hampered and what that particular berth was worth, that is, and what we could get for it on a big ship, or similar conditions to those. Overhead I doubt—I don't think the overhead would enter into it at all. In fact, it is not figured.

Q. The overhead would figure in the profits to be made by the company, though, would it not? A. Oh, yes.

Q. And the greater the overhead the greater the gross income must be in order for there to be a profit, isn't that so? A. I don't think there has been any profit, so you can't talk about this.

Q. There hasn't been any profits in any of these yards? A. No.

Q. So far as you know? Why hasn't there been any profits? A. Business conditions have been such that they simply don't make any.

Q. There hasn't been the business, isn't that why? A. I don't say that. I said business conditions.

Q. What are the business conditions? A. There is so many factors that enter into that, particularly thhe competition.

Q. The competition? A. Yes.

Q. In other words, there is not enough business to go around among the yards? A. Yes, but it is cut very heavily.

Q. Cut very heavily? A. In other words, Perth Amboy has got to take a job at the same price we have to. Their piers are as valuable as ours under these same conditions.

Q. You have got to take a job at the price Perth Amboy will take it? A. Yes, therefore, their plant is just as valuable as ours for that kind of business.

Q. What may be a profit to them may not be a profit to you? A. And *vice versa.*

Q. How could it be *vice versa* if your overhead is so much greater? A. I didn't say it was.

Q. You just said *vice versa*? A. I said, "And *vice versa.*"

Q. And *vice versa.* A. It might be more.

Q. How could it be *vice versa* if your overhead is very much greater than theirs? A. We don't know. Is Perth Amboy's more than ours?

Q. Have you any shadow of a belief or thought in your mind that their overhead is as great as yours? A. I don't know.

Q. You don't know? A. I don't know.

Q. And do you also want us to understand that you don't know whether that their land is as valuable as the Robbins' land? A. I answered that question, didn't I?

Q. And you also have no doubt, have you, that the taxes they have to pay are very much less than thhe Robbins taxes?

Mr. Haight: I submit, if your Honor please, that has been answered twice.

A. Yes.

Mr. Haight: The witness has said yes.

Q. What makes you doubt that their overhead is not much less than the overhead of Robbins? A. I don't know.

Q. You don't know what makes you doubt?

The Court: No. He means by that he doesn't know whether it is or not.

The Witness: That is right.

Q. Have you any doubt as to this? How about taking the jury in your confidence? A. I take the jury in. Will you mind forming that so I can—

Q. Will you answer my question, sir?

(Last question read by stenographer as follows): Have you any doubt as to this?

A. Have I any doubt as to what?

Q. As to the fact that the Perth Amboy overhead is less than the Robbins' overhead? A. I don't know; I don't know whether their overhead—I haven't any idea of the overhead.

Q. Do you know what goes into making up overheads? A. I think I do, but there is lots of factors that enter into overheads that auditors don't quite understand yet, and I think I know.

Q. You having said that you feel sure about the values of the land and the taxes, what items are you not sure of? A. I admitted the land values.

Q. I know that you admitted them, and you admitted the taxes. Now, tell us some things you don't admit, to use your own language.

(Last question read by stenographer.)

A. I don't know what I don't admit. I don't know what you mean. I don't know what you mean.

Q. All right. I will put it in words of one syllable. A. That is it.

Q. What parts of the overhead of the Perth Amboy Company don't you know? A. Why, I don't know whether—I don't know their taxes. I admitted that before.

Q. Well, you did before say you admitted the taxes there were less than in your plant? A. We will admit that. They might be less. I admitted they might be less. I don't know them. I don't know one tax valuation in southern Jersey or in that section. All right, taxes. I don't know whether their foreman charges, for instance, are direct

overhead charges or whether they are put on on each yard. Each yard has a different way of accumulating those charges. I don't know about lots. I don't know about their piers. I know nothing about how their overhead is accumulated. You might enlighten me there and I might help you.

Q. And because you don't know those items you have no possible basis, have you, for comparing the overhead of your yard and the overhead of the Perth Amboy yard? A. No, that is right. I haven't any basis.

Q. And you don't base your opinion, whatever it is, as to the reasonable charge to be made by the Perth Amboy Company for berthing the "Philippines" and the "Black Arrow" on the reasonable value of the space occupied by those two ships? A. Shouldn't be based on the land, or the under water.

Q. You don't do that? A. Oh, we don't not on the under water value of the land.

Q. You don't base it on anything but what the Perth Amboy Company could get for that space? A. That we base it on what the Perth Amboy can get? Is that the question?

Mr. Haight: No, no.

Q. You don't base your opinion, this mysterious opinion that you haven't given, on anything but what you say the Perth Amboy Company could get for that space? A. I want to base my opinion on what we could get for that space or what the space is worth to us. My opinion is going to be based on what is a fair and reasonable value for that space.

Q. For what space? A. The space that those boats were occupying in our plant, or in the space in the Perth Amboy's plant.

Q. Well, now you not being familiar with the Perth Amboy plant except as you have seen it, you know its nature and its business, I say, then, is it not true that you base your opinion as to what the reasonable value of that space in their plant to their men is solely on what they could get for that space? A. No, I base it on what I consider the space is worth in their plant.

Q. Now, how do you determine what the space is worth in their plant? A. What it is worth in the port. We are in the port. Perth Amboy is in the port of New York. The custom house—that is, they use the same custom house as we do. We are in the same general area that we consider him.

Q. Now, and you say that the space is worth the same in any yard in the port? A. Yes, sir.

Q. Well, now what do you base that on? A. I base it on what—in looking over that plant I base it on what I would presume would be the fair, reasonable amount of money for the disturbance caused by berthage space being occupied. You understand that these berthage spaces in a dry dock are never for any other reason, or never used when something like this comes up. We never quote wharfage. You couldn't put a boat in the dry dock for wharfage only.

Q. You know these boats are not in dry dock for wharfage? A. They were there for a specific purpose.

Q. You know they weren't in dry dock? A. I know that. They were there for work to be performed on them. They would not have been there for wharfage solely.

Q. You say you based your opinion as to the reasonable charge for these boats on what the Perth Amboy Company could get from the use of that

space; is that it? A. No, I don't. I say for the space itself, what it caused them lost on moving ships and use of that pier alongside of a valuable dry dock, that is dry dock number 6, number 5 there. Why, if a ship came off of the dock I don't know what they would do with it if they had a big ship like the "Black Arrow" alongside, where they would put the ship. So for that same reason they displaced facilities.

Q. Displaced facilities? A. I know what that is worth in our plant, and I presume it is worth some, and that is my opinion.

Mr. McCarter: That is all for the present. I think before he reads that I will get my objection in. I object to this question as incompetent, irrelevant, and immaterial, because it appears now, from the testimony of the witness, that he is not qualified to give an opinion as to the value of the Perth Amboy, and because it also appears that his basis of comparison with the facts with which he is familiar is improper and not a correct measure of the damages at all.

The Court: The question asked him, What are the charges for wharfage on such a pier or dock as this in New York harbor. That is what the question asks, that is what the profits are. The charges made for wharfage, but what are these charges, what were these charges at the time in all the courts of New York. That is what he is asked, and I hold that he is qualified to give an opinion as to what the charges were. The jury will, in considering the weights to be given to his opinion, consider all of the evidence this man gives as to his qualifications

based upon information and experience to give such an opinion.

Mr. McCarter: Your Honor will allow me an exception?

The Court: Certainly.

DIRECT EXAMINATION (CONTINUED) BY MR. HAIGHT:

Q. Do you remember the question I put to you? A. Why, yes, I think I can answer that. $125 a day.

Q. $125 a day. Does that apply to each ship? A. Each ship.

Q. Why do you make no difference in the ships when they were one larger than the other? A. Well, I might use Mr. Dendel's answer there, which would fit exactly. It was for the reason that one ship, the smaller one, displaced facilities down there that was more valuable than the bigger ship displaced. The bigger ship, the "Philippines," was over on a less used pier than the "Black Arrow," which was alongside of the big dry dock number 5.

Q. Did the fact that the "Philippines" sunk farther out into the water— A. That would also—

Q. Would that bring them out? A. Yes, and the handling of the vessels from the dry dock, particularly number 5, would be quite awkward.

Q. You mean these vessels? A. No, handling other vessels than come off the dry dock would be a little bit awkward, and not only that, you would not have any berthing space for a vessel to be put on that dry dock number 5.

Q. Do you know the St. Louis? A. I do.

Q. How large is the St. Louis? A. She is 535 foot.

Q. What is her gross tonnage? A. May I refer to a record that I have?

Q. Do you know? A. I have got a record.

Q. Where did you get it from? A. I got it out of Lloyd's Register.

Mr. McCarter: Oh, let him use it.

Q. How much is the tonnage? A. SS. "St. Louis," length 535, beam 63, depth 42, gross tonnage 11629.

Q. Have you got her net tonnage there? A. No, I have not, but that is available—no, it is not. It is in the 1923 Lloyd's.

Q. Was the St. Louis tied up to any of the docks of the Robbins' Dry Dock & Repair Company? A. She was tied to—

Q. Wait a minute. Recently? A. Not so recently. It was in 1923.

Q. 1923. What time of 1923? A. In March of 1923.

Q. How long was she tied up there? A. She was tied up there about two months.

Q. During the time that she was tied up for these two months was there any work being done on her? A. There was for a period of about thirty days.

Q. At that time no work? A. No work.

Q. Did you make a charge for the wharfage of her after you stopped doing work on her?

Mr. McCarter: Yes or no.

A. We did.

Q. Was that charge paid? A. It was.

Q. Was there any objection to it? A. No objection.

John Bonnett. Called by Plaintiff. Direct.

Q. What was the amount that you charged?

Mr. McCarter: I object to that as absolutely incompetent, irrelevant, and immaterial.

The Court: Objection sustained.

Mr. Haight: Will your Honor hear me on that?

The Court: Yes.

Mr. Haight: I think that goes to the giving of the jury an opportunity to determine whether this witness' estimate is a good estimate or not. Now, here is a vessel tied up to a dock of the Robbins' Dry Dock & Repair Company, which is engaged, as the witness says, in the same kind of business as the Perth Amboy Dry Dock Company. This vessel is practically the same tonnage. There is only less than a hundred tons difference between her and the "Philippines," less than thirty feet difference between her and the "Philippines" in length. In 1923 from March until June she was tied up there. A price was charged by the Robbins' Company and was not objected to by the person against whom the charge was made.

Now, it seems to me that that makes a clear basis, a clear charge, gives us the best way of fixing the fair charge. Here is the vessel tied up there, brought in for repairs just as the same as this vessel. After that was done she laid there still further for a period of a month longer, thirty days. It was the same size and a yard devoted to the same purpose alongside of a pier devoted to the same purposes as the pier of the "Philippines," and the Robbins' charges a sum which the other person paid.

Now, we fix a market price of anything, a market of anything by what one is willing to sell for and the other is willing to buy for. Now, it gives us a concrete example of the exact amount charged, and I think that it would assist the jury very greatly in determining what weight they are going to give this witness' testimony.

The Court: I will hear you, Mr. McCarter.

Mr. McCarter: In the first place, if your Honor please, the ship is stored a year before, a whole year before the time these ships are stored.

In the second place, it is stored at Brooklyn, as I understand, and not at Perth Amboy.

In the third place, we don't know anything about the circumstances as to why this ship was stored there, as to the clearness of the liability and all that sort of thing. We don't know anything which moved the owners of the St. Louis to pay this price.

I feel if this were proper evidence it would be just as proper in a negligent case where a person is suing for a broken right hand to ask him what they settled for a year before when they broke a left arm, if there were no difference in arms. I don't mean to make that statement.

But what one person takes or is willing to pay for the storage of a vessel does not prove what is the reasonable value of the space occupied by the vessel in Perth Amboy—does not even tend to prove it.

Now, another thing. The steamship "St. Louis" has not been compared with the vessels in question except as to size. These vessels

were there to be scrapped. They were hulks. The "St. Louis," for all we know, was to be restored to traffic and had great potention earning power; and, therefore, one would be willing to pay very much for the storage than they would be willing to pay for a partially dismantled hulk.

The Court: I will have to make the same ruling as on similar questions before. The objection is still sustained. You may take an exception.

By Mr. Haight:

Q. Let me ask this question of the witness: Was there any difference during April and May of 1923, in the shipyard conditions, so far as charge for berthage was concerned, and things of that kind, than in 1924? A. There has not been a particle of difference. There is not a particle of difference between conditions in '24 and '23.

Q. What purpose was the St. Louis left there for? A. She was in there, put in there for a job that was started and stopped, and then the vessel was scrapped. Went to Italy and was scrapped. Sent to Italy and was scrapped. She disappeared. She is not in Lloyds.

Q. She disappeared, she was scrapped. She is not in Lloyds today.

Mr. Haight: With that addition I submit the question is proper.

The Court: With that addition the objection is still sustained.

Mr. Haight: Prays exception.

The Court: Certainly.

Mr. Haight: That is all.

Mr. McCarter: That is all.

Edward W. Peterson. Called by Plaintiff. Direct.

EDWARD W. PETERSON, recalled, as a witness by the plaintiff and having been previously duly sworn, saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Did you testify this morning how long you were employed by the Perth Amboy Dry Dock Company? A. Yes, 15 years.

Q. Are you still there? A. No, sir.

Q. Where are you now? A. City of Woodridge..

Q. When did you leave the Perth Amboy Dry Dock Co.? A. About a year ago.

Q. Why did you leave? A. My health went bad.

Q. Do you remember the Black Arrow and the Philippines that were brought to the Perth Amboy Dry Dock Company plant? A. Yes, sir.

Q. Did you have anything to do with the scrapping of them? A. No, sir.

Q. Were you placed in charge of any of the work? A. No, sir.

Q. At any time? A. No, sir.

Q. Did you meet Mr. Bernard? A. Yes, sir.

Q. Under what circumstances? A. Mr. Preacher introduced me to him.

Q. Did he tell Mr. Bernard that you were to do anything there at that time? A. He introduced me as the foreman of the shop and that I should—he introduced me to Mr. Bernard as the superintendent of the shop and that I should help him out in any way that I could, with tools, and furnish him with men.

Q. Did you then act as superintendent of the job? A. No, I didn't.

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

Q. What did you do? A. Just sent the men when he wanted them.

Q. Who made the requisition to you for men? A. He did at that time.

Q. Who did? A. Mr. Bernard.

Q. What kind of men, laborers or burners, or what? A. He didn't specify any particular kind.

Q. Well, I know, but what kind of men did you furnish? A. Laborers. I didn't furnish them. I just sent them to him.

Q. Just sent them to him? A. Yes.

Q. Didn't you do any work on this job, superintendent's work on this job at all? A. No.

Q. On either of them? A. Only under whatever he said.

Q. That is what I am trying to get at. But you did work on those vessels, didn't you? A. I think one day or two.

Q. Well, weren't you there all the time working under Bernard until Williams came? A. Well, that was only a few days afterwards.

Q. Well, you were there then, weren't you? A. Yes. Under him. He placed the men and I just stayed with him until he got acquainted.

Q. Until he got acquainted? A. Yes.

Q. Then Williams came, did he? A. Yes.

Q. And when Williams came did you leave? A. I don't remember now. He introduced me to Mr. Williams in the same way as Mr. Preacher introduced me to Mr. Bernard, and after that I didn't see Mr. Bernard so much; only Mr. Williams

Q. How long did you stay there, if at all, after Williams came? A. I don't know. I ain't sure. I think I was let go once, and then I was re-hired or asked again to send men. I don't remember.

Q. When you went to work on the vessels under Bernard, did you have the same number in the

Perth Amboy Dry Dock Company that you had had theretofore? A. I never was changed.

Q. You never were changed? A. Not that I know of.

Q. At the time Preacher introduced you to Bernard, did Bernard say anything about when you were to begin work? A. He told me—Mr. Preacher told me to help him out and send men to him, well, he said, "You can start tomorrow morning and send them over."

Q. Did he say why? A. And he said, "I will place them to work."

Q. Did he mention to you any time in which the work was to be done?

Mr. McCarter: I object to that as leading.

Mr. Haight: I am not attempting to lead. I am simply directing the witness' attention.

The Court: It is leading. I will allow it.

A. He said "Send them over, we will start tomorrow morning, because we have got to hurry up on this job, we have got to scrap them in three months."

Q. Did you send men there? A. Yes, sir.

Q. The men you sent there, were they placed at work? A. Yes, sir. Mr. Bernard placed them.

Q. Do you recall the time that the seacock of the Philippines was broken and she started to sink? A. Yes, sir.

Q. Did you have any conversation with Williams prior to that time as to the methods in which he was going or, in which he was cutting and letting fall the pipe in the engine room? A. Yes, sir.

Q. What was the conversation?

Mr. McCarter: I object to that on the ground that statement by Williams are not binding on

this defendant. The testimony is that he was the agent of the Perth Amboy Company, I submit.

The Court: Objection overruled. You may have an exception.

A. I came in on the upper deck, just going through, and one of my men, he went with Mr. Bernard, that is, he took a job with him as foreman under him, foreman on that ship, and as I was going through I saw him cutting and dropping them down, so I called his attention to it.

Q. Called whose attention? A. Mr. Connor's and he said, "I can't help it," he said, "I was told to let them go."

Q. That is not what I asked you. I asked you whether you had any conversation with Williams? A. I wanted to come to that.

Q. Get to it before you get to the other, because the other thing is not proper. A. So Mr. Williams came along and I said, "Why, I understand that you are letting these pipes drown down here all over the bottom of the ship," and he said, "Yes, we have got to do that," he said, "we can't be bothered lowering them down with block and tackles the way they were doing," because, he said, "we have got to junk these ships in three months," and he said, "we can't lose no time."

Q. Did you report that to anybody? A. Only to Mr. Williams.

Q. No. But did you report what Mr. Williams said to anybody? A. I told Mr. Preacher.

Q. You told Mr. Preacher? A. Yes.

Q. When the Philippines started sinking, what was done to salvage her? A. Well, we tried to wrap

marlin, and everything possible, tried to cover it from the outside.

Q. Do you know what time of day it was that the seacock was broken? A. I think it was in the afternoon, I think late.

Q. What? A. I think late in the afternoon it was.

Q. Were you there at the time? A. No, sir.

Q. Had you been taken off of the job at that time? A. No. I couldn't say. I don't remember.

Q. Well, were you there at all on that job after Williams came there? A. Just to walk through, that is all.

Q. Were you acting as superintendent after Williams came there? A. I never acted as superintendent.

Q. What did you act as? A. Just to see that the fellows—just to send the men. I would go to see whether he wanted men, or if he needed any tools, and those things.

Q. Well, there came a time when you stopped doing even that, didn't there? A. Yes.

Q. When was that time, before or after Williams came? A. I didn't do anything after Williams came.

Q. You didn't do anything after Williams came? A. No.

Q. Well, this accident was after Williams came, wasn't it? A. Yes, sir.

Q. Well, while you were there did you ever direct the men as to how to do the work? A. No, sir.

Q. Who did that? A. Mr. Williams and Mr. Bernard.

Q. Was anything said by Williams as to the dropping of this piping, in respect to the engines?

Edward W. Peterson. Called by Plaintiff. Cross.

Mr. McCarter: I object to Mr. Williams' statement on the same ground as the last objection.

The Court: Objection overruled. Exception allowed.

A. He said, "Tell the boys to keep the pipe from dropping on the engine, because they want to sell them, or they had a market for them."

Q. Do you know anything about the flanging of these seacocks on the "Philippines"? A. Yes.

Q. Of your own knowledge I mean? A. Yes.

Q. Did you have anything to do with them? A. I think I did.

Q. Well, are you clear about it, or aren't you? A. No, I ain't.

Q. You are not sure? A. No. I remember there was talk about flanging them, but I don't remember whether—

Mr. Haight: Cross examine.

Cross Examination by Mr. McCarter:

Q. Just what did you do? What were your duties around the yard? A. Around the Perth Amboy yards?

Q. Yes, during this time while these boats were being scrapped? A. I was foreman of the machine shop.

Q. Foreman of the tool shop? A. Machine shop.

Q. And you know, as a matter of fact, from when the boat first came until February 4, 1924, you were among the men whose wages were billed to the H. L. Crawford & Co., don't you? A. No, sir; I do not.

Q. You do not? A. No, sir.

New Jersey State Library

Q. You were on these boats at some time, weren't you? A. Yes, sir, sometimes, yes.

Q. While you were on these boats you were working on this scrapping job, weren't you? A. I just furnished the men for it.

Q. You were working on the scrapping job though, weren't you? You had some duties in connection with the scrapping job? A. Only under Mr. Bernard, yes.

Q. Certainly. But you had some duties in connection with the scrapping job, didn't you? A. No.

Q. No? A. I had nothing to say about the scrapping of the ship.

Q. You had some duties in connection with the work that was being done on these ships? A. Only to furnish the men.

Q. Only to furnish the men? A. And the material.

Q. What took you down on the ships then? A. Just to furnish the men. Mr. Williams would ask me for men and I would take them down and give them to him, and he would check them up and take them in and put them to work.

Q. And then you would leave the ship? A. Well, yes. Sometimes I would walk through it.

Q. Just to take a look around? A. Yes.

Q. Interested in the progress of the work? A. Yes.

Q. Just out of curiosity? A. No. I was interested. I would like to see the work going.

Q. Well, you had no business there? A. Well, I thought I did on account of furnishing the men.

Q. Well, what business had you there, when you had furnished the men, what further business had you on the ship? A. I just— I don't suppose I had any business there.

Q. And you just walked around, as I said, to satisfy your own curiosity? A. Done as Mr. Preacher told me to do, as Mr. Bernard said.

Q. Did Mr. Bernard tell you to walk around and look at the ship? A. No, he didn't tell me.

Q. What I am trying to get at is, why did you walk around and look over the ship as you say you did? A. Because I was interested.

Q. Did you have any other duties out there in the yard, during January of 1924? A. I had plenty of work, but I don't know just what it was now.

Q. What? A. We had lots of work, but I don't know just what it was.

Q. Did you, yourself, I don't mean the yard, you yourself, have any duties elsewhere in the yard during January, 1924? A. Outside of the ships?

Q. Yes. A. Yes.

Q. You did? A. Yes.

Q. What? A. All the time we had something or other besides these ships to do personally.

Q. I don't say we. I am asking you, Mr. Peterson, did you have any other duties? A. Yes.

Q. What were they? A. I couldn't tell you now.

Q. You don't know what they were? A. I could not tell you what duties might have been in there.

Q. What say? A. There might have been some jobs in there, I don't know, I couldn't tell you. Or tow boats.

Q. You don't know what your duties in that yard were during January, 1924? A. Foreman of the machine shop.

Q. Foreman of the machine shop? A. Yes.

Q. What does that mean? A. I had charge of the men in the machine shop.

Q. You continued in charge of the men in the machine shop during all of January, 1924? A. No. Yes.

Q. Don't you recall that there was a change in your duties after February 4, 1924, you were taken off this scrapping job entirely? A. I don't know what date it was.

Q. Well, whenever it was you know it happened, don't you? A. Yes.

Q. What were your duties after that? A. Same as they were before.

Q. Then what was the change? A. I don't know.

Q. You don't know? A. No, I don't know anything about it.

Q. You don't know much about it at all, do you? A. No.

Q. You were on the Philippines the day the seacock broke, weren't you? A. After it broke, yes.

Q. After it broke? A. Yes.

Q. You were not there when it broke? A. No.

Q. How did you come to go on after it broke? A. I was called there by Mr. Connors.

Q. Called there by Connors? A. Yes.

Q. If you had no other duties except to furnish men, why did you tell Connors how to cut the pipes? A. I told him I didn't want to see anyone hurt, that was the reason.

Q. You didn't consider you were just butting in, did you? A. No.

Q. It was part of your job to tell him that, wasn't it? A. No. It was part of humanity sake, so no one gets killed.

Q. It was not in any sense your duty, under your employment there, to tell Connors that? A. No.

Q. Do you know why you were taken off this Crawford & Company job? A. No, sir.

Edward W. Peterson. Called by Plaintiff. Cross.

Q. Don't you know that you were discharged from that job at the request of Mr. Bernard? A. No, sir.

Mr. McCarter: That is all.

By Mr. Haight:

Q. Do you know whether you were ever on the job or not? A. Yes, I was there.

Q. But in charge of the work? A. Under Mr. Bernard, when he first came there, yes, I said that before.

By Mr. McCarter:

Q. You were there at one time— A. I said that the first couple of days.

Q. First couple of days? A. Yes, sir.

Q. You were working on this scrapping job then? A. The first couple of days I said that.

Q. What were your duties? A. To see that the men done the work that Mr. Bernard placed.

Q. To see that the men did the work? A. Yes.

Q. That only lasted two days you say? A. Two, maybe three days.

Q. Not more than a week? A. I don't think so.

Q. You don't think so? A. No.

Q. Well now, don't you know that it lasted all of January and until early in February? A. I have been out of there so long I don't remember.

Q. If I were to show you bills, where your time was billed to H. L. Crawford & Company, down until February 4, 1924, would that refresh your recollection that you were working? A. Because I don't know that I was being paid by them.

Q. I mean if I were to show you those bills in which it would appear that your time was billed to Crawford & Company, would that change your testimony? A. No, that would not help me any.

By Mr. Haight:

Q. You were interested in getting the money, you didn't care who it came from, is that right? A. Sure.

By Mr. McCarter:

Q. You got your money from the Perth Amboy, didn't you? A. Yes.

(Adjourned until tomorrow, Friday, January 8, 1926.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT.

December Term, 1925.

PERTH AMBOY DRY DOCK CO.

vs.

HARDEN L. CRAWFORD, *et al.*, as H. L. CRAWFORD & CO.

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the eighth day of January, A. D. 1925, at 10 A. M.

APPEARANCES:

MESSRS. WALL, HAIGHT, CAREY & HARTPENSE, WILLIAM H. CAREY, Esq., THOMAS C. HAIGHT, Esq., JOHN E. TOOLAN, Esq., Counsel for Plaintiff.

MESSRS. MCCARTER & ENGLISH, GEORGE MCCARTER, Esq., CLIFFORD I. VOORHEES, Esq., PARKER SILZER, Esq., Counsel for Defendants.

GEORGE CONNORS, a witness produced on behalf of the plaintiff and being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Connors, where do you live? A. Tottenville, Staten Island.

Q. Are you employed by the Perth Amboy Dry Dock Co.? A. Yes.

Q. How long have you been employed by that company? A. Two years and a half.

Q. You were there in the winter of 1924 then? A. Yes, sir: I was.

Q. What is your position there? A. Machinist.

Q. And what was your position at that time? A. Machinist.

Q. Did you do any work on board either the Philippines or the Black Arrow? A. Philippines.

Q. By whose direction did you go there? A. Mr. Peterson, the machine shop foreman.

Q. What did you do when you got there? A. When I left the shop he pointed out four laborers he picked up on the street and give them to me, and I started out with sledge hammers and cold cutters, and took with me some rope slings and block and fall, and started to remove the steam pipes and exhaust pipes in the engine room.

Q. Will you just explain to the jury what kind of pipes these were? A. They were copper pipes.

Q. Well, where were they? A. The upper engine room.

Q. The upper part of the engine room? A. Upper part; yes, sir.

Q. What kind of pipes were they? I mean, what were they used for? A. Oh, they were steam pipes for auxiliary use around the engine.

George Connors. Called by Plaintiff. Direct.

Q. How large were they? A. Those pipes run anything from an inch and a half to five and six inch pipe.

Q. Did you start to take them down? A. Yes, I immediately started to work just as soon as I got aboard the vessel.

Q. How did you start to take them down? A. Well, we started to cut them with cold cutters, and it seemed we couldn't make no headway with those cold cutters, and I called for a burner. So they furnished me with one burner and an operator to burn these pipes loose, that is, burn the bolts from the flanges, and as they done it, I had the foreman fling these pipes and carry them and store them away on the decks until they had a float to come alongside to take them away.

Q. In other words, as you would cut the pipes you would put them in a fling, would you? A. Yes, every pipe was slung there.

Q. And lowered that way? A. Lowered down and carried right out of the engine room.

Q. Carried out of the engine room? A. Yes.

Q. Did that practice continue? A. Well, that practice continued until I was stopped.

Q. When were you stopped? A. I was stopped by Mr. Williams. When was I stopped?

Q. You say you were stopped by Mr. Williams, When? A. I guess I was there about three or four days working there when Williams came up to me and asked me if I was Connors, and I told him yes.

Mr. McCarter: I object to what Mr. Williams said, as incompetent.

The Court: The objection is entered, and overruled and exception allowed.

Q. What did Mr. Williams say to you? A. Well, he asked me if I was Connors. I said, "Yes, my name is Connors." He asked me what I was doing, and I told him I was removing the pipes. "Well," he says, "I brought over some more men here, I have a young fellow I found as kind of a gang foreman, but," he said, "he will work under your direction." So I continued to take the pipes down in that manner. So the next time I seen Mr. Williams, I guess it was a day or two afterwards, he came over and said I wasn't making very much headway, so he couldn't see that these men were standing waiting for a man to burn a pipe, and he told me to take the men and place them on the deck and let them remove the woodwork, and he said, "Let the burner —let these burners drop these pipes to the deck below, on the floor of the engine room." Well, I mentioned to him that it was kind of dangerous, that somebody might pass under there and get hurt, or do some damage to the ship. "Oh," he said, "damage to the ship, it can't be done, these ships are scrapped, I want to make headway on this job."

Q. Did he tell you why he wanted to make headway? A. Yes.

Mr. McCarter: There is an objection to anything Williams said. An exception allowed.

Q. What did he tell you as to why? A. That headway was because as he said he wanted to get through them ships for three months, by the 1st of April, that is what he said.

Q. After you received those instructions to let the pipes drop, did you follow them? A. Certainly.

Q. Now, do you recall when the seacock of the "Philippines" was broken? A. I guess the 2nd or

3d of January, or the 4th of January, I don't know which day it was.

Q. Was it after Williams had told you to let the pipes drop? A. Yes, that was after he gave me instructions to drop. If we had been doing it the other way this accident would not have happened.

Q. Were you there when the accident happened? A. Yes, sir.

Q. You saw how it happened? A. I did. I did not see it when it hit, but I seen it just as the water was coming in.

Q. Tell us what happened? A. It was a pipe—probably the jury won't understand what I mean by calling these parts in the testimony. It was a pipe from the auxiliary condenser—that is a vessel for condensing steam, and this was the exhaust pipe to this condenser. This pipe was approximately twelve to fourteen feet long. It was a four-inch pipe, extra heavy copper.

Q. How much did it weigh? A. I guess that weighed about, say 150 pounds—well, maybe more. And these men were trying to get this pipe from the top of the condenser and they could not make any headway but picked it out, so they expected to shove it around the other way, and as they shoved this pipe it gained speedway over this condenser, and as it came down it hit this seacock.

Q. And broke it? A. Broke it clean off above the flange of the valve.

Q. Have you made a diagram of the seacock? A. I did.

Q. Is that the diagram? A. Yes, sir, that is the diagram.

Q. There was talk yesterday about flanging the seacocks. Tell the jury what you mean by that.

You had charge of that, didn't you? A. Yes, I done the job.

Q. Yes. A. Flanging the seacock is a blank, and it covered this up over the opening of the valve; and this was done so as to protect these valves in case the pipes were removed, in case some inexperienced laborer removed the valve it would not scuttle the ship.

Q. Is the seacock on the side of the vessel or the bottom? A. On the side of the vessel as near the bottom of the vessel as they can get.

Q. What are they used for? A. The pipes is to maneuver the machinery in the engine room.

Q. What do you mean by that? A. The condenser cooling steam, condenses steam, creates a vacuum.

Q. The pipes are to get water in? A. Get the water in.

Q. Then you used the water in maneuvering the machinery? A. Yes.

Q. These sea valves have pipes connected to them? A. Certainly.

Q. For carrying the water that comes in for the condensers? A. Yes, sir.

Q. Do they have a valve to control the supply of the water? A. No. That is injected and discharged overboard again.

Q. Did you have a valve, if you can show here, to let the water in or out? A. Yes.

Q. Like the faucet in the bath room? A. Same thing, only larger.

Q. When you flanged those valves, what do you mean by that? A. Put a cover on, like putting a cover on a pot.

Q. Just covered on what? A. On the seacock.

Q. Do you mean you covered the opening where the pipes were? A. Yes, when I took the pipe off I put on a cover with bolts and with joints.

Q. That is flanging? A. That is flanging.

Q. Does that in any way protect the seacock? Would you damage all these pipes? A. Oh, no.

Q. Just come over here and show the jury this sketch. What is the seacock, what you mean by the valve, and what you mean by this flanging? A. This here represents the side of the vessels, this one here (indicating) and this represents on the bottom on the steamship where these three valves are fitted in great sizes. They put a sea chest, a cast steel or maybe a steel made chest and on top of this sea chest sets a valve. It is bolted on with flanges. You see I have a diagram here showing the flanges on this valve. This valve got an opening here to the sea around to the bottom of this valve. Now, when that—when they want this sea water in the ship they open this valve.

Q. Through the thing that look like a handle? A. Yes, sir. Then they turn that wheel and that valve lifts. That lets the sea water go into this opening. This is a pipe, and this pipe was connected on her, which represents by this diagram, which shows a condenser. In this condenser is a lot of flanges. This pipe was an exhaust pipe for the use of steam that came from the auxiliary engine into the condenser, and this pipe was broke loose.

Q. Had that pipe that went from the seacock to the condenser been taken off? A. Yes, this here was all taken off.

Q. What did you do when you flanged it? What do you mean by flanging? Just show what you mean. A. Put a cover on there.

Q. Just like you put a cover on the gas pipe when you take out the gas jet? A. Same thing, just like putting a cover on a pot.

Q. Tell us where that seacock was broken. A. That pipe hit on top of this valve. When she hit she broke that valve off clean. As that pipe fell—as that pipe fell it hit the seacock.

Q. Just mark that. A. I have it marked here. Bottom floor platform.

Q. Bottom platform? A. That pipe fell and locked itself in between the flange and the bonnet on her, and it held it there. Otherwise, the ship would probably have sunk altogether, but that pipe held it there, and when it did, I got rope and tied that pipe so that nobody could move it.

Mr. Haight: I offer this sketch in evidence.

(Sketch entered in evidence and marked Plaintiff's Exhibit P-9.)

Mr. Haight: Can we agree this happened on the 3rd of January?

Mr. McCarter: I guess so.

Mr. Haight: It is stipulated that this accident happened on the 3rd of January.

Q. What time of the day, Mr. Connors? A. I think it was about half past two.

Q. In the afternoon? A. Afternoon; yes, sir.

Q. Was Mr. Williams there at the time it happened? A. No. He was there that morning, I think he was there that morning.

Q. Did Mr. Gilbert subsequently come on the job? A. Yes, about two or three weeks after Williams got out of there.

Q. Well, he came there. Did you take instructions from Mr. Gilbert after he came? A. Yes, sir; I did.

George Connors. Called by Plaintiff. Direct.

Q. What did you have to do there; what was your job? A. My job was to look out for the work in the engine room, and one morning they put me in charge of the entire job, that is the working of it.

Q. How many men did you have working under you? A. I had at one time 46 men.

BY THE COURT:

Q. When you say "they" put me in charge, who do you mean by they? A. Crawford & Company's man, Mr. Gilbert.

BY MR. HAIGHT:

Q. You say you had at one time 46. How many burners did you have? A. The highest I had while I was there was 9 burners.

Q. Did you ever ask for more? A. I kept asking for men the whole time I was there.

Q. Who did you ask? A. Gilbert.

Q. What did Gilbert say? A. He said, "I will get the men just as soon as I can." He kept promising to me. I told him I could work 30 burners there.

Q. Did he give them to you? A. No, he didn't give them to me.

Q. Did he tell you why he didn't give them to you? A. No, no reason why.

Q. Do you remember an occasion when a number of men were laid off by Mr. Gilbert? A. Yes, one day he come to me there and told me he was going to cut the force right in half.

Q. How many men did you lay off? A. I laid off about 20 or 24 men.

Q. What date was that, do you recall? A. I couldn't recall that date, no.

Q. Did he tell you why he was laying them off?

Mr. McCarter: I object.

The Court: That is the same objection.

Q. Did he tell you why he was laying them off? A. Well, I asked him why; I said, "Ain't I doing work good enough for you," I said, "You can't get this work done if you are going to lay the men off." He was hollering for steel. Well, he claimed, he said the cost of steel had dropped and it was costing too much money to handle this steel, more than what they were getting for it and it didn't pay.

Q. When you went on this job on the "Philippines", did you retain the same number you had when you were working for the Perth Amboy Company before that? A. No. About a week after they changed my number.

Q. They changed your number? A. Yes. Gave me five hundred and some number.

Q. You quit this job, didn't you, eventually? A. I quit when I asked them for more money there.

Q. What? A. Sure I quit. I quit the Dry Dock when I found out I was working for these people. I didn't know I was working for these people.

Q. I say you quit this job on the "Philippines"? A. "Philippines"? Yes, I quit them.

Q. When? A. It was in March.

Q. Did you go back to the Perth Amboy then? A. Yes, immediately.

Q. Did they change your number immediately again? A. Yes.

Mr. Haight: That is all.

CROSS EXAMINATION BY MR. MCCARTER:

Q. You thought you were working for the dry dock company until this time in March, didn't you? A. I thought I was working for them until the time in March? No, no. They raised my pay.

Q. Didn't you just say in answer to Judge Haight that when you found out you were working for these people you quit? A. When I found out I was working for these people I quit?

Q. Yes. A. When I found out I was working for these people I quit to get more money, yes. I was going to quit. I didn't quit. I will correct that.

Q. And when was it you found out you were working for these people? A. Oh, about a week after I was there.

Q. About a week after you were there? A. Yes.

Q. Before that you thought you were working for the Dry Dock Company? A. Yes.

Q. So far as you could see you were still working for the dry dock company when you were working on these ships, isn't that so? A. No, no; I wasn't still working for them.

Q. What brought to your attention that you were working for these people, as you say? A. For the dry dock people?

Q. You used the words "these people"; I am using your own words. What brought it to your attention that you were working for these people? A. I can't get that question clearly enough formed for me to memorize what I said before to answer it. Let him read that question off that Judge Haight asked me and probably I can answer that.

Q. I will ask you another question: When did you first go down to work on these ships? A. I

went down there about two days after Christmas in '24.

Q. Before you went down you were working for the Perth Amboy Dry Dock, weren't you? A. I was, yes.

Q. And when you first went down on the ship you thought you were still working for the Perth Amboy Dry Dock Co.? A. Yes, I did, yes.

Q. And after some little time of working on the ship something happened to make you think you were not working for the Perth Amboy Dry Dock people? A. Yes.

Q. Well? A. That is when they changed my number.

Q. When you knew your number was changed? A. Yes, I knew there was something going on then, and then I made a holler for more money.

Q. Until you learned your number was changed you thought you were still working for the Perth Amboy Dry Dock Company? A. Yes.

Q. You continued to get your pay from the Perth Amboy Dry Dock Company all the way through? A. I don't know where it come from, but I got it every Saturday. I couldn't tell you where it come from.

Q. You got it every Saturday just as you had before the ships came in there? A. Yes, sure.

Q. And just as you have gotten it since? A. Since, yes.

Q. That little drawing you made is not to scale, is it? A. It is not scaled?

Q. Yes. A. No, I didn't measure nothing. It is just a reflection for memorizing my memory.

Q. Drawn from memory, isn't it? A. Yes, drawn from memory.

Q. Drawn very recently, isn't it? A. Yes.

Q. Just tell me again where it is you recollect that sea-cock broke? A. At the bottom of the flange, right over the flange here. Here is your flange (indicating).

Q. Make a little blue pencil mark showing where the thing broke off as you recollect? A. Right over here. (Witness marks Exhibit P-9.)

Q. You say the pipe came to fall on that because the workmen pushed it? A. Pushed it over the condenser.

Q. It didn't drop directly from the cutting then? A. No.

Q. If the workmen had looked on the other side of the condenser and seen this sea-cock there and realized that a pipe falling on it would damage it, they would not have pushed it, would they?

Mr. Haight: I object to that. That calls for this witness to tell what the mental operations were of some laborers that he had.

The Court: Objection sustained.

Q. Where were you when the accident actually happened? A. In the engine room.

Q. Were you watching them do this? A. No. I would have stopped it if I had seen that. I wouldn't want to see that happen, you know.

Q. Did you know that the sea-cock was on the far side of that? A. Yes, sir. I know a ship.

Q. You knew the ship. Just what were you watching at the time these men were doing this? A. I had just left the men and was proceeding on the dock; I was going up the engine room, up the ladder when I heard the rush of water coming in.

Q. What ladder were you on? A. The engine room ladder, going in between the two engines.

Q. Between the two engines? A. Yes, going from the bottom platform to the middle platform of the engine room.

Q. How far were you from the sea-cock? A. I guess I was 20 feet away.

Q. 20 feet away? A. Yes.

Q. How far up the ladder were you? A. I was just at the top going on the middle platform, yet.

Q. You could not have seen this sea-cock from the position you were, could you? A. No, I didn't see it, but seen it the minute after it happened. I was there.

Q. How long after this accident happened did you report it to any superior of yours? A. Immediately.

Q. Immediately? A. Yes.

Q. To whom did you report it? A. I reported it to the time keeper. I wouldn't leave the job. The timekeeper by the name of Patton. I told him I said, "You go up and get all the bosses—"

Q. I don't ask you what you told him. I ask you at what time? A. Well, the accident happened at 2:30. I would say about 2:35 I got hold of him and told him.

Q. When did you actually quit? A. I guess it was around the 16th of March. I don't know the date exactly. I know it was the middle of March anyhow.

Q. Did you quit or were you discharged? A. I quit.

Q. You quit? A. Yes.

Q. Why did you quit? A. They didn't know what they wanted. They were trying to push a man too hard. They were trying to get work without men, and it can't be done.

Q. Who do you mean by they? A. Crawford & Co.

Q. Who actually talked to you? A. Gilbert.

Mr. McCarter: That is all.

Mr. Haight: That is all, Mr. Connors.

WILLIAM CAMPBELL, a witness produced by the Plaintiff, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Campbell, by whom are you employed? A. Now, at the Perth Amboy Dry Docks.

Q. How long have you been employed by the Perth Amboy Dry Docks? A. Off and on for about seven years.

Q. What is your position with the Perth Amboy Dry Docks? A. Ship boiler maker.

Q. What was your position in 1924, that is two years ago this winter? A. I think I worked for the Crawford people.

Q. What? A. I think I worked on these ships for the Crawford people.

Q. You did work on the Philippines and the Black Arrow? A. Yes, sir.

Q. By whom were you put to work there? A. By Mr. Williams.

Q. What was your job? A. Taking charge of a bunch of laborers, taking down woodwork. And taking out furniture.

Q. How long were you there? A. I was there from about January 1st, until about February 22nd.

Q. Did you have any conversation with Williams when you went on board as to how long you would be there on that job? A. Yes, sir. When I went on—

Mr. McCarter: I object to what Williams said.

The Court: Yes. It is understood that the defense claims that nothing that Williams might have said, or did say, can bind the defendants and, therefore, any evidence as to conversations by Williams is objected to.

Mr. McCarter: Of course, I have the other ground, your Honor, which your Honor may have forgotten, that I claim that the conversation tends to vary a written contract and is inadmissible on that ground, as well as the agency.

The Court: Yes.

Q. Now, you may state what your conversation with Williams was? A. One day in the boiler shop, a man, Mr. Peterson, said, "Mr. Williams wants me on the board the Philippines." I went down aboard the Philippines and I met Mr. Williams aboard and Mr. Bernard was next to him. He said, "Would you like to go to work for us people?" So I thought for a minute, and I thought well I worked for the Dry Dock Company a long while, they are good people and good to me, and I don't want to leave them. "Well, there is about three months' steady work," he said, "will you take it," so I said, "Well, if the dry dock employers are satisfied to leave me go with you, I am satisfied to take a job with you." So we went up and talked to Mr. O'Hagan, the foreman, and he said, "Well, if you are satisfied to leave

us and go with them," he said, "for three months, and it is easier work," he said, "allright."

Q. Was Bernard there when this conversation with Williams took place first? A. I am pretty sure he was.

Q. You did agree to go ahead? A. Yes, sir.

Q. Did you get a new number from the Perth Amboy Company, or did you get a new number? A. The day after I talked to Mr. O'Hagan, I went down to the Philippines, and Mr. Williams put me to work; he gave me the gang of men, told me what to do, and give me a new number.

Q. Gave you a new number? A. Yes, sir.

Q. From whom did you take your orders after that? A. Well, I just took orders from Mr. Williams. When Mr. Williams went, I took orders from Mr. Bernard.

Q. How about Mr. Gilbert? A. Mr. Bernard introduced Mr. Gilbert and I took orders from Mr. Gilbert.

Q. Did you ever have any trouble with men being laid off? A. Yes, sir.

Q. Tell us about that? A. Well, every time I would get the gang going good and getting ahead in work, Mr. Gilbert would come down and say "Lay off 20 today, or lay off 15 men." Well, I talked it into him and tried to hold a couple; well, he let me hold a couple, but I had to lay off, if he said 18, he would make me lay off 15. So it went along like that and I seen I couldn't get no headway, so I turned around and I left them on account of that.

Q. Do you know by whom these laborers were employed that you had? A. By Mr. Bernard and Mr. Gilbert.

Q. They were not regular employees of the Perth Amboy—

Mr. McCarter: I object to that as leading.
Mr. Haight: I will withdraw it.

Q. Had you ever seen them before as employees of the Perth Amboy Co.? A. No, sir.
Q. When did you first go on this job? A. I think it was January 2nd, January 1st, or January 2nd.

Mr. Haight: That is all.

CROSS EXAMINATION BY MR. MCCARTER:

Q. When was this conversation about laying off men? A. Oh, that must have been around February 15th.
Q. About the middle of February? A. About that, I couldn't say for sure now.
Q. How long did you stay on the job on these boats? A. From January 1st to February 22nd.
Q. February 2nd? A. Yes, sir.
Q. You say Mr. Williams gave you a new number? A. Well, I don't know who gave me the number. I know I got a new number from Mr. Ackerman.
Q. Was it Williams that gave you the number or not? A. Well, I couldn't say sure who gave it to me. All I know the timekeeper told me I had a new number. Check in with a new number.
Q. The time keeper told you you had a new number? A. Yes, sir.
Q. And Williams wasn't the timekeeper, was he? A. No, I don't believe he was. Williams was boss.

Q. The number was a Perth Amboy Dry Dock Company number, wasn't it? A. I couldn't say that.

Q. What initials were on the number, what was stamped on it? A. I don't remember now.

Q. Was it in any way different from your previous number, except that it was a different number? A. Just come up and showed you a paper. They had a paper with all the new numbers on it.

Q. Was this number different in any way from your previous number, except it was a different number? A. Why, certainly, when I got employed by the dry dock, I got a check or badge. When I got employed by them people they come up and they showed me a number, a paper with all the numbers on.

Q. Didn't you get this metal tag with this so-called new number, as well as the old number? A. Yes, in your envelope.

Q. That was the same kind of a tag, except the difference in number, as the old one, wasn't it? A. Same kind of looking tag with a different number, yes.

Q. That was the only difference, the number? A. The number, a new number, yes.

Q. You still got your pay from the same place, in the same way as before, didn't you? A. I believe I had, yes.

Q. No difference at all in that? A. What do you mean no difference?

Q. You got your pay every week from the same place and in the same way when you had this new number, as before, and as since, didn't you? A. Yes, I believe I did.

Q. Had you ever had your number changed there before while you were working there? A. Only at that time.

Q. What say? A. Only that time.

Q. Only at that time? A. Yes, sir.

Q. That is the only time your number was changed? A. Well, it was changed after I quit these people. I quit and I hung around awhile, and then I went back with the Dry Dock after a couple of days bumming, and then I got my old number back again.

Mr McCarter: That is all.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. What timekeeper was it that told you to take a new number, what is his name? A. I am not sure it was Mr. Patton or Mr. Ackerman, I am not sure.

Q. Did you have more than one conversation with Mr. Gilbert in reference to letting off men? A. Off and on lots of them.

Q. It was done more than once? A. Yes, sir.

Q. How many times would you say? A. Oh, at least four or five times.

Q. Did he give you any reason when he told you to lay them off? A. Well, we argued there and he said, "Well, I got orders to lay them off from the boss over me," he said, "and I can't do no different."

Mr. Haight: That is all.

Mr McCarter: That is all.

Joseph Goggin. Called by Plaintiff. Direct.

JOSEPH GOGGIN, a witness produced on behalf of the plaintiff and being duly sworn according to law, on his oath, saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Goggin, what is your business? A. Carpenter.

Q. Have you ever been employed by the Perth Amboy Company? A. Never.

Q. Were you employed in connection with any work on the "Philippines" and "Black Arrow" while they were at the Perth Amboy plant? A. I was.

Q. Who employed you? A. Mr. Mornay of the H. L. Crawford Company.

Q. And where were you employed by him? A. 50 Broad Street, New York City.

Q. What were you employed to do? What were your duties? A. Timekeeper and checker.

Q. On those two vessels? A. On these vessels at Perth Amboy.

Q. When did you go to work there? A. 12th day of January, 1924.

Q. At the time that you were employed did Mr. Mornay say anything to you as to how long the job would last?

Mr. McCarter: I object to that as incompetent, not on the ground of Mr. Mornay's agency—that I concede—on the ground it tends to vary a written instrument.

The Court: The objection is overruled and an exception allowed.

A. Mr. Mornay told me the job was only good for three months.

Q. How long did you remain there? A. Until just before the 1st of May, I believe it was, latter part of April.

Q. At the time you left there where did you go? A. Staten Island Shipbuilding Company, Staten Island.

Q. Did you leave the employ of Crawford & Company? A. No.

Q. You remained in their employ on Staten Island? A. Yes, sir.

Q. At the time Mr. Mornay shifted you from Perth Amboy to Staten Island, if he was the one who did so— A. He did.

Q. Did he say anything to you as to why he was shifting you? A. Well, at that time I asked the privilege of remaining at Perth Amboy. I gave for my reason the fact I was married and had a family and didn't like to shift them around, and I asked them if it made any difference if he shifted Mr. Ackerman in place of I, and he told me at the time for certain reasons he would like to have me go. So I told him I would gladly go.

Q. Was the work at Perth Amboy at that time progressing as it had been there before? A. No, they were—at that time they were working on a Chinese order for steel they were getting out for China, and they were very near completed with it.

Q. What else were they doing? A. On that ship is all they were doing.

Q. What ship was that? A. That is the "Philippines."

Q. Was anything said to you by Mr. Mornay as to why the work on the vessels there were shutting down? A. Not at that time.

Q. Did he ever state to you anything of that kind? A. Not at Perth Amboy he didn't.

Joseph Goggin. Called by Plaintiff. Direct.

Q. I say, did he ever do so? A. Oh, yes.

Q. As to Perth Amboy? A. Not as to Perth Amboy.

Q. Were you subseequently laid off at Staten Island? A. Yes, sir.

Q. When? A. It took effect the 17th day of May, I believe.

Q. At the time you were laid off there did Mr. Mornay tell you why you were laid off?

Mr. McCarter: I object to that as absolutely incompetent and immaterial.

The Court: Sustained.

Mr. Haight: The purpose, if your Honor please, if I may state it, is to show—

Mr. McCarter: Now, if your Honor please, Judge Haight is going to tell the jury what the witness would say.

Mr. Haight: I will tell his Honor so the jury won't hear me. Come on up.

BY THE COURT:

Q. At the time he laid you off when you were working in Staten Island did he say anything at all about the Perth Amboy job? A. No, I don't think he did.

Mr. Haight: Your Honor sustains my objection?

The Court: I sustain the objection.

Mr. Haight: May I have an exception, please?

The Court: Certainly.

Mr. Haight: I think that is all.

Joseph Goggin. Called by Plaintiff. Cross.

CROSS EXAMINATION BY MR. MCCARTER:

Q. Where do you live, Mr. Goggin? A. Corona, Long Island.

Q. Over in Long Island? A. Corona, yes.

Q. You, of course, are not here under subpoena, then? A. No.

Q. Your work was limited as to the "Philippines," was it not? A. Yes, sir.

Q. And you say at that time that you left the Perth Amboy plant they were cutting up only Chinese shipment, as you call it? A. They were working on a Chinese order.

Q. Those were large pieces of steel, weren't they? A. They were.

Q. They weren't cutting any charging box steel on the "Philippines" at that time? A. Well, there was some steel that went as charging box and trimming for the Chinese steel or these plates, they eventually got charging box steel out of it.

Q. They weren't cutting any charging box steel as such? A. Not intentionally.

Q. As a matter of fact, they had been stopped from doing that, weren't they?

Mr. Haight: I object. This witness can't know anything about that. It is a matter of a conclusion anyhow.

Mr. McCarter: Well, I don't think it is a matter of conclusion. It is a matter of fact. If you were stopped from doing work it is a fact.

The Court: It depends on who stopped him. I will allow it.

Mr. Haight: May your Honor caution him to state from his own knowledge?

The Court: Yes, certainly.

Mr. McCarter: This witness knows.

(Last question read by stenographer.)

BY THE COURT:

Q. Do you know, as a matter of fact, of your own knowledge? A. Yes, I do.

Q. Who stopped you? A. Why, Mr. Campbell is the man who told me the charging box steel had to be stopped.

Q. Who is Mr. Campbell? A. The witness who was on the stand just previous to me, I think he was.

The Court: Go on.

BY MR. MCCARTER:

Q. Do you recall when that was, Mr. Goggin? A. I couldn't tell you the date.

Q. You kept daily reports, didn't you, and send them in to New York? A. I did.

Q. I show you something signed J. J. Goggin. Is that one of your reports, Mr. Goggin? A. That is.

Q. Your report of what date? A. March 29.

Q. Will you look at that document and refresh your recollection thereby and tell us what was done on that day with reference to cutting the charging box sizes? A. The dry dock company threatened to—

Mr. Haight: No, no.

Mr. McCarter: What is the matter with that?

Mr. Haight: He can't say the dry dock threatened. The dry dock is a corporation. He

says now Campbell did it, a laborer in your employ told them to shut down cutting charging box sizes.

Mr. McCarter: That man was not in our employ.

Mr. Haight: He says he was.

Mr. McCarter: That is for the jury to decide.

Mr. Haight: Certainly.

(Last question read by stenographer as follows): "Will you look at that document and refresh your recollection thereby and tell us what was done on that day with reference to cutting the charging box sizes?"

Q. Please answer the question?

The Court: You aren't asked to read that, you know, to the jury. You may read it for the purpose of refreshing your recollection.

The Witness: I didn't get that question.

(Last question read by stenographer.)

Q. Maybe I will make the question a little bit better for you, Mr. Goggin. A. All right.

Q. Consider the question amended by saying with reference to stopping of work in connection with charging box sizes. A. Well, the work was threatened to be stopped.

Q. Why? On what account? A. Cutting charging box steel.

Q. Who made the threat? A. Campbell.

Q. To you? A. To me.

Q. What did he say, as well as you recall?

Mr. Haight: I object. Campbell can't bind us, a mere laborer in our employ, if he was in

our employ at that time, and if he was in their employ certainly he can't bind us by statements as to whether they were to cut charging box sizes. They can't show agency with a man of that kind.

Mr. McCarter: This man wasn't a laborer, if your Honor pleases, at all.

The Court: Who is Campbell?

Mr. McCarter: Campbell is the witness who was on just before this man, your Honor.

The Court: I will allow it. You may take an exception.

Q. What did he say, Mr. Goggin? A. He says, "You will have to stop cutting charging box steel or we will shut off the supply of gas and air."

Q. How much of the "Philippines" had been cut at that time? Was any of the superstructure uncut? A. Yes, there was a small portion of the steel there.

Mr. McCarter: That is all.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. You weren't in charge of this work, Mr. Goggin, were you? A. No, sir, I wasn't.

Q. You were a timekeeper? A. A timekeeper.

Q. How do you account for Campbell coming and give you orders? A. Why, I was a Crawford man, and at that time Mr. Gilbert relied on me a little bit for kind of looking after the work over there, and I put an interest in it, and he used to tell me what he wanted done down there; and, in turn, I would tell Mr. Martin, that was a foreman on the ship at that time, and for that reason they used to come to me with a lot of their cries and hollers, and so forth.

Q. Muerer didn't tell you to stop cutting charging box? A. Muerer, no.

Q. It was Campbell? A. Yes.

Q. He had formerly been a foreman in charge of the laborers on this vessel? A. Yes.

Mr. McCarter: I object to that question as leading.

Mr. Haight: It can't be leading now.

Q. Which vessel was it that you were cutting charging box sizes and to which Campbell objected? A. "Philippines."

Q. What part of the vessels were you cutting the charging box sizes at that time? A. The main deck.

Q. That was below the superstructure? A. Yes.

Q. Do you know whether they were making a test of the gas at that time? A. At what time do you mean?

Q. At the time that Campbell told you this? A. Well, this was just previous to the test, or in the test. I don't recall. The test in this Chinese order ran so close together, that I don't recall.

Q. Now, that test there—there was a controversy between the parties as to whether the test should be tried out on charging box sizes or on shipping sizes, wasn't there? A. I believe there was.

Q. And the Perth Amboy Company insisted that it be tried out on shipping sizes? A. Yes.

Q. Now, wasn't this statement that Campbell made to you in respect to the cutting of the shipping sizes in connection with that test? A. Will you please repeat that question?

Q. Wasn't this statement of Campbell to you to stop cutting charging box sizes made in connection with the test of the gas which was being conducted? A. It was on one occasion that I remember.

Q. Is this the occasion that you are referring to? A. It is.

Mr. Haight: That is all.

RECROSS EXAMINATION BY MR. MCCARTER:

Q. I ask you, Mr. Goggin, to look at this same daily report of March 29, refreshing your recollection, and see whether you don't want to correct that last answer? The last paragraph of your report? A. No, I stated on this particular occasion that the Judge was talking to me about, he spoke in regards to the test, and that is the time I spoke of. That is a different occasion than that. I said up on this occasion.

Q. I beg your pardon. And that which you testified to me before when the charging box was stopped, cutting charging box had been stopped by Campbell, that occasion was not in connection with the test? A. That was previous to the test.

Q. And there was another occasion that Campbell stopped cutting of the charging box, which was in the test? A. Yes.

BY MR. HAIGHT:

Q. Have you got a note of that anywhere there? A. I don't recall whether there is or not, but I remember the occasion.

Q. The one that was shown to you for the purpose of refreshing your recollection as to instruction that you received from Campbell to stop cutting charging box sizes has this statement: "Crew changing main deck in and or preparing for calorine test, which starts Monday." That is your statement, isn't it? A. Yes.

Joseph Goggin. Called by Plaintiff. Recross.

Q. And the calorine test that you refer to was the test that was to be made between the calorine gas and the hydro-carbon gas, wasnt' it? A. Yes, sir.

Q. And that is the time that Campbell told you to—

Mr. McCarter: Don't lead him, please.

Q. (Continuing) stop cutting the charging box sizes? A. He told me during the test and he—

Mr. McCarter: I object to that question as leading.

Mr. Haight: Strike it out.

A. (Continuing) He told me during the test, and he told me on this occasion previous to the test.

Q. In the occasion previous to the test, how long before that before this occasion noted here? A. Well, this is just previous to the test. This is the occasion I am speaking of, here just previous to the test he told me to stop cutting charging box sizes.

Q. Was that statement made in connection with the steel that was to be cut during the test or the steel to be cut down—

Mr. McCarter: I object to that question as leading.

The Court: Oh, I will allow that question.

A. It was in connection with the steel. We was getting ready to cut for the test. It was preparing for the test.

Joseph Goggin. Called by Plaintiff. Recross.

By Mr. McCarter:

Q. But the test had not commenced? A. The test was commenced the following Monday.

Q. Do you recall what day of the week the 29th was? A. That is on a Saturday.

Q. And the test was the following Monday? A. Monday.

Q. But it had not commenced on Saturday. A. No.

Q. And it was on Saturday that Campbell stopped the cutting of charging box? A. On this particular occasion.

Q. And then there was another occasion in the course of the test when he did something? A. Yes.

Q. What preparations were necessary to make the test? A. Well, there was clearing two decks, and some trimming of steel, and so forth, and getting her lined up to go with.

Q. Doing what with the decks? I didn't quite hear you. A. Trimming the decks.

Q. I don't quite understand what you mean by "trimming" A. There is a lot of ragged edges and columns and one thing and another that had to be taken away to allow the test to go on, to give the test a free running space.

Q. Moving things out of the way? A. That is it exactly.

Mr. McCarter: That is all.

James O'Hagan. Called by Plaintiff. Direct.

JAMES O'HAGAN, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Where do you live? A. Sewarren, New Jersey.

Q. Are you in the employ of the Perth Amboy Dry Dock Company? A. Yes, sir.

Q. How long have you been employed by them? A. Seventeen years and a half.

Q. During 1924, the winter of 1924, and the spring of 1924, what was your position with the Perth Amboy Dry Dock Company? A. Foreman in the boiler shop.

Q. Did you have anything to do with the scrapping of the "Philippines" or the "Black Arrow"? A. No, sir.

Q. Did you have anything to do with the furnishing of men for the scrapping? A. In a way.

Q. What way? A. On request.

Q. From whom? A. Whoever was in charge for the Crawford people.

Q. Who was in charge for the Crawford people while you were there? A. Mr. Williams, Mr. Gilbert, and Mr. Bernard.

Q. Just tell us what you mean by request. A. Well, if they wanted a burner—that is an operator—they would come over saying, "Give us a burner or two," and I would send them across to the Crawford people, and they would bring them down on the boats and show them what to burn.

Q. Did they have burners there besides those that you supplied? A. They had.

Q. Those that you supplied—was that a regular thing or an occasional thing? A. I supplied the burning outfits.

Q. I am speaking about the individuals, the operators. A. The operators.

Q. I say, did you supply that regularly or was it occasionally? A. No, I supplied them on request, when they asked for them.

Q. There has been some testimony about the occasion of the burners being taken off on the job on vessels, and putting them in the boiler shop. What have you to say about that? A. Why, when the ships first came in burning of the steel was not very rapid, probably a bar frame would be in the way, and get some furniture or something out, they would come up and ask for a burner. It was our dull season at the time they started that job, and I would loan them one of our own men with the understanding I could take him off again.

Q. And then when you did want them you took them off; is that it? A. And when they requested them I got outside men, fellows that was around there on the street, and they would go there and stay permanently with the Crawford people.

Q. Did you have anything to do with the supplying of the burning outfits? A. I had to supply the burning outfits.

Q. I show you a horrible looking instrument and ask you if that is what is known as a burner. A. Yes, sir, that is a carbo-hydrogen tool.

Q. Just tell the jury how that thing works, how the operator works. A. There is two hoses on that which goes to a diaphragm—in other words a gauge apiece on each hose, and there is two tanks, one is gas, and the other is oxygen. The one on the lower side, of gas, which is explosive, and the one here (in-

dicating) is oxygen. Now, regulate in those tanks there will be from sixteen to eighteen hundred pounds. You have got the diaphragm, that is the gauge which regulates that pressure down to gas, we would use probably from eight to ten pounds. Oxygen we would use from twenty-five to thirty pounds, according to the thickness of the metal to cut. We take a lighter and we turn the gas light slowly, and we light the gas. Then we turn the oxygen off to give that a pressure, like lighting a fire in the stove and opening the draft to start it to come, and when we maintain pressure of the gas. This we hold up on the metal, which operates it and makes it to a burning form. Then this gauge here is high pressure oxygen. When we touch that we blow the molted metal away and clear the way for the other operation, that is, start as I explained, and have to get on molted. This metal is melted with the burner, and this lever is the high pressure to blow the molted metal away from the cut in which you are cutting.

Q. Now, there is connected to that, as I understand it, two tubes or hose? A. Two hose, not tubes.

Q. And they go respectively to a gas tank and to an oxygen tank? A. Yes, sir.

Mr. Haight: I think I will offer that in evidence.

Mr. McCarter: No objection.

(Instrument entered in evidence and marked Plaintiffs Exhibit P-10.)

Q. How much hose is attached to these burners? A. Fifty feet.

Q. Fifty feet. Do you recall the time the manifold was put in down there? A. I do.

Q. Before the manifold was put in how were the tanks to which these hoses were attached brought on board the vessel? A. Well, I had no jurisdiction over that, but I seen the operation.

Q. Well, what did they do before the manifold was put in? A. The truck would dump them down on the dock or as near to the ship as they could, and then they had laborers to carry them on to the ships, or hoist them on.

Q. How long do you think that, with reasonably steady cutting such as was done on board these vessels, it would take a tank to be empty? A. Well, it depends on the thickness of the metal. Well, as you say reasonable, why—

Mr. McCarter: Now, wait a minute. I think I would like to cross examine on his experience.

Mr. Haight: I thought he had experience being a foreman in the boiler shop.

Mr. McCarter: That may be.

Q. What experience have you had in operating these? A. Well, I have had a lot of experience on that, on new metal.

Q. How many years? A. Oh, since I expect its infancy, when it first came around.

Q. Did you see the cutting going on in the "Philippines" and the "Black Arrow" at the time? A. I have been down there.

Mr. Haight: Do you want to ask him anything?

Mr. McCarter: No, go ahead.

Q. How long would it take under the circumstances that I have mentioned for a tank to be empty? A. Oh, a burner would probably use two and a half to three tanks in eight hours' operation. That would be six and a half steady burning. The three tanks of each, two and a half to three tanks of each. It is according to the operator.

Q. Now, this manifold—what did that do? A. Well, I can explain an individual burning at the time, and I can explain a manifold.

Q. There has been a lot of talk about it, and I would like the jury to know. Possibly they do understand, but I don't know. A. Well, if I was to do some burning in here I would take in two tanks, one of oxygen and one of gas. I would put a gauge on each one and I would hook the burner up, and I would burn from one of those tanks with the exhaust, which would be medium; take the gauge off; take the tank out of the way, get another tank, put it on there and hook up again. Now, there is two tanks to every burner. Well, all burners do not burn alike. You could start ten burners in the morning, give them all the equal tanks, same burners. One fellow, not on the fault of the man, might probably say "More air" before the rest. Maybe one fellow put his burner out and went somewheres, probably another fellow left it burn a little bit. Now, that is on the single operation. A man losing his air or tanks, he would have to take it away and get a new one, or call for somebody to get one. Now, the manifold can, as there are twelve tanks of gas there, there are twelve tanks of gas standing across from each.

Q. Parallel lines? A. Parallel lines. There is a pipe goes on one of them with little connections that hooks on to each tank— that is, one for gas and one

for oxygen, comes up to a big valve in the middle. There is twelve tanks there and there is twelve there —they are the same. That is forty-eight tanks in all. There is a diaphragm for gas, one diaphragm instead of having two gauges. There is one big one there and there is one here (indicating), and there is a valve there and one on each side of that frame. The two hose run down the deck to the end of the dock. There is a hose comes from the gas line on to the ship to a manifold where these fellows take their burner, take the ends of the hose, and hook up on this manifold. Now, ten men is burning on twelve tanks of air, and twelve of oxygen, is twenty-four; they all go out at the same time, they shut that valve, open up this other, twenty-four, proceed with the burning, and then they take these dead tanks away, put full ones there, and they are ready for the next operation.

Q. Did you always furnish all the equipment that Crawford & Company made requisition upon you for? A. Yes, sir.

Q. Did you ever decline or neglect to furnish any equipment they asked for? A. Never heard of one complaint.

Q. Did you ever have any conversation with Mr. Bernard or Mr. Williams in respect to the time within which these vessels were to be scrapped?

Mr. McCarter: Same objection.
The Court: Same ruling. Same exception.

A. I heard them say the ships had to be done in three months.

Mr. Haight: I think that is all.

CROSS EXAMINATION BY MR. MCCARTER.

Q. You supplied the tools and the men to operate the burners early in the day, when they hadn't been organized, isn't that the fact? A. What do you mean by tools of the burners?

Q. You supplied some tools, didn't you? A. Air tools.

Q. What kind of tools? A. Air tools.

Q. And you supplied burners? A. Burning outfits.

Q. And you supplied them all the way through the course of the work, didn't you? A. Yes, sir.

Q. Now, you supplied burners, the men or the operators, early in the work, before they got organized, didn't you? A. Yes, sir. My own men.

Q. I beg your pardon? A. My own men out of the shop.

Q. And it was only early in the work until they got organized you did that, isn't that so? A. Yes, and I supplied them when they couldn't get regular burners. If Mr. Gilbert said to me, "Jim, I want three or four burners in the morning," and two or three came around, I would accommodate him with one or two of my force out of the boiler shop to fill the vacancy.

Q. And that was after they got organized you did that? A. Oh, yes, that would be going along, I suppose, that would be more on a friendly term. I wouldn't say that was going all the time.

Q. You remember testifying in the chancery case, don't you? A. Yes, sir.

Q. Page 211, don't you remember being asked the following question and giving the following answer: "Q. Did you supply tools and men to operate the burners? A. I supplied tools and supplied men until they got organized to go ahead themselves; what

I mean, if they wanted a burner to burn a portion of the work, get this woodwork out, I let them have a burner." Did you so testify? A. Yes, sir.

Q. And were you not also asked the following question and did you not also give the following answer? "Q. What did you do after they got organized? A. Why, they came to me and asked me if I knew of any burners, and me being well acquainted around there, why I knew of some, and when they came down I sent them across to Mr. Bernard or Mr. Williams and he would hire them and I would give them the burning outfit." Did you so testify? A. Yes, sir.

Q. Is not that what you did after they got organized? A. Yes, sir.

Q. But all throughout the progress of the work you supplied the outfits? A. Yes, sir.

Q. How long were they there before they got organized, as you say? A. Oh, well, probably three or four weeks, probably two or three weeks, I can't recall.

Q. Well, at any rate, they were organized by the end of January, weren't they? A. Oh, I suppose they were.

Q. That is your recollection, isn't it? A. Yes, my recollection.

Q. The installation of this manifold, as you have described it to the jury, made the burning quicker, didn't it? A. I had no jurisdiction over that job.

Q. Well, you know a lot about burning though, don't you, Mr. O'Hagan? A. I do.

Q. And wouldn't it necessarily make the burning quicker? A. That would be to the men that were checking up the burners. There is a difference in burning.

Q. Of course, there is a difference in burning, Mr. O'Hagan, but I am asking you from your knowledge as an expert on burning, which you unquestionably are, would not the installation of the manifold necessarily make the burning proceed quicker than without a manifold? A. Well, it would in the way of labor, save labor carrying tanks.

Q. The operator would not have to wait while he changed tanks, would he? A. No.

Q. There would be no delay incident to getting a new burner up there to him, would there? A. No.

Q. To the manifold, would there? A. No.

Q. And that would necessarily, therefore, save time, wouldn't it? A. Well, it does look that way.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. Did the men go after the tanks or were they brought to them by laborers? A. They were brought to them by laborers. It would not do to have a burner go and carry his own tanks.

Q. There wasn't any saving of time for the burners, then, was there, if the laborers brought the tanks to them? A. Yes.

Q. How? A. I supposed they carried it and took the dead one away, as we call it.

Q. The laborers carried them, didn't they? A. I suppose so. I just looked around it. In fact, if I was doing the job, why the toppers—

Q. Let us assume that the laborers carried the tanks from the docks onto the vessel and put them where the burners needed them, would there be any saving of time, so far as the burners were concerned, except the time consumed by the burners in fastening their burning outfits to the new tanks? A. No. There would only be the time of the burner lost waiting for the change of the tanks.

Q. And in making the change, the physical changing of this hose? A. That is it.

Q. How long would it take a man to change the hose? A. About two minutes or three minutes.

Q. And there would be, say an average of maybe two and a half to three tanks per day per burner? A. That is about the average.

RECROSS EXAMINATIO BY MR. MCCARTER:

Q. In addition to the time lost actually unhooking the dead tanks, and hooking up the new tanks, there would be the time lost waiting for the new tanks to get there, wouldn't there? A. Well, that would be up to those running the job to have them in a pile there.

Q. There would be the time lost getting the new tanks, whatever that time might be, wouldn't there? A. If I was doing the job, I would have the tanks ready so they could kick it off and put the other one on.

Q. You would have to wait to get those tanks there though, wouldn't you? A. Three or four or six laborers could get—could keep ten burners in tanks distributing them anywheres on the Black Arrow.

Q. But there is no getting away from the fact, is there, that if the tanks are not there for any reason, if the tanks are not where the burners want them when they need a new tank, he has to wait for a new tank to get there? A. Oh, certainly, if it ain't there he has got to wait for it.

Q. Do you know, Mr. O'Hagan, as a matter of fact on this job, didn't they use an average of seven tanks a day, three of gas and four of oxygen? A. They did?

Q. Do you know that? A. Well, that must have been up to those that were bossing them.

Q. Do you know it? A. No, I do not.

Q. You do not? A. No.

Mr. McCarter: That is all.

Mr. Haight: That is all.

CHARLES R. PATTEN, a witness produced on behalf of the plaintiff and being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Patten, did you do any work at the Perth Amboy Dry Dock Company's plant in respect to the vessels Black Arrow and Philippines, while they were there during the winter and spring of 1924? A. Yes, sir.

Q. What was your position there? A. Timekeeper.

Q. Who hired you? A. Mr. Preacher called me up one evening and told me they had a scrap job coming to the dry dock and asked me if I would like to have a job. I told him I would. So the next morning I reported to the Perth Amboy Dry Dock and met a Mr. Meurer and Mr. Bernard and Mr. Preacher, and Mr. Preacher introduced me to Mr. Bernard.

Q. Did you have any conversation with Mr. Bernard? A. Yes, sir.

Q. What was the conversation you had with Mr. Bernard? A. From what I understood—

Charles R. Patten. Called by Plaintiff. Direct.

Mr. McCarter: I object.

The Court: Same objection. Same ruling. Same exception.

A. From what I understood from Mr. Preacher Mr. Bernard had set a price that he wanted to pay for a timekeeper, and I wanted an additional $5.00 above that price.

Q. $5.00 what? A. Per week. So Mr. Preacher took me out and introduced me to Mr. Bernard, and Mr. Bernard told me that he would grant the additional $5.00, due to the fact that it was only a short job and would last for a period of three months, and I told him that would be satisfactory to me because I had another job to go to on April at that time.

Q. You went to work there, did you? A. Yes, sir.

Q. What boat did you keep time on? A. Both ships, Philippines and Black Arrow.

Q. To whom did you report, if anybody? A. My records were turned over to the Perth Amboy Dry Dock Company, checked each day, and with Mr. Goggin and Mr. Ackerman, who were timekeepers for Crawford & Company.

Q. Did your records agree with Ackerman always? A. Yes, sir.

Q. If they did not agree did you make them correspond? A. Well, we never had any differences other than anything that wasn't allowed was put in under—until some agreement was made.

Q. How long did you stay there? A. I stayed there until the—I think it was some time in July, the early part of July.

Q. Under what circumstances did you leave? A. I was laid off by Mr. Mornay.

Q. You were laid off by Mr. Mornay? A. Yes, sir.

Q. When was that as respects the trial in Newark? A. It was right after the trial, I think. If not, the next day, the day after.

Q. When did you go to work? A. I think it was either the day before Christmas or the day after Christmas, 24th or 26th of December, 1923.

Q. Now, just tell us how the work on these vessels proceeded, will you, from the time you went there? A. My duties were to check the time and keep the payrolls on both ships, a separate payroll was kept for Crawford's men and a separate payroll for the Perth Amboy Dry Dock Company. And we checked the time of the men in the morning on the ship, on both ships, and in the afternoon, on and off.

Q. Don't care about what you did. I want to know how the work proceeded. Did you observe the work as it went along? A. Yes, sir.

Q. Now, just tell us how it went? A. Well, from time to time they would have a force of men from probably 30 to 40 on each ship, and I would receive orders from Mr. Bernard to make out my payroll and lay off 12 or 14 men. Sometimes as high as 12 and 14 burners and sometimes along with the burners 15 or 18 laborers. And I would make my payrolls out accordingly. Mr. Bernard would always tell me that it was due to orders from New York that the men were laid off. That work would probably be delayed a week or ten days and then the work would progress again, start up, and some of the burners put back and some of the laborers put back.

Q. How often did that occur? A. That occurred several times. Quite frequently.

Q. During what months? A. Particularly in the months of March, April and May.

Q. Did it happen in the month of March? A. Yes, sir.

Q. How about February? A. And I think sometimes in February.

Q. Was there a time when the work slowed down appreciatively? A. Yes, sir.

Q. When did that start? A. I think that was along in the fore part of May. I should judge between the 1st and 10th of May, on the Philippines, and from the 15th to the 20th on the Black Arrow. Practically shut down on the Philippines. There was only a few men working, very few.

Q. When did the work shut down altogether? A. I think that was in—I think on the Philippines between May 5th and May 10th. I am not sure of that date.

Q. And when on the Black Arrow? A. Two weeks later.

Q. Now, do you know whether at the time the work was shut down on the Black Arrow, there was any steel on board her? A. Yes, sir.

Q. Cut? A. There was.

Q. What size? A. Charging box sizes.

Q. Have you had any experience in scrapping ships? A. Yes, sir.

Q. How much experience? A. Just finished five at Sparrows Point, Maryland, we just recently finished five.

Q. Can you estimate the amount of steel that was in charging box sizes on the Black Arrow when the work shut down? A. I think approximately within reasonable difference one way or the other.

Q. What was the amount? A. I should judge between 500 and 600 tons.

Q. How about the Philippines? A. In charging box sizes?

Q. Yes. A. There wasn't so much charging box sizes on the Philippines.

Q. What do you think was there? A. I should judge about 75 tons.

Q. How long had the 500 or 600 tons on the Black Arrow been there? A. I think since the month of May, the middle of May.

Q. Was there any shipping sizes on either boat? A. Some shipping sizes on the Philippines.

Q. How much? A. Not much. Very little.

Q. Did they cut any shipping sizes on either of these boats? A. No, sir.

Q. Wait a minute. Prior to the 1st of April? A. No, sir.

Q. When did they cut shipping sizes? A. From what I understand a shipping size is—

Q. Well, I mean a piece 20 feet long by 5 feet 6 inches wide? A. At no time.

Q. When did they cut large pieces? A. They cut some steel that was supposed to be shipped to China for export.

Q. When? A. That was during the month of—that was cut in March and April.

Q. That was cut in March? A. I think so.

Q. What time in March? A. I think in the middle of March. Around the middle of March.

Q. Do you know whether there were any shipments of steel for say a number of weeks before the work was shut down? A. There was no shipment of steel.

Q. For how long a period before the work was shut down? A. I think six weeks.

Charles R. Patten. Called by Plaintiff. Direct.

Q. There was some steel shipped in May, was there? A. When you speak of shutting down, just what do you mean? After the litigation?

Q. What did you think I meant? A. I thought you meant in July.

Q. Well, when was the last shipment of steel before July? A. At least six weeks.

Q. Did you hear any conversation between Mr. Bernard and Mr. Mornay at the plant of the Perth Amboy Dry Dock Company in the latter part of February or the 1st of March, in reference to the cutting up of the vessels in shipping sizes? A. Yes, sir.

Q. State that conversation, will you?

Mr. McCarter: I object to that as incompetent and immaterial.

The Court: Same objection. Same ruling. Exception allowed.

A. Mr. Bernard told Mr. Mornay that conditions down at the Perth Amboy Dry Dock were that he thought they should be cutting some shipping sizes, and that the Perth Amboy Dry Docks were commencing to kick about them cutting all charging box sizes and not cutting any shipping sizes, and Mornay, in fact, he did right afterwards continue cutting charging box sizes, and we didn't cut any shipping box sizes.

Q. What did Mornay say when Bernard said that? A. Continue cutting charging box sizes.

Q. Did Bernard say anything at that time about the time when the job should be completed? A. I don't recall.

Q. Did you hear any conversation between Bernard and Mornay as to laying off the men and stopping of cutting?

Mr. McCarter: Same objection.
The Court: Yes.

A. Yes, sir.

Q. When was that? A. That was some time in May, first few weeks in May.

Q. And what was said? A. Mr. Bernard told Mr. Mornay, it seems that Mr. Mornay would come down for some auxiliary machinery, and about getting out non-ferrous metals at such and such a time, and auxiliary machinery, and Mr. Bernard would tell Mr. Mornay that it was interfering with his program and delaying the work. But at any event why we always got out the machinery, and the non-ferrous was taken care of.

Q. Let me see if I understand that: You say that— A. In other words, Mr. Mornay—

Q. Wanted them to get out non-ferrous metals? A. Yes, sir; non-ferrous metals.

Q. Ahead of the time Bernard had planned for getting those out? A. Yes, sir.

Q. And Bernard protested against that? A. Yes, sir.

Q. What did he say? A. It delayed him in his program that he had laid out in scrapping of the ships.

Q. What did Mornay say? A. And that there was very little time left and that the job was to be completed and wasn't making any headway.

Q. What did Mornay say? A. Mr. Mornay at that time, I recall, that he didn't know of any specified time when the ships should be completed.

Charles R. Patten. Called by Plaintiff. Cross.

Q. Do you know what the difference at that time in the price that could be gotten for shipping size steel and charging box steel was?

Mr. McCarter: Yes or no.

A. Yes, sir.

Q. How do you know? A. From experience.

Q. What was the difference? A. There is always a difference at the mill of between $3.50 and $4.00 per ton.

Q. Which is the higher? A. Charging box sizes.

Q. Why is that? A. Because the material is already put in chargeable shapes so that the mill does not have to handle it or re-cut it, or sheer it, and it is loaded by magnets into charging boxes and then from then on into the furnace.

Q. There was something said a day or so ago about a fire in the manifold at one occasion Mr. Gilbert's attention was directed to it; do you recall that fire? A. I recall the fire of a small spider, as I would call it, on the deck of the boat, which caught fire. But not on the main manifold.

Q. Did that delay the work to any extent? A. No.

Q. How long? A. Probably two or three minutes to put it out.

Q. Did not burn the instrument up? A. No, sir.

Mr. Haight: That is all.

Cross Examination by Mr. McCarter:

Q. Your introduction to this job was through Mr. Preacher or Mr. Meurer? A. Mr. Preacher.

Q. He called you on the 'phone, didn't he? A. Yes, sir.

Q. And didn't he ask you if you were willing to go out for the course of two or three months to take a job as timekeeper while they were doing some scrapping? A. While was scrapping was to be done at their yard was the way I understood it.

Q. Didn't he say while they were doing some scrapping? A. I don't know if I did say that.

Q. Didn't he say that? Not you. Didn't he say that, Mr. Preacher? A. I don't know as he said that, or whether he said that the scrapping was to be done at his yard. I might have said it.

Q. You remember testifying in the chancery suit, don't you? A. Yes, sir.

Q. And in the course of your direct examination by Mr. Carey weren't you asked the following question and didn't you give the following answer, Page 222: "Q. How did you come to be a timekeeper on these vessels? A. Through Mr. Preacher and Mr. Meurer called me up one evening on the 'phone and asked me if I would like to go out for the course of two or three months to take a job as timekeeper while they were doing some scrapping, and I said yes"? A. Probably I did say that. I must have said it.

Q. Your memory was naturally clearer then than it is now? A. Clearer; yes, sir.

Q. These non-ferrous metals you have talked about, they are copper, brass and that sort of thing, aren't they? A. Anything other than steel, I should think.

Q. Anything other than steel? A. Steel or cast iron.

Q. Well, the non-ferrous metals that existed on these ships was mostly copper and brass, wasn't it? A. Mostly in various classifications. There are sev-

eral classifications of copper and brass, light, heavy, and several different classifications.

Q. You make a distinction, don't you, between shipping sizes and these plates that were cut out to go to China? A. I do.

Q. Tell that distinction, please. A. You mean, if I understand your question right, to describe what a shipping size is?

Q. Yes. Begin with that. A. A shipping size is any piece of material that can be loaded on a gondola car, with an extension not exceeding 18 inches. What I mean by that, it can have an angle iron, or several angle irons, or it can have an extension over the side, or it can have an extension over the end of 18 inches.

Q. And what is the size of a gondola freight car? We all know them by sight, but we don't know their dimensions? A. They vary in width, and they vary in length.

Q. Am I to understand then that the shipping size depends upon the size of the freight car you are dealing with? A. Not necessarily. The minimum freight car is not less han 32 feet long, and not less in width than 6 feet, 72 inches.

Q. And is that what you would give as the dimensions of the shipping size then? A. I would give it as a ashipping size.

Q. Have you completely defined a shipping size, or do you want to say anything more on it? A. As I say, a shipping size is any material other than charging box size, can be described as shipping size. A shipping size is 72 inches wide, we have shipped shipping sizes, I cut four ships up in shipping sizes 72 inches wide and 32 feet long, allowed extensions beams of 18 inches, not exceeding 18 inches.

Q. Generally speaking then, by shipping sizes you mean something that will go in a gondola freight car? A. Yes, sir.

Q. Now, what do you mean—what do you define these plates as? A. Well, a plate is defined as a flt piece of steel, clear of all angles and all projections, as a plate.

Q. Is that the kind of article that was being cut out of these vessels? A. No. As I remember right the Chinese shipment was steel cut in large pieces that would stow a certain number of feet to the ton for export purposes.

Q. There was some particular specification, in other words? A. Yes, I think there was. I never seen them.

Q. But there were some particular specifications, weren't there? A. I don't know. I never saw them.

Mr. Haight: He said he did not know.

Mr. McCarter: He said he did not know what they were.

Mr. Haight: I understood him to say he did not know whether there were any specifications or not.

By Mr. Haight:

Q. What is the fact? A. I don't know. I never saw any specifications onto it.

By Mr. McCarter:

Q. What was the difference then? Go back to my first question, what was the difference between these things that were being cut out of the Philippines and the Black Arrow for shipment to China, and

shipping sizes as you defined shipping sizes? A. Because the angles were trimmed off.

Q. Because the angles were trimmed off? A. Yes, sir.

Q. They were just plates? These things that were cut to go to China were just plates? A. Not necessarily, because a plate is free from all rivets, projections and extensions.

Q. Well, were these pieces that were cut out of the ships? First, how large were they? A. I can roughly estimate, I should judge between 6 feet wide and probably 8 feet long, or a little more. Or, they may be a little smaller. According to the thickness of the plate I would imagine.

Q. And did they have anything on them besides the plate, were there any angles or anything? A. I think some were shipped with angles.

Q. Some were shipped with angles? A. I think so. According to how it would stow in the hold of the ship.

Q. You mentioned a difference in price paid by the mills for shipping sizes as against charging box sizes? A. Yes, sir.

Q. Do you know of any mill that takes shipping sizes? A. Yes, sir.

Q. What mill? A. Bethlehem Steel Corporation, Sparrows Point, Maryland.

Q. Do you know of any other mill that takes shipping sizes? A. Not a mill. I know a scrap broker that takes shipping sizes.

Q. You know of no other mill except Bethlehem? A. No, I do not.

Q. Don't you know it to be a fact that even that the Bethlehem mill will only take shipping sizes occasionally, or certain peculiar kinds? A. The same applies to charging box sizes.

Q. Do you mean to tell us that the Bethlehem will take shipping sizes whenever they will take charging box sizes, and when they will not take shipping sizes they will not take charging box sizes? A. No, I don't mean that.

Q. What do you mean? A. There are times when there are embargoes on shipping sizes, and there are times when there is an embargo on charging box sizes.

Q. What do you mean by an embargo? A. Shipments stopped into Sparrows Point, I suppose due to the condition of the mill and conditions of how much ore is being shipped in there.

Q. Well, of course, there are other mills that take charging box sizes, aren't there? A. I presume there are.

Q. Well, you know, don't you? A. Yes.

Q. Do you recall the time during which the boilers on the Black Arrow were being cut up? A. I remember the bilers on the Black Arrow; yes, sir.

Q. When was that? A. I think it was some time in March, it may have been April.

Q. In March? A. I think it was in March.

Q. Don't you remember it was in May? A. Probably it may have been in May.

Q. It may have been in May? A. It may have been.

Q. And that was the last work that was done on the Black Arrow by the way of cuttting up until they moved it away, wasn't it? A. There was some charging box sizes being cut while the boilers were being cut.

Q. And after the boilers were completed, no more work was done? A. Other than a few men around on the ship, probably cleaning up some non-ferrous metals.

Charles R. Patten. Called by Plaintiff. Cross.

Q. When do you say the last shipment of steel was made from the Perth Amboy plant by H. L. Crawford & Co.? A. I don't recollect of any being shipped six weeks previous to July.

Q. What time in May, the beginning or the end, was the cutting of the boilers, do you remember? A. I think it started in the beginning of May.

Q. In the beginning of May? A. Around, I should judge, the first week in May.

Q. Don't you remember it was the end of May? A. No.

Q. When did you make your estimate of the amount of tonnage of charging box steel lying on the Black Arrow? A. In July.

Q. In July? A. Before the litigation there at Newark, a few day before that.

Q. Before you testified? A. Yes, sir.

Q. Of course, you didn't actually weigh it? A. No.

Q. That is your estimate? A. In my opinion is what I thought was there.

Q. Well now, what experience have you in estimating the weight of steel? A. Well, I based my estimates mostly upon the boilers.

Q. How does that help you? A. Well, a boiler of the size I had seen cut up, approximately that size, and there were some 50 tons of material in that boiler.

Q. There were 50 tons in that boiler? A. Approximately. May not have been. It may not have been of that size boiler, but approximately from a boiler that I had seen cut up previously.

Q. How did you know the weight of the material in the boiler you had seen cut up previously? A. From actual shipments. Railroad weights.

Q. You estimate, therefore, from that weight of that other boiler, the weight of the boilers in the Black Arrow? A. Approximately.

Q. Approximately? A. There is a difference in boilers.

Q. How much do you estimate that the weight of the boiler on the Black Arrow was? A. Used—she had several boilers. If I remember right, I think she had four.

Q. Well, each boiler? A. I should approximately say 50 tons.

Q. 50 tons per boiler? A. I think it was that figure I used at that time, I don't just recall.

Q. So 200 tons for the whole of the boilers? A. That would be four boilers; yes, sir.

Q. How do you get your figures for the rest of the tonnage? A. From the rest of the charging box sizes that was cut.

Q. Just from looking at it? A. Yes, sir.

Q. Could you tell from looking at the steel as it lay there on the ship how much of it came from the boilers and how much of it came from other parts? A. Only as an estimate.

Q. What has been your experience in connection with the scrapping of ships? A. Now, or then?

(Question repeated by stenographer.)

A. Well, I just completed five ships at Sparrow Point, that is recently.

Q. Well, what was your duty on that job? A. As superintendent.

Q. Superintendent? A. Foreman, laying out the work, shipping material, getting the material out.

Q. And what kind of ships were they? A. Four Navy Destroyers, and one composite merchant ship.

Q. By composite, you mean partly of steel and partly of wood? A. Yes, sir.

Q. And is that the full extent of your experience, except, or course, what you had on this job? A. Not of shipping. I was connected with the United States Shipping Board a couple of years.

Q. While you were with the United States Shipping Board, did you scrap ships? A. Didn't scrap ships; repairs.

Q. What is the size of those ships that you scrapped at Sparrows Point, if that is the right name? A. Sparrows Point; yes, sir.

Q. How large were those ships by comparison with these two ships? A. In comparison?

Q. Yes, with these two? A. Practically no comparison.

Q. They were very much smaller, weren't they? A. Yes, sir. Different type ships altogether, different propositions.

Mr. McCarter: That is all.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. From whom did you get your orders after you went on the job? A. Mr. Bernard.

Q. Mr. Bernard? A. Yes, sir.

Q. Do you know whether the Perth Amboy Dry Dock Company, that is of your own knowledge, ever protested against the cutting of parts of the vessel below the superstructure in charging box sizes? A. I think there was some controversy over it. I don't know as they ever stopped the work, to my knowledge they never stopped the work or anything in connection with it.

Q. Did you hear any protest made by any representative of the Perth Amboy Company against the cutting of the rivets on these plates that were being shipped to China? A. I don't recall it.

RECROSS EXAMINATION BY MR. MCCARTER:

Q. What was the total tonnage of those five ships you scrapped at Sparrows Point, do you know? A. Just what do you mean by tonnage? Gross, net, dead weigt?

Q. Tell any one and tell me what it is? A. I just don't recall the dead weight tonnage of the Destroyers now.

Q. I can't hear you. A. I don't recall the dead weight tonnage of the Destroyers, but I know their length, width and beam, and so forth of them.

Q. Do you know how much steel you shipped out altogether? A. I think it was somewhere around 2500 tons.

Q. How long did it take you to scrap them? A. I don't understand you there.

Q. How lond did it take to scrap them? How could it be any plainer than that? A. Well, we were working on them—or while the ships were being tied up?

Q. How long did it take?

Mr. Haight: I object to it.

The Court: Objection sustained.

Mr. McCarter: If your Honor please, the testimony shows how much less the steel was in this. If they were larger it would not prove anything, but if ships are very much smaller and they can be scrapped—

The Court: I sustain the objection and you may take an exception. There is not enough testimony to draw a comparison between these ships. Besides that it is not cross examination. This witness was not called as to the time necessary—or qualified to tell of the time necessary to scrap ships.

Mr. McCarter: That is all.

Mr. Haight: That is all.

AXEL OLSEN, a witness produced on behalf of the plaintiff, and being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. CAREY:

Q. Mr. Olsen, you are in the employ of the plaintiff in this case? A. Yes, sir.

Q. How long have you been in the plaintiff's employ? A. Almost 27 years.

Q. Continuously during the winter of 1924, rather, from December, 1923, to August, 1924, what was your business? A. Office manager.

Q. Office manager. Did you have anything to do with the making and sending out bills for work done by the plant? A. I supervised the bills.

Q. You supervised thebills and made the charges for the use of the plant? Did you do that in connection with this work which was done in scrapping the "Philippines" and the "Black Arrow"? A. Yes, sir.

Q. When the bills were returned with checks for payment of bills, or payment on account of the bills, did you see the bills with the remittances? A. Yes, sir.

Q. In connection with this work will you tell us how much has been paid on account of the use of the plant? Have you examined the records to see how much has been paid? A. Yes, sir.

Q. Will you tell us how much has been paid on account of the use of the plant for the "Black Arrow"? A. $5,319.50.

Q. And how much on account of the use of the plant for the "Philippines"? A. $4,828.25.

Q. How often did you bill for use of the plant? A. Once a month, every four weeks. At the end of each month.

Q. And on what basis with respect to time did you make the bills for the use of the plant for both of these vessels? A. The first bill—

Mr. McCarter: I object to that. I can't see how the basis of how he made out the bills can bind us at all. The contract calls for a certain method of payment, as I recall it.

The Court: Yes, I know the place.

Mr. McCarter: "Bills for use of plant to be rendered monthly and to be in proportion to work done."

The Court: I suppose he wants to prove by this witness that they carried out the contract.

Mr. McCarter: I suppose they have a right to do that. I will withdraw the objection.

Q. When you made out the first bill on what basis did you make up the bill for the use of the plant? A. On the basis of twelve weeks.

Q. How long did you continue that practice? A. One month more, I think.

The Court: I don't understand that.

Axel Olsen. Called by Plaintiff. Direct.

Q. Was any objection made to the item on your first bill for the use of the plant? A. Not in the first bill.

Q. Was that item paid in full? A. That was paid in full.

Q. And how long a period did the first bill cover? A. The "Black Arrow," one week and a half; the "Philippines," one week.

Q. On the basis of the use of the plant how much time was included in your first bill? A. One week and a half for the "Black Arrow" and one week for the Philippines." That was made out.

Q. Wasn't that your labor bill? A. And the use of the plant.

The Court: Aren't the bills the best evidence?

Mr. Carey: Have you the bills there, copies of them?

Mr. McCarter: We have the original bills, if you want them.

Mr. Carey: All right.

Q. I show you the bill rendered for the use of the plant for the "Philippines" bearing date December 28, 1923, and will you tell us how much time is covered by that? A. One week.

Q. Now, then, what portion of the total price for the use of the plant did you charge in that bill? A. One twelfth, on the basis of twelve weeks.

Q. One twelfth on the basis of twelve weeks for the entire job? A. Oh, yes.

Q. Is that it? A. The same with the "Black Arrow."

Q. And the same is true of the "Black Arrow"? A. One and one-half weeks at 829, makes $1,243.50 on the basis of twelve weeks.

Q. Being one-twelfth of the total contract amount for the use of the plant for the "Black Arrow"? A. This being on the basis of twelve weeks. This was one and one-half weeks.

Q. Did this charge of $1,379.50 for the "Philippines" have any basis, or was it based upon the amount, the proportionate amount done on the "Philippines"? A. No.

Q. Was the charge of $1,243.50 for the "Black Arrow" based on any portion of the work done on that ship up to that time? A. No, it was only based on the time that was told me the ships would be finished.

Q. Were these two bill paid? A. Yes.

Q. In full? A. In full.

Q. Was any question raised about the charge for use of the plant? A. No.

Q. Now, subsequently were there deductions made from the bills as rendered by you? A. Yes, sir.

Q. Deductions made by the defendant? A. Yes, sir.

Q. And have you gone through the records to find out what those deductions were and the reason ascribed for the deductions? A. Yes, sir.

Q. How did you learn the reasons ascribed by the defendants? A. Well, I generally conferred with Mr. Meurer.

Q. I am asking you how you ascertained the reasons given by the defendants for making deductions? A. How I ascertained the reasons given by the defendant?

Q. Yes. A. Well, from the bills.

Q. From the bills? A. Yes.

Axel Olsen. Called by Plaintiff. Direct.

Q. What was there on the bills that showed you the reason of Crawford & Company for making the deductions? A. They made notations on the bills.

Q. What did you do with respect to those notations? A. I didn't receipt the bills and made credits on the bills for what was paid. If any allowances were due the defendants I made notation of that.

Q. What did you do with respect to your office copies of bills in relation to these notations made on these bills by Crawford & Company? A. The bills that I returned to Crawford I made a copy of in our office and kept that for our record.

Q. Have you made an examination of your copies of the bills and of your records to show what deductions were made by Crawford & Company on the original bills sent to them for various matters? A. Yes, sir.

Q. A computation of the amounts deducted for various reasons? A. Yes.

Q. Do you recall a deduction which was noted by the defendants on the bills for labor handling tanks?

Mr. McCarter: Now, I object, if your Honor please. This is proving the contents of a written document by the witness' memory. I think the bills should be produced.

Mr. Carey: That bill is a classification of these notations.

Mr. McCarter: If you show the bills to Mr. Olsen, he can probably help you.

Mr. Carey: Will you let me have the first bill rendered?

Q. I show you the first bill rendered in connection with the "Philippines" and ask you if there are

any exceptions on that bill with reference to labor handling tanks. A. No notations made on what—this was allowed.

Q. That was allowed? A. This deduction was allowed on the first bill.

Q. What was the deduction on the first bill? A. It is not mentioned here, but that was allowed.

Q. What deductions were made, if any, with respect to labor handling tanks on the first bill rendered in connection with the "Black Arrow"? A. The first bills on the "Black Arrow" and the small deductions there were allowed. Mr. Nichol was down and saw us, and there was some truck charges.

Q. Were these deductions made on the first bill rendered for the "Black Arrow" all allowed? A. They were allowed.

Q. Then, there was no objection which was not allowed? A. No.

Mr. Carey: Let me have the second bill.

Mr. Haight: I submit, if your Honor please, if we are compelled to go through with this procedure on every bill and pick it out for small items, we will be here from now to dooms day.

The Court: Why do you ask about them, then?

Mr. Haight: They have deducted about $1,200 from our bills that we think we are entitled to—

The Court: Then, you can argue from that statement and the jury can see, and the jury will have that trouble; is that it?

Mr. Haight: No. Let the witness testify as to a computation from the bills because the

jury is not going to sit down and figure these things out. The jury is going to go to sleep by going through these things, and everybody's patience will be worn out. I think if we are allowed to proceed by the way we originally planned, let the witness testify, we are perfectly willing to do it.

The Court: Well, offer your bills first and then there won't be any trouble about it.

Mr. Carey: Let us have the bills.

Mr. McCarter: The whole works?

Mr. Carey: Put them all in. We will put everything in.

Mr. McCarter: I produce all the bills on the "Black Arrow," thirty-four in all.

Mr. Carey: I offer these bills in evidence as one exhibit.

(Bundle of bills entered in evidence and marked Plaintiff's Exhibit P-11.)

Mr. McCarter: And I produce the bills on the "Philippines," all the bills, thirty-three.

Mr. Carey: I offer the bills in evidence as one exhibit, for the "Philippines."

(Bundle of bills entered in evidence and marked Plaintiff's Exhibit P-12.)

Q. Now, Mr. Olsen, as I understand you, you on the return of these bills examined them all for deductions; is that right? A. Yes.

Q. And have you made a summary of the deductions that you found on these bills? A. Yes, sir.

Q. I show you a paper headed S. S. "Black Arrow," dated August 1, 1924, and ask you if that is a summary of deductions made on the bills rendered for the S. S. "Black Arrow"? A. Yes, sir.

Q. Is this paper which I have shown you a correct summary of the deductions made on the "Black Arrow" bills? A. Yes, sir.

Mr. Carey: I offer these in evidence.

Mr. McCarter: Now, I don't suppose that is really evidence, but I don't object to its being used for the convenience of the jury.

The Court: For the convenience of the jury and the attorneys, yes.

(Summary sheet entered in evidence and marked Plaintiff's Exhibit P-13.)

Q. I show you a paper dated August 5, 1924, headed S. S. "Philippines," and ask you if you made that paper? A. Yes, sir.

Q. What is that a summary of? A. Of the balance due and the deductions on the "Philippines."

Mr. Carey: I offer that paper in evidence.

Mr. McCarter: I consent to that being used in the same way.

The Court: Yes, it is admitted for the purpose of assisting the jury and for speeding the trial. The jury will understand, however, that they are not to recognize anything in the summary unless they find it corroborated by these bills themselves.

(Summary sheet entered in evidence and marked Plaintiff's Exhibit P-14.)

Q. Now, taking the summary which you made in connection with the steamer "Black Arrow," will you state what deductions, if any, were made on that bill, on that summary for the first bill with reference to labor for handling tanks? A. You mean on the total bill?

Q. I mean, what deduction was made on the first bill rendered? A. On January 18 there was a deduction made, two, three hours auto truck at $2, $6.

Mr. Carey: The witness under these different headings has summed up the different items which are shown on these?

Mr. McCarter: What do you mean? He has summarized the summary. I am in favor of short-cuts, but I don't believe it will save any time. It will just make it cross examination instead of direct. I am anxious to speed the case.

Mr. Carey: Could Mr. Olsen and your man check this up, get this summary in and this classification in, and then let this man and Mr. Olsen check them up, and if they agree, all right. If not, we will make such changes as are shown to be necessary after they have made the examination. They can make the examination when the witnesses are being examined.

Mr. McCarter: They can make it during lunch time. If the Court will consent to adjourning now I will have that examination made during lunch time and make my decision at the end of that.

The Court: Oh, yes. It is time now, anyhow.

(Adjourned until 2 o'clock P. M.)

AFTERNOON SESSION.

AXEL OLSEN, a witness called for the Plaintiff, and having been previously duly sworn, resumed the stand and on his oath saith:

DIRECT EXAMINATION (continued)

BY MR. CAREY:

Q. Mr. Olsen, you have already testified that on your bills which were returned from the defendant with payments on account of them, they had notations on them of deductions? A. Yes, sir.

Q. And you examined those notations? A. Yes, sir.

Q. And took copies of them? A. Yes, sir.

Q. These exhibits P-13 and P-14 are summaries of the deductions made by the defendants on the bills? A. Yes, sir.

Q. I show you a paper which purports to be a classification of those deductions under different heads, and ask you if you made up that classification from your examination of the bills? A. Yes, sir.

Q. Is that a correct classification as to items and amounts of deductions which appear on the bills of Crawford & Company when they were returned to you? A. Yes. It is all included in the bills, whatever is on here.

Q. Whatever is on this paper which I show you? A. Yes.

Q. Was a deduction made on the bills by Crawford & Co.? A. Yes, sir.

Q. And under these various headings which appear on this paper which I show you? A. Yes, sir.

Mr. McCarter: I have no objection to that paper being used in the same way as the last two exhibits for our assistance.

Mr. Carey: I ask to have it marked on that understanding.

(Yellow sheet of paper entered in evidence and marked Exhibit P-15.)

Q. Referring to Exhibit P-15, I note that you have a heading, "Labor handling tanks," do you know what that referred to? A. That was handling the tanks from the place they were left by the trucks delivering them to us on board the vessel.

Q. From that place where the truck delivered, to the vessel? A. Yes.

Q. What distance was that, to the vessel? A. I should say from down to 100 feet.

Q. Another heading is "Labor lost on account of lack of manifolds," do you know what that refers to? A. Well, the defendants claim that, but we had no agreement—

Q. No. I am not asking you that. A. That was making tank connections.

Q. Making tank connections? A. Yes.

Q. Before you got the manifold? A. Before we got the manifold, yes.

Q. Another heading is, "Labor on account of lack of air," do you recall what that deduction was made for? A. One day the truck was on its way to our plant and broke down, and was a short while—we were a short while without air on account of that.

Q. Another heading is, "Miscellaneous labor ordered by Mr. Bernard," to what does that refer? A. That was clearing off the car float on which the material was left from the "Philippines," the old car float that was used.

Q. Clearing off material on the float? A. All the material from the "Philippines."

Q. From scrapping the "Philippines"? A. From scrapping the "Philippines."

Q. That was the car float which was used in connection with the scrapping? A. Yes, and shifting the car float.

Q. That is the item under the heading "Philippines"? A. Yes.

Q. Now, there is another item under that classification under the heading "Black Arrow," $5.04. What does that refer to? A. That was time going to Staten Island for some material requested by Mr. Bernard.

Q. Under the heading, "Labor lost on account of crane off track." To what does that refer? A. Well, the crane happened to go off the track one day, and the men were idle for a short while on account of that.

Q. Was there not more than one day when the crane went off the track? A. Possibly was.

Q. Another item or heading, "Labor making wrenches." What does that refer to? A. Special wrenches that were ordered for the "Philippines."

Q. By whom? A. Either by Mr. Gilbert or Mr. Bernard.

Q. Another heading, "Labor on steam line." To what does that refer? A. That was putting the steam line in shape on the "Philippines," as far as I know.

Q. On the "Philippines"? A. On the "Philippines." Mr. Preacher, I think, can explain to us what that line was.

Q. Another heading, "Use of steam, 19½ hours at $6." To what does that refer? A. That was steam for hoisting and other purposes on the

"Philippines." The first steam was ordered by Mr. Gilbert.

Q. Do you recall what that steam which Mr. Gilbert ordered was for? A. For hoisting purposes, I believe.

Q. Do you remember that he gave an order and a receipt? A. Yes. That was left the day before yesterday.

Q. And that order was marked in evidence as P-5, I think. Examining that, does that refresh your recollection? A. P-7.

Q. P-7. Does that refresh your recollection as to the use to which this steam was put? A. Yes, for pumping.

Q. Pumping what, Mr. Olsen? A. Fire pumps.

Q. And what was the occasion for using fire pumps for pumping the "Philippines"? A. I presume the boat was leaking for water which had accumulatetd in the hold from rain or snow.

Q. You make a charge of $6 per hour for use of steam. How do you arrive at that figure of $6 per hour? A. From the amount of coal we estimate as consumed furnishing that steam.

Q. In furnishing the steam? A. Extra coal in furnishing steam after hours, after our regular working hours.

Q. Do you have a regular price for furnishing steel at your plant? A. Yes, sir.

Q. And that price is what?

Mr. McCarter: Now, I object. I don't think the regular price they had at their plant is the test.

The Court: No, you want to go into that.

Axel Olsen. Called by Plaintiff. Direct.

Q. You say that you estimate the cost of coal for furnishing steam at six dollars per hour? A. About that. In cold weather it will require more coal; in warmer weather, less coal.

Q. Have you made examination at your plant to examine that? A. Yes, sir.

Q. Another item is, "use of air pump." What does that mean? A. That was the air pump used in pumping out the two vessels.

Q. How much per hour is that? A. Two dollars.

Q. Have any estimates been made of the cost of operating the air pump at your plant? A. Yes.

Q. What do you find it to be? A. Well, about $2.

Q. Now, will you state whether or not all of these items which appear on this exhibit P-15 were actually paid by the plaintiff in connection with the scrapping of these two vessels? A. Yes, they were paid.

Q. And the total amount shown on that exhibit is how much? A. $814.31.

Q. Has any part of these items aggregating $841.31 been paid by the defendant? A. No, sir.

Mr. Carey: I now offer in evidence a bill produced by the defendants, with reference to the expenditures incurred in salvaging the "Philippines" at the time of the accident by the breaking of the sea-cock. This, I understand the defendants are willing to admit, shows reasonable profits.

Mr. McCarter: You need not put the bill in unless you want to. I will, of course, without admitting responsibility or reliability for it, I will admit that the amount of $1,572.43

which is the total of this bill, is a reasonable amount for repairing the "Philippines" due to her threatened sinking.

The Court: I think you have already admitted that.

Mr. McCarter: I did not admit the amount. We did not have this paper in hand.

Mr. Carey: Your admission went farther, I think, that such work was necessary to be done in order to save the "Philippines," without admitting any liability for you to meet the expenditure.

Mr. McCarter: Yes.

Mr. Haight: I started to put in evidence by one witness whether he did work—

Mr. McCarter: I did, yes.

Mr. Carey: I will offer this bill, which has attached to it a bill of payment made to the wrecking company by the Perth Amboy people, constituting part of the expenditure.

(Bill entered in evidence and marked Exhibit P-16.)

Mr. Carey: Cross examine.

CROSS EXAMINATION BY MR. MCCARTER:

Q. Now, Mr. Olsen, you said, I believe, that there was no objection made by the defendant to the first bill, insofar as it applied to the plant use? **A. No.**

Q. And objection was made to the amount charged by you in the second bill, wasn't it? A. In the second bill, yes.

Q. Who made the objection? A. I don't think there was anything—it was simply deducted from the bill when it was paid, as far as I remember.

Q. Didn't you have a talk with Mr. Mornay? A. Not on the second bill; I think, on the third I did.

Q. On the third bill you had? A. Yes. I believe Mr. Mornay came down on March 27th.

Q. On March 27th, didn't Mr. Mornay deliver you a letter? A. Yes, sir. I have a copy of it right here, if you wish.

Q. Is the original there or the copy? I ask you to produce what you have of that letter?

Mr. Haight: What is the letter you want?

A. No. I thought I had. I don't see it here.

Mr. McCarter: Here is a copy right here.

Mr. Haight: Go ahead and use your copy.

Q. I show you, Mr. Olsen, a copy of a letter dated March 27, 1924, addressed to Perth Amboy Dry Dock Company by H. L. Crawford & Company, and ask you to look at that please and tell me whether or not that is the letter Mr. Mornay handed you to which you have just referred? A. Yes, as far as I can say that is the letter.

Mr. McCarter: I offer it in evidence.

The Court: If there is no objection it is admitted at this time.

(Copy of letter dated March 27, 1924, entered in evidence and marked Exhibit D-5.)

Mr. McCarter: With the permission of the Court, I will read this letter:

"March 27th, 1924. Perth Amboy Dry Dock Company, Perth Amboy, N. J. Gentlemen: We hand you herewith our checks in payment of your invoices as follows:

Axel Olsen. Called by Plaintiff. Cross.

Your invoice of February 21st, covering labor and plant use on the S. S. 'Philippines' for the week beginning February 21st and ending February 27th, amounting to $4,021.03.

Your invoice February 21st, covering labor and plant use on the S. S. 'Black Arrow' for the week beginning February 21st, and ending February 27th, amounting to $3,191.20.

From these two invoices we have deducted the $2,069.25 deducted for the use of the plant on the S. S. 'Philippines' from January 31st to February 27th, inclusive.

According to the statement of your Mr. Runyon, Mr. Meurer and Mr. Preacher, to us on Friday last, March 21st, you estimated that the 'Black Arrow' was 33 1/3% completed and the 'Philippines' 10% completed on that date (March 21st). On this basis we would have been called upon, according to the contract with you, to pay for the use of the plant $3,316 for the S. S. 'Black Arrow' and $1,655.40 for the S. S. 'Philippines.' Inasmuch as the proportion of the work done on the two vessels was on February 27th very much less than the proportion you now estimate, we find we have considerably overpaid you account of the plant use; inasmuch as we have paid you $3,231.50 on the 'Black Arrow' and $4,138.50 on the 'Philippines,' or a total of $7,370.00 for plant uses, whereas the total payment we should have made up to and including the work done up to Friday, March 21st, would be $4,971.40, or approximately $2,400 overpayment on account of plant use up to this later date.

We regret the necessity of having to deduct these amounts from your invoices, and if your office staff will see that these extra charges are not placed on the invoices, deductions will not be necessary.

In reference to the labor items for which we have been overcharged, we are not deducting anything on this account, inasmuch as you object to these deductions, and we are enclosing invoices covering these extra charges. However, we make strong exceptions to our being asked to pay them. By invoicing them to you it will get them into the records and they will therefore not be lost sight of in the adjustment of our accounts.

Regretting the necessity of making these various deductions and counter charges, and expressing our desire at all times to co-operate to the best of our ability in the completion of these contracts, we are,

Yours very truly,

(Signed) H. L. Crawford & Co."

Q. Now, when Mr. Mornay delivered that letter to you did he have a conversation with you with respect to the plant use charges? A. I think he did. We talked the matter over.

Q. What did he say to you and what did you say to him? A. I really don't remember the conversation what we had. I told him I would submit his letter to Mr. Runyon. I remember that.

Q. Don't you remember anything about the conversation? A. That is all I remember.

Q. That is all you remember? A. That is all I remember just now.

Axel Olsen. Called by Plaintiff. Cross.

Q. Now, you say Crawford & Company had objected to the rate of the charge for plant use prior to that occasion; is that correct? A. On the second bill they made a deduction, changed the rate of the "Black Arrow" from twelve to twenty weeks, and the rate of the "Philippines" from twelve to twenty-four weeks.

Q. Did you have any conversation with anybody with respect to that charge and that reduction? Anybody from H. L. Crawford & Company, I mean. A. Not that I remember.

Q. There was nothing done but just a deduction from the bill? A. Yes.

Q. While Mr. Mornay is looking at those bills I will ask you something else, Mr. Olsen. Do you know, Mr. Olsen, how much of the amount charged for plant use was for the gas and air and how much for the rest of the plant? A. No, I don't.

Q. You don't know? A. No.

Q. You don't recall, then, how these two sums put in the contracts for plant use were arrived at? A. No.

Q. They were given to you as an agreed sum? A. Yes.

Q. And you billed for plant use at the end of each month? A. At the end of each month, yes.

Q. And you bill for labor weekly? A. Weekly.

Q. Do you recall how much was deducted on the second month's plant use for the "Philippines," Mr. Olsen? A. No, I don't recall just from my memory.

Q. I beg pardon? A. No. It was changed to 24 weeks.

Q. Did anybody from H. L. Crawford & Company tell you that that was the basis of the change,

or is that just your computation? A. No. That is my idea of that.

Q. Isn't it a fact that H. L. Crawford & Company cut in half the amount charged by your concern for the plant use, so far as the "Philippines" was concerned, on the second bill, the bill of January 24th? A. Yes. That would make it 24 weeks.

Q. Cut in half? A. Cut it in half, yes.

Q. Now, Mr. Olsen, directing your attention to the items segregated by you in Exhibit P-15, these deductions for labor in handling tanks were deductions from your weekly bills for labor, weren't they? A. Yes, sir.

Q. In other words, you had included in the labor which you charged a bill to H. L. Crawford & Company the time of some laborers who were moving these tanks from where the trucks dumped them to where they were used by the burners, that is correct, isn't it? A. Yes, sir.

Q. And these so-called deductions of $86.50 as to the "Philippines" and $264.00 as to the "Black Arrow"—I am reading from Exhibit P-15—represent the time of the laborers who were actually moving those tanks, that is correct, isn't it? A. Yes, sir.

Q. Now, what is the time represented by the labor lost on account of lack of manifold, grouped by you in Exhibit P-15? Just what is that? A. That is noted on your bills "burners time lost making tank connections due to lack of manifolds."

Q. Then, Mr. Olsen, this item on your list, P-15, "labor lost on account of lack of manifolds," represent, does it not, the time of the burners? Now, of course, I mean the men. A. The men, yes.

Q. Lost while the tanks were being changed? A. Yes.

Q. Isn't that a fact? A. That is right.

Q. Now, the next item I see you have listed is, "labor on account of lack of air." What does that represent? A. That was the day the truck was late. It broke down on the way.

Q. This was the truck that was bringing to your plant tanks of air? A. Yes, sir.

Q. And the air did not arrive and the burners were thereby idle? A. A short while idle, a short while.

Q. However long or short it was, they were idle for a time? A. Yes.

Q. Until the truck with the air could get there? A. Yes.

Q. That is what this item, $13.68, represents? A. Yes.

Q. The next item, as I said, is miscellaneous labor ordered by Bernard amounting to on the "Philippines" to $41.60. Will you please look at Exhibit P-14 and show me the items on that that go to make up this $41.60? A. It is more than one item, I think. There is several items put together.

Q. Yes, and I want you to point out to me those several iems which put together total $41.60. A. Well, I will have to get the book, too.

Q. What book do you mean? A. I have it somewhere, if you give me time to find it. It is part of these, Martin's time here, you see.

Q. It is part of what item? A. Part of this item here (indicating).

Q. Under what date? A. May 20, 21, and 19th.

Q. Part of the items— A. I think you have a letter to that effect.

Q. Part of the items of May— A. Start here (indicating).

Q. Part of the items? A .On May 6, May 19, 20 and 21.

Q. Which are indicated on Exhibit P-14 as follows: "18 hours labor"? A. Yes.

Q. $10.08? A. $10.08.

Q. One-half hour per boat? A. That is not included.

Q. Not included? A. No, it is just the labor.

Q. Martin's time? A. Martin's time, $4.32.

Q. $4.32 on May 20, Martin's time, on May 21, $2.88? A. And then there is $24.32 there.

Q. And on May 19 labor amounting to $24.32? A. That makes $41.60.

Q. Now, do you know yourself what that labor was? A. It was, as far as I know, for shifting the car float and clearing off the car float.

Q. That is not an answer to my question. Do you yourself know what it was? A. I know from a letter written by Mr. Runyon.

Q. Only from a letter written by Mr. Runyon? A. Yes.

Q. You don't know of your own knowledge? A. No, I don't know.

Q. On the "Black Arrow," under the same heading there is an item of $5.04. Can you find that for me, or rather, find the items which go to make up that on Exhibit P-13? A. It was with this item $2.16.

Q. Under what date? A. February 15th.

Q. And how described? A. Three hours labor at 72 cents, $2.16. And on May 15th, four hours for W. Martin, $2.88.

Q. They both represent labor? A. Labor, yes.

Q. You don't know of your own knowledge what that labor was? A. No, I don't know, not of my own knowledge.

Axel Olsen. Called by Plaintiff. Cross.

Q. On Exhibit P-15, Mr. Olsen, there is an item of $17.07 under the "Black Arrow" for labor lost on account of crane off track. Tell us exactly what that is, what deduction was made there? A. That was a deduction made on account of labor lost while the locomotive crane was out of commission.

Q. Whose labor, the burners or whose? A. No. I believe that was laborers.

Q. Laborers? A. Yes.

Q. Laborers who were unable to proceed with their work during the time the crane was off the track? A. I believe so.

Q. And this $17.07 represents the time of those laborers during the time the crane was off the track? A. Yes, sir.

Mr. Carey: I object to that. This witness has gotten his information from an endorsement on the bills made by the defendant. Now it is up to them to explain just what they mean by that deduction. We say that that is what the bills, when they came back to us through the endorsement of the defendants.

Mr. McCarter: Your Honor will see that this particular series of items really is; it is a claim for an unpaid portion of what they say is labor charge under these contracts. We simply have not paid it. It is not a deduction really. It is not something that the burden is on us to establish. They are suing for an unpaid portion of their labor bills, and my question is entirely proper then, directed to what this charge is for. It is an unpaid charge.

Mr. Haight: The contract is, "You to pay"—that is Crawford & Company—"you to pay roll

costs of all labor used in scrapping, including the assistant foreman, timekeeper, day and night watchman, and actual charge of this work, also labor in removing the material from the yard." We simply acted as their agent in paying these men, that is all. If these monies were paid, Mr. Olsen testified to it, and the bills sent into New York, they arbitrarily deduct certain things because they do not think they are proper; at least they state that they are not proper deductions. The burden is, as Mr. Carey says, I think is on them to establish.

Mr. McCarter: Suppose we had not paid them a nickel, and they came in here and sued for the whole payroll, the whole labor charge for the whole thing, the burden certainly would be on them to establish that the labor was labor properly performed in pursuance to these two contracts. We paid some and have not paid all, and they have to prove what they are trying to recover is labor performed pursuant to these contracts.

BY THE COURT:

Q. Upon whose payroll did you make up your bills? You made up your bills from payrolls submitted to you, did you not? A. Yes.

Q. Who prepared those payrolls? A. Our timekeepers.

Q. Your timekeepers? A. And Crawford's. They were paid by the Perth Amboy Dry Dock Co.

Q. I understand that. You were to pay, under this contract, you were to pay for the labor, ac-

cording to the rolls that were given to you by timekeepers? A. Yes, sir.

Q. Whose timekeeper did you make up your bill from? A. The bills were going over by our bookkeeper and Mr. Crawford's timekeeper and our timekeeper.

Q. Who actually gave you the time rolls? A. Mr. Patten.

Q. Whom did he represent? A. Crawford.

Q. Crawford? A. Patten and Ackerman both.

Q. Represented Crawfords? A. Yes.

Q. And it was from Crawford's timekeeper that you claim— A. And our bookkeeper got the time from them and checked it. As far as I know the time always agreed.

Q. What do you mean agreed? Who agreed? A. With the payrolls, with the time given in by the timekeepers.

Q. I do not understand you. Were there two timekeepers? A. Yes, sir.

Q. Did the Perth Amboy Dry Dock people have a timekeeper and the defendants also have a timekeeper? A. No. They were both employed by Crawford.

Q. Whom do you say agreed, both of those? A. Patten and Ackerman both.

Q. Both of whom were employed by Crawford? A. Yes, sir.

Q. And your charges were made from those time rolls, were they? A. Yes, sir.

Q. All right.

The Court: Go on.

Axel Olsen. Called by Plaintiff. Cross.

BY MR. MCCARTER:

Q. Am I to understand, Mr. Olsen, following up his Honor's questions, that Crawford & Company had two timekeepers on that job? A. That is what I took it.

Q. Isn't it a fact that Mr. Ackerman was Crawford's timekeeper and Mr. Patten, the other man, kept the time for the Perth Amboy Dry Dock Company and reported the time to them, to Mr. Pearce? A. Yes, but they were both in Crawford's employ then.

BY THE COURT:

Q. I know, but whom did they represent? A. Mr. Patten reported his time to Mr. Pierce.

BY MR. MCCARTER:

Q. And Mr. Pierce was your bookkeeper? A. Yes, Mr. Pierce.

Q. And Mr. Ackerman reported his time to, you don't know? A. But he checked it up with—

Q. I understand that. And the payments were made up in your particular office either by you or the men under you and on the reports that came in from Mr. Patten to Mr. Pierce? A. Yes.

Mr. McCarter: Now, I would like to have my question to which an objection was made read. There has been a change of stenographers.

(Last question read by stenographer as follows):

"Q. And this $17.07 represents the time of these laborers during the period that the crane was off the track? A. Yes, sir.

"Q. Now, Mr. Olsen, will you please find on Exhibt P-14 the item or items going to make up the $13.60 labor making wrenches? A. February 19 and 20, 8½ blacksmith, and 8½ hours helper, $8.50 and $5.10, makes $13.60."

Q. 8½ hours blacksmith on tools, it is entered, and 8½ hours helper on tools? A. Yes.

Q. And the blacksmith and helper were employees of the Perth Amboy Dry Dock Company, weren't they? A. Yes.

Q. They weren't the men who were on the pay roll of Crawford & Company? A. No.

Q. Do you know what those wrenches were for? A. No, I understood they were special wrenches.

Q. Do you recall that they were wrenches to be used in removing nuts on the deck boats of the "Philippines," or don't you know? A. I do not know that.

Q. Now, will you please point out on Exhibit 14 the item or items that go to make up labor on steam line, $34.54?

Mr. Haight: Mr. O'Hagen says that that was correct, that they were made to remove the bolts, and that will be stipulated.

Mr. McCarter: Yes, thank you.

A. April 9, 2 hours labor at 80c, $1.60; 23 hours labor, $16.56; 16 hours labor at 56, $8.96, and 2 hours labor 35, 70c. Then comes April 19, 4 hours labor at 56, $2.34, and April 17, 8 hours labor at 56, $4.48. I believe that makes $34.54.

Q. Now, will you point out in the same way the items on Exhibit P-14 that go to make up, "use of steam 19½ hours, $117"? A. April 9, 7 hours steam at $6, $42; and 15th, 2 hours steam at $6, $12.

Q. Maybe I can stop you. Are they all labeled steam? A. Yes.

Q. Very well. You need not recite them. A. With air guns, same thing.

Q. Air pump, is it called? A. Air pump.

Q. Air gun? A. No, that is repairing air guns, July 16, 18 hours air gun at $2, $36.

Q. On July 16? A. Yes.

Q. Where does that appear on the "Black Arrow"? A. Same date, 12 hours labor. That covers one day.

Q. The charge was made on that day for work done on several days? A. Yes.

Q. What is this air pump that is charged for in this item you mentioned last? A. Well, that was a pump that was given into me as an air pump.

Q. I beg your pardon? A. A pump used by compressed air. Mr. Preacher can explain to you what that is.

Mr. McCarter: I think that is all.

REDIRECT EXAMINATION BY MR. CAREY:

Q. Mr. Olsen, when was the bill for use of the plant which was first objected to, rendered to the defendant? A. The last week in January.

Q. Last week in January? A. 1924.

Q. And when was it paid? A. Thirty days after. About thirty days afterwards.

Q. Was that the first objection that was made to your charge for use of plant? A. Yes, sir.

Axel Olsen. Called by Plaintiff. Recross.
Charles D. Snedeker. Called by Plaintiff. Direct.

Q. Did you as a matter of fact pay the laborers for the work ordered by Bernard, which was specified under the heading "Miscellaneous work ordered by Bernard"? A. Yes.

Q. And did you in fact pay the laborers for the time when the crane was off the track? A. Yes, sir.

Q. And did you as a matter of fact pay the laborers who were delayed by failure of the air people to get the air there exactly on time? A. Yes.

Q. Now, all you know as to the basis for these deductions is what appeared on the bills when they were returned from Crawford & Company, isn't it? A. Yes.

RECROSS EXAMINATION BY MR. MCCARTER:

Q. The bills were not supposed to be paid until the expiration of 30 days, were they, or at least they had 30 days in which to pay these bills? A. 30 days.

Mr. McCarter: That is all.

CHARLES D. SNEDEKER, a witness produced on behalf of the plaintiff, being duly sworn, according to law, on his oath saith:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Snedeker, where do you reside? A. Perth Amboy, New Jersey.

Q. How long have you lived in Perth Amboy? A. About 31 years.

Charles D. Snedeker. Called by Plaintiff. Direct.

Q. How long have you lived in Middlesex County? A. All my life.

Q. I suppose you are too modest to say how long that is? A. I can say it if it is necessary.

Q. Do you occupy any position with the Perth Amboy Dry Dock Company? A. I am the secretary and treasurer.

Q. How long have you been secretary and treasurer? A. 31 years.

Q. How long ago was the Perth Amboy Dry Dock Company formed? A. 1887.

Q. How large a proportion of the stock of the Perth Amboy Dry Dock Company do you own? A. I own half of it.

Q. Who owns the other half of it? A. Mr. W. Parker Runyon. That, of course, provides for our wives having a share or two apiece in order to comply with the law in voting.

Q. Have you and Mr. Runyon been in business under the Perth Amboy Dry Dock Company since its formation? A. No. We took hold of it under the re-organization in 1894.

Q. You and he have operated it since that time? A. Ever since.

Q. What kind of business does the Perth Amboy Dry Dock Company do? A. Building and repairing of boats.

Q. Do you know whether Mr. Runyon is unable to attend this trial? A. He is not able to attend.

Q. Why? A. Because he is ill, confined to the house.

Q. How long has he been ill? A. About ten days.

Q. Do you recall a proposition being submitted by Mr. Meurer to your Mr. Runyon for the scrapping of the Philippines and the Black Arrow at your plant? A. Yes.

Q. You signed the contracts, didn't you? A. I did, under agreement with Mr. Runyon, as a matter of convenience; we talked it over and I said, "Well, if you are satisfied, I will sign it."

Q. In signing those contracts were you influenced at all by and statements made to you as to the time that the vessels would occupy your plant?

Mr. McCarter: I object.

The Court: Objection sustained.

Mr. Haight: I thought that was the same question.

The Court: You are asking him if he was influenced by that. It brings in that question of representation. I have held that if there was anything said about the time, that is evidential in determining what was a reasonable time, and it may be for some other reason, but your pleadings do not allege damages because of false representation.

Mr. Haight: No, but I thought that all went to the question of reasonable time. They make a proposition to us, at least our man has so stated; and it also goes to the question of damages, because these men were influenced, in submitting the price, or taking the price that they agreed to take, because of the fact that it was represented to them that—

Mr. McCarter: I do not think Judge Haight ought to make a speech what was represented.

Mr. Haight: I have stated it a dozen times.

Mr. McCarter: I know you have.

The Court: I will permit you to ask him if there was anything said by—

Mr. Haight: I am going to come to that in just a moment, but I wanted to make it clear

first, what this winter proposition of his was, for the purpose of affecting damages. I do not want them to argue here they used these two figures for the scrapping of these vessels, in which they were to use the plant, and to use the gas and air at the same time, and now they are asking us almost as much for the wharfage of the vessels alone during the time they were thereafter the first of April. Do you see my point?

The Court: Yes.

Mr. Haight: Do I understand your Honor permits the question now?

The Court: No, I do not. You will have to reframe it. You may take an exception. He may state the facts, without any evidence as to what moved him in making the contract. That is a matter possibly for the jury to pass on.

Q. Now, did you have, before these contracts were signed, a conference with Mr. Crawford? A. Yes.

Q. Was that a personal conference or telephone conference? A. Telephone.

Q. During that conference did Mr. Crawford say anything as to the time that these vessels would be at the plant?

The Court: Objection overruled.

Mr. McCarter: Prays exception.

Mr. McCarter: I object as tending to vary a written instrument.

The Court: You may take an exception.

A. Do you want me to answer the question, or tell you what the conversation was?

Charles D. Snedeker. Called by Plaintiff. Direct.

Q. I ask you to answer my question always? A. I have forgotten what it was already.

(Question repeated by stenographer.)

A. He did.

Q. What did he say?

Mr. McCarter: Same objection.

The Court: Yes, it goes to all this line.

Mr. McCarter: Yes, sir.

Q. What did he say, Mr. Snedeker? A. He said the job would be completed in three months.

Q. Did that influence you in signing the contracts? A. It did.

Q. Would you have signed them otherwise?

Mr. McCarter: I object to that as absolutely immaterial and incompetent.

The Court: Objection sustained. He said it did influence him in signing this contract.

Q. In what way? Why did it influence you?

Mr. McCarter: I object.

The Court: I will allow that.

Mr. McCarter: Prays exception.

The Court: Yes, certainly.

A. Because the term of three months was to begin about the 1st day of January and that would use up the dullest period of the year when our plant was used the least for our own purposes.

Q. What is the busy season of the Perth Amboy Dry Dock Company? A. From the 1st of April to the 1st of November.

Q. Is your plant busy during the months from November to April? A. That is what we call our dull season.

Q. Did you remain around the plant after the signing of these contracts any length of time? A. Why, I was at the office off and on until I sailed for Europe on January 16.

Q. When did you come back? A. I reached him on April 19, 1924.

Q. When you went they were scrapping the vessels? A. Yes.

Q. Who was in charge for Crawford? A. Mr. Bernard.

Q. And was there anybody under Bernard at that time, or don't you recall? A. I presume there was.

Q. You don't know. When you got back in April what was the condition of the vessels? A. They weren't nearly completed.

Q. Was the work progressing on them? A. No, not to any extent.

Q. Exactly what do you mean by that? A. Well, they weren't employing very many men for that sized job.

Q. Do you know what kind of steel they were cutting at that time, what sizes, or don't you know? A. Not from personal knowledge.

Q. After you came back were you conversant with the correspondence that took placee between Crawford & Company and the Perth Amboy Dry Dock Company? A. Yes.

Q. I show you a letter dated April 16 purporting to have been written by H. L. Crawford & Company under date of April 16 and ask you whether you saw that, whether it was received by the Perth Amboy Dry Dock Company. A. Yes.

Mr. Haight: I think I ought to offer the letter to which it is replying in evidence. That seems to be the original.

Mr. McCarter: I will consider it is produced by us today.

Mr. Haight: I offer in evidence a letter dated March 29 written to H. L. Crawford & Company by the Perth Amboy Dry Dock Company, signed W. Parker Runyon, and also letter written by H. L. Crawford & Company to the Perth Amboy Dry Dock Company under date of April 16.

(Letter dated March 29 entered in evidence and marked Plaintiff's Exhibit P-17.)

(Letter dated April 16 entered in evidence and marked Plaintiff's Exhibit P-18.)

Mr. Haight: Now, will you produce, or I will use a copy of the letter written on April 24.

Mr. McCarter: Use the copy.

Q. I show you what purports to be a copy of a letter written by the Perth Amboy Dry Dock Company to H. L. Crawford & Company under date of April 24, 1924, and ask you if that letter was sent. A. Yes.

Mr. Haight: I offer that in evidence.

Mr. McCarter: No objection.

(Letter dated April 24 entered in evidence and marked Plaintiff's Exhibit P-19.)

Mr. Haight: Now, there is another letter written, Exhibit 8, to your answer in the chancery suit.

Mr. McCarter: We produce a copy, for some reason or other. I don't know how we got that.

Charles D. Snedeker. Called by Plaintiff. Direct.

Q. I show you another letter written by the Perth Amboy Dry Dock Company signed by W. Parker Runyon under date of April 26, and ask you if that was sent. A. Yes.

Mr. Haight: I offer that in evidence.

Mr. McCarter: No objection.

(Letter dated April 26 entered in evidence and marked Plaintiff's Exhibit P-20.)

Q. I show you a letter written by—purporting to be written by W. Parker Runyon, president of the Perth Amboy Dry Dock Company, to H. L. Crawford & Company under date of April 29, 1924, and ask you if that letter was sent by you. A. Yes.

Mr. Haight: I offer that in evidence.

(Letter dated April 29 entered in evidence and marked Plaintiff's Exhibit P-21.)

Q. I show you letter purporting to be written by H. L. Crawford & Company to Perth Amboy Dry Dock Company under date of May 5, 1924, and ask you if you received that. A. Yes.

Mr. Haight: I offer that in evidence.

(Letter dated May 5 entered in evidence and marked Plaintiff's Exhibit P-22.)

Q. I show you letter produced by the defendants, written by W. Parker Runyon to H. L. Crawford & Company under date of April 12, 1924, and ask you if that was sent, and if you know about it. A. I wasn't in this country the day that was written. I arrived home on the 19th of April, but I can identify Mr. Runyon's signature.

Charles D. Snedeker. Called by Plaintiff. Direct.

Mr. Haight: I offer that in evidence.

(Letter dated April 12, 1924, entered in evidence and marked Plaintiff's Exhibit 23.)

The Court: Is there any objection to that last letter?

Mr. McCarter: No objection.

(Letters read to the jury by Mr. Haight.)

Mr. Haight: I offer in evidence two letters referred to in Exhibit P-21, dated respectively April 25, 1924, and April 26, 1924.

(Letter dated April 25, 1923, entered in evidence and marked Exhibit P-24.)

(Letter dated April 26, 1924, entered in evidence and marked Exhibit P 25.)

(Letters read to the jury by Mr. Haight.)

Q. Now, Mr. Snedeker, in this letter Exhibit P-23, reference is made to the scrap iron deposited on the upland in front of dry dock No. 5. Did you see that when you got back? A. Yes.

Q. Just explain to the jury what the condition was? A. The upland in what we call our No. 2 plant was all cluttered up with tanks and parts of the houses of the Black Arrow, and material that seemed to me ought not to have been put there.

Mr. McCarter: I move to strike that out.

The Court: That is stricken out.

Q. How long did it remain there after you got back? A. It remained there until after the ships went away.

Q. I show you a photograph and ask you if that is a photograph of that material that was on the upland? A. It is.

Q. I show you another photograph and ask you if that is a photograph of the material that was on the upland referred to in that letter? A. Yes.

Q. Both of those photographs show it? A. Yes.

Q. One was taken from one place, and the other from another? A. Yes.

Q, Did the presence of that stuff there interfere with your business at all? A. Yes.

Q. In what way? A. Why, it was almost impossible for us to get across our property.

Mr. Haight: I offer these two photographs in evidence. They were in the chancery suit.

Mr. McCarter. No objections.

(Photograph entered in evidence and marked Exhibit P-26.)

(Photograph entered in evidence and marked Exhibit P-27.)

Q. In the letter of April 26th, Exhibit P-20, Mr. Runyon wrote that from then on you would begin to charge wharfage of each ship $100 per day. Did you have anything to do with the writing of that letter? A. Yes.

Q. Why did you not in that letter state that you would charge wharfage from April 1st? A. At that time we thought that the matter was going to be adjusted in a friendly way, and that the whole affair could be settled, and we wanted to be reasonable, and we fixed it at that date. Later, I think, when we found that there was going to be a lawsuit and a controversy, we concluded that we were entitled to a wharfage from a date before that.

Q. Now, has the Perth Amboy Company ever let its pier for wharfage purposes alone? A. No.

Q. Do they let the use of the piers for any other purpose than in connection with work to be done by the company on vessels to be moored there? A. No.

Q. How much of the work done by the company during the year would you say is done between April and November? A. I should think between 75 and 80 per cent.

Q. You know where these vessels were moored in your plant, of course? A. Yes.

Q. What have you to say about the relative usefulness in size of these piers as compared with the other piers in your plant? A. They were our most important piers.

Q. How many piers have you there? A. Six.

Q. How many dry docks? A. Five.

Q. All the same size? A. No.

Q. How do they compare in size? I mean by that, have you a certain number of size, or one large and a number of small ones, or what? A. We call our number 5 dry dock the big dock. It is the largest of all. The other four are considerably smaller.

Q. On the dock at which the "Philippines" lay what had been the company's regular charge for the use of the derrick?

Mr. McCarter: Well, now, wait a minute. I object to that. I think the use of the derrick is immaterial and incompetent as a measure of the damages claimed.

Mr. Haight: It is one of the elements, if your Honor please. The derrick, you will recall, was on that pier, and the company was in the habit of charging a certain price for the use of that derrick whenever vessels were moored in there for repair purposes, and it entered into

the amount to be awarded by the jury for wharfage of that vessel at that pier.

The Court: I feel that in order to determine what was the value of wharfage, if the plaintiff is entitled to anything at all, that the value of the things that went with the wharf itself are proper evidence. I will allow it.

Mr. McCarter: Your Honor will allow me an exception.

(Last question read by stenographer.)

The Court: Is that the way to prove the value of the derrick? Do you object because of the method of proof?

Mr. McCarter: I object, because the value of the derrick has no bearing at all, and I object as to proving the value of the derrick, both things. In other words, my answer to your Honor' last question is yes.

Mr. Haight: I don't see how we can prove it any other way.

The Court: Well, he might say that from his experience he knows the market amount of the charge for use of such a derrick.

Mr. Haight: I, of course, can ask him that, but it seems to me a better method of proving what the value of the derrick was to this concern, because it is that value after all that we have to deal with here, if they were charging a certain sum for the use of that derrick and the people were paying it.

The Court: But the trouble is that you may say the value was so and so and that could not met by any other evidence. However, I will allow it. Go on.

(Last question read by stenographer.)

Charles D. Snedeker. Called by Plaintiff. Direct.

A. $10 an hour.

Mr. McCarter: Did I get an exception on that question?

The Court: Yes, you did.

Q. $10 an hour. Was that a fair and reasonable price for the use of a derrick of that size? A. Yes.

Q. Is that the kind of charge charged by shipyards in New York harbor? A. Yes, that is the way we make it up.

Q. You make it up by what other people are charging? Is that what you mean? A. Yes.

Q. Now, on the dock where the "Black Arrow" lay, the dock at which she laid there was a locomotive crane? A. Yes.

Q. How much do you charge for the use of that locomotive crane?

Mr. McCarter: The same objection.

The Court: The same ruling, and an exception allowed.

A. $7 an hour.

Q. Is that a fair and reasonable price? A. Yes.

Q. Is it the price that is charged generally by shipyards throughout New York harbor? A. Yes.

Q. Did the presence of the "Black Arrow" interfere in any financial way with the company in its use of the dry dock number 5, which lay alongside of that pier? A. Yes.

Q. How? A. In the first place, she deprived us of a berth in which to moor a vessel that was about to go on the number 5 dry dock. In the second place, if we are about to place a vessel on the number 5 dry dock, it is impossible to lay her across the

end of the pier because the "Black Arrow" projected about thirty feet beyond the end of the pier, and we had no pier on the other side of the dry dock at which to put on a prospective vessel, and to wharf her around from that direction which, of course, meant in the case of a large vessel the expense of tug hire.

Q. Now, at the berth where the "Philippines" lay you ordinarily had a number 3 dry dock, didn't you? A. Yes.

Q. And, of course, when the "Philippines" came there you had to move that dock? A. Yes, sir.

Q. Where did you move it? A. We moved her over to the extreme south end of our plant to a temporary berth, a distance of 265 feet, and operated her there by an extension of a temporary steam line, to run her pumps, and not only did we have condensation of steam for all that distance, which made us burn considerably more coal, but at the berth where she lay temporarily there was not sufficient water to hold the boat at any state of the tide, and sometimes we had to wait three or four hours for the tide to rise and put a boat on. Furthermore, she was at what we call our tug boat dock, and in her proper position she was near the machine shop, saw-mill, and blacksmith shop; but in the temporary location she was so far away from the base of supply that it made it very much more expensive for time going and coming for men and for supplies. Furthermore, she occupied, in her temporary berth, a space which deprived us for a berth for a large vessel, and we depended on those berths for large vessels laying up, that were not going on the dry dock at once, upon which we made top repairs.

Q. You have stated that you would charge $100 a day for wharfage of these vessels? A. Each.

Q. Did you render bills for them? A. Yes.

Q. Were those bills paid? A. No.

Q. They were returned each time with the statement that they were not in order, weren't they? A. Or words to that effect.

Q. Now, in fixing this charge of $100, did you have any part in that? A. Yes.

Q. Do you consider that a fair and reasonable charge? A. I do.

Q. What would you say as to the use of all of the company's piers during the season from April 1st to November 1st?

Mr. McCarter: I object to that question as absolutely immaterial.

The Court: I do not know what it means, Judge.

Mr. Haight: I do not believe anybody does. I think the witness is having difficulty with it.

Q. I mean by that, Mr. Snedeker, this: As a general rule are all the piers of the company used during the busy season from April until November? A. Yes.

Q. Could large jobs be handled at any other piers than these two piers at which the Black Arrow and Philippines lay? A. Not to as good advantage.

Q. Why? A. Because the other piers are not as large.

Q. About the derrick and railway, do they have anything to do with the availability of those piers for large work? A. Yes. The locomotive crane was put absolutely out of business by the Black Arrow, and where the Philippines laid, the stationary derrick, which has a boom about 90 feet up in the air—

a spar, I should say, the boom only swings on the side of the pier where the Philippines was moored, and although the other side of that pier was partially available, unfortunately the boom did not reach over that side. We planned the boom to pick up weights on the side upon which the Philippines was tied.

Q. You did not have the locomotive crane until these vessels came in, did you? A. No.

Q. She was purchased for that? A. Yes.

Q. You did have the railroad track there, though? A. Yes.

Q. Do you know what date these vessels were taken out? A. One of them was taken out the 31st of July and the other August 2nd.

Q. Do you know which was taken out which date? A. You don't like me to refer to any memorandum? It is a little confusing to remember those two names, that is all.

Mr. McCarter. Mr. Mornay says the Philippines went out first and the Black Arrow second.

The Court: What were those dates?

Mr. Haight: July 31st for the Philippines, and August 2nd for the Black Arrow.

Q. I show you four photographs and ask you what they portray, taking this one I hand you first? A. This photograph shows a picture of the Black Arrow on July 12th, taken from the wing of No. 5 dry dock, from the shore end.

Q. Looking down the pier? A. Yes.

Q. And the Black Arrow is the hulk lying against the pier? A. Yes.

(Photograph entered in evidence and marked Exhibit P 28.)

Q. Now, take this photograph, what does that show? A. A picture of the Black Arrow taken when—taken near her stern, looking towards the shore, from the wing of No. 5 dry dock.

Q. And it shows the pier alongside? A. Yes.

Mr. Haight: I offer that in evidence.

(Photograph entered in evidence and marked Exhibit P-29.)

Q. What date? A. July 12, 1924.

Q. I show you another photograph and ask you what that is? A. The Philippines.

Q. Same date? A. Taken on the same date, from the shore end.

Mr. Haight: I offer that in evidence.

(Photograph entered in evidence and marked Exhibit P-30.)

Q. I show you another photograph and ask you what that is? A. The uplands in what we call our plant No. 2, same day.

Q. Does that show the locomotive crane? A. Yes.

Q. Which was on the pier where the Black Arrow was moored? A. Yes.

Mr. Haight: I offer that in evidence.

(Photograph entered in evidence and marked Exhibit P-31.)

Q. Mr. Snedeker, do you know of your own knowledge whether or not any instructions were given to

one of your salesmen, one of your solicitors of business, not to solicit business on account of the presence of these two vessels in your yard?

Mr. McCarter: I object to that as incompetent, and not the basis for damages, in any event. Also as irrevelant.

Mr. Haight: It show the damages to which we are put by these vessels, if we can show that that was the fact. They had to stop soliciting business.

Mr. McCarter: It would not be any damage unless he could also show that he would have gotten business if he had solicited it.

The Court: Do you want to insist on that question?

Mr. Haight: I will let it go.

(Adjourned until Monday, January 11, 1926, at 10 A. M.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT.

December Term, 1925.

PERTH AMBOY DRY DOCK CO.

vs.

HARDEN L. CRAWFORD, *et al.*, as H. L. CRAWFORD & CO.

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the eleventh of January, A. D. 1925, at 10 A. M.

APPEARANCES:

MESSRS WALL, HAIGHT, CAREY & HARTPENCE,
WILLIAM H. CARY, Esq.,
THOMAS G. HAIGHT, Esq.,
JOHN E. TOOLAN, Esq.,
Counsel for Plaintiff.

MESSRS. MCCARTER & ENGLISH,
GEOGRE MCCARTER, Esq.,
CLIFFORD I. VOORHEES, Esq.,
PARKER SILZER, Esq.,
Counsel for Defendants.

CHARLES D. SNEDEKER, called by the plaintiff, and having been previously duly sworn, resumed the stand on on his oath, saith:

DIRECT EXAMINATION (CONTINUED) BY MR. HAIGHT:

Q. Mr. Snedeker, will you point out by the blueprint exactly where the upland was that was occupied by the scrap taken from the two vessels, which scrap you identified on the photographs the other day? In this place where I mark a circle in red? A. Yes.

Q. Is that right? A. Yes.

Q. Now, will you tell the jury how, if at all, that interfered with your regular business? A. In the regular course of our business we sometimes have vessels tied up to a wharf here (indicating).

Q. Do you mean dry dock No. 5? A. At the north side of dry dock No. 5, there were a few spiles along there, and small vessels and small tug boats could tie to those spiles, and then over on this side we had vessels tied, and our workmen on the way to these vessels would be obliged to cross this property here (indicating on map).

Q. Well, could they cross it? A. Well, not freely. It was all lumbered up with this stuff that came out of the vessels.

Q. I show you a letter written by the Perth Amboy Dry Dock Company, Mr. Runyon as President, to the Crawford Company, dated May 14, 1924, and ask you if you recollect that letter having been sent? It is produced by the other side. A. Yes.

Mr. Haight: I offer this letter in evidence. It is an answer to one of the others that are already in. I neglected to offer it the other day.

(Letter dated May 14, 1924, entered in evidence and marked Exhibit P-32.)

(Portion of the letter read to the jury by Mr. Haight.)

Mr. Haight: That is all.

CROSS EXAMINATION BY MR. MCCARTER:

Q. Mr. Snedeker, am I to understand that this material which lay on the uplands, occupied the upland across which the tracks ran? The railroad tracks? A. No.

Q. Well, will you look at this map here and see if it has not been so marked? A. Yes.

Q. Is that a mistake? A. I should say that it would take in as far as the railroad tracks. They didn't throw the stuff on the tracks.

Q. They didn't throw the stuff on the tracks? A. No.

Q. The tracks were left clear? A. Yes.

Q. And they didn't throw the stuff where the garage and mould loft are there, did they? A. Well, in a general way it was all over that propery, Mr. McCarter.

Q. Yes, but it was not occupying the ground which the garage and mould-loft occupied? A. No. The garage occupied that.

Q. And the same is true as to the storehouse? A. Yes.

Q. And the iron shed? A. Yes.

Q. A little building to the left of the garage? A. Yes.

Q. So this circle as drawn by Judge Haight to indicate the place where the material lay on the upland is not quite accurate, as drawn on the blueprint, is it? A. Not quite.

Q. You identified some photographs, Mr. Snedeker. Were they all taken on the same day? A. Yes.

Q. And what day was that? A. July 12th.

Q. 1924? A. 1924.

Q. You had a conversation over the telephone with Mr. Crawford, which you testified to on your direct examination, in which something you say was said by him about the duration of the job, the length of time it would take? A. Yes.

Q. Do you recall what day of the month that was? A. 18th of December, 1923.

Q. And it was after Mr. Meurer had left Perth Amboy to go to New York with a written proposition, wasn't it? A. Yes.

Q. And the only change between that proposition and the one that was signed and made the contract was in the question of the compensation insurance, wasn't it? A. Yes.

Q. What time of day was that conversation with Mr. Crawford? A. It must have been after 4:30.

Q. Well, now, Mr. Snedeker, if that conversation with Mr. Crawford was, as you say, after the proposition was submitted, will you tell us how anything Mr. Crawford said could in any way influence you in the price you quoted in the contract? A. Mr. Muerer said that Mr. Crawford—Mr. Muerer talked to me on the telephone. I remember distinctly because I was called out of a directors' meeting at the First National Bank, and that doesn't start until half past four. We had two wires in the yard, and they switched Mr. Muerer over to me. Mr. Muerer said that Mr. Crawford didn't like the way we fixed the compensation covering employers' liability on the labor. He objected to having it done by a percentage and wanted it made a fixed rate, fixed sum,

and Mr. Muerer said, "How would it be if you would talk to Mr. Crawford about this?" I said, "Put him on." So I talked to Mr. Crawford and we discussed the insurance feature of the contract, and I told Mr. Crawford that I thought it was the fairer way to set it by a percentage on the labor because our insurance was fixed on the yearly payroll. Mr. Crawford replied that this job would be finished in three months, and we further discussed it and left it open. It wasn't finally settled on that day.

Q. Well, now, I don't still understand, Mr. Snedeker. I don't want to repeat my question. Why if it is a fact as you have already said that the only only change in the price quoted for either vessel between the proposition as it was when Mr. Muerer had it with him and your Mr. Crawford had this talk, and the proposition as actually signed, was in the matter of compensation insurance, I ask you then how can it be that anything Mr. Crawford said to you over that telephone influenced you in the price quoted. A. You refer to the price of the compensation or the price of the entire contract?

Q. I refresh your recollection and maybe mine a little bit by the question that was asked you on direct examination by Judge Haight. You were asked by Judge Haight: "Q. In signing those contracts were you influenced at all by any statements made to you as to the time that the vessels would occupy your plant?" and you answered—that is not the right question.. That was objected to and the objection sustained. I will have to read to you several questions to give you the train of thought. "During that conference did Mr. Crawford say anything as to the time that the vessel would be in the plant?" You said, "You want me to answer that question or

tell you what the conversation was?" "Q. I ask you to answer my question always." "A. I have forgotten what it was already."

"(Question repeated by stenographer."

You said, "He did." "Q. What did he say? What did he say, Mr. Snedeker? A. He said the job would be completed in three months." Now here is the important one. "Did that influence you in signing the contracts?" And you answered, "It did." Now, in view of the fact, in which you have said, that the conversation took place after the price with the exception of compensation insurance was fixed, I ask you how did anything Mr. Crawford say influence you in quoting that price. A. That evening we held a conference at Mr. Runyon's home. Mr. Runyon and Mr. Preacher and Mr. Muerer and I talked the matter over, and I reported the conversation that I had had with Mr. Crawford, and it was agreed that the amount of compensation could be added as a lump sum to fix the price of the contract, and in further discussion we thought that inasmuch as Mr. Crawford had assured me, and we had other assurances that the job would be finished in three months, that it would be a contract that we ought to take.

Q. Well, it didn't influence you on anything except the amount to be quoted for compensation insurance, did it? A. Yes, I have just told you that in the conference it influenced us in taking the contract. The contract—we didn't agree to take the contract until that conference that evening at Mr. Runyon's home.

Q. Hadn't Mr. Muerer the day before to the day that this telephone conversation took place taken

with him two written propositions which were offered to do this work and to have your plant used already for Crawford & Company to sign? A. He had them ready to sign, but they had not been accepted by either side.

Q. You want us to understand now that those were only tentative so far as you were concerned? A. Yes, we were negotiating.

Q. You were negotiating. And you want us to understand now that if Mr. Crawford had not raised this objection about compensation insurance that those propositions as made were not firm offers to be accepted, if acceptable? A. You want me to guess what I would have done in case certain things had not happened?

Q. If it is a matter of guess that will answer my question. Is it a matter of guess? A. If the transaction had not occurred that did occur I don't know what I would have done.

Q. Then, you want us to understand that those papers which Mr. Muerer took into New York to submit to Crawford & Company were not firm and *bona fide* offers from your company? A. Why, I don't say why they weren't firm and *bona fide* offers.

Q. And you say they were firm and *bona fide* offers? A. I should think so.

Q. The only change in them and the contracts that were accepted was in the price quoted for the use of the plant, wasn't it? A. Yes.

Q. And the only change in that price quoted for the use of the plant was with respect to this compensation insurance, wasn't it? A. Yes.

Q. Well now then, if as you say there were firm offers, and if as you say, and the fact is, your talk with Mr. Crawford was after these first offers had been submitted, and if as you say the only change

between these offers and the offers which were signed and were made the contract, was in the quotation for compensation insurance, I ask you to tell us again, how can anything that Mr. Crawford said have any influence on you, or on your company, except so far as the compensation insurance was concerned? A. We made the offer with the compensation insurance fixed on a percentage rate, and when the offer was not accepted, why, we upset the offer until we could have another conference.

Q. And that is, so you say, what Mr. Crawford said had some further effect than upon the compensation insurance? A. Yes.

Q. And yet you made no change in the offer from the first conditions to its final conditions, except with respect to the compensation insurance? A. Yes.

Q. And you say that the offer as submitted the first time was a firm and bona fide offer? A. Yes.

Q. What was the figure you put in the final contract so far as liability insurance was concerned? A. As near as I can remember it was about $800.

Q. If your understanding had been that the ships were going to be there longer than three months, you would have increased that $800, isn't that so? A. I should think so.

Q. Is there any doubt about it at all? A. The liability insurance—

Q. I would like yes or no to that? Is there any doubt about the fact that if those ships were going to be there more than three months you would have quoted a sum in excess of $800, so far as liability insurance was concerned?

Mr. Haight: I object to that.

A. Liability insurance was not based on the time. It was based on the amount of labor. I didn't think the lump sum that they wanted to pay was sufficient, but the others appeared to think that that would cover the amount of labor, and there is where I was influenced by the length of time. They thought, that the amount of money ought to be enough to cover the labor and inasmuch as it was represented to me that the job was only to be a short one, I said, "Well, if that is the way they put it, let it go that way." There is where I was influenced by the length of time.

Q. Then this influence which you refer to was influence peculiar to you and not to your associates? A. You might put it that way.

Q. The fact remains, doesn't it, that the offer was made the day before the day of the telephone conversation, and the difference between that offer and the offer that was accepted, the only difference was in this compensation insurance, isn't that a fact? A. The offer we made was not accepted.

Q. And isn't the fact that the only difference between that offer and the one that was accepted is with respect to the compensation insurance? A. Yes.

Mr. McCarter: I think that is all.

REDIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Snedeker, when the offer was taken down by Mr. Meurer to Mr. Crawford, before the question of the compensation insurance arose, did Mr. Meurer tell you whether or not there had been any representations made to him as to the time the vessels were to remain in the plant?

Mr. McCarter: I object to that. It is neither redirect examination, nor is it competent or relevant.

The Court: I overrule the objection. You may take an exception.

A. Yes.

Q. What had he said to you?

Mr. McCarter: I object to that on the same ground.

The Court: I will allow it. You may take an exception.

A. He said that the job would take three months.

Q. And you knew that before you talked with Mr. Crawford? A. Yes.

Q. There was some question asked you about if it had not been for this representation of Mr. Crawford's whether you would have entered into the contract in the form that it was, some something or other to that effect, I have forgotten the exact language. Would you have entered into the contract at all, had you not been assured that the vessels would be out in three months?

Mr. McCarter: I object to that as not redirect examination and incompetent and irrelevant.

The Court: Objection overruled. You may take an exception.

A. No.

Mr. Haight: That is all.

PLAINTIFF RESTS.

MOTION FOR NON-SUIT.

Mr. McCarter: I wish to move for a non-suit on certain of these counts. I, of course, concede that on some of them it is a matter not in the proper form for this motion.

I move for a non-suit on the seventh count, which is a count in which the plaintiff demands a certain sum for cutting up the boilers, starting with an allegation that there was a special contract made that the boilers on the Black Arrow should be cut up, if a court of competent jurisdiction should thereafter decide that the plaintiff was not required by the contracts to furnish gas and oxygen for cutting up the boilers, and alleging that the plaintiff did furnish gas and oxygen costing $792.66, and that it was not required by the contract to furnish gas and oxygen. I move for a non-suit on that count on the ground that there is not the slightest evidence in the case that the plaintiff was not required by the contracts to furnish gas and oxygen for cutting up the boiler of the Black Arrow.

I move for a non-suit on that count in which they claim $2000, that has been reduced by the evidence to $800 and something, their claim has, for unpaid labor in connection with the scrapping of these ships. They describe it as the unlawful deductions made by us from their bills. I move for a non-suit on that on the ground that their claim is for labor performed pursuant to the contracts in suit, and that they have not made any proof whatsoever that the labor has been performed or that it is pursuant to the contracts in suit.

I also move for a non-suit on the first and second counts, where they claim damages for the delay in getting out the ships, though wharfage claim, on the ground that there is no evidence whatsoever to sustain their contention that the ships were in the plant more than a reasonable time; their only evidence being alleged statements as to what was expected, all of which evidence I have objected to, and I contend that that is not sufficient evidence of the reasonable time in which the scrapping should be completed.

Mr. Haight: It is rather unusual practice to me, but one to which I shall not object, to move to non-suit on individual counts of the complaint. I would assume that those things would be taken care of in a charge to the jury. As to the first one—

The Court: I will not take up time now. The motions are denied and exceptions allowed.

WALLACE H. ACKERMAN, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Where do you live, Mr. Ackerman? A. Elizabeth, New Jersey.

Q. Are you employed by the defendant in this case? A. No, sir.

Q. Were you employed by them at one time? A. Yes, sir.

W. H. Ackerman. Called by Defendant. Direct.

Q. Are you employed by a corporation in which they are interested now? A. That is right.

Q. Were you employed by these defendants down at this scrapping job at the plaintiff's plant at Perth Amboy? A. I was.

Q. In what capacity were you employed? What was your job? A. I represented H. L. Crawford Company as a checker of men and materials.

Q. How long were you there? A. From December 26 to August 7, about seven months.

Q. Practically during the whole time the boats were there? A. That is right.

Q. Were you there before the "Philippines" arrived? A. Yes, sir.

Q. Now, give us in a little more detail just what your duties were. A. Why, check the time of the men that were charged on our bills with the actual time that I saw these men put in on the plant. Also checked the material that was shipped, consisting in the sale of some of the goods from the boats, and I reported to H. L. Crawford & Company the progress of the work and what was being done down at the plaintiff's plant.

Q. Now, did you in the course of your duties as such keep a diary or daily log on the job? A. I did.

Q. Have you got that yet? A. That is in my bag there.

Q. Will you go and get it, please? I am going to ask you to refer to it. Have you kept in that document, that book you have there, the record of the shipments that were made, how much charging box steel shipped, and how much larger sizes? A. Yes, sir.

Q. That is the document that you will refresh your recollection from on that? A. Yes, sir.

Q. Have you kept those records distinctly as to the two ships so that you know what came from the "Black Arrow" and what came from the "Philippines"? A. I could segregate it from my records.

Q. You could segregate it? A. Yes, sir.

Q. Can you tell us in the first place, the total tonnage of steel that was shipped, having been cut at the plant of the Perth Amboy Dry Dock Company? A. Charging box size?

Mr. Haight: Just a minute. May I have the purpose of that stated? I don't want to object if it is relevant, but from my present information I don't see how it is material.

Mr. McCarter: It is material on several grounds, if your Honor please, and I feel it certainly is material.

The Court: Maybe I will agree with you. State your grounds.

Mr. McCarter: On this ground at least. There has been some testimony from the plaintiff as to the percentage these vessels were cut up, which, of course, is an estimate.

Mr. Haight: All right. I will withdraw the objection.

Mr. McCarter: Well, as to that and others. That is one at least.

A. The total tonnage of charging box was 1,333 tons.

Q. 1,333 tons. And the total— A. Large pieces was 93 ton.

Q. 93 ton. A. And this export shipment was 257 tons of plates.

Q. Well, now, I don't think I understand your distinction there. The difference between the 93

tons and the 200 and some tons. A. The 93 tons were large pieces, anything that would fit in a car, and the 257 tons was cut specially for an export order, special plates.

Q. Special plates. What size plates were those plates? A. Well, they were anything up to two-ton per piece, and they were cut so they would stay in a vessel.

Q. What were the specifications of those pieces? What size and shape and so forth were they? A. They had to have flat side, and certain of the plates had to have no channels or angles on them, but others—one export order could be shipped with channels on.

The Court: What do you mean by "channels"?

The Witness: The side of a ship contains strengthening channels that are riveted fast to the plate and the shell, or every 26 inches I think they are. The whole channel runs the vertical to the side of the ship, riveted fast.

Mr. McCarter: At the risk of having the question leading, I will ask you to tell us if the channel was not a steel piece fixed at right angles to the plate?

The Witness: Yes, sir.

BY MR. MCCARTER:

Q. Sort of like a beam is to a ceiling? A. That is right.

BY THE COURT:

Q. Then, when the plate is cut the channels stick out from the plate? A. Yes, sir. They stick out.

For this one order we cut off flat of the channel, and left one side of it attached to the plate to save our cutting the rivets.

Q. If you cut out a piece of that wall (indicating) and left some of that pillar there attached to the wall you would call that the channel, would you, the part of the pillar? A. No, sir, the channel runs the same way as the wall, right up against the wall like that. They had a lap here through which the rivets run, and the back of the channel was this way, and there was another strengthening beam this way, another side.

Q. Then, a channel is a strengthening piece put upon the plates? A. Yes, sir.

Q. That go over the plates? A. Yes, sir.

By Mr. McCarter:

Q. I show you a little paste-board model and ask you what that represents. A. Represents a section of shell such as we put in with the large pieces that I spoke of before.

Q. By "shell" you mean the shell of the ship? A. Shell of the ship.

Q. Yes. A. This is a shell. These here are the channels, and this here is along here, longitudinal strengthening bar (indicating).

Q. And the channels which you have described are these little projections from the shell which run vertically? A. Yes, sir.

Q. And what do you call these larger projections which run horizontally? A. I don't know if it is a technical name. We call it a water-way bar.

Q. What had to be done to this portion of the ship in order to make any part of it available for

shipment on this Chinese order as you have called it?

Mr. Haight: I object to that, if your Honor please. I don't think it makes any difference what they had to do. This testimony is relevant for the purpose of showing, as far as I see it, simply as to the extent these vessels were scrapped. What they had to do with the Chinese order doesn't make any difference. If it is offered for the purpose that we objected to the cutting off angle iron and things of that kind, it will avail them nothing because the Vice-Chancellor said we had a right to do that.

The Court: To do what?

Mr. Haight: Object to anything except to cutting off these large pieces.

The Court: What part of his opinion does that show in?

Mr. Haight: The part that I have particular reference to is this part.

(Reading case.)

Exactly the same testimony was offered in the other case as was offered here, on the question of the angle irons and the channels and things of that kind. As a matter of fact, as I understand it, they actually did ship this Chinese order and used the additional gas which was necessary to cut off the angles and channels, and that whole thing that has been in litigation by them as to whether or not it was any excuse for the failure to go ahead and perform this contract and get these vessels out at the time they should have been out, and I can't see that it can possibly have any relevancy in this case.

Mr. McCarter: I went in at some length in the opening of the case on this question of *res adjudicata,* and I don't think your Honor wants me to take up much of your time on it again, but I certainly do claim the right, and unless your Honor rules against me, I shall seek to get it to show what our rights under this contract were. The Vice-Chancellor particularly rules in the equity suit that the representations which were the sole basis of any litigation of our rights and privileges under this contract would be inadmissible in an action at law, and I claim the right in this case to have our rights and obligations adjudged solely and entirely by the contracts in the case.

Mr. Haight: You see that comes back to exactly the same proposition that was settled last Wednesday, and that was the reason I objected to it, because it seemed to me to go to the very thing that your Honor determined. Everything that the Vice-Chancellor settled in this case, as I understand your Honor's determination, is settled as far as your Honor is concerned. What Mr. McCarter seeks to litigate in this case is whether or not under their contract they should have done so and so and we should have done so and so. The Vice-Chancellor has determined that, whether rightly or wrongly it makes no difference whatever so far as all that litigation and so far as that time is concerned, and, of course, he has reached the conclusion as I think your Honor determined the other day that the fault was the defendant's and not our fault. Now, the only question it seems to me that are open under your Honor's ruling of the the other day are these: First, were these vessels re-

moved within a reasonable time? Of course, we can't say that they were removed within a reasonable time because the Court of Chancery would not have ordered them removed if a reasonable time had not expired. The second proposition is: What was a reasonable time? That is open for the jury to pass upon. It won't have to be passed upon by any other court. That is what our evidence has been directed to. Second, what should be allowed as a fair and reasonable price to the plaintiffs for the use of its docks and the facilities there, after the reasonable time expired. That is the second proposition. That has never been determined by anybody, and it is for your Honor and the jury to determine.

The next proposition is, who was responsible for the sinking of the Philippines. That the Vice-Chancellor declined to pass upon; he held it was for the jury to determine.

Then the fourth proposition is, how much should be allowed for the sinking of the Philippines, and as to that there is no question.

Then we come to two or three minor questions, the matter of the deduction from our labor bills, and the matter of the cutting up of the boilers, the two items aggregating very small amounts, which I will not discuss now. But on the main proposition as to the fault and liability, that has been settled. Any testimony that Mr. Carter offers to affect reasonable time, I shall object to, because I think it is entirely proper. But insofar as that testimony is offered for the purpose of indicating a defense to this action, there cannot be any defense, because every defense that they now urge in their

pleadings, and we have catalogued them all here, every one of them, they offered testimony on in the other case, and if they had been defenses, of course, the Court of Chancery could not have ordered the vessels to be removed.

It may be of some help to your Honor to have this summary of matters which we think have been adjudicated, and the reference to the testimony where they can be found.

The Court: The Court of Chancery declared that as of the 17th day of July, 1924, it was unreasonable for those vessels to longer continue at these wharfs. There is no suggestion in the opinion of the Vice-Chancellor as to when the unreasonableness commenced. This contract was for the use of the plant for the scrapping of these two vessels, and there is not a thing said in the contract as to what is scrapping, and I have already held that it was the right of the jury to know what scrapping meant, what it comprehended. If the Vice-Chancellor has determined what scrapping included, then I am going to follow whatever he held it included. But I do not know, from a rather casual reading of his opinion, that he definitely determined what was included within scrapping. The jury must know what was the nature and extent of the work to be done by the defendants, while using these wharves, in order to determine what was a reasonable time for the use of those wharves. If you can point out to me that the Vice-Chancellor has held that the binding up, or otherwise removing of these angle irons, and these cross bars, and these vertical bars, was not included within the scrapping that was understood by the plaintiff, then,

of course, the evidence is not competent. But, otherwise, I am going to leave it to the jury to determine from all of the evidence in the case, what scrapping meant.

Mr. Haight: For the purpose of showing reasonableness.

The Court: For the purpose of showing reasonableness, of course.

Mr. Haight: I think your Honor's analysis of it is very clear and plain. The Vice-Chancellor does not, in so many words, say the contract did not provide for the cutting of angle irons or channels. They contended in the case that we had prevented them from fulfilling this contract because we said to them at one time, "You cannot cut these angle irons and channels off," I think that is the testimony, isn't it?

The Court: I think your position, or the position of your clients, was to the effect that simply because they got a special order from China which required them to do special kind of work which was not included within the ordinary scrapping of a vessel, that therefore, the extra oxygen and gas that was required in order to meet the special contracts that they had engaged in with China, should not be charged up against them. That is the position they took, isn't it?

Mr. Haight: Yes, sir; that was one of them. That is to say, we should not be charged for that gas—well, rather, they should pay for that extra gas and oxygen that was required in doing these things, because it was entirely from the work that had been laid out to us, and the Vice-Chancellor held that that was so.

The Court: Well, I will allow the question. I think I can take care of it when the counsel come to their summing up and the court comes to its charge, as to what was included in scrapping.

Q. Do you remember the question? A. You asked me what had to be cut off this piece to make it suitable for shipment to China.

Q. Yes, that is it. Now, tell us. A. We cut the angles off, leaving the back of the angles still fast to the plate. It saved us blowing out all the rivets. Cut it right up as close as we could to the plate, that is all. Just to leave a flat piece.

Q. You describe this vertical cutting now. What other cutting did you have to do? A. Of course, this had to be trimmed off, and this had to be cut close up against the back here.

Q. Do you mean— A. A piece had to be cut in half also. You could not handle a piece as long as that.

BY THE COURT:

Q. In other words, you mean that in order to meet this special order for China, that everything that projected from the skin of the vessel had to be removed, is that right? A. Yes.

Q. Either entirely or in part? A. That is right.

BY MR. MCCARTER:

Q. To what extent did the "in part" go? How much could be left? A. We left the flat of the channel, the part that held it up against the side of the ship.

W. H. Ackerman. Called by Defendant. Direct.

Q. The flat of the channel? A. Yes.

Q. But none of the vertical right-angle projections from the skin of the ship? A. No.

Mr. McCarter: I offer this model in evidence.

Mr. Haight: I object to it as immaterial.

The Court: I will allow it as an illustration.

(Model of skin of ship entered in evidence and marked Exhibit D-6.)

Q. Now, can you by referring to those records which you have already referred to, tell us how much charging box steel was shipped out prior to March 1, 1924? A. 364 tons.

Q. Have you any knowledge of how long it had taken to load the freight cars with this material? A. Why, I have a record here of some of the time it took. I think it averaged about four or five hours.

Q. Four to five hours. Is that loading in charging box sizes or the larger sizes? A. Charging box.

Q. How many cars of larger sizes altogether went out? A. Four.

Q. How did the Chinese order leave the plant? A. They left by lighter.

Q. Now, can you tell us Mr. Ackerman, when it was that the locomotive crane was first put in operation? A. On January 21st, almost a month after we started work down there.

Q. Will you look at your daily record under January 31st?

Mr. Haight: January 31 or 21, was that?

Mr. McCarter: January 21st, he said.

W. H. Ackerman. Called by Defendant. Direct.

Q. Under January 31st and tell us if there is any entry there with respect to the crane, and if so, what it is? A. Crane broke down.

Mr. Haight: Let me see that, Mr. Ackerman.

A. Crane broke down 1:30.

Q. Have you any recollection, either independently, or capable of being refreshed by that memorandum of yours, how long the crane remained broken down on that day? A. 2½ hours time that day.

Q. Will you look at February 1st, and having looked and refreshed your recollection, tell us, did anything happen to the crane that day, and if so, what? A. Lost some time adjusting the damage when it went off the track.

Q. How long? A. It does not say.

Q. Do you recall independently? A. I think about a couple of hours.

Q. Have you any notation on that day of Anderson's truck, and if so, what does it mean? A. Why, we had to hire a truck I think the rate was some thing like $25.00 a day, to carry material off that dock, the crane wasn't capable of taking it, had so much other work to do, and otherwise this material all had to be carried off the dock by hand power, and in order to facilitate that we hired a truck which we loaded up on the dock and brought the stuff to the storehouse.

Q. Which of the two ship docks do you refer to? A. This is on the Black Arrow. No trucks could go down on the Philippines' dock.

Q. You don't refer to dry docks, of course, you refer to the piers, don't you? A. Yes, sir; simply the piers.

W. H. Ackerman. Called by Defendant. Direct.

Q. Did the Perth Amboy Dry Dock Company furnish this Anderson's truck, or was this an outside truck. A. No. We had to hire it ourselves.

Q. Will you look under the date of January 17th, and tell me if any notation of Anderson's truck is there on that day, and if so, what it was?

Mr. Haight: If it is on the same line I submit that it is not of any materiality on the question of reasonableness, whether they saw fit to hire a truck, or whether they did not.

Mr. McCarter: Of course, I am not limiting, unless limited by the court, my examination of this witness, to the question of reasonableness. In this previous last argument to your Honor, Judge Haight, very well, I think, described the issues raised by the complaint in this case, but we have counter-claimed and in this counter-claim I am going to outline very briefly to your Honor: It alleges the making of two contracts which are written and annexed to the complaint, says that the plaintiff thereupon entered upon the prosecution of the work, and partly performed it, but failed and refused to perform in the following respects: It failed and refused to furnish gas and oxygen for cutting, of the kind and quality required for the proper prosecution of the work.

It failed and refused to furnish the use of a locomotive crane for the handling of this material within a reasonable time after the making of the contracts.

It failed and refused to supply the necessary equipment for doing special work, and in particular failed and refused to supply a manifold, thereby causing delay.

It failed and refused to cut up the steamship in sizes which would render the material taken therefrom commercially available for sale, and failed and refused to cut in small pieces from the said steamship as it was obligated to do under said contracts.

And on or about the 1st day of July, 1924, without any justifiable cause or excuse, abandoned the further performance of the contract and failed and refused to carry out the same.

Then we claim damages under that contract as I outlined in my opening, but which I might very briefly refer to again: We say that the work done by the plaintiff was prosecuted so tardily and inefficiently that the cost of scrapping was largely in excess of what the cost should have been to us, and by reason of the failure and refusal of the plaintiff, we were required to remove the steamships, which required us to pay the cost towing and required us to pay additional large sums of money to complete the scrapping of the steamers ourselves.

Now, this question which I am trying to ask now, is certainly of some bearing under this allegation of damage that the tardy and inefficient performance by the plaintiff made the cost of scrapping to us in excess of what it should have been. If, to get the work done, we had to hire an outside truck, naturally there is an additional cost to us of scrapping this ship.

Mr. Haight: Your Honor will see that the defenses which they now raise, or rather so far as their counter-claim is concerned, it is exactly the same as their allegations of breach of con-

tract on our part, they are exactly the same as in the defensive. They set up what they are. In the memorandum which I have just handed to your Honr you will find on pages 6, 7, 8 and 9, specific reference to the pages in the record, where the same evidence was offered to support, or where evidence was offered to support these alleged defenses. Now, of course, if those defenses had constituted defenses, or could constitute a breach of contract, which would give them a right to maintain a counter-claim, the Vice-Chancellor could not have ordered these vessels removed from the plant. So then, they have been adjudicated.

(Question repeated by stenographer.)

Mr. Haight: He offers it in support of his counterclaim. The matters which in his pleading are stated as breaches of contract on our part, were all submitted as breaches of contract in the case before the Vice-Councellor, as your Honor will find by reference to the pages in the record, where it was submitted, and, of course, under fundamental principles of equity, the Vice-Chancellor could not have granted us relief if we had broken the contract. Therefore, the matter has been adjudicated under the principles of the cases which I cited the other day.

Mr. McCarter: As I understand and read the effect of the chancery litigation, it is quite different from what Judge Haight said. Vice-Chancellor Backes, at the bottom of page 409, and top of 410, says, "The contract failed to fix the time for the use of the docks and the method of scrapping. As to these two items, they have become very important in the case, the con-

tract must be read in the light of what the law says, and it is agreed and understood that the work was to be done within a reasonable time, in the ordinary course of trade done for the market. Reading the contract there is no limitation except reasonableness. Now, that is the legal view, but it is not controlling in this case." And he goes on to say what is controlling in this case, and on what is controlling in this case decides it, but I have just read that in the course of so deciding, he expressly in so many words says that legal view is different. We took his opinion to the Court of Appeals after the ships had been actually moved, so that the only thing that is left is the effect of that case on this case, and the Court of Appeals says, because the ships are moved we have no grievance, and, therefore, cannot appeal. And so, not only are the express words of Vice-Chancellor Backes, but the necessary effect of the action of the Court of Errors and Appeals in saying we had no grievance because the ships were out, to be taken to mean that a different rule must apply in this case, and that the peculiar provisions and things which Vice-Chancellor Backes said were applicable, in reading his decision, are not applicable in this case, but this case must be governed, as he says, the contract must be read that the agreement was the work to be done within a reasonable time, in the ordinary course of trade done for the market. These things Judge Haight said we are precluded with respect to, we are not precluded. And I claim the right in this case, in support of our counter-claim, and insofar as it

is a defense to the plaintiff's claim, to show that the work was prosecuted tardily and inefficiently, and insofar as it was so prosecuted it caused us greater damage, and we claim the right to show that the plaintiff abandoned the contract and by reason of which abandonment required us ourselves either to leave these ships halfway scrapped, which, of course, was greater damage, or to proceed to scrap them ourselves, which we shall show was at a greater cost to us than was called for by these contracts. And that is our contention.

The Court: I think this testimony is competent. I am not holding that it is competent upon any particular ground that has been alleged in the arguments just listened to. The probative effect, so far as it has any probative effect, of this testimony will be taken care of by the court when it comes to charging the jury. But it does seem to me that the only question in this case is when it became unreasonable for the defendant to continue the use of these wharves, and we must know just what was the work all through while the vessels were on the wharves, in order to determine when it became unreasonable for them to continue the use of the wharf. Now, for example, if in the proper discharge of this contract it was the duty of this plaintiff to furnish a truck, and he did not furnish a truck, and that delayed the work substantially, why, of course, that is competent evidence. And it is evidence that the jury should have in determining when a continuance of the use of the wharf became unreasonable upon the part of the defendants.

I am going to allow quite a latitude in this testimony, because I feel that in view of the failure of the Court of Chancery to definitely fix a time as to when it became unreasonable, that now there must be such a latitude given in the taking of testimony. I will allow the question. You may take an exception.

Mr. Haight: I will not object to any of these questions, as long as I can see they are coming within your Honor's ruling of what is reasonable time. I merely want to, not for the purpose of opening this argument, but direct your Honor's attention to the fact that there is nothing said in the contract about our furnishing a truck, or anything of that kind, and I will not object to any of these questions because they go beyond what I understand to be the basis upon which your Honor permits that question now.

Q. Will you turn to January 17 then? A. Again we had to hire a truck to push the work.

By Mr. Haight:

Q. You mean you did hire a truck? A. Yes, sir.

By the Court:

Q. For what purpose? A. We carried wood to the shed from the "Philippines."

Q. Why was it necessary to have a truck? A. To facilitate the work, it saved—

Q. Could a locomotive crane have done the work? A. No, sir.

W. H. Ackerman. Called by Defendant. Direct.

Mr. McCarter: The crane wasn't there then, your Honor.

Q. Even if the crane were there, could it have done the work? A. Not in this case.

Q. Could a floating derrick have done the work? A. It might have helped part way.

Q. In what way? A. They could have brought it around the "Philippines" over to the wharf.

Q. Was there any lifting done? A. Yes, sir.

Q. What lifting? Such lifting as made a derrick necessary? A. Yes, sir.

The Court: All right. Go on.

By Mr. McCarter:

Q. Well, if the truck had not been used, Mr. Ackerman, how could the wood have been removed? A. Well, by hand power.

Q. Would that have been as quick as the truck? A. No, sir.

Q. Will you look at January 18 and tell us whether the truck was used on that day?

Mr. Haight: Maybe we can shorten it. Are you attempting to show that there was any representation on our part that the truck was to be a part of the contrac?

Mr. McCarter: No, sir. There was no distinct representation in the contract that a truck was to be furnished, but I am proceeding to show that so far as our delaying the game, we expedited it from our own expense by hiring a truck.

The Court: Go on.

Mr. Haight: I am willing that the witness should, in order to save time, go through this memorandum that you have and state the days on which he used the truck, if that will save time.

Mr. McCarter: I think it will. He made it up.

Q. Did you make this up, Mr. Ackerman? A. No, I did not. It was made from my books, though.

Q. It was made from your books? A. Yes.

Mr. Haight: Go ahead and look at it. State what days you used the truck.

Mr. McCarter: And how much of the day.

Mr. Haight: He can't do that unless he—

The Witness: January 17, truck 3 hours; January 18, truck all day; January 23, January 29, January 30, February 1. February 25 we hired McKean's dump truck. February 26 we hired McKean's truck. February 27, McKean's truck, and Anderson's truck. February 28, McKean's truck. March 1, McKean's truck. March 7, the same truck; March 14, the same truck; March 15, the truck; March 17, the same truck; March 18, the truck; March 19, the truck; March 23, the truck; March 27, the truck; March 24, the truck; March 25, the truck; April 5, April 15, May 13.

Q. Now, generally speaking, was the reason for using the truck and the necessity of it the same in all those occasions or not? A. Was to hasten and facilitate the work, to clean up the piers, was used at the time to clean up the wharves. Dump material in the dumping pit, waste material.

W. H. Ackerman. Called by Defendant. Direct.

Q. I ask you to look at your memorandum on February 4 and tell us whether or not there was anything on that day delaying the progress of the work, and, if so, what? A. Crane went off the tracks again that day.

Q. Anything else? A. We had run short of air tanks, of oxygen tanks.

Q. How much time? A. Two burners lost some time.

Q. There is a notation on this memorandum that I am reading from of 19 hours out of 40 hours. What does that mean? A. Why, figuring the number of burners we had and the number of hours they lost, it meant they lost 19 hours of actual work.

Q. Now, will you turn to February 11 and tell us whether there is any delay on that day? A. Two burners reported for work, but they were no torches for them that day.

Q. What day are you looking at, February 11? A. February 11, yes.

Q. Is there anything about the lighter on that day? A. Lighter held up three hours.

Q. Doing what? Why? A. Being repaired and getting up steam.

Q. What kind of gas for cutting purposes did they use to begin with? A. They used acetylene at first.

Q. Do you recall what day they changed? A. I think it was late in January—

Q. Will you look at your memorandum under date of February 16. A. I don't think it shows it here. It is in the daily memorandum to the office.

Q. We will skip that now. Will you turn to February 25 and see if there is anything to refresh

your recollection about delays on that date? A. Burners ran out of air that day, oxygen.

Q. How long did that delay the job, do you know? A. It happened just before lunch and it took four men taking during lunch hour to get the oxygen to the boat.

Q. Did Mr. Preacher do anything that day? A. He had some mechanics working on the winches with which they were going to lower the anchor, I believe. He took them off because he had another job in the dry dock or in the machine shop.

Q. Did Mr. Peterson do anything? A. He reported he had no one to put on these two winches the following day.

Mr. Haight: Let us find out what you mean by that. Do you mean that they did not put anybody on the next day?

Mr. McCarter: That is just what I was going to ask him, Judge.

Q. Do you recall or can you by looking at your diary refresh your recollection as to whether or not anybody was put on the next day? A. I could dig it out and find out, but I don't see anything about it here.

Q. You don't see anything about it there. What would you have to look at? A. I suppose the labor reports and maybe my note to the office.

Q. I may have asked you this, but will you look at February 26 and see if there is any notation of delay on that day? A. Why, on the night of February 25, dry dock used a crane to handle some tanks at the end of the pier, and they spilled it on the tracks, and they had quite a job getting it

back. Didn't get it back until 1:15 on February 26.

Q. Do you recall what day the manifold was complete, and if you don't recall, will you turn to March 8 and look and see if that will refresh your recollection? A. "Manifold made complete today, 1 P. M."

Q. Now, will you look at March 15 and tell us whether anything happened to the manifold on that day, and if so, what? A. That was one of the days the manifold froze up.

Q. Did that cause any delay? A. Yes, sir.

Q. Do you know how long? A. Maybe several hours.

BY MR. HAIGHT:

Q. Now, you don't know that, do you? A. I have it in my memory.

Q. You have nothing in the book?

Mr. Haight: I want to caution the witness not to guess. That was all.

BY MR. MCCARTER:

Q. Will you look at March 18 and tell us whether anything happened to the manifold on that day? A. Manifold leaked.

Q. Did that cause any delay, and if so, how much? A. I don't know how much. They had to put gas aboard so they could work from gas tanks while it was being repaired.

Q. Now, will you look at March 22 and tell us whether anything happened to the manifold on that day, and if so, what? A. Couldn't get pres-

sure through it. We required pressure. Wouldn't reach the burners on the far end.

Q. Did that delay the progress of the work? A. It certainly delayed the men who were working from this manifold.

Q. Do you know how long it delayed it? A. No, sir.

Q. Will you look at March 24 and tell us whether anything happened to the manifold? A. The manifold blew out on the "Black Arrow." The manifold on the "Philippines" also blew out.

Q. Do you know how long those delayed the job? A. No, I do not.

Q. Will you look at March 25 and tell us whether anything happened to the manifold on that day? A. Got burned from the fire.

Q. Do you know whether, and, if so, how long that delayed the job? A. Well, the hose would have to be taken down to the boiler shop, either a new one spliced on and brought back. Probably delay the burners who were working off that hose, delay them maybe an hour that morning.

Q. Did anything happen to the crane that day? A. That was the day the double-fall broke on the crane. Two hours were lost.

Q. Have you any record on that day with respect to the sizes that were being cut and what happened on that occasion? A. Cutting those large pieces.

Q. Yes. Well, what else happened? A. Dry Dock ordered the burners not to cut any more charging box.

Q. What say? A. Dry Dock ordered the burners not to cut any more charging box.

Q. Will you turn to April 14 and tell us whether anything happened that day that delayed the job,

and if so, what? A. Dry Dock had a car of heavy timber on the track. There was no room for us to put in a car to load out the scrap material.

Q. And turn to the following day and tell us the same thing. A. They took the crane that day and unloaded this timber from that car.

Q. By looking at either or both of those two days can you tell us how long the presence of this timber-laden car delayed the progress of the job, and using your independent recollection as well. A. Well, on April 14 we could not have loaded it in, still could not have gotten a car in the place on the track on account of the car of timber being there. The following day—I imagine we didn't have it very long that day, only looked like a half an hour, although it was still tied up for putting in the car.

Q. I don't hear you. Speak a little louder. A. I say, we were still tied up from putting in the car on account of that timber car being in there, but they only used the crane for a half an hour, from three-thirty to four-thirty. They may have used it some the following day.

Q. Will you turn to April 21 and tell us whether there was any delay on that day, and if so, what? A. I imagine that is—the crane operator was away that day, wasn't he?

Q. I am asking you, Mr. Ackerman. A. I haven't got all my notes here. Some of my notes are in these letters that I wrote to—

Q. By looking at the memorandum in front of you and refreshing your recollection therefrom can you tell us whether or not the crane operator was away that day. A. Monday was some kind of a foreigners' holiday, and the ranks were depleted.

The crane operator and rigger was away, but the engineer was carried on the payroll all day, I noticed. It wasn't used any.

Q. Will you turn to May 1 and tell us whether anything delayed the job that day? A. Took a burner away from us.

Q. Who did? A. Dry dock company took a burner off the scrapping job and put them one one of their own jobs in the yard.

Q. Who was the burner? Do you know? A. A fellow named Dimond Tripolitis.

Q. Now, will you look at May 5, and tell us whether anything occurred or failed to occur on that day? A. Perth Amboy Dry Dock took a burner that acted as a foreman on the "Black Arrow" to the boiler shop.

Q. Who actually took him away, do you know, do you remember? A. Jim O'Hagen, I guess.

Q. Did you hear any reason given as to why he was taken away? A. They need him on some other job.

Q. Have you got any notation there about the scow "Preacher"? A. There was supposed to go to the "Philippines" at 7 A. M. and didn't arrive until 1:45 P. M.

Q. Now, will you look at the next day, May 6, and see if anything happened to delay the job? I ask you if you see any notation referring to the car float. A. Perth Amboy Dry Dock Company shifted a car float for some work of their own and then they wanted us to stand half the expense of the moving of this car float.

Q. I am not so much interested in that as how long it was away. Do you know? A. I imagine most of the day.

W. H. Ackerman. Called by Defendant. Direct.

BY MR. HAIGHT:

Q. Are you just guessing now or is that your recollection, or haven't you any recollection? A That is my recollection.

BY MR. MCCARTER:

Q. Now, on May 7 was there anything to delay the job? A. Perth Amboy Dry Dock Company took the lighter "Preacher" away, set up stack.

Q. How much of the day was lost on that? A. Nearly the entire afternoon.

Q. Now turn to the next day, May 8, and tell us what happened that day with respect to delaying the job? A. Lighter, they were supposed to be sent to the "Black Arrow" pier, so they could be unloaded, but they didn't bring it around.

Q. Have you any notation there with respect to the gas for the burners? A. That was the day Mr. Meurer turned off the gas and the oxygen, stopped the work.

Q. Did any burners knock off on that day? A. Nine A. M. all the burners and the laborers knocked off at 9 A. M. on the "Philippines," and 11 A. M. on the "Arrow."

Q. Turn to May 10 and say whether anything in the line of delay happened that day. I ask you to look for the word "lighter" in your notes. A. Perth Amboy Dry Dock Company took the lighter which we were unloading away for an hour in the afternoon, and returned it close to four o'clock.

Q. Now, will you turn to May 16 and see if anything happened on that day. A. Why, across the stern of the "Black Arrow" they tied up a wooden scow, the "Maud Morey," and the burners could not

cut there in the stern on account of the danger of setting the ship on fire.

Q. Do you recall how long she stayed there? A. I think she was—

Q. Will you look at the next day, the 17th? A. Moved away about 10 A. M. the next morning, so we could go ahead with the work.

Q. Will you turn to May 20 and tell us whether there is anything on that day that delayed the job, and, if so, what? A. I don't find anything here.

Q. Turn to May 26 while we are trying to find May 20. A. Mr. Meurer turned off the manifold, burners were starting to cut up the boilers.

Q. Do you recall whether or not that was the day when the cutting up of the boilers on the "Black Arrow" commenced? A. That is right.

Q. Do you now recall when it was finished, the cutting up of the boilers on the "Black Arrow," and if you do not recall it, I ask you to look at June 24 and see if there is anything there to refresh your recollection? A. Completely finished the "Black Arrow" boilers on June 24.

Q. There was at one time a magnet operating on the job, wasn't there? A. Yes.

Q. What did that do? A. Facilitated the handling of scrap from the depth of the ship to the railroad cars.

Q. Was it used in connection with the crane? A. Yes, sir; it hung from the crane.

Q. Hung from the crane? A. That is right. Took the place of chains or boxes for handling scrap material.

Q. And do you recall when that magnet was put in operation, and if you don't recall, I ask you to look at March 31? A. Magnet was received that

day. I don't believe it was put in operation until a couple of days following.

Q. Will you look at the 26th? A. Yes, it started working 10 A. M. on the 26th of March.

Q. Will you turn to April 1 and tell us what the magnet did that day? A. That was the first car we loaded with the magnet, on April 1.

Q. Am I to understand that the magnet was from March 26 to April 1 loading its first car? A. No. It didn't take that long. They just started loading the car that day.

Q. How long did it take the magnet to load the car? A. About two or three hours. Two hours, I guess. About two and a half hours is a fair average.

Q. Now, was the progress of the work delayed at all on account of the weather? A. Yes, we lost considerable time during January, February and March.

Q. Mr. Ackerman, I don't know whether you answered this or not: How long did it take to load one of these cars without the use of the magnet under the pre-existing system? A. Practically twice as long as with the magnet.

Q. Can you explain to the jury just why that was? A. What operation did the magnet save, in other words? A. The magnet was dropped on a pile of steel and the current was snapped on by a switch, the steel could all stick to it and be picked up by it and it was swung over the car and they would release that switch and all the steel would drop right in the car. When they handled it with chains without the magnet it took four men, or three men to hook it on, they had to hook the chain to each individual piece, or two or three pieces if they could get it around two or three pieces,

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and this sling might have had four or five chains hanging from it, and that would be swung over the car and it would be lowered to the bottom of the car and two men over there had to unhook each chain and, first, the lift would take a great deal longer than it would with the magnet. With the magnet we practically made a lift a minute, whereas with the chains one lift probably every five minutes and then a pieec might get stuck and could not be unhooked in the chain, causing delays.

Q. Whose magnet was this and who installed it, the dry dock company or Crawford & Co? A. The magnet belonged to H. L. Crawford & Co.

Mr. Haight: You do not contend there was any obligation on our part to furnish a magnet?

Mr. McCarter: I do not, no.

Q. I show you a little photograph and ask you, Mr. Ackerman, whether that is a picture of that same magnet in operation? A. Yes, sir.

Q. That picture was not taken at the Perth Amboy Dry Dock Company's yard, was it? A. No, sir.

Q. Where was it taken? A. Taken at the yard of the American Shipwrecking Corporation, Staten Island.

Q. And that is where these ships were taken to be scrapped after they left the Perth Amboy? A. Yes, sir.

Mr. McCarter: I offer that in evidence.

(Photograph entered in evidence and marked Exhibit D-7.)

Q. Mr. Ackerman, I was asking you whether or not the men working on the winches that were removed on February 26th, were put on the next day, and I now show you some papers and ask you if you can tell me what they or any of them are? A. Is that on the Philippines?

Q. Answer my question, please. What are those papers I am showing you? A. These are daily labor reports.

Q. Made up by whom? A. Which I made up myself and forwarded each night to the New York office of H. L. Crawford & Co.

Q. Was this first page made up by you? A. No, sir.

Q. And the second page was not made up by you? A. No, sir. Made up by the Perth Amboy Dry Dock.

Q. Nor the third page, nor the fourth page? A. No.

Q. What you did commences with the fifth page where it is in pencil? A. That is right.

Q. And where it says your signature, isn't that right? A. Yes, sir.

Q. But you made up all the rest of this group of papers, did you not? A. Yes, sir.

Q. Well, now, I want to ask you whether in the first place this is limited to the labor on the Black Arrow, isn't it? A. Yes.

Q. Nok, I ask you: Tell me whether or not by looking at so much of this group of papers as you had to do with, as you made up, you can tell us those men who were taken off the 25th were or were not put back to work? A. That was on the Philippines. These are Black Arrow reports.

Q. I will withdraw this from you, and I show you a similar group of papers with respect to the

ship Philippines, being part of Exhibit P-11, the daily labor reports from February 21st, to February 27th, and ask you, by looking at that you can answer my question? A. They were not put back on the 26th. I don't find they were put back that week at all.

Q. Now, I am going to direct your attention to some days on which the weather may have had some effect, and I want you to look under date of January 11th?

Mr. Haight: In order to save time, if Mr. Ackerman will testify that he has made a record, let him read from it, if he will say that is correct. Rather than have him go through all that, just let him read it.

A. Heavy rain in the morning.

Q. January 16th? A. Rained heavily 3 P. M.

Q. Does it show how long it kept up? A. We quit work at 4 o'clock. It couldn't have delayed more than an hour.

Q. January 21st? A. Extreme cold weather that day. Four men quit outright at 7:30. The rest working under difficulties.

Q. January 22nd? A. Extreme cold.

Q. Did that have any effect on the job? A. Not many men working.

Q. January 25th? A. Snow.

Q. Any effect on the job? A. That is all it says here.

Q. Do you recall whether that snow had any effect on the progress of the work? A. Snow would always hold up outdoor work where they had to cut directly on the steel.

Q. January 26th? A. Very cold and raw.

Q. Any effect on the work? A. Those days in February—

Q. I am talking about January 26th now. Not February. A. No, there is no record here.

Q. Now, turn to February 5th? A. Heavy rain. Rain kept the burners out of the yard and the men below decks. Also stopped use of crane after a couple of trials.

Q. Next day, February 6th? A. Rain and heavy fog. No burners in yard due to threatening and misty weather.

Q. This may be a little different, turn to February 7th and tell me how many burners were working on the job that day? A. Nine burners on the Black Arrow, five on the Philippines.

Q. Did you make a record every day of the numbers of burners working? A. Not in this book. I did on the daily reports.

Q. Why did you come to make that entry in that book then? A. I don't know how it happened.

Q. You don't know? A. No, sir.

Q. Will you turn to February 11th and see if there is any notation there about burners? A. We were short two torches for burners.

Q. What do you mean short? A. Twelve burners that day on the Black Arrow, seven burners on the Philippines.

Q. Yes. Well, how many torches were there? A. I don't know. They were short here two torches. Men showed up for work but there were no torches for them.

Q. Turn to February 12th and see if there is any weather entry there? A. Three inches of snow fell. No work.

Q. February 16th, anything about weather or burners? A. Weather fair. Three burners away.

Q. Well, what does that mean? Who caused them to be away? A. I don't know.

Q. Did you have anything to do with them not being there? A. No.

Q. February 19th, anything about the weather there? A. Cold and snow started to fall.

Q. February 20th? A. Six inches of snow fell the night before. Rained heavily in the morning. Heavy rain wetting everyone. Burners working below decks. Crane did not operate. All labor knocked off at 10 o'clock.

Q. March 11th? A. Burners knocked off on account of storm.

Q. March 26th? A. Rain. Everyone knocked off at noon, soaking wet and cold.

Q. March 29th? A. Rain slowed work today. Everyone laid off for the afternoon.

Q. April 1st? A. Windy and chilly. Heavy wet snow in the afternoon. It does not say how many worked.

Q. April 2nd? A. Snow slowed up work necessitating much shoveling and other loss of time.

Q. April 4th? A. Large lay-off of burners in the afternoon.

Q. April 7th? A. Rain in the morning.

Q. Did that delay the work? A. Yes, it would. I don't know how much.

Q. April 9th, same question? A. Rain at 3 P. M.

Q. April 21st? A. Clear but cloudy. That was a holiday.

Q. April 29th? A. Rain, 11 o'clock.

Q. Does it show how long it lasted? A. Heavy rain rest of day. One man, eight burners, off on account of rain.

Q. 30th? A. Rain on and off all day.

Q. Does it show how that affected the progress of the work? Except so far as it necessarily did? A. No.

Q. May 8th? A. Rain and mist. Burners and laborers off at 11 o'clock.

Q. May 9th? A. No labor on either ships on account of water. Heavy rain.

Q. May 12th? A. Heavy rain. Clear at 10 A. M. Rain again at 3:30.

Q. May 21st? A. Rain. Rain caused everyone to be laid off shortly.

Q. June 12th? A. Rain. Had to stop work at 10 A. M. as everyone was wet.

Q. Do you remember, generally speaking, Mr. Ackerman, without asking you to go through your daily reports, the number of burners that were working? A. At that time?

Q. Well, if they changed, tell us how the number of burners went up and down and so forth? A. When they started in they only had two burners on the job and they were gradually increased. I think something like 37 was the maximum. 35 or 37. Sometimes they would shift the majority of burners from ones hip over to the other ship. There might be 12 on one ship and 15 on another.

Q. How many burners were there during January on an average, if you remember now? I don't want you to guess at this? A. I don't remember.

Q. How about February, do you remember that? A. They increased during February.

Q. Increased during February? A. Yes.

Q. How about March? A. I think there were more in March.

Q. What time was the maximum? A. During March.

Q. During March? A. Yes, sir.

Q. Do you recall how many there were on an average during April? A. No.

Q. May? A. Fewer in May.

Q. And June? A. Fewer yet.

Q. Did you take some photographs of these ships, Mr. Ackerman? A. Yes, sir.

Q. Do you recall when you took them? A. Various times throughout the progress of the work.

Q. Now, I show you ten photographs and ask you first to look at them all and tell me whether you took them all? A. Yes, sir.

Q. And when did you take them all? A. July 2nd, 1924.

Q. Is there a stamp on the back which shows which of the two ships they represent? A. Yes, sir.

Mr. McCarter: Now, I offer these photographs in evidence.

(Ten photographs entered in evidence and marked Exhibit D-8, Exhibit D-9, Exhibit D-10, Exhibit D-11, Exhibit D-12, Exhibit D-13, Exhibit D-14, Exhibit D-15, Exhibit D-16, and Exhibit D-17.

Q. I show you now, Mr. Ackerman, four smaller photographs and ask you to look at them and tell me if you took them? A. Yes, sir; I took them.

Q. Did you take them on the date mentioned on them? A. Yes, sir.

Q. Which is what? A. February 26, 1924.

Q. And are they pictures of the Black Arrow? A. All four, yes.

Mr. McCarter: I offer them in evidence.

(Four photographs entered in evidence and marked Exhibit D-18, Exhibit D-19, Exhibit D-20 and Exhibit D-21.)

Q. Now, I show you four more photographs and ask you if you took them? A. Yes, sir.

Q. And what is the date? A. March 19, 1924.

Q. And of which ship? A. The four of the "Black Arrow."

Mr. McCarter: I offer those in evidence.

(Photograph entered in evidence and marked defendants' Exhibit D-22.)

(Photograph entered in evidence and marked defendants' exhibit D-23.)

(Photograph entered in evidence and marked defendants' exhibit D-24.)

(Photograph entered in evidence and marked defendants' Exhibit D-25.

Q. Now, I show you six more photographs and ask you if you took them? A. Yes, sir.

Q. On what date? A. One on July 2.

Q. Which one is that? A. This one here.

Mr. McCarter: I offer that in evidence.

(Photograph entered in evidence and marked defendants' Exhibit D-26.)

Q. What are the dates on these others? A. February 15, the "Philippines."

(Photograph entered in evidence and marked defendants' Exhibit D-27.)

The Witness: This is May 13.

Q. You identify how many as May 13? A. These two, May 13.

Mr. McCarter: The two pictures just identified by the witness as May 13 have already been marked D-1 and D-2 for identification. I now offer them in evidence.

(Photograph heretofore marked defendants' exhibit D-1 for identification entered in evidence and marked defendants' exhibit D-1.)

(Photograph heretofore marked defendants' exhibit D-2 for identification entered in evidence and marked defendants' exhibit D-2.)

Q. I show you three more and ask you when you took them? A. These two, May 13.

Q. And they are of the "Black Arrow." A. Yes, sir.

Mr. McCarter: I offer them in evidence.

(Photograph entered in evidence and marked defendants' exhibit D-28.)

(Photograph entered in evidence and marked defendants' exhibit D-29.)

The Witness: This, I think, was earlier in May.

Q. And does it represent the "Black Arrow"? A. Yes, sir.

Q. You don't think it was taken on May 13? A. No, sir.

Mr. McCarter: Then, I had better rub out the pencil mark on it, that it was May 13. I offer that in evidence.

(Photograph entered in evidence and marked defendants' exhibit D-30.)

W. H. Ackerman. Called by Defendant. Direct.

Q. I show you, Mr. Ackerman, exhibit P-11 in this case and ask you to look through it as quickly as you can and tell us whether any part of it is made by you, and if so, what part.

Mr. Haight: What do you want to prove?

Mr. McCarter: I want to have him show that certain parts of it are in his handwriting.

Mr. Haight: They are already in, aren't they?

Mr. McCarter: Yes.

Mr. Haight: There is no need of proving it.

Mr. McCarter: I withdraw the question in view of what Judge Haight said.

Q. Do you recall that there was a test of different kinds of gas made on these ships? A. Yes, sir.

Q. Do you recall just when that test took place without refreshing your recollection? A. No, sir.

Q. All right. I ask you to turn to March 10 and tell us of any test notation on that day. A. Air Reduction Sales Company making tests for calorine gas.

Q. That wasn't the comparative test that was conducted between the two kinds of gas then? A. Yes.

Q. Well, I ask you to look down at March 28 and see if there is not something to refresh your recollection about a test on that day. A. Started the test for calorine gas on the "Philippines."

Q. Now, Mr. Ackerman, are you able to tell us whether or not throughout the job as a whole the Perth Amboy Dry Dock Company, the plain-

tiff, did or did not supply the necessary tools and equipment for the job?

Mr. Haight: I object to that. It calls for a conclusion.

The Court: Sustained.

Q. Do you recall any tools or equipment, any specific tools and equipment now for this job, that the Perth Amboy Dry Dock Company did not supply? A. The most important equipment is the use of a crane. There was practically no—

The Court: I don't think the jury is hearing this witness.

Q. Just make a little more noise. A. There was practically no way of getting material off the "Philippines" except this one big stiff-leg derrick that had a very small reach.

Mr. Haight: I object to that, if your Honor please. The witness is now attempting to state what he thinks the contract provided. All we agreed to do was to supply a locomotive crane, and we supplied it, and if we didn't supply one on the "Philippines" this witness can't give his idea as to whether or not there should have been one.

Mr. McCarter: I don't think this witness is attempting to say that there should have been a lighter crane on the "Philippines."

(Last question read by the stenographer.)

Q. Now, you heard my question. Can you make any other answer to it than that? A. There was delay in giving the tools lots of times.

Q. There was? A. Small wrenches. One day they reported they didn't have any wrenches for the men, and cold cutters were always very scarce.

Q. What is that? A. Cold cutters.

Q. What are they? A. Why, for cutting bolts or rivets.

Q. When you got there, Mr. Ackerman, who was in charge of the work? A. Mr. Preacher.

Q. And who was under him? A. Mr. Peterson.

Q. How long did that situation continue? A. Until Mr. Williams came down.

Q. When did he come? Do you recall? A. Late in December, 28th of December I think it was.

Q. How long did he stay? A. He only stayed until January 2.

Q. And who was in charge of the work after he left? A. Peterson and Preacher again.

Q. How long does that continue? A. Till Mr. Gilbert came.

Q. And do you recall when he came? I will ask you to look at your book and see if he didn't come on January 16.

Mr. Haight: No dispute about that.

Mr. McCarter: All right. That is all. Cross examine.

CROSS EXAMINATION BY MR. HAIGHT:

Q. You don't mean to say that Bernard wasn't in charge of this work, do you? A. He supervised it.

Q. He was in charge, wasn't he? A. The work went on whether Mr. Bernard was there or not.

Q. Mr. Ackerman, let us have an understanding now in the beginning that you will just answer my questions. Wasn't he in charge?

Mr. McCarter: I submit the witness has answered the question.

The Court: Let him answer it.

A. What do you define by "in charge"?

Q. Everything was under Bernard, wasn't it? A. He didn't actually direct the work.

Q. He didn't? A. No, sir.

Q. How do you know? A. Because he wasn't there all the time.

Q. When he was there he gave instructions as to how the work should be done? A. He gave instructions to Peterson or Preacher.

Q. He gave instructions to Peterson or Preacher? A. Yes.

Q. You say he did gave them to them? A. Yes, sir.

Q. And when he wasn't there if you didn't have Mr. Williams or Gilbert there somebody else took charge. That is what you mean to say, isn't it? A. Yes.

Q. Now, you say that Williams came there late in December? A. Yes.

Q. Is that right? A. I think it was in December, yes.

Q. The vessels didn't come there until late in December, didn't they? A. That is right.

Q. The "Philippines" came there on the 27th? A. Yes.

Q. And Williams came hotfoot on the track of the "Philippines"?

Mr. McCarter: I object to that, "hotfoot of the 'Philippines.'" You are putting the words in the witness' mouth.

Mr. Haight: Well, it is a matter of the next day. Certainly, I am putting it in the witness' mouth. This is cross examination.

Q. A matter of the next day? A. Yes, sir.

Q. Why did you say that it came there late in December? A. I didn't remember the exact date.

Q. You said on the 28th? A. You put the date in your mouth.

Q. I didn't put any date in your mouth. As I recollect it, you said December 28 Williams came there? A. No, I didn't say.

Q. I don't care about your looking at it. A. December 28.

Q. The "Philippines" came there on the 27th? A. Yes, sir.

Q. And the "Black Arrow" on the 22nd? A. Yes.

Q. And before the "Philippines" came they didn't do much, did they? A. No.

Q. Now, you said that the wrenches were scarce? A. Yes.

Q. You didn't make any note of that in your diary, did you? A. I don't know. I have a note of it either in here or in my daily reports.

Q. But in this long list of derelictions and delays and what not there is nothing about wrenches, is there?

Mr. McCarter: He didn't make that.

Q. You have seen it, haven't you? A. Yes.

Q. There is nothing in there about wrenches, is there? A. Maybe.

Q. Now, you say cold cutters were scarce at times? A. Yes.

Q. You got labor, didn't you? A. What do you mean?

Q. I mean Crawford & Company hired labor? A. No.

Q. Didn't Gilbert hire? A. No, sir.

Q. You don't mean to say Gilbert never hired anybody? A. Why, they hired some labor.

Q. You know he did, don't you, Mr. Ackerman? A. I know he did, yes.

Q. Why did you say that he did not? A. I didn't say he did not.

Q. So I understood you to say that he did not hire labor. Am I wrong? A. You are wrong.

Q. I am wrong in my understanding of what you said. Now, you say there was no way of getting material off of the dock where the "Philippines" was by crane. You did get that material off by the derrick lighter, didn't you? A. Sometimes.

Q. Wasn't that the way to get it off? A. We didn't always have the derrick lighter.

Q. Well, when you had the derrick lighter you got it off that way, didn't you? Didn't you? A. Yes.

Q. And do you suppose that that was the reason why the parties provided in the contract that the Perth Amboy should furnish a derrick lighter?

Mr. McCarter: I object, if your Honor please, to the question as to his suppositions.

The Court: Yes.

Mr. Haight: Did your Honor sustain the objection?

The Court: What he supposes, yes.

Q. Now, I don't recall in this resume that you gave this morning of the things that caused delay

in this work in reference to the derrick lighter. Do you recall of any? A. I think I mentioned it a couple of times.

Q. You mentioned a float, but do you recall mentioning a lighter, if you did mention a lighter? Let me ask you this. If you did mention a lighter the instances which you gave when you didn't have that lighter are the only instances when you didn't have the lighter from the time when you first went on the job until the vessels were out? A. Oh, no.

The Court: Judge, what do you mean by "lighter"?

Mr. Haight: This floating derrick.

The Court: Isn't that only for the purpose of lifting?

Mr. Haight: Well, I understand it was for the purpose of lifting and for the purpose of moving, too.

Q. Wasn't it? A. Some material was moved on it, yes.

Q. What? A. Some material was moved on it.

Q. Now, those instances you gave in your resume this morning as to the things that caused the delay in this work when you didn't have the derrick or the lighter—those are the only instances when you didn't have them, isn't that so? A. Oh, no, it was from Mr. Williams I got it.

Q. Why, how is it if there was this minute record that you kept that you didn't make some report of those things, if you didn't refer to them in your book, do you understand what I mean? A. Yes.

(Adjourned until 2 P. M.)

W. H. Ackerman. Called by Defendant. Cross.

AFTERNOON SESSION 2:00 P. M.

CROSS EXAMINATION BY MR. HAIGHT (Continued):

Q. Mr. Ackerman, in that book to which you referred this morning, you kept a day by day record of everything that transpired on this job which you thought of sufficient moment to jot down, did you not? A. Yes, sir.

Q. That also contains, and was used this morning, entries made there by Mr. Goggin? A. Yes, sir.

Q. So the book contains, so far as a statement of everything which you and Mr. Goggin thought was of sufficient importance to make note of, doesn't it? A. That is right.

Q. And from day to day, after entering these things in your book, or before, you transmitted your reports to the office? A. Yes, sir.

Q. Everyday? A. Yes, sir.

Q. Of everything that transpired. Let me ask you one question about this gas test: I find in the notes which you referred to this morning the entry under March 10th, "Calorine gas tested," and on March 14th: "Calorine test ended," and then on March 28th the entry: "Preparing for calorine test." Will you explain the significance of those three entries? A. The first date recorded was the start of the test on the "Black Arrow" and the second was the date of the completion of that test on the "Black Arrow." The third was the start on the "Philippines." They tested on both ships.

Q. Now, you spoke about loading the car with a magnet? A. Yes, sir.

Q. The effect of loading the car with the magnet was to materially reduce the cost of labor, wasn't it? A. Yes.

W. H. Ackerman. Called by Defendant. Cross.

Q. That was the primary consideration for installing the magnet, wasn't it? A. That, and the saving of time.

Q. Well, which was the primary one? A. Well, to save time you would save labor.

Q. It would save labor more than it would save time? A. It saved both.

Q. Which did it save in the greater degree? A. Well, it saved labor more, of course.

Q. And in that way it saved the cost? A. Yes, sir.

Q. Because Crawford & Company were paying for the costs? A. Yes, sir.

Q. Now, did you make any mental or other notes as you went through this morning giving the details of the various things about which you were asked as to how many days there were when the weather interfered, either part of day or all of the day, with the work? A. No, I didn't.

Q. My notes here is that altogether out of six months there were sixteen days when the weather interfered some part of the day with the work; do you think that is about right? A. Yes, sir.

Q. Of course, in making a contract one always takes into consideration, that is to say a contract for outside work, that the weather might interfere with the work? A. Sure.

The Court: Do your notes, Judge, show how many days there were during the first three months?

Mr. Haight: Seven days. They were not all, your Honor will recall, that there was a whole day lost.

The Court: Yes, I understand. I just wanted to get approximately.

Mr. McCarter: That is not what my notes show.

Mr. Haight: February 11th, rain in the morning.

Mr. McCarter: January 11th.

Mr. Haight: January 11th. January 16th, rain started three o'clock.

Mr. McCarter: I do not want to go over it again, but we can just count it up.

Mr. Haight: There was one more. I am wrong. I am talking about the days when he said it interfered.

Mr. McCarter: I have twelve.

Mr. Haight: He said there was extreme cold, but he never said that interfered with any work. Another day there was snow, and there is no testimony that interfered.

Mr. McCarter: He testified always whenever there was snow it interfered.

Mr. Haight: I do not recall any such testimony.

Q. Whenever it interfered materially with the work, you jotted it down, didn't you? A. Not always, no.

Q. Didn't you always do it? A. It might show on my daily report at the office, and not show on here. Or might be the other way.

Q. Why, didn't you put it down in there? A. Well, sometimes I didn't think of it in time.

Q. Now then, I count five days during the six months which your reports cover that the crane was either off of the track or something was the matter with it? A. Yes.

Q. Do you think that is about right? A. Yes, sir.

Q. That wasn't an unusual situation for a piece of machinery, was it, to be out of repair five times in six months? A. Oh, no. No, that would not be.

Q. Quite usual, wasn't it? A. Yes.

Q. On January 31 you say the crane broke down. Of course, the fact that the crane broke down didn't stop the burners burning, did it? A. No.

Q. And it didn't cause any delay in the work in that way, did it? A. No, it would not interfere with the burners unless they were waiting for the crane to make a lift of a piece they cut.

Q. You don't know whether anything of that kind happened? A. No.

Q. Ordinarily it would not interfere with the burners? A. If it was too long, it would.

Q. A delay of two and a half hours would not delay the work? A. No.

Q. On February 1 your notes state, as I noticed them, as I was reading there, "lost a short time adjusting damage caused by going off the track." Is that correct? A. Yes.

Q. What did you mean by short time? A. Maybe half an hour, maybe an hour.

Q. Maybe half an hour, maybe an hour. That, of course, didn't delay the burners any? A. No.

Q. The next time we have is February 4, the crane seems to have gone off the track from two to three-thirty, is that correct? A. The 4th?

Q. Yes. A. That was right.

Q. Of course, that didn't delay the burners any? A. No.

Q. Now, then, on February 26 the crane went off the track. How long was it off? A. Till one-fifteen from seven o'clock in the morning till one-fifteen.

Q. That didn't delay the burners any? A. It might have.

Q. Well, have you any recollection about it? A. No.

Q. No recollection? A. No.

Q. Ordinarily it would not, though? A. If it was to happen every day it would.

Q. No, no, a delay of that kind. A. It all depends on where they are cutting.

Q. What? A. It all depends on where they are cutting, what part of the ship, whether it is on the shell. If it was on the shell they might have been delayed.

Q. They weren't down to the shell then, were they? They hadn't got below the superstructure, for that matter, so it could not have delayed it, could it? Now, then, on March 25, two hours seemed to have been lost there while the crane was broken. Will you look at your record there, please, March 25? The record reads, "crane laid up for repairs on double-fall, seven a. m. to nine a. m.," is that right? A. Yes.

Q. Then it was laid up two hours? A. Yes, sir.

Q. That didn't interfere with the burners, did it? A. No.

Q. Now, let us go to the manifold. I find that five instances detailed by you where you say something happened to the manifold; is that right? A. Yes.

Q. Now, the first one was on March 15. It was frozen. There is nothing in your book to show how long it was frozen, is there? A. Freeze, get it thawed out, freeze up again.

Q. There is nothing in your book to show how long it was? A. No.

Q. If it had been any length of time— A. Must have entered it somewheres or I would not have the record.

Q. If it had been any length of time, anything out of the way, of course, you would have entered it, wouldn't you? A. I would not have entered unless it was out of the way.

Q. If it was first frozen and you got it thawed out, it was all right, wasn't it? A. It probably froze up more than once.

Q. But you have only indicated it having happened once? A. I would not have made a note of it if it only happened once.

Q. Wasn't March 15 the cold day? I don't find anything on your records that indicate it was an extraordinary day. A. It says, "burners having trouble with manifold, freezing up. Lost considerable time."

Q. But you don't find anything in there that indicates that was a bad day? A. No, fair day.

Q. How do you account for the manifold freezing? A. Let the air through too quick. Lots of times it freezes up. Same principle as a refrigerating machine.

Q. It will freeze in summer the same as it will in winter? A. No.

Q. Wouldn't it? A. You won't ordinarily find that trouble in summer.

Q. It will happen in days that are not cold enough to freeze outside, would it not? A. Yes.

Q. Now, then, on March 18, leaks from gas, you say? A. Yes.

Q. Did that delay the work any? A. Yes.

Q. How long? A. I think it was about an hour that day.

Q. That wasn't a very serious loss, was it? A. No. Multiply by the number of burners. Figure it out yourself.

Q. The burners used the tanks just the same, didn't they? A. I don't suppose they put tanks on when—

Q. How many burners did you have that day? A. I have no record here.

Q. The next time was March 22. You say the pressure in the manifold was low? What effect did that have on it? A. They would not be able to blow from the steel.

Q. They used it just the same, didn't they? A. I believe they did.

Q. Don't you know what they did? A. That was on the "Philippines." Mr. Goggin was checking up there.

Q. That was his note? A. Yes.

Q. There isn't anything in his note to state that you couldn't get enough pressure? A. It says manifold working but don't seem to be able to get required pressure on same.

Q. Well, it did work then? A. Yes, it worked.

Q. As far as you know that didn't delay the work a bit? A. Well, it would mean they couldn't get enough pressure and they would have to work on only light material. They would not be able to cut a heavy piece of steel.

Q. It also indicates, if there was low pressure there, the Perth Amboy Company, if they paid for proper gas, they got stuck, didn't they?

Mr. McCarter: I object to that as immaterial.

Mr. Haight: All right. We will not waste any time on it.

Q. Then on March 24th, the manifold blew out. What does that mean? A. I suppose there was a blowout on the pipe line somewhere on the docks.

Q. Is that in your writing? A. Yes. One blowout on the Black Arrow and one on the Philippines. Same morning.

Q. You haven't any idea how long that took? A. I suppose they had to get a new piece of pipe down and thread it up.

Q. You don't know how long it took though, do you? A. No.

Q. There wasn't anything to stop the burners burning, if they brought the tanks onto the vessel? A. There was always delay in getting tanks.

Q. Oh, yes, there would be some little delay, but nothing unusual, was there? A. I call it unusual.

Q. Why didn't you put down the time of the delay that was caused, in the book? A. I have a note of it. I haven't got the time.

Q. If there had been any length of time you would have put it down, wouldn't you? A. No, I might not have put it down here.

Q. Why wouldn't you? A. Because I didn't keep track of all of it.

Q. Didn't you keep track of not only the very little things, but the large things as well? A. Tried to.

Q. Of course, you did. And if there had been any unusual length of time consumed by that blowout, you would have noted it at the time, wouldn't you? A. Well, if it hadn't been unusual, I wouldn't have written down about it.

Q. Well, you had the crane, and the crane went off the track; in the book you said it was 2½ hours? A. Yes.

Q. And other things you have indicated the time when there was anything over a small amount of time. Now, doesn't that indicate to you that if this had taken any length of time that you would have noted it? A. No.

Q. You don't think so? A. No.

Q. All right. And at the time the manifold burned, something else burned at the same time, didn't it? A. Yes.

Q. What was it, in your book there? A. Fire in the ice box.

Q. And in the manifold too? A. Yes.

Q. Didn't burn the manifold up, did it? A. Must have burned the hose line up.

Q. There is nothing to burn up in the manifold, is there? A. Well, the part that wore off is, instead of being connected with a pipe, is connected with a rubber hose.

Q. You are likely to have a fire in the manifold at any time, aren't you, a backfire? A. No. Not usual.

Q. These burners are liable to create a backfire at any time, aren't they? A. Yes.

Q. If that backfire goes back far enough, it will go into the manifold, won't it? A. Yes.

Q. Therefore, a manifold is more or less dangerous, isn't it, in that way? A. I suppose it is. Never heard of it doing any damage.

Q. These trucks, if you hadn't used these trucks and had to cart that stuff all off by hand, it would have cost Crawford & Company a pretty penny, wouldn't it? A. Yes.

Q. You got the trucks on purposely to save money, didn't you? A. Yes.

Q. On February 11th, you said the lighter was held up for three hours, you couldn't get it for

three hours; that didn't delay the burners any, did it? A. Not the burners, no.

Q. Now, then, you stated on February 25th, that Mr. Preacher knocked the men working on the winches. Exactly what did you mean by working on the winches? A. Why, the winches that were on the ships were used to handle material to lighters or scows that might have been loading alongside, and for lack of other equipment we had to use the winches on the boats.

Q. How many men were working on the winches? A. Why, sometimes there was one man, sometimes two.

Q. And what particular vessel did this entry in your book refer to? A. The Philippines.

Q. So there were either one or two men that Mr. Preacher took off that time? A. Yes, sir.

Q. Do you know why he took them off? A. Had some other job in the yard.

Q. Were they expert men? A. Yes, sir; mechanics.

Q. Couldn't ordinary laborers do the work? A. No, sir.

Q. Did that delay the burners any? A. Not at that time.

Q. There was another time on April 14th, where you said there was some lumber on the track of, I suppose you meant where the locomotive crane operated? A. Well, the siding too.

Q. On the siding? A. Yes.

Q. Well, that didn't delay the burners, of course, any? A. Not the burners, no.

Q. I notice that on April 15th, you note a delay as small as one half hour, when the crane was used for unloading lumber? A. Yes.

Q. On April 21st you say the crane operator was away. So that this— A. No. I changed that to the rigger.

Q. The chief rigger was away? A. Yes.

Q. Did that stop the working of the crane? A. Evidently it did.

Q. There was a general delay that day anyhow, wasn't there? That was the clear cloudy day that was a holiday, is that right? A. That is right.

Q. There was a holiday that some of the foreign element that were working on this boat had? A. That is right.

Q. This man went away with the rest of the holiday-makers? A. Yes, sir.

Q. I notice that on May 6th you wrote a note "They shipped the car float, the company shipped the carfloat to somewhere else, and wanted you to stand half of the cost." Cost was the principle thing you were concerned with, wasn't it? A. Absolutely.

Q. Mr. Meurer turned off the gas May 26th; that was in respect to the burning of the boilers, wasn't it? A. Yes.

Q. And there was a controversy as to whether or not you should burn the boilers or take them out by hand? A. Take them out how?

Q. By hand. I mean lift them out, or whether they should be burned, or don't you know about that? A. I knew there was some discussion about it. I don't know.

Q. On May 8th, when you say he turned off the gas, what were you cutting then, and what was the reason that he turned off the gas? A. Burner was cutting into a donkey boiler.

Q. You were cutting into a boiler then and he objected to that, is that right? A. Yes, sir.

Q. On May 10th, you say the company took the lighter away during the afternoon for one hour. That didn't delay the burners any, did it? A. Not the burners, no.

W. H. Ackerman. Called by Defendant. Cross.

Q. How many burners were delayed at the time this schooner was tied across the stern of the Black Arrow? A. I think there were about eight on at that time.

Q. Couldn't they burn anywhere else except the stern? A. No, sir. They couldn't cut charging box anywhere else, I don't think.

Q. Couldn't cut charging box sizes anywhere else? A. I don't think so.

Q. Well, as a matter of fact, they never got down to the stern of the Black Arrow, did they, below her main deck? A. No.

Q. How did the fact that the schooner lay across her stern then in anyway prevent the burners? A. They were working on the stern.

Q. Well, they were not working on the stern below the main deck, were they? A. No.

Q. The schooner lay way below the main deck? A. Sparks dropped down.

Q. Were the sparks dropping down on the "Black Arrow"? A. Yes, but it was steel.

Q. How many burners were there working on that particular part? A. What date was that?

Q. That date that you say, May 16. A. I don't know how many.

Q. You don't know? A. No.

Q. You don't know how much delay that caused to the burning? A. No.

Q. Now, then, you state that the total amount of charging box cut or shipped before the 1st of March was 364 tons, and taking your figures as to the total amount of charging box cut, there must have been shipped after that time 972 tons; that is right, isn't it? A. That is it, yes.

Q. As you testified in the former suit—the date of your testimony was in the middle of July—

that there was 700 tons had been shipped after the 1st of March; that is correct, isn't it, or would you like to see it? A. Yes.

Q. Then, subsequent to the trial in Newark you shipped 272 tons approximately of charging box? A. I will tell you exactly if you want to know. 286.

Q. 286 after the trial in Newark? A. Yes.

Q. And you cut no more charging box after the trial in Newark, did you? A. No.

Q. And you did, as a matter of fact, cut no charging box after the latter part of May, did you? Or did you cut some in the boilers? A. The boilers we cut charging box.

Q. Well, this 280 odd tons were there all the time on board the vessel? A. Yes.

Q. Now, did you take away any charging box or other sizes on vessels? A. During what date?

Q. No, the time that the vessel—taken away on the vessel when you moved the vessels away? A. On the "Philippines" we took some.

Q. How much? Do you know? A. There is no way of figuring it. Between 50 and 100 tons.

Q. Between 50 and 100 tons from the "Phillippines"? A. Yes.

Q. And how much on the "Black Arrow"? A. Maybe 10 tons.

Q. Well, now, when was your last shipment of shipping sizes? A. You mean large pieces?

Q. Yes, I mean what we call shipping sizes and what I think you call large pieces. A. February 23.

Q. February 23. And prior to the time that the trial in Newark, the last shipment of charging box had been on April 11, hadn't it? A. April 9?

Q. What. A. April 9.

Q. And your last shipment—that is to say, this Chinese order that you call ship plates—was on May 4 or some time early in May? A. May 8.

Q. Now, you spoke about 19 hours or something or other, the burners being prevented from working, this morning; do you recall that? A. Yes.

Q. In connection with what was that? A. On some hold-up, some delay.

Q. Never mind if you can't get it. I will tell uoy, it is February 4. "Lack of air on the 'Philippines,' 19 hours." What you meant to say there was there were 19 burners that were unable to work because of lack of air for an hour apiece? A. That is right.

Q. And the delay therefore was, so far as one man was concerned, just an hour? The delay on the job, the time the air wasn't there was just an hour? A. That is if there were 19 burners.

Q. Were there 19 burners? A. I don't know how many there were.

Q. You don't know how many there were there? A. No. I imagine there may have been about 15 at that time.

Q. The cutting off of the channels was a very expensive proposition, wasn't it? A. No.

Q. Didn't it cost quite a lot compared with cutting out a rectangle piece of steel? A. Of course, it cost more for cutting out a piece. They had to be cut off.

Q. In that way comparatively it was an expensive piece of work? A. Cheaper than charging box.

Q. What? A. Cheaper than charging box.

Q. You knew the Perth Amboy Company protested against that, didn't you, cutting that way, very early in the game? Cutting off these chan-

nels? A. I know they made some objection, but I know they didn't stop the work.

Q. What? A. I know they had some grievance against it, but I—

Q. You don't know what it was? A. No.

Q. You made up a statement, didn't you, of the length of time that the men who were employed on the crane lost when the crane broke down or was off the track on these various occasions which we have spoken of? A. I haven't the sum total of it, no.

Q. I know, but you did make up such a statement, didn't you? From time to time, I mean. A. Yes.

Q. And you deducted it from the bills that were rendered by the Perth Amboy Dry Dock Company for labor? A. I think I did on certain occasions. I didn't touch the bills. I made a note of it to our office.

Q. What would you say if I told you that the total amount deducted from our bills for loss of labor in connection with the crane being broken down or anything of the kind was $17.07?

Mr. McCarter: I object as not cross examination. If he wants to make him his own witness let us so understand it.

Mr. Haight: I am not making him my own witness. It is cross examination. The witness has testified to the conditions and I presume they were put in to show to the jury how much time was lost on account of the crane. They have charged us with all of that, and they figured the amount now to $17.07, and the witness has said he made up the statements, and I want to find out if they are correct.

Mr. McCarter: The witness just testified he didn't make up the bills.

Mr. Haight: He can testify if he doesn't know.

The Witness: Judge, there were some times when we checked up the labor at night, and they knew about these men working on the crane, and they didn't even put it on the bill. It was never on the bill, so how could it be deducted?

Q. Well, you deducted from our bills, didn't you? A. No.

Q. If you can't answer say so. $17.07 for loss of time of men in connection with the time that the locomotive crane wasn't working? A. No, I did not.

Q. You did not? A. No.

Q. Who was A. Morgan? A. He was that rigger.

Q. He was the rigger on the crane? A. Yes.

Q. Who was T. Mallet? A. Crane operator.

Q. Who was W.—you pronounce it. A. Chereseavitch.

Q. What was he? A. Helper.

Q. On the crane? A. Yes.

Q. E. MacFarlene? A. Helper.

Q. W. Drost? A. Helper.

Q. I notice that there are deductions made here in this summary of January 31, two and a half hours, February 1, one hour, February 2, one hour, February 4, one and a half hours. That corresponds very closely with the analysis that you gave this morning as to the times that the crane was out of business, doesn't it? A. Yes.

Q. And that is altogether a total of six hours, is that right? A. I guess so.

Mr. Haight: Let me have that bill.

Mr. Carey: On the bill under date of January 31, beginning January 31 and running through February 6.

Q. I show you one of the bills that have been offered in evidence, to which there is attached the heading, from W. H. A., general report February 4. Then follows a list of the names I just read to you, the numbers, the rate of pay, and the dates and the amounts. Do you know anything about that? A. No, sir.

Q. You don't know anything about that? That is from W. H. A., or from you? A. Sounds like it. I may have made the original. I didn't type it.

Q. Can you tell whether in making the original, if you did make up the original, the total amount that you deducted from us for the time that the locomotive crane was out of business was $17.07, for the total number of hours she was out of business was six from January 1, the time she came, until that time? If you can't, why, just say so. It might be that you don't know. A. I believe I did make the original of that.

Q. That is correct, then, isn't it? Total amount deducted from our bill was $17.07? A. Can't say.

Mr. Haight: That is all.

REDIRECT EXAMINATION BY MR. MCCARTER:

Q. Mr. Ackerman, you have on your daily log there, whatever you call it, noted difference occasions when there was snow. Will you state whether or not it is a fact that you ever noted snow that it didn't delay the job, the progress of the work? A. Did I state that?

Q. Will you now tell us that? Did you ever—
A. Snow would naturally hold up the work more than it would show on any knocking off of men. Naturally, if you have a coat of three inches of snow on the work that is to be cut, it would have to be cleared off before they would ever be able to burn there. Or, men doing any kind of work would have to clean off the snow before they would be able to get to their work.

Q. Did you ever make a notation of snow, on your daily log from which you have testified this morning, when work was not delayed by reason of the snow? A. No.

Q. Mr. Haight, asked you whether the locomotive crane delayed the burners and you said it did not. Will you state whether or not it delayed any other part of the progress of the work? A. The locomotive crane not being in use would naturally hold up the work of loading or clearing the decks, or getting out any material that they might be working on, and thus it would delay the work so that in the end it might delay burning, but not immediately.

Q. All of the material that was cut had to be removed, didn't it? A. Yes, sir.

Q. Was the crane used in removing the material from the Black Arrow? A. Yes, sir.

Q. The same kind of question was asked you about the lighter, whether any of the delays in connection with the lighter delayed the burners, and you said it did not. Will you state whether any delays to the lighter delayed any other part of the progress of the work? A. It may have delayed handling the material; in getting the cut steel off the deck or in taking off whatever might have been in the way on the boat.

Q. Were there any occasions when on account of the locomotive crane being delayed, the time of the workmen employed on the locomotive crane was never even charged against Crawford & Company by the Perth Amboy Dry Dock Co.? A. I think there were. There was on one occasion I know, but I don't know how many more.

Q. Did you make everyday a daily report to the New York office? A. Yes, sir.

Q. Did you ever note any things on that daily report that you did not report in your log book? A. I believe I did.

Q. Was there any rule by which you guided your choice of where you made these entries? A. Not at all.

RECROSS EXAMINATION BY MR. HAIGHT:

Q. There could be no delay, could there, in the general work, if the burners were never delayed? In other words, every other person had to be behind the burners? A. No. All other work had to be ahead of the burners.

Q. What do you mean by that? A. Why the burners could not burn on a deck that was covered up with a pile of boards, or covered up with dirt, or broken concrete, or machinery, booms.

Q. But I mean in the moving off of material that was cut by the burners, you could not move that material off until it had been cut, could you? A. Naturally.

Q. Therefore, if the burners were never delayed with cutting the material, then the delay in taking it off never delayed the whole work? A. The cut material might have been piled up enough to—

Q. Of course, lots of things might have happened, but I am asking you what did happen? A. Well,

lots of times it was piled up, a pile of cut material was covering up their work.

Q. Did that or not stop the burners? A. I remember they had to be shifted.

Q. Didn't stop them, did it? A. No.

Mr. Haight: You have already testified it did not. That is all.

By Mr. McCarter:

Q. Was there any work in connection with the scrapping of these ships other than the burning and cutting? A. Yes.

Mr. McCarter: There are a couple of questions I forgot to ask him on direct examination.

Q. I show you a large photograph, Mr. Ackerman, and ask you if you took it? A. Yes, sir.

Q. When did you take it? A. About December 29, 1925.

Q. What does it represent? A. It represents a section of the shell of the Philippines.

Q. Did you measure that section?

Mr. Haight: I object to that. That is just this year. We haven't anything to do with that.

Mr. McCarter: It is just for illustration to show the size of that.

Mr. Haight: Everytime you get an illustration in we are delaying it just so much longer. I cannot see any purpose of something that is last December.

Mr. McCarter: We did not take a picture of one of these big pieces of the Philippines before. It is the same Philippines and it shows the jury what these big pieces amount to.

The Court: Where did you take it from?

Mr. McCarter: The Philippines is not completely scrapped yet, and he took a picture of it. It is the same ship.

Mr. Haight: That is not the same size as ours anyhow. That is 8′7″ by 27.

Mr. McCarter: I offer the picture in evidence.

Mr. Haight: I object to it.

The Court: Objection sustained.

Mr. McCarter: I would like to have it marked for identification.

(Photograph marked D-13, for identification.)

Q. What is that big piece of iron over there on the floor, Mr. Ackerman, that was brought in? A. That is what is known as charging box scrap.

Q. Did you weigh that piece? A. Yes, sir.

Q. How much does it weigh? A. 544 pounds.

Q. What is it from, what ship? A. From the Philippines.

Q. Is that an unusual size charging box, or a heavy weight? A. No. It is an average size piece.

Mr. McCarter: That is all.

Mr. Haight: That is all.

EDWIN T. WILLIAMS, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Where do you live, Mr. Williams? A. I live 191 Sterling Place, Brooklyn.

Q. What is your occupation? A. Occupation is practical ship builder.

Q. Are you now employed by H. L. Crawford & Co? A. No, sir.

Q. Were you ever employed by them? A. I was employed by H. L. Crawford & Company; yes, sir.

Q. Where were you working when you were employed by them? A. At the Staten Island Shipbuilding Co.

Q. Did you ever do any work in connection with the scrapping of these ships at the Perth Amboy Dry Dock Co? A. Yes, sir. I worked there from about December 28, 1923 to January 3, 1924.

Q. By whom were you brought on that job? A. I was hired by J. L. Bernard.

Q. From whom did you receive your pay? A. I received my pay from the Perth Amboy Dry Dock Co.

Q. What were your duties? A. My duties there were to assist Mr. Bernard in the general supervision of the scrapping of these ships.

Q. Were you under Bernard? A. I was under Bernard, yes, sir.

Q. Who was in actual charge of the work when you first got there? A. Mr. Preacher.

Q. Mr. Preacher? A. Yes, sir.

Q. Who was with or under him? A. There was a man named Peterson, I believe.

Q. Were you there when this accident to the Philippines occurred? A. No, sir.

Q. Did you give any instructions or directions to anybody with respect to the cutting of pipes on the Philippines? A. No, sir.

Q. Did you give any instructions with reference to the method of lowering those pipes? A. Mr. Preacher and I went over, we were on the Philippines on the morning that I left there, and we cut out holes through the ship's bulkhead, and machinery bulkhead, to make room for them to take the pipes through. And they had a man there they put in charge, and he was directed by Mr. Crawford to get a block and fall and handle stuff that way.

Q. Did Mr. Preacher or Mr. Peterson, either one, at any time propose to lower these cut pipes by block and fall, and did you at any time instruct them not so to lower them, but to let them drop? A. No, I never gave any instructions like that.

Q. At any time, Mr. Williams, when you were going around the Philippines with Mr. Preacher, were men dropping the pipes without putting tackle under them, and at any such time did you say in response to Mr. Preacher's objection to that method, "Oh, I have scrapped lots of ships before and that is the way I am going to do it." A. No, sir; I never passed any remark like that.

Q. Have you had any experience in scrapping ships? A. Yes, sir.

Q. What? A. I worked for the government for 23 years and we prepared all scrap to send to the mill; and also had a torpedo boat destroyer that was cut in half in the East River, and we cut that up. And then after leaving the government service I was over to Perth Amboy for those three or four days, and then I went to Staten Island Company

for 5½ months, and I just returned from Baltimore last July, after cutting up four destroyers and one composite ship, about 5½ months. Since then I have been on other work.

Q. When you had left the plant of the Perth Amboy Dry Dock Company, the locomotive crane hadn't arrived, had it? A. No, sir; there wasn't any crane there when I was there.

Q. Now, assume that the locomotive crane arrived and was in operation on January 21st, Mr. Williams, from that date, with the additional facility of the locomotive crane, will you tell us, what in your opinion, would be a reasonable time within which both of these vessels should be scrapped completely?

Mr. Haight: Let us find out in the first instance how he is going to scrap those.

Mr. McCarter: Go ahead and ask him, if you wish.

SPECIAL CROSS EXAMINATION

BY MR. HAIGHT:

Q. In giving your estimate, do you take into account the way in which they were to be scrapped? That is to say, the size of the pieces to be cut? A. To be cut, yes.

Q. What sizes are you going to assume? A. Well, I would assume both. I would first give you one and then the other.

Q. What do you mean? A. The one in charging box size and one in shipping size.

Q. One in charging box and one in shipping size? A. Yes, sir; one in charging box and one in shipping size.

Q. The whole thing? A. Yes, sir.

Q. About taking out the boilers and the auxiliaries, and things of that kind, by hand? A. They don't take those out by hand.

Q. Have you assumed that, or haven't you? A. I have taken that all into consideration. Q. What are you going to do with those in your estimate, cut them up or take them away? A. Take them out and cut them up.

Q. You are going to do it both ways? A. Yes, sir.

Q. Do you estimate it both ways? A. Yes.

Q. Or, did you just do it now while you are sitting there? A. While—well, I am figuring it now from my experience.

Q. While you are sitting there? A. Yes.

DIRECT EXAMINATION (continued):

BY MR. MCCARTER:

Q. Now, in order that you may have the question in your mind: In your opinion, cutting up the Black Arrow and the Philippines as much as was desired, or say all of them in charging box sizes, and cutting up the boilers and engines in charging box sizes, both of them, how long would you say it would reasonably take to completely scrap those two ships at the Perth Amboy Dry Dock Yard, with the facilities there? A. I would say one year.

Q. Now Mr. Williams— A. But I would like to make a correction on those engines. You would not cut the engines up in charging box sizes, on account of the frames being cast iron, and so forth.

Q. So in your estimate you have just given, you did not include the cutting up of engines? A. No, sir.

Q. Now Mr. Williams, assume that only the superstructure of both of those vessels was to be cut up into charging box sizes, and the rest of the vessel into shipping sizes, and assume, as Mr. Meurer has testified, that all of the ship above the main deck, that is, the highest continuous deck that goes from bow to stern, is superstructure, how long would you say it would reasonably take for both of those vessels—

Mr. Haight: The balance of it in shipping sizes?

Q. Yes. The balance of the vessels to be cut in shipping sizes, except the superstructure, as it is so delineated? A. Yes.

Q. How long would you say it would take reasonably to completely scrap both of those vessels at the plaintiff's plant? A. I would say eight months.

Q. Eight months? A. Yes, sir.

Q. In making those estimates did you limit in any way the number of men employed in and about the shop? A. Well, the number of men would have to be determined as you go along on that work to see how much free board you get room enough to work. You have to add and increase your force as you clear away your material.

Q. Are your estimates based then on using the reasonably appropriate amount of men as the job progressed? A. That is the idea, yes.

Mr. McCarter: Cross examine.

CROSS EXAMINATION BY MR. HAIGHT:

Q. What number did you calculate that you would use on each vessel? A. Number of men?

Q. Yes. A. First off I would have to start—

Q. Why do you have to think about it? Can't you tell me? A. I am going to tell you.

Q. Why do you have to stop and think about it? A. You can't look at a big ship in your mind.

Q. You have come here and told us how much it should take. A. I am going to try to explain that to you.

Q. First tell me now how many men you calculated you would use on each of these vessels? A. I would start off with fifty laborers to start off.

Q. How many burners? A. I wouldn't start off with five burners.

Q. How soon would you increase them? A. In probably ten days. Then or twelve days.

Q. Ten or twelve days. How many would you put on then? A. About thirty.

Q. When would you increase that force? A. I wouldn't increase that force above ten per cent. in probably ten more days.

Q. Then, you would get how many there? A. About thirty-three to thirty-five.

Q. Then, you would increase it more? A. I wouldn't increase it any more.

Q. You would not increase it any more than thirty-three a ship? A. No.

Q. Why not? A. That would be plenty to complete it.

Q. The more men you have the quicker the job would be completed? A. No, they would be in each other's way. You have got to get the material out of the way.

Edwin T. Williams. Called by Defendant. Cross.

Q. You could get the material out of the way for thirty men to go ahead? A. No.

Q. How long would it take a man to cut a piece of charging box size? A. About half an hour.

Q. About a half an hour? A. That is determined on the thickness.

Q. You mean to say that you couldn't use more than thirty-three men on an 11,000 ton ship? A. Thirty-three burners, no, sir.

Q. You couldn't use over thirty-three burners? A. No.

Q. You never had any experience in scrapping ships before you came here? A. Yes, sir.

Q. What have you scrapped before you came there? A. Scrapped all kinds of iron in the Brooklyn Navy Yards.

Q. You have done any cutting? A. Yes, sir.

Q. Are you an engineer? A. I am not an engineer, no sir; but I was one of the first ones in this country to develop oxygen and hydrogen.

Q. To what? A. To help to develop hydrogen and oxygen in this country, the manufacture of it.

Q. Are you a chemist? A. No, sir.

Q. Have you any profession? A. Yes, sir, I am a ship fitter.

Q. A ship fitter? A. Yes, sir, been assistant master ship fitter in the Brooklyn Navy Yard for twenty-three years.

Q. When did you get out of the Navy? A. Not the navy, the navy yard.

Q. Well, the navy yard. A. 1922.

Q. How did you happen to connect up with this job? A. Through Mr. Bowers at Staten Island.

Q. You only stayed there six days, didn't you, in Perth Amboy? A. I was there six days. About four and a half days.

Q. You were there till January 3? A. Yes, there was a holiday and a Sunday in between.

Q. You left at about eleven o'clock in the morning that day? A. Yes, sir.

Q. Then you went over to Staten Island? A. Yes.

Q. You stayed over there for five and a half months? A. Yes, sir.

Q. Worked slacked over there, too, didn't it? A. Yes.

Q. In making you shut down, practically doing nothing further?

Mr. McCarter: I object to that as absolutely immaterial. He is basing it on his experience. If they go over to Staten Island and they close down it may reflect on what this man's judgment is.

Mr. Haight: The length of time, certainly, but the length of experience he had, but when it starts.

The Court: It may be.

Q. You heard the question here, did you? They weren't slacked off in May, then? A. Slacked down somewhat in May.

Q. You did practically no work for some time afterwards, did you. A. Latter end of May and the early part of June.

Q. When did you stop altogether, then? A. I don't know when they stopped altogether, but I stopped some time in the early part of June.

Q. There was no work to do then, was there?

Mr McCarter: I object to that.

Q. You weren't doing any work? A. We were working right up to the time I left.

Edwin T. Williams. Called by Defendant. Cross.

Q. You were doing very little scrapping at the time you left? A. We were working on non-ferrious metal, cleaning it up.

Q. Were you on this one composite and five destroyers down at Sparrows' Point A. Four destroyers and one composite.

Q. How much did it take you to cut up one of those destroyers? A. About a month and a half.

Q. Did you cut one destroyer up in ten days? A. No, I didn't cut one destroyer up in ten days.

Q. Was Patten down on the same job? A. Patten, yes, sir.

Q. Wasn't there one destroyer completely scrapped in ten days? A. No, sir.

Q. It took you a month and a half to scrap one? A. Positively.

Q. How many men did you have working? We had sometimes thirty men.

Q. How many burners? A. Ten or twelve.

Q. Ten or twelve burners? A. Yes.

Q. And you used ten or twelve on a destroyer? A. Yes, sir.

Q. But on an 11,000 ton ship you couldn't use but thirty-three? A. No, sir.

Q. Is that right? A. Correct.

Q. What is the tonnage of a destroyer? A. Tonnage of a destroyer, approximate steel tonnage or dead weight?

Q. I mean gross tonnage. A. About 875, 900 tons.

Q. 875 or 900 tons. You could put ten burners on an 875 ton vessel and you couldnt' put but 33 on a 11,000 ton vessel? A. Positively.

Q. Now, Preacher did direct the men to lower these pipes by slings, didn't he? A. Oh, yes.

Q. You didn't tell him that was taking too long? A. No, sir.

Q. And let them drop? Then the fact that they were dropped must have been due to the man to whom Preacher had been giving instructions, generally speaking? A. I didn't see any of them drop at any time.

Q. If he did that you didn't countermand the order?

Mr McCarter: I object to that.

The Court: Objection sustained.

Q. There isn't any doubt in your mind that you were employed by Mr. Bernard? A. No. He employed me.

Q. There isn't any doubt in your mind about it? A. No, sir.

Q. You so testified and made an affidavit about that? A. Yes, sir.

Q. In the other case? A. Yes.

Mr. Haight: That is all.

By Mr. McCarter:

Q. How long did it take you to cut up these destroyers at Sparrows' Point? A. About five and a half months.

Q. Five and a half months? A. Yes, sir.

Q. What was the net tonnage of the destroyers? A. Net tonnage—

Mr. Haight: How long did he say it took him?

Mr. McCarter: Five and a half months.

A. About 1100 ton.

Q. Is that 1100 tons in the whole four? A. 1100 tons in the whole four.

Q. Were they the same size each? A. Yes.

Q. So that in one the net tonnage was one-fourth of the 1100, whatever that is? A. About that.

Q. What job does this man Patten have down at Sparrows' Point?

Mr. Haight: I object. That has nothing to do with Patten so far as this witness is concerned. Patten was called here as a fact witness as to what transpired down at Perth Amboy. It doesn't make any difference what happened down at Sparrows' Point.

Mr. McCarter: He testified he had a certain job down there.

Mr. Haight: You can't contradict him on an immaterial matter. Nothing is better settled in the law of evidence than that.

Mr McCarter: It goes to his credibility.

Mr. Haight: You can't attack his credibility on an immaterial matter.

The Court: You are taking up a lot of time with things that have nothing to do with the case. The objection is sustained.

Q. There is one question that I forgot to ask you on direct, Mr. Williams. Mr. Peterson testified in this case that when the "Philippines" was being scrapped he said to you, "Why, I understand you are letting these pipes drop down here all over the bottom of the ship." And that you said to him, "Yes, we have to do that. We can't be bothered lowering them down with block and tackle the way they were doing business because we have got to

jump these ships in three months. We can't lose any time." Did you say anything like that? A. No, sir, I never said anything of that kind.

Q. Or anything like that? A. Nothing like it at all.

RECROSS EXAMINATION BY MR. HAIGHT:

Q. How much was the gross tonnage of these destroyers? A. The gross tonnage of the destroyers were about 3600 tons; something like that.

Q. It took you five and a half months to scrap those destroyers and the composite ship, didn't it? A. Yes, sir, they were working on the composite ship before I went there. The whole operation took eight months.

Q. They just started there a little while before? A. In October.

Q. The composite ship took twice as long to scrap as an all-steel ship? A. The way they were operating it.

Q. It would, as a matter of course. A composite ship takes twice as long as a steel ship? A. I don't know whether it would or not. It is just a question of the way they were operating it. The way they were doing it, yes. But the way I started doing it we got away much quicker.

Q. It takes longer to scrap a partly wood and partly steel ship than it does an all-steel ship? A. No, it does not.

Q. It does not? A. No.

Q. You don't agree with that? A. I do not.

BY MR. MCCARTER:

Q. When did you go to Sparrows' Point? A. I went to Sparrows' Point about the day after Christmas, something like December 27.

Charles Wood. Called by Defendant. Direct.

Q. A year ago? A. A year ago.

The Court: That is all.

Mr. McCarter: No, your Honor. My attention has been directed to the fact that Mr. Patten was asked these questions. Your Honor, I want you to look at that.

Mr. Haight: What page?

Mr. McCarter: 435. I think in view of that I have the right to ask of this witness to qualify him as an expert.

Mr. Haight: That was cross examination.

Mr McCarter: Was it? I take it all back if it is on cross examination. That is all.

CHARLES WOOD, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Where do you live, Mr. Wood? A. Elizabeth, New Jersey.

Q. What is your occupation? A. Boiler maker, helper at the present time.

Q. Did you have to do any work on these two ships, the "Black Arrow" and the "Philippines"? A. I work on one of them, the "Black Arrow."

Q. The "Black Arrow"? A. Yes, sir.

Q. What work did you do? A. Burner.

Q. You were a burner? A. Yes, sir.

Q. Where did you do the work? A. At the Perth Amboy Dry Dock Company.

Q. Who employed you? A. Well, I don't know. The man that employed me—the man took me down

on the job and showed me my duties was Mr. O'Hagen.

Q. Mr. O'Hagen. And when did you go to work there? A. It was in February. I worked February and March.

Q. Whom did you get your pay from?

Mr. Haight: Is the purpose of this to show that he was employed by the Perth Amboy Dry Dock Company?

Mr. McCarter: Yes.

Mr. Haight: Then, I submit, if your Honor please, that that is not in this case because Vice-Chancellor Backes has held that this contract was a contract for the hiring of our plant, and any testimony of this kind it can have no materiality or relevancy in the case. There is no question in the world that we paid this man in the first instance. The contract provided that we should do so. And whether we hired them in the first instance or whether we did not, it doesn't make any difference so far as the contract is concerned. Vice-Chancellor Backes has held that the contract was one for the use of our plant, and if there was delay on the part of the men or anything of that kind it was their men, not our men in that sense of the word. The contract says in so many words, "use of our plant." Your Honor will recall the language of it. I make this objection at this time because it seems to me it may cut the case short if we do it now.

(Argument by counsel.)

The Court: What is the point of bringing it in? What difference does it make.

Mr. McCarter: It has the same difference to it as to who is responsible for the delay. It has the same difference to it as to who is responsible for the damage to the "Philippines."

The Court: As I look at it under this contract the defendants could either employ the men themselves or they could say to the Perth Amboy Dry Dock Company, "Furnish us so many men." And if they said that to the Perth Amboy Dry Dock Company then under the terms of the contract as expressed by the Vice-Chancellor, the Perth Amboy Dry Dock Company was to furnish the man power, but that man power was under the supervision and under control of the defendant even though they furnished it. Go on. We will see what significance it may have, but I can't see whether it makes any difference whether one of these persons was employed directly by Mr. Bernard, for example, or someone acting directly under him, or whether they were employed by the Perth Amboy Dry Dock Company. Once they got on this job they were under the supervision and direction of the defendants.

(Last question read by the stenographer).

A. Well, I was paid at the Perth Amboy Dry Dock office, the Perth Amboy Dry Dock Company badge, but I don't know whether the Perth Amboy Dry Dock Company's money—

The Court: I doesn't make any difference whether you knew or whether you did not.

Mr. McCarter: I think that is all.

The Court: That is all.

Mr. Haight: That is all.

Mr. McCarter: Will your Honor permit me to ask Mr. Williams?

EDWIN T. WILLIAMS, recalled.

DIRECT EXAMINATION BY MR. MCCARTER:

Q. What did Mr. Patten have to do with the scrapping of these ships at Sparrows' Point? A. Mr. Patten was a timekeeper.

Q. Did he have any supervision over the scrapping? A. No, he had supervision, just the timekeeper and loading the cars.

Mr. McCarter: That is all.

Mr. Haight: May Mr. Toolan ask him some questions? He has worked out a mathematical proposition here. It sounds good to me.

Mr. McCarter: I don't see why we should not have Judge Haight ask the questions. I don't see why the witness should be subjected to cross-examination by two different counsel.

The Court: If you object, I will sustain the objection.

Mr. Haight: That is all.

W. W. Sofield. Called by Defendant. Direct.

WILLIAM W. SOFIELD, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Where do you live, Mr. Sofield? A. Perth Amboy.

Q. What is your occupation? A. Bathing master, sometimes in the summertime.

Q. Did you have to do any work on these ships? A. Yes, sir.

Q. When? A. Well, December and January.

Q. What ships did you work on? A. "Philippines."

Q. Who employed you? A. I applied to Mr. Bernard. Mr. Ackerman happened to be in the presence and he told me to come down at noon. I came at noon and he had no work, a fellow says, "Never mind. Go over to see Mr. Peterson." I went over to see Mr. Peterson. Mr. Peterson says, "Come down in the morning and go to work." So I went to work on the "Philippines."

Q. What was your work? A. Average helper, same as any other men.

Q. Did you have anything to do with the cutting and lowering of these pipes? A. I dismantled all the pipes from below myself, pumps, and so forth, all the metal, lead.

Q. Do you recall when a sea-cock on the "Philippines" was damaged? A. I wasn't called. I was the man that made the repair.

Q. Do you remember when it happened? A. Yes, sir, I was the man made the repair.

Q. Tell us what happened. A. There was only three men at the present time at the job when we

was working. It was just before quitting time in the evening. There was about three of us left below. It was one of the last pieces of copper. We started to lower down, it was cut. We had a frail piece of rope. We always had to scrap for to get the stuff to lower it down with, so a fellow by the name of George Glass was the helper. He was up above and I was down below giving directions. I told him, "George, I don't think that rope will hold."

Mr. McCarter: Don't go into the conversation. Tell us what happened. How was the piece being lowered? Was it being dropped or lowered?

A. It was always lowered. There was never a piece thrown from any orders from that boat when I was in charge. I acted as straw boss under Connors, as a sub-boss to do his work.

Q. Under Connors? A. Yes, George Connors.

Q. At the time this piece fell, what happened? A. Why, this fellow George Glass, in pursuit of getting a piece of pipe clear, he shoved it off over one of the rails of the top of the engine, where you walk around to oil, or it was some walking place around the top of the engine, it was caught over there and they give it a shove off, and the rope wouldn't hold, so it slipped down, went down into the bilge, I don't know if it hit that, or where it hit, but I got out of the way when I saw it coming and after awhile, being working there, of course, and from hearing the burners all day, I didn't pay much attention, I hear sizzling from somewhere and I happened to look down in the bilge—

Q. What? A. I heard something going siss, siss, siss, naturally as burning wood, and I looked down there and seen water coming in; I didn't pay much attention to it, and we kept on working, and got the pipe out, and finally about the time we got the pipe out, there was a gush of water and I went upstairs and I made the remark that it looked bad below, that she was leaking bad around the sea-cock.

Q. Where was Connors when this happened? A. He was upstairs, somewhere, I don't know. I made the report as I went up. I said, "Best look out for yourselves, she is leaking bad below."

Q. What part of the sea-cock was broken, did you see? A. The sea-cock?

Q. Yes. A. The water was flying so you couldn't see much. All you wanted to do was make your escape.

Q. Did you ever look at the sea-cock afterwards? A. Well, you couldn't see it, the water—

Q. I mean after such repairs was were made, were made, did you ever see the sea-cock again? A. No, it was flooded. She made water so fast.

Q. After they pumped it out did you see it? A. No, sir; never. I don't know if I ever saw a sea-cock above the water afterwards.

Q. When did you leave the job down there? A. Oh, it was somewhere in, I think it was January. I won't say. The books can tell that on the ledger, what kept our time. I don't know.

Q. Who discharged you, who got you to go? A. Well, we got so we disagreed—

By the Court:

Q. Who discharged you? A. I didn't say anybody discharged me.

Q. Then say that you were not discharged? A. I wasn't discharged then, if that will suit you better.

By Mr. McCarter:

Q. Did Mr. Preacher have anything to do with your leaving? A. No, sir; not as I know of. Maybe indirect. I don't know.

Q. Or Peterson? A. Indirect, I don't know.

Mr. McCarter: Cross examine.

Cross Examination by Mr. Haight:

Q. Bernard hired you, you know that, don't you? A. I do not. I don't know.

Q. I thought you said Bernard hired you? A. I didn't say any such thing.

Q. Who hired you? A. Mr. Peterson.

Q. Mr. Peterson? A. Yes, sir.

Q. You never worked for the Perth Amboy before, had you? A. I had previous in some years.

Q. How many years? A. Oh, I don't know. Quite a number of years. When William Rankin was there.

Q. Ten years? A. I won't say how long.

Q. Twenty years? A. I won't say how long. I don't know.

Q. When you are not a bathing master, what is your job? A. Handy man at anything.

Q. Being a handy man at anything, you were put as sub-boss under Conners, weren't you? A. Yes, sir.

Q. Who put you as sub-boss under Connors? A. Connors himself.

Q. Connors himself? A. And Mr. Gilbert had something to say about it.

Q. Mr. Gilbert did? A. Yes, sir.

Q. Gilbert wasn't there when that happened, was he? A. Yes, sir.

Q. When the— A. More or less he was there, yes.

Q. Was he there when the "Philippines" sank? A. More or less, yes.

Q Gilbert was there then? A. More or less, yes.

Q. Do you know when the "Philippines" sank? A. Yes. I think it was on the 3rd of January.

Q. Do you know that Gilbert didn't get there until the 16th of January? A. Well, he was there more or less, I said. I don't know in what capacity he was there, but he was there.

Q. Was he there before the 16th of January? A. I don't know. More or less sometimes, that is.

Q. That does not mean anything, more or less. A. Well, I will say I saw Mr. Gilbert there and I saw Mr. Bernard there, and there were times when Mr. Bernard wasn't there, and he was there too. Mr. Gilbert the same.

Q. You have enlightened us a great deal by telling us that. There were times when Mr. Gilbert wasn't there and times when he was there, weren't there? A. I don't know what capacity that was.

Q. I didn't ask you that. I asked you, there were times when he was there, and times when he was not there? A. I suppose like all the rest of the bosses.

Q. You were not like them, I suppose, you were always there? A. I always was.

Q. Never in any way— A. No, sir; only at my work. Whatever work I had everytime I am always there.

W. W. Sofield. Called by Defendant. Cross.

Q. When you cut these pipe in the engine room you lowered them by slings? A. Slings, always.

Q. Always in slings? A. Yes, sir.

Q. You never dropped them? A. Never. Pipe, pumps, all material was lowered.

Q. I am not talking about anything but the pipes. You never dropped the pipes? A. No, sir.

Q. Sure about that? A. Sure, absolutely.

Q. This particular piece of pipe did happen to drop, though, didn't it? A. It dropped because the rope parted. We couldn't prevent that.

Q. Because the rope parted? A. Yes, sir.

Q. Where did it land when it dropped? A. I suppose near the sea-cock. I don't know. I imagine that. Maybe it started it, maybe it didn't; I don't know.

Q. Who was in the engine room besides you then? A. There was a fellow by the name of George Glass.

Q. With yourself? A. I don't know. There was some other laborer. I wouldn't say who it was.

Q. Conners wasn't there? A. Conners wasn't there; no, sir.

Q. He wasn't up in the engine room? A. I think he was up in the companion-way. I wouldn't say at that, because he was always there to receive our check.

Q. That is in the same room? A. No. It is away upon the second or third deck. There was a hole cut in the side to admit us on the docks.

Q. You had heard Mr. Preacher give instructions that these things were not to be dropped, didn't you? A. Not to my knowledge.

Q. Hadn't he given instructions that they were to be put in slings? A. Not to me, never.

Q. And lowered? A. Not to me.

W. W. Sofield. Called by Defendant. Cross.

Q. Had you heard about it? A. Not him. I got my orders through Connors.

Q. Had you heard him? A. I hadn't never heard, no. Not to myself with my own ears.

Q. It is possible that you, on the job as much as you were, did not hear him give instructions that they were to be put in slings and lowered? A. As I said, I always took my orders from Mr. Connors.

Q. But you heard a lot of things, didn't you, that you didn't get in the way of orders? A. Well, more or less we do anything.

Q. Have you got any trade other than a bathing master? A. I have dismantled. I worked for John H. Gregory.

Q. What time of the year are you engaged as a bathing master? A. Well, three months of the season, yes. In the bathing season.

Q. The rest of the time you are a handy man? A. Well, that is my own leisure, yes.

Q. You work when you feel like it? A. Like anybody else that can, yes.

Q. But you don't work all the time? A. When I feel like it.

Q. But you don't work all the time? A. When I feel like it.

Q. That does not answer the question. Do you work all the time? A. That is my answer. That is the way I feel about it.

Q. Is that the best answer you can make? A. Why sure. Like any other man answers. If he is an independent man he answers as he pleases, I imagine, don't he?

Q. Were you answering us as you pleased? A. I imagine if he is an independent man.

Q. That is the way you have been answering today, just as you pleased? A. No, sir; I am answering just as you asked me.

Q. I asked you a question, do you work all the time? Now, your answer to that is that you work when you please, isn't it? A. Yes.

Q. I want to know whether that means whether you work all the time or not? Can you tell me whether you work all the time or not? A. When I am able to.

Q. How much do you work an average per year? A. That depends when I can get work.

Q. When you can get work. What do you do in this handy man's business? A. Build boats, truck.

Q. Attend furnaces? A. No, sir; I do not, absolutely no.

Mr. Haight: That is all.

Mr. McCarter: That is all.

ELIAS MONESS, a witness produced on behalf of the defendant, and being duly sworn, according to law, on his oath, saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Where do you live? A. 1975 Creston Ave., New York.

Q. You are employed by H. L. Crawford & Company, aren't you? A. Not that I know of.

Q. I thought I saw you in their office? A. News Projection Company, Mr. Nichol signs it.

Elias Moness. Called by Defendant. Direct.

Q. You are employed in the same place with them? A. Yes.

Q. What is your profession? A. Mechanical engineer.

Q. I show you a large drawing and ask you if you made it? A. Yes, sir.

Q. What does it represent? A. That is a crane that was given to me, according to some specifications, and here are two scales, one showing the redius at which the crane might work, and the other, the lifting power in tons, at each position of that boom.

Q. That you said was made on some specifications somebody gave you. Who gave them to you? A. Mr. Mornay; they are right here.

Q. Mr. Mornay gave them to you. Please explain this drawing to me. What does this particular thing on wheels here to the left, what does that represent? A. That is the crane.

Q. The crane? A. Yes, sir.

Q. This thing on wheels to the right, this long low thing, what is that? A. That is the car to which that crane comes and picks up.

Q. A freight car? A. A freight car.

Mr. Haight: I submit that all this testimony is immaterial. The allegation in the answer is the plaintiff failed and refused to furnish the use of a locomotive crane for handling the material to leave the yard by cars, lighters or trucks within a reasonable time. There has never been a complaint that the crane that we furnished was not the kind of a crane which our contract required.

Mr. McCarter: That is not the object of this.

Mr. Haight: Then it is immaterial.

Mr. McCarter: No, it will not be immaterial.

The Court: What is it for?

Q. What is this scale along the bottom, 5, 10, 15, etc? A. That is the radius in feet at which that boom works.

Q. From the— A. From the pivot line of that crane.

Q. Those are the figures which you read in looking at the design flat in front of you? A. Yes.

Q. What are these figures that you have to read the other way? A. Those figures show the lifting power of the boom at the position given.

Q. And what is this loose piece of paper which— A. This is a scale drawing of the boom fixed in its correct position on the scale drawing.

Q. Indicate by moving that way the position? A. The position of the actual moving of the crane.

Q. When the crane, for example, is over this ink line in the middle of the freight car, there appears down here in this line of figures, which you read from Judge Haight's position, the lifting power of the boom? A. 6½ tons.

Q. At that point? A. At that point.

Q. If you move the boom out to a radius of 50 feet? A. It will lift 3.18 tons.

Q. And so on according to the position in which you move the crane? A. Right.

Mr. McCarter: Cross examine.

Mr. Haight: I would like to postpone the cross examination of this witness until I can cross examine him intelligently.

The Court: All right.

Mr. Haight: I would like to submit that to somebody who knows something about it, because I do not.

Mr. McCarter: We had better have this marked for identification.

(Drawing of crane Marked D-32, for identification.)

JAMES REILLY, a witness produced on behalf of the defendant, and being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. What is your occupation, Mr. Reilly? A. Foreman burner.

Q. By whom are you employed? A. American Shipwrecking Corporation.

Q. That is a corporation that is controlled by H. L. Crawford & Co.? A. Yes, sir.

Q. How many years have you had in practical burning? A. About 12 years.

Q. Burning metal, steel? A. Steel and iron.

Q. Have you ever used a gas known as calorine? A. Yes, sir.

Q. Have you ever used a gas known as carbohydrogen? A. Yes, sir.

Q. Which of those two gases cuts steel quicker? A. Calorine.

Q. How much quicker? A. Oh, a good deal quicker. Got more heating power.

Q. Can you give us any idea of what you mean by a good deal quicker? A. Well, it has got a big-

ger percentage of heat. It will cut through iron quicker.

The Court: How much quicker?

Q. Yes, how much less time would calorine— A. Well, you could cut 100 feet in about half the time you could with carbo.

Mr. McCarter: Cross examine.

CROSS EXAMINATION BY MR. HAIGHT:

Q. It makes some difference, doesn't it, Mr. Reilly, as to the purpose for which you are cutting? A. Yes, sir.

Q. If you are cutting scrap, carbo is just as good as the other? A. No, sir.

Q. The calorine makes a clean cut, doesn't it? A. Yes, sir; but it hasn't got the heat.

Q. It cuts cleaner than the carbo, doesn't it? A. Yes, sir.

Q. And that is the reason that it is preferable to the carbo? A. Yes, sir.

Mr. Haight: That is all.

REDIRECT EXAMINATION BY MR. MCCARTER:

Q. Which cuts the fastest? A. Acetylene.

Q. That is the third gas? A. Yes, sir.

Q. Which of the two cuts the fastest? A. Calorine or acetylene?

Q. Calorine or carbo? A. Calorine cuts faster than carbo, but acetylene will cut faster than both of them.

RECROSS EXAMINATION BY MR. HAIGHT:

Q. The fact is that calorine makes a more intense heat, doesn't it? A. Yes, sir.

Q. It has some disadvantages, hasn't it? A. Well, it has a little disadvantage, not much though, not to speak of.

Q. What is the disadvantage that you speak of? A. Well, it takes probably a little longer to light it, that is about all, you have to feed it a little, give it a little gas and a little air, and a little gas and a little air, but you will pay up for that after you get it lighted and get working.

Q. It frequently burns off the tips of the burners, too, doesn't it? A. Any gas will do that.

Q. This does it more often? A. No, sir. Carbo does it the most.

Q. Doesn't this do it because of the intense heat? A. No, sir; acetylene has a more intense heat, and it does not—

Q. Wait a minute. I am not talking about acetylene. If you get it close to the steel that you are burning, isn't it a fact that it will very likely burn off the tip of the burners? A. That is the man's fault of putting it too close.

Q. That is the fact, isn't it? A. It will with any gas if you put it close enough.

Q. It will do it with that more than anything else? A. No, sir; it will do it more with carbo.

Q. It will do it more with carbo? A. Yes, sir.

Q. Notwithstanding that carbo hasn't as intense a heat? A. It will do it more with carbo.

Q. How do you account for that? A. Because you get a backfire in the head and burn the tip off right in the head.

Q. You burn the tip off by the intense heat, don't you? A. No, sir; it does it with a backfire.

Q. Don't you burn a tip off by heat? A. You can by heat and you can by backfire.

Q. I am not talking about backfire; I am talking about heat? A. Yes, sir.

Q. When you use these burners and you get them too close to the steel it burns off the tips of the burners, doesn't it? A. It will burn off with any gas; yes, sir.

Q. It will do it quicker with calorine than it will with carbo? A. I don't know about that.

Q. Haven't you tested or noticed that? A. I have tested it, yes.

Mr. Haight: That is all.

Mr. McCarter: That is all.

HAROLD J. NICOL, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. You are employed by H. L. Crawford & Co.? A. I am.

Q. As an accountant? A. Right.

Q. And have been employed by them ever since the commencement of the scrapping of these ships, at least, haven't you? A. Prior to that.

Q. What are these books that you have here? A. The records of the accounts of scrapping the boats at Perth Amboy.

Q. Well, now, which of these books is the initial book? I show you a book that has H. L. Crawford & Company on the first page, and ask you to tell us what that book is? A. Book of accounts.

Q. What accounts? A. The classifications of the different classes of work in scrapping boats, under their titles and sub-titles.

Q. And from where do you get the information which you make these entries? A. From tickets that are made up from bills.

Q. I show you Exhibit D-11, in this case, being the daily labor reports that come in from Mr. Ackerman, and bills submitted to H. L. Crawford & Company by Perth Amboy Dry Dock Company, and ask you if any part of this Exhibit D-11 is made by you? A. The recapitulation on each of the weekly assemblages of reports there of assembly of weeks by boats.

Q. The green sheet on top? A. Green or white, whatever the top sheet is.

Q. Please explain to us the system of that? A. Each day the man at Perth Amboy makes up a daily labor report, one report for each boat, and that is forwarded to the New York office. At the end of the week the reports are assembled or recapitulated on to an outside sheet. In other words, a man is known on this sheet by his number, and his work is segregated by the hours to the different classifications of the work. Non-ferrous charging box scrap, ship plate, cast iron, equipment, miscellaneous and the total with remarks. That is totaled on the outside showing how much for that week on that boat was charged to that account.

Q. Then, this recapitulation sheet is simply a summary for the week of the daily labor reports

during the week which are annexed to it? A. They are.

Q. Is that correct? A. They are.

Q. And the same testimony is true, is it not, of Exhibit P-12, the "Philippines"? A. Applies to the "Philippines."

Q. In your system of bookkeeping what do you do with the entries on the recapitulation sheet, where do they come from? A. Tickets are made out from the recapitulation sheets. If you take any particular one you can refer to any ticket. That ticket there dated March 27, representing part payment of bill, Perth Amboy Dry Dock's, for the period February 21 to 27.

Q. With respect to what ship? A. The "Black Arrow."

Q. With respect to the payment of the bill of the Perth Amboy Dry Dock Company to which it is annexed? A. It is.

Q. And what do these different entries to the right mean? You have "N. F. 2853," what does that mean? A. Represents the charge of labor during that week for the period on there for non-ferrous.

Q. Non-ferrous metals? A. Non-ferrous metals.

Q. Then, there is an entry of "$586.30" opposite "C. B. S.," what does that represent? A. "C. B. S." is charging box scrap, and the amount of $566.30 is the total of labor expended during that week as shown on the Perth Amboy Dry Dock's bill and from the recapitulation sheet.

Q. "S. P." means what? A. Ship plate or shipping size.

Q. "C. I." means what? A. Cast iron.

Q. "Equip." I suppose means equipment? A. Equipment, or that part of boat which is sold as

is, which can be used as a winch, or boom, or whatever the material may be.

Q. Miscellaneous means what? A. Anything that cannot be put into the other accounts.

Q. This allocation which you have entered on this particular ticket you say you get from the recapitulation sheets? A. Recapitulation.

Q. Which you got from the daily labor reports themselves? A. Daily labor reports.

Q. Having made up this ticket where do you enter those items in the book? A. It is placed in the ledger to the account as shown, "Black Arrow," non-ferrous, charging box scrap, C. B. S., shipping plate, or "S. S.," cast iron, equipment and miscellaneous, placed under those accounts.

Q. Is this book—what do you call this book? A. That is a ledger.

Q. Is this ledger the book of final entry, is this the last thing in the series of records that you make up? A. It is. The final figures are like in a trial balance. The totals of those figures are taken here to another book, which is shown as a trial balance, showing the total of the accounts.

Q. The total of the account. Now, you are looking at what? The trial balance? A. Trial balance. The book that uses the total of the different accounts, labor month for month. According to whatever proof is needed.

Q. You are looking at a page now of the trial balance under which there are five ships noted, including the "Black Arrow"? Will you explain what these items mean? A. Taking the last entry in the book here, is of December 31, 1924, which closed the year of 1924. The "Black Arrow" is shown here, C. B. S. The total on the debit side is—

Mr. Haight: Don't mention the figures.

A. (Continuing) You see an entry on the debit side.

Q. Well, what is it, without giving the figures? A. That is taken from the ledger, the total of the ledger from the debit page.

Q. In other words, if I may lead him to hurry him—

Mr. Haight: Yes, go ahead.

Q. Does that mean the total cost of labor allocated to producing charging box steel on the "Black Arrow"? A. That includes total labor and certain other expenses that are immaterial as far as the item itself goes. It may represent a small amount of tools and other things that may have been on the bills and have been honored.

Q. And the corresponding entry opposite, S. C. B., is on the credit side, makes the total amount received by H. L. Crawford & Company for the charging box steel from the "Black Arrow"? A. That is right.

Q. What is this other book here? A. That is the American Shipbreaking Corporation voucher record book.

Q. What do you call this last book you say is American Shipbreaking? A. This book is the original, the book of entry for expenditures and receipts of the American Shipbreaking Corporation, which is now run in separate books from the other books. This book here shows the date upon which certain items were paid, to whom, and to what accounts they were charged. It also shows the

moneys received, from whom and to what account they are credited.

Q. Is the American Shipbreaking Company or Corporation, whichever it is, a corporation through which H. L. Crawford & Company is completing the scrapping of the "Black Arrow" and the "Philippines"? A. Yes, sir.

Q. Do you know where that work is being done?

Mr. Haight: I object to that as immaterial.

The Court: I will allow it, but I don't allow anything further along this line.

A. I do.

Q. Now, does this book, this last book, show the amount of expenditure in preparing the plant where those ships are being scrapped for scrapping?

Mr. Haight: I object to that.

The Court: Sustained.

Mr. McCarter: Your Honor will allow me an exception.

The Court: Certainly.

Mr. McCarter: If that ruling, your Honor, is based—I want to be sure I know because it will guide me in future questions I ask—is based on the theory we are not entitled to recover any damages under the counterclaim, then I might just as well withdraw the witness and stand on my exception there.

The Court: My ruling is based on this: That in view of the Vice-Chancellor's opinion and the decree of the Court of Chancery, that this jury has no right to allow any damages,

if there were any, flowing to the company as a result of the decree which compelled them to remove their boats to some place. That is what my ruling is based on.

Mr. McCarter: To be sure I understand your Honor; your Honor rules out so much of our counterclaim as contains a claim for the extra cost we have been put to in scrapping these ships elsewhere? In other words, you are not limiting it merely to the cost of towing and removing in that sense?

The Court: Oh, no; I am holding, Mr. McCarter, that I am precluded from considering any question of damages which is based upon a claim that you suffered loss because you had to remove the vessels.

Mr. McCarter: Very well, sir. Then I stand on my exception.

The Court: Certainly.

Mr. McCarter: There is no use asking any more questions.

The Court: And you can put that exception just as fully as you wish on the record.

Mr. McCarter: I think your Honor's ruling is very clear.

(Adjourned until to-morrow, Tuesday, January 12, 1926, at 9:15 A. M.)

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT.

December Term, 1925.

PERTH AMBOY DRY DOCK CO.

vs.

HARDEN L. CRAWFORD, *et al.*, as H. L. CRAWFORD & CO.

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the twelfth day of January, A. D. 1925, at 10 A. M.

APPEARANCES:

MESSRS. WALL, HAIGHT, CAREY & HARTPENCE,
WILLIAM H. CAREY, Esq.,
THOMAS G. HAIGHT, Esq.,
JOHN E. TOOLAN, Esq.,
Counsel for Plaintiff.

MESSRS. McCARTER & ENGLISH,
GEORGE McCARTER, Esq.,
CLIFFORD I. VOORHEES, Esq.,
PARKER SILZER, Esq.,
Counsel for Defendants.

Mr. McCarter: Now, if your Honor please, in order that the full effect of your Honor's ruling may be plain on the record, and in order that, in

your Honor's own words, I may have an exception sufficiently broad enough to embody that, I wish to say that I offer to prove that the plaintiff refused to permit any part of either vessel below the superstructure to be cut up into charging box sizes. That in order to produce a marketable article, to scrap the ships in the ordinary course of trade done for the market, it was necessary to cut them up into charging box sizes; that as a result of such refusal of the plaintiff, the defendants were themselves forced to complete the scrapping of the ships, which caused the scrapping of the ships to be much more expensive to the defendants than the contract prices payable by the defendants to the plaintiff, and I offer to prove what that expense amounts to.

Now, will your Honor permit me to introduce such evidence?

Mr. Haight: I object to the offer of such evidence on the ground—

The Court: The objection is sustained. You may have an exception.

JAMES W. DECKER, a witness produced on behalf of the Defendants, being duly sworn, according to law, on his oath saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Dr. Decker, you are one of the defendants in this case? A. Yes.

Q. And a partner of Mr. Crawford the other defendant? A. Yes.

Q. You were away during the year of 1923, and the early part of 1924? A. I was.

James W. Decker. Called by Defendant. Direct.

Q. Did you have any conversations with any officer or representative of the Perth Amboy Dry Dock Company with respect to these contracts at any time? A. No.

Q. Did you attend a luncheon at the Bankers' Club in New York City? A. I did.

Q. When some officers or representatives of the Perth Amboy Dry Dock Company were present? A. Yes.

Q. Who were present? A. Mr. Runyon, Mr. Meurer and Mr. Bernard, Mr. Mornay, Mr. Crawford and myself. You meant all that were present?

Q. Absolutely. When was that? A. The 26th of February.

Q. 1924? A. 1924.

Q. What was said with respect to the contracts, or the performance of them and by whom? A. Well, Mr. Crawford spoke to Mr. Runyon in regard to the manner in which they had been carrying out their part of the contract; he told Mr. Runyou that on account of their failure to provide certain equipment, and the way in which some of the equipment was handled, it was causing us unnecessary delay and unnecessary expense. He also mentioned the quality of the gas which was used. As I recall it the equipment which he mentioned was the locomotive crane, and the manifold for the gas.

Q. And what did he say about the gas itself? A. He complained the gas—the burning quality of the gas which they were using was not as efficient as other gas which could be obtained.

Q. What did Mr. Runyon say? A. I don't recall that Mr. Runyon made any—Mr. Runyon did say that he had not given this contract his personal attention; he did not offer any explanation, except, as I recall it, to Mr. Crawford after he had

finished—do you mean in regard to these complaints?

Q. Whatever Mr. Runyon had to say? Carry on and tell us all. A. I don't recall that Mr. Runyon made any particular reply to those complaints of Mr. Crawford, except as I say, he said that he had not given this matter his very close personal attention. I got the impression that he was—

Mr. Haight: I object to that.

Q. Yes, you cannot tell your impression. You have to tell what gave you the impression, in other words. A. Then after Mr. Crawford had finished Mr. Runyon said that he had some complaints to make, particularly about deductions which were being made from the payroll for labor used in handling the tanks. Mr. Crawford told him that that matter had been taken up by Mr. Meurer, and that it had been agreed between Mr. Meurer and Mr. Crawford that that was a proper charge to the Perth Amboy Dry Dock Company, as they had failed to provide a manifold. Mr. Runyon referred to Mr. Meurer and asked him if that was correct; Mr. Meurer said that it was. Mr. Runyon said, "Very well, in that case it will be allowed. Those deductions for the labor in moving the tanks of exygen and air." They had not yet provided a manifold and it was necessary to move the individual tanks of oxygen and air up onto the boats.

Q. Was there any else of importance said at that lunch? A. Well, there was a great deal of discussion, but I don't recall specifically.

Q. Now, after that did you go down and visit the Perth Amboy Dry Dock Yard? A. We did.

Q. When? A. I think it was the 21st of March. I am not sure.

James W. Decker. Called by Defendant. Direct.

Q. Who went from your side and who on the Perth Amboy side did you see there? A. Mr. Crawford and Mr. Mornay and I went down. We saw Mr. Runyon, Mr. Olsen, Mr. Preacher, and we saw some of the foremen on the boat. I can't tell you their names.

Q. What did you do down there? A. When we arrived we went to Mr. Runyon's office and asked Mr. Runyon to accompany us while we made an inspection of the work being done. He said no, to come back after we had seen what was going on.

Q. Did you examine the progress of the work? A. We went on board the boats, yes.

Q. Do you recall looking at the manifold and tanks? A. Yes.

Q. What, if anything, did you notice in respect to them? A. Mr. Crawford was a few feet ahead of us and noticed that the pressure in some of the tanks was not what it should be.

Mr. Haight: I object to that.

The Court: Yes, of course.

Q. What do you mean, "not what it should be"? A. We examined the tanks, found the pressure on the tanks which was supposed to contain 2200 pounds was running in many of them from 1200 to 1500 pounds. They were tanks which they had just been connected up and had not been opened yet, been delivered in that condition.

Q. Did you thereafter have any conversation with Mr. Runyon on that day, the 21st of March? A. We went to Mr. Runyon's office.

Q. Was any mention made of these tanks and the condition of the pressure and so forth? A. Mr. Crawford mentioned the matter to Mr. Runyon.

Q. Was anything said about the kind of gas? A. Mr. Crawford again complained of the gas which was being used.

Q. What did Mr. Runyon say? A. I don't remember Mr. Runyon's exact words, but he took the position that the gas which they were using was as efficient as other gas that could be provided.

Q. Do you recall anything being said by any of the Perth Amboy people on that day with respect to the percentage which each of the ships were scrapped on that day? A. Yes, it was agreed by Mr. Runyon—

Mr. Haight: I object to that.

Q. What was said by Mr. Runyon? A. I can't tell you who made the statements, but one of the representatives of the Perth Amboy Dry Dock Company made the statement that the "Black Arrow" was thirty-three per cent. scrapped and the "Philippines" ten per cent. scrapped.

Mr. McCarter: Cross examine.

CROSS EXAMINATION BY MR. HAIGHT:

Q. Decker, you testified exactly the same thing that you testified to here in Newark, did you not? A. Approximately the same. That was what I knew.

Q. Well, you covered exactly the same field? A. I think so.

Q. You have covered exactly what you stated in your affidavit, which was submitted in the Court of Chancery? A. I think it covered most of it.

Q. And you read that affidavit, of course, very recently? A. Yes.

James W. Decker. Called by Defendant. Cross.

Q. To refresh your recollection as to what you did testify to? A. Yes. I think there are one or two things omitted.

Q. Yes. I am going to call your attention to one or two things now. At your conference on the 21st of March Mr. Runyon complained about your cutting the vessels in charging box sizes? A. He did.

Q. And said that that was causing them to use a great deal more gas than they had estimated? A. That is true.

Q. And then he also claimed that you had used gas that they had not estimated upon in cutting up non-ferrous metals, did he not? A. That is true.

The Court: Has the jury been told what you mean by non-ferrous metal?

Mr. McCarter: Yes. It was defined in answer to a question I asked for one of the earlier witnesses, as copper—

Mr. Haight: Anything but steel or iron.

The Court: Yes, I had forgotten that.

Q. Now, when Mr. Crawford called Mr. Runyon's attention to the low pressure on some of the tanks he said to him that in all tanks protested as the ones that they had examined, they had noticed that the plaintiff was paying for considerable gas—that is to say, the Perth Amboy Company—were paying for considerable gas they weren't getting? A. Yes.

Q. He said that? A. Yes.

Q. That was Mr. Crawford's main complaint? A. I don't think he was complaining. He was calling Mr. Runyon's attention that they were paying for the gas.

Q. It wasn't a subject matter of complaint because the Perth Amboy were paying? A. Yes.

Q. His claim was that Mr. Runyon was not getting what he was paying for—that is, as much gas as he was paying for? A. That is true.

Q. In the talk about this calorine and carbohydrogen gas those were the two kinds discussed, were they not? A. I think so.

Q. The suggestion was made that the Perth Amboy Company should use the calorine gas; that is right, isn't it? A. Yes, that is right.

Q. And Mr. Runyon protested that the gas they were using was just as efficient as the other; that is right, isn't it? A. That is true.

Q. And finally it was agreed at that conference, was it not, that a test should be run, conducted to see which was the most efficient kind of gas? A. I don't think it was agreed at that conference, as I recall it.

Q. Let me read to you from your affidavit in the chancery suit, referring to Mr. Runyon. "Mr. Runyon was very arbitrary and would not listen to any request to change the gas used, and finally he consented to make a comparative test of the gas then being used and of calorine." A. Then it was agreed at that conference. That is two years ago.

Q. Of course, you didn't pay any attention to the details of these things, did you? A. I haven't paid much attention to the details on this particular work.

Q. Are you a doctor of medicine? A. I am a doctor of medicine.

Q. Or a doctor of philosophy? A. Doctor of medicine. I haven't practiced since I was discharged from the United States army following the great war.

Q. You have not practiced? A. No.

Q. And you do devote your attention to the business of Crawford & Company? A. I devote my attention to the business of H. L. Crawford & Company.

Q. Do you know anything about this test that was subsequently— A. Only in a general way, Mr. Haight.

Q. Now, there was another remark when you and Mr. Runyon met that day. He offered you a cigar, according to your affidavit in Newark, and said, "We may as well meet as friends no matter how we part." A. Yes.

Q. That was quite typical? A. It was very typical, I should say.

Q. Now, supplemented by the questions that I have asked and the answers which you have given, you have now testified to exactly the same things that were covered in your affidavit which was submitted to the Court of Chancery, haven't you? A. Well, I think I have. I would have to see the record.

Q. And everything.

Mr. Haight: That is all.

REDIRECT EXAMINATION BY MR. MCCARTER:

Q. You testified, doctor, in answer to Judge Haight's questioning that at the conference of March 21st, Mr. Runyon complained because the vessels were being cut up into charging box sizes. Will you say whether he made any such complaint at the prior conference of February 26th at the Bankers' Club? A. There was no mention made in the manner in which the size was being cut up or material.

Q. Did he at that Bankers' Club conference make any complaint or demand for the expenses incurred in saving the "S.S. Philippines"? A. It was not mentioned in my hearing.

RECROSS EXAMINATION BY MR. HAIGHT:

Q. You know he did make a complaint on the sidewalk to Mr. Mornay, subsequently, don't you? A. No.

Q. Didn't Mr. Mornay tell you about that? A. If he has, I have forgotten it, Mr. Haight. I don't recall it.

Q. After this conference on February 26th, there had been no attempt made, had there, to cut any point of the vessel other than the superstructure in charging box sizes, at that time? A. Well, that I couldn't tell you. I am not sufficiently familiar with the details.

Q. Let me see if I can possibly refresh your recollection about it by a letter. I call your attention to a letter which has been marked—

Mr. McCarter: Now, I do not deny that Judge Haight has, if he insists upon it, a right to pursue this line of cross examination, but if we have to finish today, as your Honor has ruled, I submit he might let this go, as I am going to put both Mr. Mornay and Mr. Crawford on the stand, I promise you that, and this gentleman knows very little about this.

Mr. Haight: I want to see if he knows about this letter because the inference with the jury would be that on February 26th, if it never was mentioned, that this thing was an overthought, and I want to show by the letter that at that time they had not attempted to cut.

Morris L. Tyroler. Called by Defendant. Direct.

Q. I show you a letter dated March 3rd, which has been marked Exhibit P-5, in which Mr. Meurer states what he understands was the way in which the vessels were to be cut up, and then he says: "It has been brought to the attention of this company that you now intend cutting up these ships entirely in charging box sizes, and that the engines and boilers are to be dismantled and the boilers taken out and cut to suit the requirements of the steel company." Do you recall that letter? A. I have seen that letter before, yes.

Q. Does that refresh your recollection as to whether or not at the time of the February 26th conference you had not attempted to cut any part of the vessels other than the superstructures? A. No, that does not refresh my memory.

Mr. Haight: That is all.

MORRIS L. TYROLER, a witness produced on behalf of the Defendant, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Mr. Tyroler, where do you live? A. In South Orange, N. J.

Q. And what is your business? A. Buying and selling scrap iron.

Q. And with what concern are you connected? A. Luria Brothers & Company.

Q. Do you know H. L. Crawford & Co.? A. Yes, sir.

Q. When did you first hear of them or have any business relations with H. L. Crawford & Co.? A. In the fall of 1923.

Q. And sometime after that, did your concern enter into a contract with H. L. Crawford & Co.? A. Yes, sir.

Q. Without going into the details of that contract, can you tell me for how many tons of steel it called?

Mr. Haight: The contract is the best evidence.

Q. I show you a yellow paper headed, "Purchase Contract, Luria Brothers & Company, Inc.", and ask you if that is the contract, or one of the duplicate originals of the contract to which you have referred? A. It is.

Mr. McCarter: I offer that in evidence.

The Court: Any objection?

Mr. Haight: No.

The Court: It is admitted.

(Contract entered in evidence and marked Exhibit D-33.)

Q. How many years have you been in the scrap business, Mr. Tyroler? A. Over 20 years.

Q. Continuously? A. Continuously.

Q. What is the purpose or destination of scrap steel? What is it used for? A. It is used for melting in the furnaces, for various products.

Q. Melting in the furnaces? A. Melting in the furnaces.

Q. Whose furnaces? A. Mills, such as the Bethlehem Steel Company, Lukens Steel Company, and others.

Q. Is there any other use to which scrap steel is put except to be melted in the furnaces of steel mills? A. Well, yes, there are other uses, such as melting in foundries, steel castings, but this would have no bearing on ship plate.

Q. I will ask you, to save time now, to consider that all of my questions I am going to ask you hereafter are limited to the kind of steel which comes out of steel ships. Are you familiar with the kind of steel that is produced by the cutting up of steamships, such as the Philippines and Black Arrow? A. Yes, sir.

Q. What have you to say as to the requirements of the steel mills as to the size and shape of steel for scrapping?

Mr. Haight: I object to that upon the ground it is immaterial and irrelevant. It has nothing to do with this issue. The fact that the defendants in this case represented how the vessels were to be cut up, and that they were to be cut up in charging box and shipping size steel, or substantially that, has been determined by Vice-Chancellor Backes, therefore, any testimony along this line would be immaterial, it seems to me.

Mr. McCarter: In answer to that I wish to say two things:

In the first place, Vice-Chancellor Backes has consistently adhered to one line of thought throughout this case, and that is that the rule before him was something different than what it would be in an action at law, and that the rights of the parties under a contract in an action at law would be to have the ships cut up in a reasonable time, and in the ordinary

course of trade for the market. That is one thing.

In the second place, the question of reasonable time, your Honor yourself has said, is determined in part upon the size to which the pieces are to be cut, and that is obvious, and in determining what is a reasonable time we have a right to show what is a reasonable way to have the ship cut. There is no evidence in this case on the presentation. Your Honor has ruled that out, and we are going on the contract itself, and as I recall Judge Haight in the very early part of the case, in the argument we had, admitted that the effect of Vice-Chancellor Backes' ruling would be to preclude him from recovering anything for extra gas and air for cutting up into the smaller pieces.

Mr. Haight: Except in an action for deceit.

Mr. McCarter: In which we are not engaged.

Mr. Haight: That is true.

The Court: I will allow this question, though, on another ground.

Mr. Haight: Will your Honor note an objection?

The Court: Yes, certainly.

(Question repeated by stenographer.)

A. The mills require steel scrap in charging box sizes.

Q. Is there any mill which at any time ever takes, or has taken steel in larger sizes? A. Yes.

Q. What mill is that? A. Bethlehem Steel Co.

Q. Do you know of any other mill in this territory that takes that? A. No.

Q. Does Bethlehem Steel Company at all times take steel in shipping sizes? A. No, sir.

Q. Do you recall whether in the first half of 1924, the Bethlehem Steel did or did not accept steel in larger than charging box sizes? A. Crawford & Company asked us around April of 1924, to ascertain whether Bethlehem would at that time take any steel scrap in over charging box sizes, that is shipping sizes, pieces that would go into a gondola freight car, and we endeavored to see whether they would do that, and they refused. They had too much of that stock on hand and declined to take any more.

Q. Is there a trade name for scrap steel such as is produced from these ships? A. There is number 1 heavy melting steel and shipping sizes.

Q. Number 1 heavy melting steel? A. Yes.

Q. And shipping sizes you say? A. I didn't hear whether you said "and" or "in". A. And in shipping sizes. There are times when there are such shipping sizes.

Q. Is there a differential in the price for which shipping sizes are paid at the price for the charging box sizes are paid? A. Yes, sir, there is.

Q. Which is the greater? A. Well, the number 1 melting steel scrap and charging box sizes brings a higher price, of course, because it is ready for consumption.

Q. What has to be done to shipping sizes to make it ready for consumption? A. It has to be cut down into charging box pieces. Q. Do you know what that differential in price amounts to? Is it constant or does it vary? A. It varies. Goes anywhere around three to four dollars a ton.

Q. Three to four dollars a ton? A. Yes.

Q. Can you say whether or not it is understood in the trade as to what sizes this steel that you call number 1 heavy melting steel it? A. Yes, sir.

Mr. Haight: I object to that. We are getting into a trade custom, it seems to me, without the essentials necessary to prove a trade custom. I don't know exactly what Mr. McCarter is leading to or what he is trying to establish, and therefore I must be a little wary. What is the purpose of the question?

Mr. McCarter: The question and the whole line of testimony is designed to bring this case within what Vice-Chancellor Backes said, that the defendants had a right to have the ships scrapped, that is, to have the material composing the ships cut for the trade or the market.

Mr. Haight: I don't recall that Vice Chancellor said anything of that kind.

Mr. McCarter: Well, I will remind you of it. Bottom of page 409.

(Reading case.)

The Court: That refers to time, as I read it.

Mr. Haight: Then he specifically held how the boats should be cut up?

Mr. McCarter: I don't see how you can limit it to time when this is these two items.

The Court: I know he says as to two items, and then he only speaks about one in that particular paragraph.

Mr. Haight: Then he goes on a little further.

The Court: Yes, later on in his opinion he says that it was understood that wherever it could be done in shipping sizes it was to be done, and wherever it could be done in charging box sizes it was to be done, but it is so

general a statement I am allowing this examination, and I am allowing this question. You may have an exception.

(Last question read by stenographer.)

A. The sizes at Bethlehem would be not over six foot long and not over twenty-four inches wide.

Q. Do the sizes vary slightly at different mills? A. Yes, sir.

Q. Depending, I suppose, on the size of the charging box? A. Those mills? That is right.

BY MR. HAIGHT:

Q. Did you say not over six feet long? A. Not over six feet long and not over twenty-four inches wide.

BY MR. MCCARTER:

Q. How much do the different charges vary? Give us some idea of the size of the other mills. A. Some mills take only four feet in length, and some take up to five feet in length, and some take not over eighteen inches wide.

Q. Is there any mill which has a larger charging box size than Bethlehem that you know of? A. No, sir.

Q. That seems to be the most liberal mill of all? A. Yes, sir.

Q. When did you first in the trade hear of shipping sizes?

Mr. Haight: I object to that as immaterial.

The Court: I don't know how we are concerned with when he first heard it.

Mr. McCarter: I will reframe the question in another way, your Honor. Withdraw that.

Q. When was shipping sizes first known to the trade? A. I think in the fall of 1923, or winter of 1923. Fall or winter of 1923.

Q. Now, the fall and winter. What month do you mean? A. I should say it was late in December.

Q. December? A. Yes. As far as I can recollect.

Q. In connection with what? What brought them up then? A. The government sold various ships for scrapping and in asking for bids they asked for bids in both ways, in charging box sizes and in shipping sizes.

Q. Am I to understand that that is the first time the trade ever heard of shipping sizes? A. Yes, sir.

Q. Has your company, Luria Brothers, ever scrapped ships? A. No, sir.

Q. I suppose, though, they have frequently bought scrap produced from the scrapping of ships? A. Oh, yes, very much.

Q. Now, Mr. Tyroler, in view of your experience and knowledge of the trade will you say whether or not in dealing with the scrap produced by the scrapping of a steel vessel such as the "Black Arrow" or the "Philippines" a shipping size is a merchantable size? A. It is not.

Mr. Haight: I object to that as immaterial and irrelevant. These people made representations to us which the Vice-Chancellor has found. Now, in the estimation of what is a reasonable time they, of course, cannot go back

on the representation that they made, and whether it was a merchantable size or whether it was not a merchantable size it makes no difference. They may have made a mistake. That is our idea of what they did at that particular time. They may have thought there was a market for shipping sizes and there was a market for shipping sizes, as Mr. Tyroler has said, and at the particular time when they came to deliver it there wasn't any market. Bear in mind on page 411 the Vice-Chancellor says in so many words:

(Reading case.)

Now, whether it was a merchantable article or whether it was not a merchantable article makes no difference. There was injected into this contract by the law the term of reasonable. A reasonable time. Now, of course, in the determination what was a reasonable time we have got to bear in mind how these vessels were to be cut up, and certainly in a contract in which the law supplies the element of time if the parties have not themselves supplied it, they can't be heard. They are estopped to claim that the vessels in determining reasonable time should be cut up in a different way than that which they represented. Do I make that clear?

Mr. McCarter: I can't lay my finger right now while we are here on the part of early testimony, but my recollection is that your Honor distinctly ruled out some questions of Judge Haight tending to show these alleged representations he is talking about and my recollection is that we are simply in it on the contract.

The Court: I held that any positive determination as to any question of fact which was made by the Vice-Chancellor I am holding is conclusive on us in the trial of this case, and wherever the Vice-Chancellor has found that certain facts has been proved, why, I am not going back on his determination; but on this question as to whether or not there was an unreasonable delay upon the part of the defendants in the prosecution of this scrapping I am allowing a wide latitude; but when it comes to a determination by the jury of what I consider the real issues in this case, why, anything that the Vice-Chancellor has found they will be told is conclusive. Now, the Vice-Chancellor has distinctly asserted in his opinion that it was proved—what? That where the ships could be cut up conveniently in shipping sizes they were to be cut up, and where the parts of the ships were so small that shipping sizes could not be cut then in charging box size. And that is what he has held. And I am not going to allow, if I can prevent it, this jury refute anything that the Vice-Chancellor found that was proved in his judgment. However, I can say that where a proper determination of the issues which are before this jury, that is, I suggested before, the widest kind of latitude along this line will be allowed, and I am allowing you to put the question. You may take an exception.

(Last answer read by stenographer.)

Q. Why isn't it? A. Because it is not in shape for use by the mills for melting.

Q. Do you know, Mr. Tyroler, what the market for scrap was during the first months of 1924? A. I made a few memorandums from our own books. Will that be all right?

Q. From your own books? A. Yes, which are true and exact.

Mr. Haight: I object to the use of one individual set of boks.

The Witness: No, no, just our orders. Sales, actual sales.

Mr. Haight: I don't think that that is a fair—

Mr. McCarter: Let me ask him a few questions.

Q. Give us some idea as to how scrap steel you sold during the period I am referring to, the first months of 1924, the first six months? A. You mean the Luria Brothers Company, or just the branch office, New York City?

Q. If you can only testify to the branch office limit it to that. I don't want you to testify to anything you don't know. A. The first six months?

Q. Yes. A. 1924?

Q. Yes. A. Went around 150,000 tons.

Q. To different buyers or to one buyer? A. Did you ask me whether that was sales or purchases?

Q. I asked you sales. A. Sales?

Q. Yes. We don't usually make the sales in the New York office. They are made in the main office at Reading, and they certainly amount to a great deal more than I have mentioned, because the New York office is only a branch and takes care of the New York territory.

Q. Tell me from what sources you derived your information as to the market price of steel which you are going to tell me. A. From actual purchases.

Q. Actual purchases? A. Yes, sir.

Q. Which your company has made? A. Yes, we have made it in our New York office.

Q. And are those purchases made in competition with other companies? A. Oh, yes.

Q. Luria Brothers have competitors in the scrapping business? A. Yes.

Q. How many tons purchases during this six months did Luria Brothers make, so far as you know? A. That I am not ready to testify as to the entire company, because we had various offices all over.

Q. Limit it to your New York office, then. A. I should say close to 150,000 tons.

Q. You are now about to refresh your recollection on the memorandum you took from your office records? A. From actual purchases made.

Q. All right. Now, then, what was the market price of steel for these months?

Mr. Haight: I object to that.

The Court: Objection sustained. I don't think it has anything to do with the issues this jury will pass upon.

Mr. McCarter: It has this, your Honor. Testimony has been brought into this case by Judge Haight, alleged statements by our people that the work should be stopped on these ships because of the fall in the market of steel. I am going to deny those statements, but I also want to bolster up that denial by showing

that the market did not go as Judge Haight's witnesses said it went. Of course, it has some bearing on the length of time it would take to scrap these ships. The inference they argue is we held up and delayed the work because there was an unfavorable verdict.

Mr. Haight: They introduced evidence in the chancery suit as to the market price of steel during the months of the winter of 1924 and the spring of 1924. Now, if they will stick to their proof as to what kind of proof as to what the market was, the general market condition, I won't object to this testimony, but I don't think they have a right to take an individual and say, "What did you purchase from this man and from that man," and so forth. There is a market for all this. There is a general market. There are general market quotations.

The Court: This man, because of his intimacy with this particular trade, can make general statements as to the condition of the market without going into those details.

Mr. Haight: If he will state as to the general conditions of the market that is another situation, but what he is going to testify is as to what his own purchases were.

The Witness: This would really be the market price of scrap in a general way, because that establishes the market.

Q. Are these figures which you are going to give us, Mr. Tyroler, figures showing the market-price of scrap steel for the period in question? A. Yes, sir.

BY THE COURT:

Q. The general market price? A. The general market price.

BY MR. MCCARTER:

Q. Yes. Your purchases were in competition with other scrap dealers? A. Absolutely.

Q. And the price which you had to pay was fixed by the market? A. By the market.

Q. Now, Mr. Tyroler, will you please give us the figures? A. In December, 1923?

Mr. Haight: No, we do not want that.

Q. Well, begin with 1924. A. About January 9, 1924?

BY MR. HAIGHT:

Q. Let me understand. Are you testifying now as to your particular sales or as to what the market was? A. The market at that time.

Q. Why do you pick January 9th? A. Because that happens to be a particular sale on that day, or within that week. That week.

Q. Let me ask you this: Isn't there a trade paper which gives the market for scrap steel week by week? A. Yes, sir. But I am sure it will coincide with what I am about to give you.

Q. Have you the paper with you? A. Not the "Iron Age," or the "Trade Journal," no, I don't recall it.

Q. There is a general scrap market, isn't there? A. Yes.

Q. And the prices are fixed in that market? A. Yes, according to the trade journals.

Q. Just the same as the stock market? A. But the trade journals get their views from the various dealers. From the buyers and sellers.

Q. They go around and get the sales from all dealers, don't they? A. Yes, sir.

Q. What you are going to do is to give us what your particular purchases were? A. No, sir. Not only that, but also what the condition of the market was at that time.

Q. What source has your information come from, other than your own sales? A. From actual business conditions.

Q. Have you made reference to the "Iron Age?" A. Yes, sir.

Q. January 9th, have you referred to the "Iron Age"? A. Not in every case, no.

Q. Have you as to January 9th? A. How is that?

Q. Have you referred to the market quotations as set forth in the "Iron Age," in the quotations which you are now going to give us? A. I didn't look in the iron trade reviews at all.

Q. Didn't look at anything, did you? A. No, not in this particular instance.

Q. You are depending entirely upon your own sales or purchases? A. I am depending on what the market conditions were at that time.

Q. But in determining what the market conditions were at that time, you are depending upon your knowledge of what your own purchases and sales were? A. Yes, but I know that that was the market condition.

Q. Well, is that what you are determining what the market condition was? A. That is the market.

Q. What? A. That is the market. We abide by the market.

Q. But you are giving instances of your own purchases? A. Yes, sir.

Q. Now, of course, it is conceivable that on a particular day you might get a better price? A. Not on a particular day. At a particular time. Within that time. It does not require, because I said January 9th, it does not mean that the sales were just governed on that day, or made on that day, but within that time. Around that time. Within a week or so.

Mr. Haight: I submit that the testimony is not competent, if your Honor please.

The Court: If this man says that he knows the market price at that time, but that it is necessary to refresh his memory by referring to figures, which were the figures of purchases made by his own concern, and that he knows that at that time the market price was paid, he may refresh his memory. I think that he is entirely competent to tell us what the market price was.

Mr. Haight: In that light possibly so.

Q. Now, will you proceed, please Mr. Tyroler?

The Court: I sustain the objection, however to the question. We do not want his particular sales to determine the market price. But you may ask him what the market price was.

Mr. McCarter: I do not think that was my question. I think Judge Haight has—

The Court: You asked him to read the—

Mr. McCarter: No, sir. I did not.
The Court: I thought you did.

A. I made a few notations from our own business.

The Court: You are asked what the market price was.

BY THE COURT:

Q. Do you know what the market price was? A. Yes, sir.

Q. And that by referring to your own figures? A. Yes, sir.

Q. You can give this jury what the market price was at the time of January 9th? A. Yes, sir.

Q. Now, go on and give it to us. A. At Bethlehem the price was $17.50 to $18.00 gross ton, delivered.

BY MR. MCCARTER:

Q. What was it in February? A. In February, $17.00. That is around February 26th, it was $17.00. On February 13th, that is going back, it was $17.75. February 18th, it was $17.50.

Q. Go ahead? A. March 14th, $16.00. April 4th, $15.00; April 30th, $14.50. It was gradually going down. June, $14.50.

BY THE COURT:

Q. Why do you jump from April to June? Did you do any business within that time? A. Oh, yes, but there was a gradual decline, a gradual movement of 25 cents one way or the other.

The Court: Go ahead.

A. May, it was $14.00. About July 24th, there was an advance to $15.00. July 29th, it went to $15.50. That is as far as I have gone.

By Mr. McCarter:

Q. That is as far as I ask you, Mr. Tyroler. Do you know whether or not Crawford & Company ever completely filled this contract, Exhibit D-33, with your Company?

Mr. Haight: I object to that. That is immaterial whether they filled the contract or did not.

Mr. McCarter: The materiality of that is just this, if your Honor wants to hear from me. This contract is for 10,000 tons at $16.50 gross. Now, whatever happens to the market, if we still have 10,000 tons which we can dispose of at $16.50 gross, any change in the market does not concern us.

The Court: I will allow it.

What was the date of the contract?

Mr. McCarter: December 18, 1923.

The Court: How long was it to carry over?

Mr. McCarter: Four months, through January, February, March and April.

The Court: They were to deliver 10,000 tons to this firm within four months?

Mr. McCarter: Yes, sir.

The Court: Go on and answer the question.

A. Crawford & Company filled every contract they have ever made with us.

Morris L. Tyroler. Called by Defendant. Cross.

BY THE COURT:

Q. You were not asked that question. You were asked if they filled this particular contract? A. As far as I know they have; yes, sir.

BY MR. MCCARTER:

Q. Do you know when they completely filled it? A. No, not without referring to my records.

Mr. McCarter: Cross examine.

CROSS EXAMINATION BY MR. HAIGHT:

Q. Did you have anything to do with the negotiation of this contract Exhibit D-33? A. Yes, sir.

Q. You knew they were to get the steel to fill this contract from the five vessels they were scrapping? A. From ships they were scrapping.

Q. You knew there were five, didn't you? A. I knew they had four or five; I didn't know exactly.

Q. There were some at Staten Island Shipbuilding, and some at Perth Amboy? A. Yes, sir.

Q. There was another one somewhere's else, wasn't there? A. I don't know.

Q. This contract specifically provided that the steel was to be delivered during January, February, March and April of 1924, didn't it? A. Yes, sir.

Q. You expected the whole 10,000 tons to be delivered to you within four months? A. Naturally.

Q. And the 10,000 tons were all for charging box steel? A. Yes, sir.

Q. None of it for shipping sizes? A. According to that contract, no, but there was some talk about taking some in at shipping sizes wherever it was possible.

Q. Not at the time the contract was negotiated? A. Well, I don't know wehther it was exactly at that time. There was talk about accepting shipping sizes at some time.

Q. The shipping size market was at least three to four dollars less than the market for charging box at all times, wasn't it? A. Yes, sir.

Q. And you say that in April, Bethlehem would not taken any shipping sizes? A. Yes, sir.

Q. How about before that time? You don't know what Bethlehem would have done, do you? A. Well, they did accept shipping sizes before that time and after that time.

Q. To any extent? A. They usually take it up specially—we usually take it up specifically and ask them whether they are in a position to accept shipping sizes.

Q. Well, they were before April accepting shipping sizes, were they? A. I think they were.

Q. And in April they would not accept shipping sizes? A. At that time they would not.

Q. So far as the steel mills are concerned, the difference between shipping sizes and charging box sizes is this, is it not, a charging box size is a size which wil go into the charging box of the open hearth furnace? A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

Q. For melting? A. For melting.

Q. And if they take a shipping size the mill itself has to cut that steel into charging box sizes? A. Yes, sir.

Q. And the differential they make, that is to say, the difference in cost is based on the cost of converting the shipping size into charging box size? A. Well, that is taking into consideration the inconveniences and the actual cost of preparing it.

Morris L. Tyroler. Called by Defendant. Cross.

Q. Now, the Bethlehem Company used the sheers? A. No.

Q. Don't they use sheers? A. No, not very much.

Q. I thought that they cut up the shipping sizes by sheers? A. No, sir.

Q. Well, never mind. They cut it up anyhow? A. Yes, sir.

Q. To the charging box sizes? A. They burn them.

Q. You say the government started this idea of having large sizes? A. In a very general way; yes, sir.

Q. The market for scrap steel during the month of April and May was pretty quiet, wasn't it? A. Yes, sir.

Q. The dealers had paid a large price for steel and they would not sell to the mills at the prices that the mills were willing to pay, that was generally the condition at that time? A That slowed down the business.

Q. Well I say, that was the cause of it? A. Yes.

Q. When did the low-water mark enter, May 14th, $14.00 per ton? A. Yes, I have it here as May. There was a gradual going down.

Q. How about April, didn't it get as low as $14.00 in April? A. No.

Q. Now, at that time the price of shipping sizes would have been, you say, four dollars off the prices which you have quoted? A. It would rule around three or four dollars a ton.

Q. Off the prices you have quoted? A. Off the prices, No. 1—

Q. So that in April, if the price for charging box stel was $14.50, the price for shipping size was say $11.00? A. Around $11.00 I should say. It depends on how much the mill—how much they

would accept it, whether a three dollar or four dollar basis.

Q. In the trial in Newark, the condition in the market was described as one of sustained condition?

Mr. McCarter: I object to that.

Q. Would you say that that was a proper characterization of the market?

Mr. McCarter: I object to the form of the question in the trial at Newark.

The Court: Yes.

Mr. Haight: All right, we won't waste any time on it. That is all.

REDIRECT EXAMINATION BY MR. MCCARTER:

Q. I don't know whether I asked you this direct question, I think I forgot to: During the first say seven months of 1924, was there or was there not always a market for charging box steel? A. There was a market at all times. We have never stopped buying during all that time.

Q. Was there any market for shipping size steel after April, 1924? A. Oh yes.

Q. There was? A. Yes.

Q. During what portion of the time was such a market for shipping sizes? A. Well, I couldn't tell you exactly right now without referring to my records and I didn't go into that, but I know we bought over charging box size after April, sometime after April.

Q. Was Bethlehem Steel Company accepting charging box sizes after April, 1924? A. Charging box sizes?

Morris L. Tyroler. Called by Defendant. Recross.

Mr. McCarter: I will withdraw the whole question.

Q. After April 1, 1924, was Bethlehem Steel Company accepting shipping size? A. Well, sometime after that they did, yes.

Q. Long after that? A. I would not know exactly, but I don't think it would be more than a couple of months probably. I can't tell you. I am just guessing at it.

Q. Now you say there was always a market during that period for charging box steel. That market was made by your company and other competitors of yours? A. Well, I think it was made more by the requirement of the steel mills, and the amount of scrap available.

Q. How much steel in charging box sizes had to be offered by any one seller in order to get into that market? A. Charging box sizes?

Q. Yes. A. A carload. We never buy less than a carload, but we do buy a great many carload lots.

Mr. McCarter: I think that is all.

RECROSS EXAMINATION BY MR. HAIGHT:

Q. This market during the month of March, April and May, was largely a market between the dealers themselves, wasn't it? A. Well, I don't know whether that is so or not.

Q. You didn't sell much to the steel mills those months, did you? A. Well, we always have orders with the steel mills. We sell all the time.

Q. Well, I mean generally speaking? A. Generally speaking there was a decline, it was slowing down, but if the mill would not pay one price, it

would pay another, some steel mills would, and we continued to sell.

Q. Did the steel mills as a general rule hold out for a lower prices than the dealers were willing to sell? A. That may be the case, yes.

Q. And the market, therefore, was largely between the dealers themselves? A. Possibly.

Q. A market of that kind is, of course, a very small market, isn't it? A. Comparatively, yes. There is always something going on. There is always material that must be moved.

HENRY D. MASON, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Where do you live, Mr. Mason? A. 98 Maurice Avenue, Allenhurst, Long Island.

Q. What is your occupation? A. I am a structural steel man.

Q. How long have you been in that business? A. For the last 25 years.

Q. Have you ever had any association with the scrap business in any way? A. I have.

Q. Tell us what it is? A. I ran a scrap yard in 1920, and was wrecking ships in 1923, '24 and '25.

Q. How many ships have you scrapped? A. Why, in all about ten.

Q. And what kinds of ships were they? A. They were merchantships and government ships.

Q. What size? A. From 450 to 200, I think the smallest.

Henry D. Mason. Called by Defendant. Direct.

Q. Did you ever scrap a ship whose dimensions were anywheres near 409 feet long, 52 feet wide and 23 feet deep? A. 409 feet?

Q. Yes. A. We scrapped one 450, and there were some smaller. I wouldn't say for sure that there was any that length or not. I imagine there were some 400. 390 we had one.

Q. Your largest was 450? A. 450: yes, sir.

Q. Where did you scrap these ships? A. At Downey's Shipyard.

Q. Where is that? A. That is on Staten Island and also at Port Reading, N. J.

Q. You scrapped some at Port Reading, N. J., and some at Downey's? A. Yes, sir.

Q. Have you ever been at the yard of the Perth Amboy Dry Dock Company? A. I never was; no, sir.

Q. What facilities for scrapping did you have at Downey's? A. We had a dock 900 feet long and used Jersey Central lighters for handling the steel.

Q. Jersey Central lighters? A. And a locomotive crane on the shore.

Q. What was the ship you scrapped there? A. The largest one was the "Freedom".

Q. How large was she? A. 450 feet.

Q. How long did it take you to scrap her?

Mr. Haight: I object, if your Honor please, unless we have more details. It may give an entirely unwarranted view to the jury.

The Court: Objection sustained.

Mr. McCarter: Your Honor will allow me an exception?

The Court: Yes. I am not preventing you from having him tell us, provided there is first some comparison made between the character

and extent of the work by him on the scrapping of this ship and what was required to be done on the scrapping of the Philippines and Black Arrow.

Q. Did you completely scrap this ship the "Freedom" at the Downey yards? A. I did.

Q. What size pieces did you cut it into? A. We cut some of it into shipping size and some into charging box.

Q. What proportion then, Mr. Mason? A. Probably 50 per cent, 50 or 60 per cent, I would say 60 per cent we cut into shipping size.

Q. 60 per cent in shipping size and 40 per cent in charging box size? A. Charging box; yes, sir.

Q. And you say you had the use of a locomotive crane? A. We used locomotive cranes on the dock and railroad lighters on the other side of the ship in the water.

Mr. Haight: I thought you said you used a locomotive crane on the shore?

A. We had two locomotive cranes.

Q. How large were the railroad lighters? A. We had them up from 3 ton, I guess to 40 ton. The heaviest lighters, I think, handled 40 tons.

Q. How many of them were vailable? A. We generally had from two to three on the side of the ship.

Q. They, of course, contained more than a railroad freight car, do they not? A. They would handle from 50 to 300 tons. Probably some more than that.

Q. How long did it take you to cut the "Freedom"?

Mr. Haight: I object. Let us see whether she compares with the "Black Arrow" or the "Philippines".

Mr. McCarter: Why, she is larger.

Mr. Haight: We want to find out how many men he had on it and a number of other things that would enter into a determination of whether he exercised reasonable intelligence in cutting up this vessel.

Q. How many burners did you use on the "Freedom"? A. We used from 12 to 15.

Q. 12 to 15. Why didn't you use more? A. Why, I found that it does not pay to use too many because there is too much material to remove to clean up out of the way, you can't keep the burners going.

Q. Will you state whether in cutting up the "Freedom" at the Downey Shipyard you used reasonable diligence and proceeded with reasonable dispatch? A. I think so.

Mr. Haight: I will let it go. It is a conclusion of the worst kind.

Mr. McCarter: It will save you some time, though, Judge.

Q. How long did it take to cut it up? A. Nine months.

Q. What were the facilities at the other place where you cut up the other ships? A. At Port Reading we had a railroad pier of the Reading Railroad, and at that place we only used locomotive cranes.

Q. A locomotive crane? A. Yes, sir.

Q. And you loaded the ship into cars? A. Into cars, directly into cars, yes, sir.

Q. How many burners did you employ on these ships there? A. About the same amount.

Q. About the same amount. Did you at that place scrap any ships in the neighborhood of four hundred feet long? A. No, sir.

Q. What were they there? A. 200, 250 feet to probably 300. Small size ships.

Q. Do you recall the tonnage of any of the small-sized ships you cut up there? A. Why, I think the smallest one would run nine to twelve hundred tons, I think, sir.

Q. What kind of tonnage is that, gross, net, or dead weight? A. Gross tons.

BY MR. HAIGHT:

Q. Nine hundred tons? A. I think it was about that.

BY MR. MCCARTER:

Q. Nine hundred gross tons? A. Yes.

Q. What was the largest of the ships you scrapped at this other place, in gross tonnage? A. The gross tonnage of the "Freedom", I think it was 3000.

Q. The "Freedom" I thought you scrapped at Downey's. I am talking about Port Reading. A. We didn't scrap any big ones.

Q. All about 900 tons? A. Nine to twelve, I think, would be the heaviest.

Q. Twelve hundred tons would be the heaviest? A. Yes.

Q. How many did you scrap there? A. Four of them.

Q. How did you scrap them? One right after the other or was there an intermission between? A. No intermission. We continually kept working.

Q. What was the total tonnage you scrapped at that place? A. About 3000, between three and four thousand tons.

Q. Between three and four thousand gross tons? A. At Port Reading, yes, sir.

Q. Do you know of any ship of 400 feet or over that in any yard was scrapped in less than nine months?

Mr. Haight: I object to that.

A. I do not.

Mr. Haight: It seems to me that that is entirely too vague.

The Court: He doesn't say there was not. He says he doesn't know.

Mr. Haight: Oh, I didn't hear that. That was lost in my objection.

The Court: He says he doesn't know.

Mr. Haight: That is innocuous. We will let that stand.

Q. I want you to look at this blue-print on the wall here, Mr. Mason. You can read the dimensions. And I ask you to assume that a locomotive crane was operating on this pier immediately to the left of the red letters "BA" and that the red letters "BA" represent the ship known as the "Black Arrow", which was 409½ feet long, 52.8 feet wide, 28 feet deep, 1000 tons dead weight,

6022 gross tons, 3657 tons net; and I ask you to look and read the dimensions on the pier to the right of the red letter "P", and to assume that dry dock number 3 was not occupying that place, and that the place where the red letter "P" there lay a steamship "Philippines", 500 feet in length, 62 feet in width, 34½ feet in depth, net tonnage 7305, gross tonnage 11440, dead weight tonnage 13000, and to assume that those ships were being scrapped pursuant to a contract containing the following specifications, speaking in the language of the Perth Amboy Dry Dock Company: "We to berth ship at yard taking two ships at one time. We to furnish gas and oxygen for cutting, also use of hose and burning outfits required by Mr. Bernard. We to furnish use of locomotive crane for handling such material as would leave our yard of cars or lighters or trucks. We to furnish use of floating derrick for lifting up to five tons, it being understood we are not to furnish derrick for handling ordinary scrap material. We to furnish general supervision of work under Mr. Bernard. We to furnish such stage piping as may be necessary to do the work. You to pay payroll costs of all labor used in scrapping, including assistant foreman, timekeeper, and day and night watchman in actual charge of this work only, also labor in removing material from yard. You to pay for services rendered by outside contractor for railroad. Bills for repair to be rendered weekly. Bills for use of plant to be rendered monthly, to be in proportion to work done. All bills to be paid in thirty days. We to assume liability for compensation to our employees for injuries. We to furnish connection by rail from the dock to present tracks." And assume that rail connection was furnished,

and assume that on this pier to the right of the "Philippines" there was a stiff-leg derrick which could not move from its position, capable of lifting twenty-five tons. I ask you to tell us what in your opinion would be a reasonable time for both of these steamers to be completely scrapped? A. With a derrick of twenty-five tons?

Q. Stiff-leg derrick of twenty-five tons. A. And located at one position?

Q. Yes, on one pier, and on the other pier the locomotive crane. A. Well, the one with the locomotive crane, according to my judgment on wrecking the "Freedom", I would say we spent nine months, lighters, and cranes, it would take twelve or fifteen months, I should say as the best; and for the one with the stiff-leg derrick it is beyond me. I don't know how you would do it. I know how I would get part of it, but if I couldn't shift the ship back and forth I could never get the rest.

Q. Do you know anything about the market for scrap steel during the first seven months of 1924? A. Not so much about the market. I was only shipping it and the prices were handled in New York.

Q. Do you know whether you were able to ship or dispose of the shipping sizes during all of the first seven months of 1924? A. No, we shipped shipping sizes on this ship "Freedom" up until March, I think the latter part of March we were stopped, and from then on we cut charging box entirely.

By Mr. Haight:

Q. You are talking about 1924? A. March, 1924, yes, sir.

Henry D. Mason. Called by Defendant. Cross.

By Mr. McCarter:

Q. Do you know where the shipping sizes were going? What was the market for them? A. Yes, sir.

Q. Where? A. Bethlehem.

Q. Do you know of any other market for shipping sizes? A. I do not.

Mr. McCarter: Cross examine.

Cross Examination by Mr. Haight:

Q. Now, in your estimate you said that you didn't know how long it would take to scrap the vessel which was moored alongside of that pier that had the stiff-arm derrick. Did you take into consideration that after the one which was located at the other pier had been completed and put on the dry dock for cutting, the bottom of her, that the other one, the one moored where the stiff derrick was, was to be brought over and the scrapping completed on the other pier? A. Yes. That could be done, yes, after the one was finished so it could be dry docked.

Q. Now, when you scrapped this "Freedom" which I understand is the largest vessel which you ever scrapped, some four hundred feet long, isn't it? A. Yes.

Q. How deep? A. Deep, she was about 50 or 60. I wouldn't be sure about that.

Q. 50 or 60 feet? A. I am a little bit off on that.

Q. Gross tonnage? A. About 3000 tons.

Q. 3000 gross? A. Gross ton, yes.

Q. 3000? A. Yes.

Q. On a vessel 450 feet long? A. 3000 tons. I think that is correct.

Henry D. Mason. Called by Defendant. Cross.

Q. When was she scrapped? A. She was scrapped in 1924.

BY THE COURT:

Q. When? A. From January to the last of September.

Q. In that one year? A. In that year; yes, sir.

BY MR. HAIGHT:

Q. Was she 445 feet long? A. I would not be exact on that length. It was over 400.

Q. The record of the "Freedom" in the record of the American Shipping and Foreign Shipping seems to give her gross weight as 5640? A. What is her length?

Q. The length is 445 feet. A. I would not be so sure about the weight, because I tell you—

Q. That is almost double the weight that you gave? A. Almost, according to that. That is the gross weight?

Q. Look at it. You can read that book, can't you? A. I can. 3,607.

Q. No, that is the dead weight. A. 6,500 gross.

Q. 5,640 is gross, isn't it? A. That is right.

Q. Now, are all your estimates as accurate as that estimate on the tonnage of that vessel? A. I beg your pardon?

Q. Are all of your estimates that you have given to this jury today as accurate as the estimate of the tonnage of that vessel? A. I think that the rest are accurate.

Q. You think the rest are accurate. How is it you made such a mistake on the tonnage? A. I didn't think there was that much weight in it.

Q. I assume that. But how is it you made that mistake? A. I don't know, only I figured she was only 3,000 to 3,500, was all the weight I thought she had.

Q. You had there in Downey's Shipyard in Staten Island? A. Yes, sir.

Q. You didn't have any time limit set as to when you were to get her out? A. No, sir.

Q. You could go along just as you saw fit? A. Yes, sir.

Q. And you were guided a lot as to the market price of steel, weren't you? A. We were guided, I suppose, we would be, yes.

Q. Well, certainly. If it didn't pay you to take out steel you stopped taking it out? A. If the company would tell me to stop.

Q. You were just in charge? A. I was superintendent.

Q. You had no financial interest in it? A. I didn't, no, sir.

Q. There were times came when they told you to stop? A. Yes.

Q. And times came when they told you to cut down the number of men? A. Yes.

Q. And you didn't put on full force of men and attempt to rush this job through at the quickest time you could get it through? A. I worked them for the best advantage for the company.

Q. You worked them for the best advantage of the company? A. The best I could, certainly.

Q. You were trying to scrap that vessel as cheaply as possible for the company? A. Yes, sir.

Q. And you cut out charging box where it was more profitable to cut charging box, and you cut out shipping sizes where it was more profitable to cut shipping sizes? A. We cut shipping sizes on that ship until the mills would not accept it.

Q. Then you stopped? A. Then we cut charging box.

Q. Then you started cutting charging box? A. Yes, sir.

Q. It takes a good deal longer to cut charging box than shipping sizes? A. It does.

Q. Very considerable longer? A. Yes, quite some longer.

Q. Half as much again? A. Well, twice as much, I should say.

Q. Twice as long. When did you start scrapping this vessel? A. On the "Freedom," January 1.

Q. January 1? A. A day or two maybe after. Beginning of January.

Q. In April you were running a pretty small crew on board this vessel, weren't you? A. April? Well, no. We kept cutting almost the same amount of men right through. There probably was time limits on it to be cut up. I wouldn't say for sure.

Q. There was a time when you stopped entirely, wasn't there? A. Oh, no.

Q. I thought you said that the company told you to stop? A. You asked if there was such time.

Q. I understood you to say yes? A. There was no such times. We never stopped cutting.

Q. Never did stop cutting? A. No, sir.

Q. At no time did you ever have over twelve or fifteen burners? A. On one ship.

Q. On this "Freedom." That is what I am talking about. On this one ship? A. That is right.

Q. You didn't scrap these ships together, did you? A. We had several ships at that place.

Q. Running several of them at the same time? A. At Downey's, yes, we had two and three running.

Q. What? A. Two or three, yes.

Q. Two and three? A. Yes.

Q. Who was over you in this? A. The head of the company, Mr. Luches. Water-side Salvage Company.

Q. Who was the head man? A. F. J. Luches.

Q. Where is he located? A. 3503 Woolworth Building at that time.

Q. Is he an engineer? A. He is.

Q. He is an engineer? A. I think he is, yes, a civil engineer.

Q. He laid out the work for you? A. Laid out the work?

Q. Yes. A. Not much. I laid out the work myself.

Q. He was an engineer and the man who directed the thing, wasn't he? A. When he would come around he would occasionally direct.

Q. Now, you aren't engaged in the scrapping business now, are you? A. No, sir.

Q. Are you working for H. L. Crawford & Company? A. No, sir; never did.

Q. Or the American Wrecking Company? A. Never did.

Q. The American Shipbreaking Company? A. No, sir.

Q. When did you first give your estimate as to the time that it would take to scrap the "Philippines" and the "Black Arrow" to any one in this case? A. When did I first give the estimate? Right here. I never knew anything about them.

Q. When did you first give an estimate as to the time it would take to scrap these two vessels, the "Philippines" and the "Black Arrow"? A. Never give any estimate before.

Q. Never gave any estimate before? A. No, I formed my estimate from the time I spent on the "Freedom."

Mr. Haight: That is all.

REDIRECT EXAMINATION BY MR. MCCARTER:

Q. How many tons of steel did you cut out of the "Freedom," do you remember? A. I don't. I thought there was 3,000, 3,500 tons, but there may have been more.

Q. You thought that there were 3,000 or 3,500 tons of steel you cut out of her? A. Yes.

Q. Is it on that you based your estimate of the tonnage?

Mr. Haight: I object. That is just telling the witness what to say.

A. I figured that on the size of that ship. The difference in the size of the two ships. This ship is 50 or 60 or 75 feet longer, and, of course, it ought to take a little more time to cut it, and we also had three lighters on our ship.

Q. You don't understand my question, in spite of its alleged leading character. I am asking you whether the amount of steel you cut from the "Freedom" had anything to do with your telling Judge Haight, this gentleman, that the gross tonnage of the "Freedom" was that figure you gave? A. The gross tonnage that I gave?

Q. You gave a certain figure of gross tonnage to which he took exception and showed you a book. Now, I am asking you whether the amount of steel which you say there was about, as I understand you, 3,000 or 3,500 tons, which you cut from the "Freedom," had anything to do with the figure you gave before you saw the book for the gross tonnage. A. Had nothing to do with it whatsoever.

Mr. McCarter: That is all.
Mr. Haight: That is all.

HARDIN L. CRAWFORD, recalled.

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Mr. Crawford, what is the business of your firm of which you and Dr. Decker are the partners? A. We operate and own public utilities and do bond business and financial deals for others who bring them to us and who haven't the money to finance them.

(A brief recess was taken.)

ELIAS MONESS, recalled.

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Let me understand you, so I understand you. This arm indicates the arm of the twenty-five-ton derrick, does it? A. Yes.

Q. What kind of a derrick? A. Well, that is a derrick which we supplied to the American Hoisting Derrick Company, and we have the catalogs completely on it.

Q. It is a derrick that is down at the Perth Amboy Dry Dock Company? A. Don't ask me about that.

Q. I ask you do you know or don't you? A. I told you where—

Q. I asked you do you know or don't you? A. What was it?

Q. I asked you whether that was the kind of derrick that was down at the Perth Amboy Dry Dock Company. A. I don't know.

Q. You could say that, couldn't you? A. All right.

Q. Just answer my question and you and I will get along a good deal better. A. Fine.

Q. What do you mean, "lifting powers"? A. I mean the derrick will lift so many tons as each plate designated.

Q. For instance, if we put it over here perfectly straight it would not have any lifting power? A. No lifting power.

Q. If you put it over there halfway, six and a half tons? A. Six and a half tons.

Q. And if you put it up vertically? A. Except for an impossibility for it to hit here.

Q. Then, it would be a lifting power? A. 18.9 tons.

Q. What do you mean by twenty-five-ton derricks? A. It means that if you use a certain apparatus on it, an out rigger which clamps up to the rails, and that prevents it from dipping, you can lift about a third more. That will bring it up to twenty-five.

Q. Could a twenty-five ton derrick at the point that that boom is located now, which is on the first line, lift twenty-five tons? A. Sir?

Q. No derrick, twenty-five-ton derrick, with a boom elevated to the first line on this part would lift twenty-five tons?

Q. Now then I say no 25 ton derrick with a boom in the position that the boom is now, namely, that it is now at the first line on this chart, would raise 25 tons? A. Every derrick will do it. Every 25 ton derrick. Not no derrick. Every 25 ton derrick will.

Q. I thought you said at this point the 25 ton derrick would not lift but 18.9 tons? A. But I said with the outrigger it will lift one-third more, which brings it up to 25 tons.

Q. That is what we understand by a 25 ton derrick, is it? A. Correct.

Q. In the operation of a derrick when it is desired to move a piece, located farther away than will permit you to lift the particular weight of that piece, the piece is pulled over by the derrick to a place where the derrick will lift it, that is right, isn't it? A. Do you mean drag?

Q. Yes? A. Can't drag it either.

Q. You can't drag it either? A. Not at all.

Q. You are sure about that, are you A. Perfectly.

Q. Are you a graduate engineer? A. Yes.

Q. What college? A. College of the City of New York.

Q. Did you get a degree of Mechanical Engineer? A. Yes. Bachelor of Science first, and Mechanical Engineer.

Q. Have you had any experience in lifting? A. In lifting?

Q. Operating lifting machines? A. I am not quite clear. Do you mean whether I handled—

Q. Have you had any practical experience in the operation of a locomative crane, for instance? A. No.

Q. You say that a piece of material that is deserious to be lifted, which is too heavy to lift at the point where it lies, cannot be dragged by the crane to a point where it can be lifted? A. Definitely so.

Q. You say that, do you? A. I can prove it right here.

Q. You cannot prove it to me. I do not know whether you can prove it to anybody else or not.

By Mr. McCarter:

Q. Try and prove it to me, Mr. Moness. A. All right. Now here, for instance, supposing you want to lift a piece that lies here (indicating), obviously, assuming that the weight is over 4 tons, you can't do it. The thing you will do is try to drag it over here to a point here; that is what you are speaking about, was it?

Mr. Haight: Yes.

A. Now, it is perfectly plain that at this position the angle is such that the dragging is only that

much, whereas here it is a complete weight. It just amounts the same as lifting a pound with your hand that way, or holding it like that (indicating). There is not difficulty in this, but it is difficult to hold it like that (indicating).

By Mr. Haight:

Q. Supposing I am trying to pick up a piece, a weight away out there? A. Yes.

Q. I can't pick that up as easily as I can if it is here, can I? A. The analogy is wrong.

Q. Can I? A. Oh, yes, certainly.

Q. I can pick it up as easily over there as I can right here parallel with my leg? A. Again, how was that?

Q. Well, now, I am going to pick up a piece say two feet beyond my leg? A. Yes.

Q. I can't pick that as readily as I can a piece of the same weight right opposite my leg, can I? A. Yes.

Q. I can do it? A. Well, you can't pick it as readily.

Q. That is what I say. You agree with that? A. Certainly.

Q. But I can pull that over, can't I? A. Yes.

Q. Just as easily as I can pick it up from my foot? A. Well, no, I don't think just as easily. Besides we are getting into very mixed terms. I apply engineering terms—

Q. No, that is all I want to know. A. All right.

By Mr. McCarter:

Q. I want you to hold up one side of this, Mr. Moness, and I will move this handle as you tell me

to, and I want you to show, so the jury can see,—which they could not the way it was held before,—why this boom on this crane, which we will say can lift within a 50 foot radius, 3.8 tons? A. Yes.

Q. Why it cannot drag say 5 tons from that place? A. Let us take in one position you are expected to work; now, for instance, like that, of course, that one works the boom all the way down, because it hits the car right here. There is no use talking about such a case. But, just clearing the car, the boom stands up. Now, suppose there is a piece somewhere out here in the corner.

Q. The outer corner of the diagram? A. Yes. And this piece is too heavy for that boom to lift when it is right above it.

Q. Yes. A. Which is more than 4.3, let us say.

Q. Yes. A. Say it is a 5 ton piece.

Q. Yes. A. Now, the reason this piece cannot be lifted by the boom is that the component perpendicular to this boom is more than the component operating this boom. Just imagine two here. This means the weight going directly down is split parallel to the boom, and vertical to the boom, and this, of course, makes a triangle. If this turns out then to be too much for the boom to lift; now, suppose you had the piece lying over here in the corner, as I said before, and you attached it here, that makes the entire weight of this piece directly at right angles towards the boom, which means that the boom that could not lift a part of that weight, has now to contend with the complete weight.

Q. Has it also to contend with the friction? A. No. Before we have friction we have to move it, and before you move it you have to lift it. The question of friction starts when you begin to drag it, but you will never start to drag it from the spot.

Q. Never start to? A. No. Never budge it.

Mr. McCarter: I offer this D-32 for identification in evidence.

(Drawing heretofore marked D-32 for identification, entered in evidence and marked Exhibit D-32.)

HARDIN L. CRAWFORD, recalled as a witness on behalf of the Defendants, and having been previously duly sworn, on his oath saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Mr. Crawford, until this matter which we are here in court on today first came, up was your firm at any time in the business of scrapping ships? A. Never, sir.

Q. Did you yourself know anything about the scrapping of ships? A. Absolutely nothing, sir.

Q. So far as you know, did Dr. Decker, your partner know anything about the scrapping of vessels? A. No, sir; he did not.

Q. Now, these contracts were signed by you on December 20th, 1923, as I recall. How long before that, Mr. Crawford, had you acquired these ships? A. They were awarded to us by the government sometime in December, prior to that date, I don't remember the exact date.

Q. Whom in the Perth Amboy Dry Dock Company did you first see? Who was the first representative? A. Mr. Meurer.

Q. And when did you first see him? A. I saw him two days before the contract was signed.

Q. And did he, the first time you saw him, have any written proposition from his company? A. He had a definite, written, signed proposition from his company, which he brought into our office.

Q. In what respect, if any, did that proposition, or rather those propositions, differ from the contracts as signed? A. Only in the amount which they had on their first proposition, which covered the compensation insurance of their employees, was not on the second proposition.

Q. Did you and Mr. Meurer have any conversation on day? A. Is this the first day?

Q. The first day he came in with these signed propositions? A. Yes, sir.

Q. What did he say to you and what did you say to him? A. I was just about either going home or going to lunch, I don't remember which, passing out of the office anyway, and Mr. Morney introduced me to Mr. Meurer, who was sitting at his desk. Mr. Meurer told me that he would like the opportunity of bidding on the scrapping of these two boats that we had. I told him we already had a firm contract with the Staten Island Shipbuilding Company to scrap all four of the boats and we were, therefore, not interested. He stated that they would like to get the business, and that the freight rate from Perth Amboy would have us a considerable amount in shipping our steel, than it would be if we shipped from Staten Island, where we had the other contract. I told him at that time to prepare to figure on it, but before doing so, for them—we would have to see whether the Staten Island Shipbuilding Company would release two of the boats. He asked for permission to see the boats, and I told Mr. Mornay to give him a pass to go down and see the boats, or to arrange for him

to be allowed to go on the boats. And then I went on out and that was all that I saw of Mr. Meurer that day.

Q. Did you have any telephone conversation with Mr. Snedeker that day? A. No, sir.

Q. Did I understand you to say that day, when you did not have any telephone conversation, that he had with him a signed proposition? A. Not that day.

Q. Not that day? A. No, sir.

Q. When next did you see Mr. Meurer? A. I saw him the following day, but one, the day after my first conversation with him I did not see him at all. The following day he came into the office with these two definitely signed contracts.

Q. And what was your conversation with him that day? A. I told him that we were not interested at all, that we were anxious to have all indefinite amounts eliminated, we wanted to know just what it was going to cost us to scrap the boats, and that any indefinite amount that was put in, such as the compensation insurance on a percentage basis, did not interest us at all, we would have nothing to do with it. He then said that he would see—that he had no authority to change it, but that he would see if he could get Mr. Snedeker or Mr. Runyon on the phone, which he proceeded to do.

Q. Did he talk over the phone with the person whom he got? A. He did. I so understand.

Q. Then were you put on the phone? A. I was.

Q. And you had a conversation then with Snedeker? A. I did.

Q. What was that conversation? A. It referred solely to the matter of compensation insurance. I told him that we would not stand an indefinite percentage amount, that we wanted a straight figure

as to what it would cost us for them to break up the boats.

Q. And did you say in that conversation with Mr. Snedeker, anything about the time within which the boats would be scrapped, or could be scrapped? A. No, sir; I did not.

Q. Did you at that time know anything about how long it would take to scrap those ships? A. I hadn't the slightest idea.

Q. Who was Mr. J. L. Bernard? A. J. L. Bernard, I think was either a navy man or an engineer or something of that kind that had some experience in scrapping boats.

Q. I did not so much mean what was his past life, but who was he in connection with you, and on this job?

Mr. Haight: I object to that. The purpose is evidently the same purpose that was advanced in Newark, to show that Bernard was not the agent of the witness at the time he went on board the vessels. That has been settled?

The Court: What have you to say about that?

Mr. McCarter: That is among the purposes that, of course, we have.

The Court: I am going to hold that the Vice-Chancellor, of course, said he was the agent.

Mr. McCarter: In spite of that holding, does Your Honor rule out this question?

The Court: For what other purpose is it offered?

Mr. McCarter: It shows the whole situation as much as the preceding questions that I have been asking him.

The Court: I am asking what purpose you offer it for?

Mr. McCarter: I offer it to give the jury the picture of the situation. Included in that I frankly say I design to show that Bernard was not their agent, but that is not the sole purpose.

The Court: As long as that is one of the purposes, I will sustain the objection.

Mr. McCarter: Will your Honor allow me an exception?

The Court: Yes.

Q. Did H. L. Crawford & Company have any employees working on or about these two steamers the Black Arrow and the Philippines?

Mr. Haight: I object to that. It calls for a conclusion. He can state what the facts are, and from the facts your Honor will determine, as a matter of law, whether or not they were employees or they were not employees. I think you have already determined the question.

Mr. McCarter: I will withdraw the question and put it in another way. I am not trying to do what Judge Haight thinks.

Q. Did H. L. Crawford & Company have an employee named Ackerman working in connection with these? A. They did.

Q. What was Mr. Mornay's relation to H. L. Crawford & Co? A. Mr. Mornay was a young man who had brought in some business to H. L. Crawford & Company from time to time, in which we financed his business. He was in no way di-

rectly or indirectly connected with H. L. Crawford & Co. If he was able to find business of his own, which was attractive to us, we fancied the business for him.

Q. Well, wait a minute. So far as this ship was concerned, he was associated with H. L. Crawford & Co? A. Absolutely.

Q. In the scrapping all of these ships? A. Yes.

Q. Although he was not strictly an employee, no? A. He was not an employee, no, sir.

Q. When did you first go down to the Perth Amboy Dry Docks yard to see these ships there? A. My memory would be around the first part of January; I don't know about exactly what date, 6th or 7th or 8th or 9th. Around there somewhere. Early part of January.

Q. Was that the first time you saw Mr. Runyon? A. That was the first time I saw Mr. Runyon, yes, sir.

Q. Did you have a conversation with him that morning? A. Yes, sir, I did.

Q. What was that conversation? A. It was a very pleasant conversation. He stated that anyone who had ever done business with the Perth Amboy Dry Dock, would always come back again. And it was that they were sure that the work would be done to our satisfaction; and it was very pleasant at that conversation.

Q. Did you have any conversation with him in reference to Mr. Meurer on that day? A. I did, sir. I asked him if at that time there was anyone in his employ who was going to be directly in charge of this work that was being done there. And he told me that Mr. Meurer was the man that they had designated for that purpose. And further, that anything that Mr. Meurer could do for us, that he

would be only too glad to do, and anything that Mr. Meurer said, as far as our work was concerned, was all right.

Q. I show you, Mr. Crawford, a copy of the letter, or what purports to be a letter on your letterhead to the Perth Amboy Dry Dock Company, under date of January 31, 1924, the plaintiff not producing the original, and ask you if you wrote them that letter? A. Yes, sir, I did.

Q. And did you enclose the bills mentioned in that letter as being enclosed? A. There are no bills mentioned in the letter, sir.

Q. I am asking you that letter? A. January 31st?

Q. 31st, yes? A. I did.

Q. And did you enclose the bills that are mentioned in that letter? A. Yes, sir. They are enclosed from the office.

Q. Is this bill which you just looked at part of the group of bills which has been put in evidence as Exhibit P-11? A. Well, I have no knowledge of the bills myself, sir.

Q. Is that the bill you sent? A. That is the bill, sir. That is the bill that went from the office, so far as I know.

Mr. McCarter: Let it appear that this bill is one of the bills taken from Exhibit P-11.

Q. I show you bill for the same date for the Philippines and ask you if that is the bill you enclosed in that letter? A. I should say it was, yes.

Mr. McCarter: Let it appear that that was taken from Exhibit P-12.

Hardin L. Crawford. Recalled. Direct.

May I read into the record this letter, which I am getting from the book, January 31, 1924, (page 89): "The Perth Amboy Dry Dock Company, Perth Amboy, N. J. Gentlemen: Beg to enclose our check herewith to your order for the sum of $4,670.24, in payment of the enclosed bills for the period from December 22nd, to January 2nd, inclusive, for the 'SS Black Arrow' and 'Philippines,' with such exceptions as are shown thereon. Yours very truly, H. L. Crawford & Co."

Q. When next did you see Mr. Runyon, Mr. Crawford? A. I would not remember the dates. I think I saw Mr. Runyon three or four times at different times I would go down to the plant. I remember some particular definite dates when I did meet him.

Q. Do you remember any particular definite date before luncheon at the Bankers Club? A. That was in February?

Q. Dr. Decker testified this morning it was on February 26th? A. I was at that luncheon on February 26th, yes.

Q. Well now, taking this thing up chronologically, I say, do you remember any particular conversations of any importance that you had with Mr. Runyon, after the first one which you have testified to, and prior to February 26th? A. I don't remember any particular dates; no, sir.

Q. Well, now, in the first place tell us how you came to meet Mr. Runyon at the Bankers' Club in the City of New York? A. I invited Mr. Runyon to attend the luncheon at the Bankers' Club for the reason that we had many things that I thought

should be talked over with him, and we invited him to come up there for that purpose.

Q. Well, tell us the conversation that took place at that Bankers' Club luncheon? A. There were present at that luncheon, my partner, Dr. Decker, Mornay, Mr. Bernard, Mr. Meurer and Mr. Runyon. I told Mr. Runyon that we had had great difficulty in getting the steel from the yard because of the fact that the crane was getting off the track; that the work needed speeding up; that the steel was not coming out of the boats, that the many small delays were being occasioned, and asked for his cooperation to straighten those things out in his yard.

Q. What did he say? A. He said that he had paid very little attention to the matter down there, that Mr. Meurer had had charge of it; and he turned to Mr. Meurer and asked him if such delays had happened. And Mr. Meurer admitted that in many cases—

Mr. Haight: Tell us what he said.

A. Mr. Meurer acknowledged that they had.

Mr. Haight: That is just as bad. Won't you tell us what he said?

A. Mr. Meurer said that there had been certain delays that I had mentioned.

Mr. McCarter: Go ahead. Go ahead with the whole conversation without any more questions from me.

A. I also told him that certain charges that had been made on their bills were in our estimation im-

proper charges and that—he brought that up, that certain amounts had been improperly deducted from his bills, and I told him that we had taken those various amounts up, several amounts which we talked over with Mr. Meurer, and that Mr. Meurer had agreed that they were proper charges to be deducted. Those referred definitely to the extra costs that had been charged up to us, because of the fact that no manifold was then in operation. They expected to put in a manifold—

Mr. Haight: I object to that.

By Mr. Haight:

Q. You did not have any conversation with him about a manifold before February 26th, did you? A. Personally, no, sir.

Mr. Haight: Then it is clear that it is not proper.

The Court: Yes. Strike out "they expected".

Mr. McCarter: Go on Mr. Crawford.

A. Can I say that we expected a manifold to be installed very promptly, and it had been delayed. That had necessitated the carrying up onto the ships these large cylinders of gas and air. We complained about that extra charge, not only from the cost of the labor, but of the time of the burners themselves, and explained—

Mr. Haight: I object to that unless you did it yourself.

Mr. McCarter: He can retail the conversation, I submit.

Mr. Haight: He is not retailing the conversation. He is talking about something that happened before.

Mr. McCarter: I understand he is saying this is what they said in the conversation.

The Court: Go on.

BY MR. HAIGHT:

Q. Is this what was said in the conversation? A. So far as I know, sir; yes, sir.

The Court: Go on.

A. This brought about the question from Mr. Runyon to Mr. Meurer, "Are those proper charges to be deducted. Should we have stood those, instead of Crawford & Co." And Mr. Meurer distinctly said, "Yes, those are proper charges against us." And Mr. Runyon then said, "All right, we will deduct them." I complained about the crane going off the track and Mr. Runyon stated that he would on his return try to see whether he could not straighten out the difficulties that had been occasioned in the yard and speed up the work.

BY MR. MCCARTER:

Q. Was anything said at that time by way of complaint from Mr. Runyon as to the method of cutting up the vessels, and the size of the pieces? A. Not a word.

Q. Any complaint about the time within which the vessels should be cut up? A. Nothing was said, sir, in regard to either time or the size.

Q. Did he say anything about a claim for salvaging the "Philippines"? A. Not a word.

Q. You knew, did you not, at the time that the "Philippines" accident had occurred? A. I did, sir.

Q. When was your next conversation with Mr. Runyon? A. I believe the next conversation was at the meeting at Perth Amboy, sir.

Q. And when did that take place? A. That took place toward the end of March.

Q. Who were at the conference? A. The same that were at the meeting in the Bankers' Club, plus Mr. Preacher, Mr. Snedeker, I think Mr. Olsen of their yard were there at that time.

Q. Tell us any conversation had at that meeting. A. I asked at that meeting how they intended to complete the boats when they got down to the water's edge, and Mr. Runyon said that they would put them on the dry dock and complete the cutting up of these boats that way. I had never seen a dry dock and asked how they could get the pieces off the dry dock, and he explained to me that the dry dock was in sections and you could cut the part of the boat nearest to the end of the dry dock, bring a heavy lift boat up to that section, remove the piece that was cut, and then sink that section of the dry dock, and then repeat that performance by cutting off the part of the boat that was nearest the end of the dry dock that was still left, bring up the lift boat again, and lift that off, and gradually let down the different sections of the dry dock and dispose of the steel that way.

Q. Go ahead. Was there any further conversation? A. Yes, sir, at that meeting he claimed that the boats should be cut up into big pieces.

Q. And what did you say? A. I didn't so understand that our contract in any way provided that they should be cut up into big pieces; and he was very excited and very arbitrary and would not listen at all, would not talk any.

Q. Did you have any conversation with him about the gas that was being used? A. I did.

Q. Tell us that. A. They had written a letter to the effect that they were using more gas than they expected to use. I wondered why and tried to see whether there was any reason for their having used more gas than they thought they should use.

By Mr. Haight:

Q. You were asked about the conversation, Mr. Crawford. Please relate that. A. The conversation in regard to the gas at that time, as near as I can remember, was as follows: I had been out in the yard and found that the manifold which was then operating showed that they had a pressure of 1,200, in some cases 1,500 pounds of pressure on the tanks. The gas in order to get up to the plates where it is going to be used—

Mr. Haight: I object to this. I don't think Mr. Crawford is qualified to testify as to what is necessary for the proper pressure of gas and things of that kind. He was asked a specific question as to what was said about gas. He proceeds to go off and give his opinions that so far as I know have nothing back of them except what somebody has told him, about what the proper pressure should be.

Mr. McCarter: If I understand the rule I am the only one who can object if an answer is

not responsive. He is now telling about something in the yard before the conversation. It would be more proper if I had asked the question in that way. He is telling what he saw in the yard.

(Last answer read by stenographer.)

The Court: He was going to express an opinion as to how many pounds pressure it should have, and he has not qualified to express such an opinion. You may qualify him if you think you can.

Mr. McCarter: Mr. Crawford is not a gas expert or anything like that.

Q. What did you see in the yard that led you to have a talk with Mr. Runyon about gas? A. Well, I saw that the pressure was low in their tanks.

Mr. Haight: I object to that as a conclusion. State what the pressure was.

The Witness: The pressure was 1,200 to 1,500 pounds pressure on tanks that had just been put on the line; that is, new tanks, full tanks.

Q. Now, having seen that what did you say to Mr. Runyon about gas? A. I told Mr. Runyon that we had made tests on these very boats of two different kinds of gases, calorine and carbo-hydrogen gas, that the findings of this showed that the calorine was much cheaper to use and burned very much quicker, and that I thought if he would use that gas that he would not have no complaint as to the amount of gas that was being consumed.

Q. What did he say? A. Mr. Runyon would hardly say anything, and he was just mad all over.

Q. Did he say anything at all about the gas? A. I believe he said at the end, "Well, we will make a test," or something of that kind.

Q. Now I show you Exhibit P-6, Mr. Crawford. You wrote that letter, didn't you? A. I did, sir.

Q. In that letter, Mr. Crawford, you said, "We have contemplated for the sale and must deliver a quantity of ship plates for export, and are most desirous of getting out these plates and shipping them promptly." When had those contracts for export been made, or that contract, whichever it was? A. These are the ship plates for China. I believe that contract was entered into some time in January or February, something like that.

Q. How many tons did those contracts or that contract in all call for? A. My remembrance is that they were possibly three separate contracts, in varying amounts. I think one of them was 200 tons, another was 100 maybe, another one 150, therefore five or six hundred tons.

Q. Was there any time limit in those contracts? A. Yes, sir.

Mr. Haight: Have you got them?

Q. I ask you to look at the paragraph in that letter where you say the time is getting very short, and so on, and ask you what time you referred to, what you had in mind. A. The time for fulfilling the contract for delivery of these Chinese contracts.

Q. I ask you to look at the sentence next preceding that where you say, "However, through no fault of ours, but of the dry dock company in not

providing facilities to allow us to carry out the sale of the ship plates, then in that case the only market that we will have will be for charging box sizes." Is that correct? A. The only contract that we had to fill was for charging box other than this for the ship plates; yes, sir.

Q. Did you make any effort at any time to find a market for shipping sizes? A. Yes, sir; some time in April or thereabouts, later than this.

Q. Were you able to find a market and sell shipping sizes? A. No, sir; I tried it through several sources. One was through Luria Brothers, who were the largest dealers of scrap that I knew about, and who were very close to the Bethlehem Steel Company. I tried by having Mr. Mornay make a trip to Youngstown, Buffalo and different other points.

Q. Now, you can't tell us what Mr. Mornay came back and told you. Do you distinguish between shipping sizes and these ship plates which you have said were going to China? A. I do, yes, sir.

Q. What is the distinction? A. Well, I know what the two are. I didn't know what the difference between the one and the other when we entered into the contract. The difference, as I ununderstand—

Mr. Haight: I object to what it is now. It is immaterial as to what his understanding is now.

The Court: That is true.

Q. Did you know when you wrote this letter of March 6, 1924, what were the ship plates for export to China? A. Yes, sir.

Q. What were they? A. They were a plate of size that would weigh not more than a certain tonnage per piece, so that that size depended on the thickness of the steel. They were to be stacked for shipment in the boat and they could not be stacked so that they would occupy a larger space than a certain number of cubic feet to the ton of steel material.

Q. Now, did you after this letter of March 6, any time after, proceed with the cutting of plates for this Chinese shipment? A. I believe that the plates for this Chinese shipment continued to be cut at this date; yes, sir.

Q. I show you two letters which are permanently annexed, from Perth Amboy Dry Dock Company to your company, both dated April 29, and ask you if you received those two letters? A. Yes, sir.

Mr. McCarter: I offer them in evidence.

(Letter of April 29 entered in evidence and marked Defendant's Exhibit D-34-a.)

(Letter of April 29 entered in evidence and marked Defendant's Exhibit D-34-b.)

Mr. McCarter: These letters marked Defendant's Exhibit D-34-a and D-34-b to the jury.

Q. Do you know, Mr. Crawford, whether before the receipt of this letter, and if so, how long, these angles had been cut off the backs of the plates? A. No, sir.

Q. You don't know? A. No.

Q. Did this letter have any effect on causing the cessation for the Chinese shipment? A. Yes, it stopped it.

Hardin L. Crawford. Recalled. Cross.

Q. Were you able to completely fill your order for the Chinese shipment? A. Not in time. I am not sure later on or before, but I know we failed on the delivery of the Chinese order in time, that the contract for the delivery of that expired.

Q. You bought altogether from the government at one time how many ships? A. Five ships.

Q. And how many were being scrapped at the Staten Island yard? A. Two.

Q. What was happening to the fifth ship? A. It was tied up in Philadelphia.

Mr. McCarter: I think that is all.

CROSS EXAMINATION BY MR. HAIGHT:

Q. Now, Mr. Crawford, let us go to this conference of March 21. Mr. Runyon at that time claimed that you were cutting up other parts of the vessel than the superstructure in charging box sizes, did he not? A. No, sir; he simply stated that we were cutting up charging box sizes.

Q. He didn't state anything to you about the superstructure? A. Nothing was said as to the part of the boat, as I remember.

Q. What did he say that you should not do? A. Said we should not cut up; he would not allow cutting up in charging box sizes.

Q. No charging box at all? A. No.

Q. At all? A. At all.

Q. You had been cutting up charging box sizes for three months? A. We had.

Q. Did you understand him to say that thereafter you were going to cut up no charging box sizes? A. Yes, sir.

Q. That was a most peculiar attitude for him to take when you had been cutting them for three months? A. I thought so.

Q. You didn't have any doubt about that at that time, did you? A. No, sir.

Q. What did you say, that your contract did not so provide? What did you mean when you said that? A. That our contract did not so provide.

Q. Yes. A. That we could not cut them up in charging box sizes.

Q. It had been brought to your attention, had it not, by Mr. Meurer's letter of March 3, eighteen days before this conference, that the claim of the Perth Amboy Company was that Bernard had represented at the time he took Preacher and Meurer on board these vessels that the entire superstructure was to be cut up in charging boxes and the rest of the hull cut up in large-size plates for shipment to China, and the engines and boiler were going to be lifted out without being entirely dismantled for shipment to Germany? Was that so? A. He so wrote.

Q. You know that? A. I knew he wrote me.

Q. You knew that you received that letter? A. Yes, I did.

Q. You replied to it? A. I did.

Q. The letter of March 6, Exhibit P-6, is your reply, isn't it? A. It is, sir.

Q. In that letter you wrote this, didn't you: "Your letter of March 3 states that it has been brought to your attention that we now intend cutting up these two ships entirely into charging box sizes." You wrote that, didn't you? A. Yes.

Q. "I should appreciate knowing who has brought this matter to your attention and where

you have gotten your information, as there has been no change in our plans for scrapping of the ships." A. Right.

Q. You wrote that, didn't you? A. I did.

Q. And that was in reply to Mr. Meurer's letter where he told you what the plan was? A. It was.

Q. And you didn't deny that the plan was as Meurer stated to you in your letter of March 6? A. I stated that there had been no change.

Q. That there had been no change? A. No, sir.

Q. The plan that Meurer said there was that the superstructure was to be cut up into charging box sizes, the balance of the hull in large size pieces to go to China, and the engines and boilers, and so forth, to be taken out and dismantled without being cut up. That is the plan he stated, wasn't it? A. It was.

Q. You said there had been no change? A. In our plan.

Q. You said there had been no change? A. In our plan.

Q. In your plans? A. Yes.

Q. Did you try to differentiate between your plans and the plan that Meurer wrote in his letter of March 3? A. I was a little suspicious when I received that letter.

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

Q. And that is the reason you wrote a letter when you were suspicious saying, "There has been no change in our plan," is it? A. It was.

Q. What were you suspicious about? A. That they were going to try to throw the deal.

Q. Then, why didn't you say to them in so many words that wasn't the understanding at the time that we were to cut these vessels up in that way?

A. Because I had been informed by Mr. Bedges of the Staten Island Ship Building Company that this shipbuilding company was going to try to throw over our deal.

Q. Why didn't you say so, that that wasn't our deal? A. They had not done so.

Q. Why didn't you say so, that that wasn't our deal? A. I thought that if I could get from them a statement as to who had given them this idea, which I didn't believe anybody had given, and the fact that they never answered my letter would be rather an indication that there was no one had said it.

Q. Did you think there was any need of an answer to a letter which says there has been no change in the plans when that letter was written in reply to a letter which stated what the plan was?

Mr. McCarter: Now, I object to that question as assuming that this letter, or the letters, had said that Crawford's plan was thus and so whereas the letter in question does not say it is Crawford's plan.

(Last question read by stenographer.)

The Court: I will permit that question.

A. I don't understand the question, your Honor.

The Court: He says he doesn't understand the question.

Q. Now, Mr. Crawford, you are in the habit as a business man, are you when, somebody says to you, "I made in a contract or in an agreement with you so and so," of denying that they made such an agreement if, in fact, such an agreement

was not made? A. If I wasn't suspicious that there was not something behind it.

Q. Just leave that alone. That would be the ordinary way you would deal, wouldn't it? A. It would.

Q. That is the way ordinary men deal? A. If he wasn't suspicious of the other one.

Q. Do you think the best way to get around suspicion, the best way to protect yourself against suspicious actions, is to admit by not denying, or admit expressly as the case may be, their statement of what the contract was? A. If I understand what you mean—

Q. I may make it plainer to you if you do not. Do you think the best way to deal with somebody of whom you are suspicious when that person says to you, "You made a contract with me so and so," to say to that person, "I made such a contract with you," either expressly or inferentially?

Mr. McCarter: I object to that, for it assumes a certain inference in this letter which the witness has not testified to is his inference.

Q. Do you think the best way to counteract somebody of whom you are suspicious when that person writes you a letter and says in black and white, "Our plans were so and so," that the way that this work was outlined to us was so and so," and right at the end of it, "Kindly advise us of what your opinion is in this matter," and you reply, "I should appreciate knowing who has brought the matter to your attention and where you have gotten your information as there has been no change in our plans for scrapping the ship." Do you think that is the

proper way to counteract a person of whom you are suspicious? A. I did in that case, sir.

Q. I ask you generally do you think that is the way. A. I was to purchase of that and that is the reason I wrote that letter to get a reply for them. I didn't believe there was anybody had said such a thing.

Q. You said that Runyon was mad at this time at this conference in March 21? A. Yes, sir.

Q. Do you have any reason to question the justness of his anger if he had brought to his attention in March 6 these letters that I have just read to you and then you on March 21 take the position that there was nothing in that contract that limited you as to how you would cut these vessels up?

Mr. McCarter: I object to that as immaterial.

Q. Do you wonder why he was angry?

Mr. McCarter: I object to that as immaterial.

Q. Do you wonder why he was angry? A. He was angry.

Q. Do you wonder that he was? A. I did at that time?

Q. You did? A. Yes.

Q. Wouldn't you be angry in the same circumstances? A. If I was honest in my understanding, if I had not been influenced in my understanding, I should have been.

Q. Suppose you were honest in your understanding? A. Then I think I would.

Q. You have no reason to attribute to Parker Runyon a dishonest understanding, have you? A. I would rather not answer that.

Q. You stated in your direct examination that you understand Mr. Meurer's letter of March 3 to refer to the plates which were to be shipped to China under this special contract? A. A part of my letter did refer.

Q. Well, when he said in his letter, "The rest of the hull cut up into large pieces for shipment to China", I understood you to say on direct examination that you understood that to relate to the plates that were to be shipped to China under this contract which you had gotten? A. I don't think that question was asked, Judge.

Q. Is that the fact? A. Will you ask it again?

Q. Is it a fact, that you understood when you received this letter of March 3 that Mr. Meurer referred to the plates which were to be shipped to China as those plates that you say you had entered into a contract for delivery on? A. I imagine so, yes, I imagine so.

Q. You said that that contract had not been entered into until February? A. I think it was February, part of it in February, part of it in January, I think.

Q. This letter of Mr. Meurer's says, does it not, "At the time your representative, Mr. Bernard, came down here to talk over the matter of scrapping the "Black Arrow" and the "Philippines", and right there, and so forth, went over the fleet where these were and looked over the ships. Mr. Bernard at that time informed us that he intended scrapping the ships in the following manner, the superstructure to be cut into charging box sizes,

and the rest of the hull to be cut up into large-sized plates for shipment to China." That is so, isn't it? A. That is what he said.

Q. You knew that in the letter, didn't you? A. I did.

Q. Then, how could you have reference to this particular contract that you have referred to? A. We originally had in our original estimates figured on ship plates and charging box steel. We had that always in mind, that there would be all kinds of steel that would come out of that boat. There would be ship plates and scrap steel.

Q. Well, Meurer—

Mr. McCarter: Let him finish, Judge.

Q. Hadn't you finished? A. Those are the only two we had ever figured on.

Q. That is what you had figured on? A. Yes, sir.

Q. But you had inquired of Bernard, hadn't you, after you got this letter of yours or before that as to what statements Bernard had made at the time he went on this vessel with Preacher and Meurer? A. Bernard was not in my employ. It made no difference what he said. To begin with—

Q. He wasn't in your employ. You know the Vice-Chancellor decided that against you, don't you? A. Yes, I believe he did.

Q. In this letter, this statement is made, this letter of March 3: "At the time that your representative, Mr. Bernard, came down here to talk with us." Did you deny in this letter of March 6 that Bernard was not your representative, deny that he was your representative? A. No, sir, nothing said about that.

Hardin L. Crawford. Recalled. Cross.

Q. Why, if they wrote you that Bernard was your representative at that time and he wasn't, didn't you say so in that letter of March 6? A. Well, representative, whether you mean a legal representative or whether you simply mean that he went down with him.

Q. You knew that Mr. Meurer was not a legal man, didn't you, in the sense that he was a lawyer? A. I didn't know that he was a lawyer, no, sir.

Q. He is not a lawyer, is he? A. No.

Q. You knew he was not a lawyer? A. I think I knew he was not a lawyer.

Q. And when business men use "your representative," they mean your agent, don't they? A. Maybe they do in some cases. Maybe they don't.

Q. Don't you understand it that way? A. I would understand that a representative would be your legal representative, yes, in a legal firm, but if you are not talking in a legal way your representative might be the man that was down there at that time.

Q. You didn't in this letter say anything about him? A. Not a word.

Q. Not a word of him? A. No, sir.

Q. Bernard became your representative subsequently, didn't he? A. He did, sir.

Q. But you didn't attempt to deny that he was your representative in your letter of March 6? A. I never mentioned him.

Q. Did you do that because you were suspicious that the Berth Amboy Company was going to put something over on you? A. No, sir.

Q. Why didn't you do it then? A. I don't think it occurred to me.

Q. Is it reasonable for you as a business man when some one says to you about whom you are

suspicious, bearing in mind, going to put something over on you, he says, "Your representative represented so and so to me upon which I acted," for you not to say, "that man was not my representative," if in fact he wasn't your representative? A. If he had—

Q. Did you immediately do that? A. If he had told me who said it, my reply to them.

Q. If he told you who said it what? A. If he told me who said it, I should have probably come back at him with another letter.

Q. There on the top, "at the time your representative." He didn't say anything about who said Bernard was your representative or anybody had represented Bernard as your representative, did he? A. Apparently not.

Q. There wasn't anything there about who told him Bernard was your representative then, was there? A. There is nothing there.

Q. And that reason, because he didn't tell you who had told him about how you intended to cut up the ships, doesn't apply to his statement as to Bernard being your representative, did it? A. I don't understand that question.

Q. Would you understand it if it was repeated? A. Maybe.

(Question repeated by stenographer.)

A. I don't understand it yet, Judge.

Q. At the time this letter of March 6 was written you knew what sizes you had contemplated having these ships cut, didn't you? A. Yes.

Q. Why didn't you say to the Perth Amboy Company in that letter your understanding of the sizes to which these vessels were to be cut? A. There

was no particular reason for not doing so except that I had taken form of a letter for my reply, and I waited to hear from them in reply to my letters before going further into it.

Q. Let me understand. Is it your idea that the way to deny a statement of a contract made by a person of whom you are suspicious is to say, "There has been no change in our plans"? A. Not a method of denial, but if there have been any changes I simply stated that there wasn't any changes.

Q. You knew, didn't you, if your story is correct, that what Meurer said was the understanding, or wasn't the understanding? A. I knew it wasn't my understanding.

Q. It wasn't your understanding? A. Yes, sir.

Q. Then your idea of it was to handle a situation of that kind when the statement is made by a person whom you think is going to put something over on you, is to say, "There has been no change in our plans"? A. I believe at that time they were trying to manufacture something.

Q. Is that your manner of answering such an accusation? A. It is the way I did answer.

Q. I know it is the way you did answer in that particular case, but is that the way you ordinarily answer such an accusation? A. I try not to do business with people I am suspicious of.

Q. I think that the reply would apply to the Perth Amboy Company if they have anything to do with you?

Mr. McCarter: I move that be stricken out.

Mr. Haight: It may be stricken out.

The Court: It is stricken out.

Q. You testified in this chancery case, didn't you? A. I did sir.

Hardin L. Crawford. Recalled. Cross.

Q. Let me ask you if you made an answer, these questions were asked of you and you made these replies. "Q. Why didn't you state to these people your understanding of the sizes to which these were to be cut? A. I didn't think there was any controversy except they had heard from somebody we were going to do something differently from what was originally contemplated. Q. You got a clear idea of what they meant, did you? A. Yes, sir. Q. And you knew that your idea was entirely different from what you had in 1933, didn't you? A. Yes, sir." That is correct, isn't it? A. Yes.

Q. "Q. Why was not that sufficient ground for you to state to them definitely and positively what was in your mind at that time? A. When they would tell me where they got their information or whether it was a fishing trip they were going on, I would answer them perfectly clearly, but until I knew who was giving this information or where they were getting it or whether they were making some claims that wasn't in the contract, there was no reason I should have answered definitely more than I did." You made those answers, didn't you? A. I did.

Q. No doubt about that, is there? A. No.

Q. This record was printed by you for appeal in the Court of Errors and Appeals? A. Yes, sir.

Q. "Q. So that it was because you felt that they were trying to play something on you, is that the idea, put something over on you," that question was asked you, wasn't it? A. Yes.

Q. And you made this answer, "A. I do not believe I felt that way at that time," you made that answer, didn't you? A. I did.

Q. Now, how do you reconcile that answer with the answer you say now that the reason you wrote this letter because you thought they were trying to put something over on you? A. I didn't want to bring in the Staten Island Shipbuilding Company into it at that time. I feel quite different about it today.

Q. Is that a justification, Mr. Crawford, in your mind when, on the stand, under oath, before the Court of Chancery, testifying to something differently than you have testified here today? A. I left it out at that time; yes, sir; on purpose.

Q. Left it out. Why you positively stated: "I do not believe I felt that way at the time." Do you call that leaving it out? A. I mean I left out about the Staten Island Shipbuilding having warned me to be careful about it.

Q. Take the next question: "Q. Didn't you trust them just the same as you trusted other business men at that time," that quetion was asked you, wasn't it? A. It was.

Q. And the answer you made: "A. I think I probably did?" A. Yes.

Q. Didn't you? A. Yes, sir.

Q. Now, then, how do you reconcile those two answers with testimony you have given here today that the reason you wrote that letter of March 6 was because you suspected they were putting something over on you? Well, I feel—I was suspicious of them at that time. I tried—I had heard from the Staten Island Shipbuilding that there would be trouble. Do you want me to go into that at all?

Q. Why, if you were suspicious of them at that time, when you were before Vice-Chancellor Backes, did you testify under oath: "I do not believe I

felt that way at that time," and when the question was asked you: "Q. Didn't you trust them just the same as you trusted other business men," at that time you said, "A. I think I probably did"? A. And the Judge said—

Q. Never mind what the Judge said. I want you to tell me why, if you were suspicious of them at that time, you made those answers under oath? A. I didn't want to bring the shipbuilding in at that time at all.

Q. So you believe it is justification for testifying falsely, not to bring somebody else in? A. No, I would not make it as strong as that, Judge.

Q. Well, how do you handle it? You say now today the reason you wrote the letter of March 6 was because you were suspicious; when you testified before Vice-Chancellor Backes in July of 1924, you said that you didn't believe that they were trying to play something on you, and that you trusted them as you did other business men? A. Well, I trusted them as much as I could with the knowledge that I had at that time.

Q. Well, that is not answering my question as to why—well, I will not press it. Now, was Morny an employee of yours in this transaction? A. Not an employee, sir.

Q. What does he have, a financial interest in these contracts? A. He has a financial interest in the outcome of the contract, if it was successful.

Q. Did you pay him a salary? A. No salary.

Q. He, of course, is vitally interested in the outcome of this trial? A. Mr. Morny?

Q. Yes. A. Yes, sir. Just as much—

Q. He has been the guiding hand of my brother McCarter here all during the trial? A. He has been the practical man. I am not the practical man in it at all.

Hardin L. Crawford. Recalled. Cross.

Q. Well, what is your function exactly? A. Well, I finance deals for people. If they come in, and the deal looks like a profitable deal, we put up the money and share the profits with them.

Q. You are not going to take the position that you are not responsible for this letter, are you? A. No, sir; not at all.

Q. Have you found out yet whether Williams was an employee of yours? A. I hadn't even been to the yard in which Williams was, while he was there, until afterwards.

Q. Can you answer the question, have you found out yet whether William was an employee? A. I find out now that he was in the other yard in our employ.

Q. He was at the Perth Amboy yard in your employ, wasn't he? A. I have no knowledge of it, sir.

Q. Oh, you haven't any knowledge of that. Still doubtful about that? A. Not of my own. I never saw Mr. Williams there. I had no reason to know that Williams was there any more than I knew that any other employee of the Perth Amboy Dry Dock Company was there. I hadn't even been to the yard.

Q. Now, this calorine gas, you know that a test was conducted, don't you? A. Yes, sir.

Q. And the representative of the calorine company came there and conducted the test on behalf of the calorine company? A. I don't know the details of the test, Judge.

Q. Don't you know that? A. No, sir; I don't know the details of it.

Q. And you know that the report of the test was that the carbo-hydro was just as good as the calorine?

Mr. McCarter: I object to what the report of the test was. It is no more competent under cross examination than it was on direct examination.

The Court: If he knows.

Mr. McCarter: If he knows the report, that is hearsay.

Mr. Haight: I want to see how he acted.

The Court: I will allow it.

Q. You know what the report was, don't you? A. I know the report of the test that was made on the "Black Arrow," those figures came to our office.

Q. It showed just as good, didn't it? A. No, sir; it did not.

Q. Didn't show as good? A. No, sir.

Q. Did you make any protest then that they should use calorine after that? A. We did at the meeting in—I showed Mr. Runyon those figures.

Q. What meeting? A. The meeting of March 21.

Q. That is the meeting where the test was to be taken? A. The test was taken before that, sir, on the "Black Arrow."

Q. Wasn't the test made that Mr. Runyon said that he would make, after the meeting on the 21st of March? A. Yes, sir; but that was not the test we made.

Q. There was a test made afterward, wasn't there? A. I have never seen the figures on the second test, if there was one.

Q. After the second test was made did you make any demand that they should use calorine instead of carbo-hydro? A. I never heard—

Q. Can't you answer that? A. No, sir.

Hardin L. Crawford. Recalled. Cross.

Q. You never made any request, did you? A. No, sir.

Q. Now, you say positively that you did not say to Mr. Snedeker over the telephone that this work would be finished in three months? A. Absolutely I did not, sir.

Q. When did you have this first conference with Meurer? A. The first time I saw Mr. Meurer was in our office, I think in the afternoon—

Q. Did he have the proposals with him that time? A. No, sir.

Q. I understood you to say on your direct examination that the first time you saw him he had his written proposal with him? A. No, sir; he did not.

Q. Am I correct in that? A. I don't know that I so testified, but if I did, it was wrong. He did not have with him on the first time I saw him any contracts of any kind.

Q. Now, the deductions referred to in this letter of January 31, to which Mr. McCarter directed your attention, was for carrying the tanks from the dock to the vessel, wasn't it? A. I think probably it was, sir. And other things, maybe.

Q. Now, I understand that at this Bankers' Club conference you told Mr. Runyon that you had had some trouble in getting the material out of the yard because the crane was getting off the track, if I correctly understood your testimony? A. That was one of the troubles.

Q. That was one thing. You were having great trouble because the crane was getting off the track, that is right, isn't it? A. We had trouble; yes, sir. I don't know about great trouble.

Hardin L. Crawford. Recalled. Cross.

Q. Well, didn't you say that on your direct examination, that you had had great trouble? A. I don't know whether I did or not, sir.

Q. That was the thing you mentioned, wasn't it, particularly? A. One of the things.

Q. Well, now, then, according to Mr. Ackerman, who was on the stand yesterday, on January 31 the crane broke down and was out of business for two hours and a half, and on February 2 and February 4 it was off of the track, not for a sufficient length of time to warrant Ackerman in making any specific notation as to the time. Those, as I recollect it, are the only instances where anything happened to the crane between the time it was put in operation, and this Bankers' Club conference on February 26. Is that your recollection? A. Well, I have no way of telling, sir, at all.

Q. Well, if that is so, do you think that that was great trouble? A. No, sir; not great trouble. But every time the crane would go off, or any trouble of that kind, it slowed up everything else in connection with the work, as I understand.

Q. Didn't slow the burners, did it? A. If the crane could not get back to take the pieces off, yes.

Q. Did it slow the burners? A. Yes, sir.

Q. You know more about this than Ackerman who was down there, do you? A. No. I understand that it would, though.

Q. But you don't know, do you? A. Not of my own knowledge, no.

Q. Your testimony today, with the exception of the differences that I pointed out, was substantially the same as that given in the chancery suit, wasn't it? A. I think so, sir.

Mr. Haight: That is all.

Hardin L. Crawford. Recalled. Redirect.

REDIRECT EXAMINATION BY MR. MCCARTER:

Q. Mr. Crawford, you were questioned by Judge Haight with respect to your testimony about this answer of yours to their letter of March 3, as given in the chancery case, and you were asked, "didn't you trust them just the same as you trusted other business men at that time," and if you didn't answer, "You probably did." Will you state whether or not your answer was interrupted, or rather the completion of your answer was interrupted by a remark from the Court? A. It was.

Q. And if so what that was? A. Well, the Judge interrupted me and said—

> Mr. Haight: I ask your Honor to look at the record yourself, page 310, and see if you see any interruption there. The Court made an aside afterward, a pleasantry.
>
> Mr. McCarter: You were not there, Judge Haight, and I was, and I have a right to ask this question in this way.
>
> Mr. Haight: I can interpret the English language, and this record was prepared for you.

BY THE COURT:

Q. You had finished your answer, had you not, before the Court said anything? A. I think—I don't remember, Judge. I imagine so.

Q. You say, "I think I probably did," and then the Court made a remark, but you had finished your answer, had you not? A. I am not sure whether I had finished or not.

Q. You were asked the question: "Didn't you trust them just the same as you trusted other business men at that time," and according to the record your answer is: "I think I probably did." Wasn't that a complete answer? A. It was a complete answer to that question.

The Court: Then there was no interruption.

By Mr. McCarter:

Q. What was the remark of the Judge that immediately followed your answer? A. The Judge said, as much as one business man to another.

Mr. McCarter: It had an effect on the testimony and it had an effect on redirect examination, and that is why I have a right to bring it in.

By Mr. McCarter:

Q. Didn't Vice-Chancellor Backes say, right following your answer, which was "I think I probably did trust them," didn't Vice-Chancellor Backes immediately say, which, of course, means no trust? A. He did.

By Mr. Haight:

Q. Did he smile when he said it? A. I don't remember, Judge.

Q. Now, you remember that he smiled, don't you?

Mr. McCarter: My recollection is that he did not.

The Court: We are wasting a lot of time.

Frederic A. Morny. Called by Defendant. Direct.

By Mr. McCarter:

Q. You testified to something Mr. Runyon said at one of these conferences as not continuing to allow you to cut charging box steel? A. Yes, sir.

Q. Was there any other such statement ever made to you by anybody from the Perth Amboy Dry Dock Company? A. That they would stop—

Q. Stop the cutting of charging box. Not indirectly, that somebody reported to you, but to you yourself? A. Not direct, no.

Mr. McCarter: I think that is all.

Mr. Haight: That is all.

Frederic A. Morny, a witness produced on behalf of the defendants, being duly sworn according to law on his oath, saith:

Direct Examination by Mr. McCarter:

Q. Where do you live, Mr. Morny? A. Elizabeth, New Jersey.

Q. You are associated with H. L. Crawford & Company? A. Yes, sir.

Q. In just what way, so we can see your interest? A. I am completing the contract that the Perth Amboy Dry Dock Company welched on.

(Answer repeated by stenographer.)

Mr. Haight: I did not hear that. I object to that, of course.

The Court: The answer is stricken out.

Mr. McCarter: I take an exception to striking out.

The Court: You may take an exception. Mr. Witness, you do not characterize. Just answer the questions.

A. I thought I did, your Honor.

The Court: No, you did not. It is for the jury to determine whether there was any welching. That is a matter of conclusion that the jury alone can draw, or the Court.

Q. You were frequently down at the plant of the Perth Amboy Dry Dock during the scrapping of these ships, were you not? A. I was.

Q. When was your first visit to the plant? A. Shortly after the ships arrived there.

Q. By the way, were you in Mr. Crawford's office when Mr. Meurer brought in the first proposition at the time of the telephone conversation? A. I was.

Q. Will you tell us what you heard that day? A. Mr. Crawford objected to the contracts carrying a clause for five per cent. compensation insurance on the employers' liability, and Mr. Muerer said that he had no authority to change the contracts, but that he would call up his office and see if he could have that clause eliminated; and the number was called, I think, from our switchboard and connected to the telephone booth, Mr. Muerer stepped into the telephone booth and talked to someone at that time and told them that Mr. Crawford objected to that clause and asked if he could eliminate it. He afterwards asked Mr. Crawford to step to the 'phone and talk to that party on the other end of the wire.

Q. What did Mr. Crawford say in your hearing? A. Mr. Crawford said that he didn't want to have any unknown items in the contract and that he was—if they wanted the contract they would have to eliminate the five per cent. insurance clause.

Q. Did Mr. Crawford say anything about the length of time within which this scrapping would be completed? A. He did not.

Q. Now, your first visit to the yard, tell us what occurred that day? A. I went down on a Sunday, if I recollect correctly, and met Mr. Preacher and Mr. Muerer; I was accompanied by a friend of mine; and we went aboard the vessel and looked them over and discussed the question of cutting out some plates for China. And when Mr. Preacher heard and saw what would have to be done to get those plates out, he said it would cost more to do that, and they might better cut all the ships in charging box size, instead of in plates. That to burn the rivets and the angles and channels off would cost a lot of money, and it would be cheaper to do the whole job in charging box size.

Q. Was there any objection from Mr. Preacher or Muerer, that day to cutting the ship in charging box sizes? A. Not a bit.

Q. When did you first hear of any objection to such cutting? A. At the conference of March 21 at the office of the Perth Amboy Dry Dock Company.

Q. Were you present at the conference in the Bankers' Club? A. I was.

Q. Tell us what you heard that day there. A. Mr. Crawford, acting under suggestions from me, told Mr. Runyon of the various complaints and troubles that were being encountered at the yard, and told Mr. Runyon that the crane was frequently

going off the track, that there was a lack of manifold for conducting the gas to the vessels, and that the cost of handling the tanks was a burden to us which ought to be eliminated, and that it was delaying the work in addition; that the tanks rested all over the decks of the vessel and interfered with the operation of the burners, in addition to costing us considerable money, and objected to it and said they would have all those things eliminated and that they should install a manifold for that purpose.

Q. What did Mr. Runyon say? A. Mr. Runyon said that he had paid no attention to the job, but that he had left it all to Eddie, as he referred to Mr. Muerer, and he would—he turned to Mr. Meurer and said, "Ed, how is that?" And Ed said it was true, that we ought to have a manifold and that the crane did go off the track several times. And Mr. Runyon asked him if he thought it was a proped charge for them to absorb, for the handling of the tanks; and Mr. Muerer said, "Yes, it was." Mr. Runyon said, "We ought to be installing a manifold." Mr. Muerer, "All right." He said, "I was over to the Staten Island Shipyard on Sunday, or some day as that," I think he said Sunday, and made a sketch of the one at Staten Island, and it is being made in the copper shop now.

Q. Was anything said by Mr. Runyon that day for a claim for salvaging the "Philippines"? A. Not a word at the luncheon.

Q. Anything said afterward? A. Yes, sir.

Q. What was it? A. When we had finished luncheon and come down in the elevator and walked out in the street, Mr. Runyon and Mr. Muerer and Mr. Bernard and myself stopped a moment on the out-

side on the sidewalk, and Mr. Runyon said, "There is a matter I am not making a claim for, that is the salvaging the 'Philippines'."

Q. Did he say why he didn't make any claim? A. No. He stopped at that point.

Q. Did you ever hear Mr. Muerer at any time say anything about the time he thought it would take to complete the scrapping of these ships? A. Yes, sir.

Q. When? A. When the first bills came in under the contract I was down at the yard shortly after that and I went in to see the bookkeeper, Mr. Olsen, and I asked him how he got the amounts for the plant use; and he said he got them from Mr. Muerer; and Mr. Muerer happened—whether he was there right then or whether he came in promptly after that, I don't recollect, but he came in shortly, and I said to him, "Mr. Muerer, how do you figure this percentage of the vessels being cut to this point?" He said, "I don't, I put it on another basis." "Well," I said, "this is figured on a three-months' basis, according to Mr. Olsen. Do you figure to finish the vessels in that time?" "No," he said, "we will be lucky if we get out of that by July." I said, "Then, the bills should be changed," and Mr. Olsen said, "Well, it doesn't amount to very much on this first bill, and we haven't paid out so much money, suppose you let it go through." "Well," I said, "I will let it go through this time, but change it on the next bills when they are rendered"; and he said.

Q. Did you have any subsequent conversations with Mr. Olsen about the charges for plant use? A. Yes, sir. At the end of March, somewheres around the 27th or 28th of March, I just can't recollect the exact date.

Q. Yes. A. I knew it was the last day under the thirty-day period which I suppose must be paid, and so as the check had not gone forward by mail I sent them—I took them out by hand. I wrote a letter accompanying it and delivered it personally to Mr. Olsen. Mr. Olsen—

Q. Now, wait a minute and see if I can find that letter. I have an idea it is here. I don't know. What was the date of that letter? A. March 27 or 28, I can't recollect the exact date.

Q. What did you say to Mr. Olsen when you handed him that letter, and what did he say to you? A. I handed him the letter and I said, "Here are the payments due on this past month's bills, Mr. Olsen." He looked at it, read it, and he said, "Well, no matter which way I answer," he said, "I am wrong." He said, "We are wrong in every case, aren't we?" I said, "You must be." He said, "Certainly."

Q. I show you Exhibit D-5 and ask you if that is the letter you showed Mr. Olsen at that visit you have mentioned. A. This is a copy of it.

Q. And it was in answer to that which he read at the time that he made this remark that you have just testified to? A. He did.

Q. You were present at the conference of March 21 at the Perth Amboy's yard, were you not? A. I was.

Q. Tell us what happened that day. A. He went down on an early morning train and went over to the Perth Amboy Dry Dock yard and had a chat with Mr. Runyon for a moment; Mr. Crawford invited him to come out and go around the yard with us and look over these jobs, and he declined; he said, "Mr. Muerer would show us around." And when we went out of the office he

handed us—offered some cigars and said, "You might as well start as friends, even if we part to the contrary." Something to that effect. And out he went. We walked around the yard and came back in about an hour and had a discussion over the question of gas that was being used on that job. We had this copy of a report analysis of a test that had been made on the "Black Arrow," and went into that rather thoroughly with Mr. Runyon, showing the cost it was to them to use this carbo-hydrogen gas they were using, as well as the additional cost to us. I showed him where their cost was perhaps about forty per cent., as I recollect it, higher than it should be, and ours was over fifty per cent. And Mr. Runyon was not interested at all in it; he said, "It don't make any difference, you have got to give it the gas, that is all, you have got to give it the gas. If you don't give it the gas it don't cut. I am not interest." And after some discussion he afterwards agreed that an additional test should be made, but the test was never made on a conclusive basis.

Mr. Haight: I object to that. It calls for a conclusion.

The Court: He may be examined on this. Go on.

A. We discussed the percentage of the ships that had been scrapped, and Mr. Olsen and Mr. Preacher said that the ship—the "Philippines" had been scrapped to the extent of ten per cent., and that the "Black Arrow" had been scrapped to the extent of thirty-three and one-third per cent. And then we discussed the question of large sizes as against charging box. Mr. Runyon said it had been agreed

to cut them all in large sizes, except the superstructure. And Mr. Crawford objected to that and said it was not so, that we had a right to cut charging box to any extent that was necessary. We went into the question of the test as relating to that cutting, and told him we thought if he had used a more efficient gas and watched the job a little more closely, that he would come out all right, and that their estimates for the amount of gas used would not exceed those in their original estimates, and that their costs would not be higher than they should be. And Mr. Runyon said, "He didn't care how the test came out," he would not allow us to have any more charging box cut. Mr. Crawford wanted to know how they proposed to scrap the hull, the bottom of the "Black Arrow" and the "Philippines" and Mr. Runyon went into great detail explaining about the use of the dry docks; putting the "Black Arrow" on it, cutting off part of it at the stern, sinking that after section of the dry dock, and so on throughout the hull. When the "Black Arrow" was completed, or the "Black Arrow" was cut as low to the water as was practical, they were to move the "Philippines" over on the berth occupied by the "Black Arrow," as long as it was on the dry dock. And the same process followed with the "Philippines."

Q. Do you remember having a conversation with Mr. Muerer on or about February 7 when you were riding back in a train to New York from Perth Amboy? A. Yes, I had some conference with Mr. Muerer.

Q. What did Mr. Muerer say? A. Well, I am somewhat doubtful—

Mr. Haight: I object to that.

A. I don't remember at the moment.

The Court: He says he is doubtful.

Mr. Haight: Whether Mr. Muerer may have said on occasion of that kind—I happen to know what the testimony is that is coming, or rather, I think I do—it is, I presume, hearsay.

Mr. McCarter: Look at page 76 and you will know.

Mr. Haight: What was said to the Vice-Chancellor, I do not think anything of that kind can be given by—page 76?

Mr. McCarter: Yes. Line 10.

Mr. Haight: Yes, that is the place. I think admissions of that kind cannot be made by an agent.

Mr. McCarter: Your Honor will recall that Muerer was the man—

The Court: It goes to the question of the degree of credence to be given to the testimony that he gave. On that ground alone it would be admissible, if for no other reason.

Q. Do you remember what Mr. Muerer said, and if so, tell us. A. I remember in a conversation with Mr. Muerer on the train coming up from Tottenville, that Mr. Muerer said he hadn't paid much attention to the job, but that he would have to go into it and see that the work was done better than it was being done. He likewise told me at that time that the other employees of the yard were jealous of him, that he was a newcomer, and that he had been brought down there to wake them up, and get a lot of business, and that they were scuttling every job that he brought in there, so as to discredit him with the heads of the company.

Q. Do you recall any other conversation Mr. Muerer had with you on the train, in which he said something else? A. Well, at the moment I don't.

Q. If you don't, all right. Now, tell us about these tests of the gas, Mr. Morny? Was there more than one test? A. There were two tests made.

Q. When was the first test? A. Made on March 12 and 13, I think.

Q. Tell us how that test was made, and all about it. A. The production on the job was so low that I was complaining—

Mr. Haight: I object to that.

A. (Continuing) constantly the amount the burners were cutting.

The Court: Yes. He has no right, Mr. McCarter, to make conclusions.

Mr. McCarter: That wasn't an answer to my question.

Q. Tell us about that you were not satisfied, you wanted a test, start with that now. A. So I arranged it with the Air Reduction Company, the manufacturers of a gas called calorine, to furnish some tanks of calorine and oxygen, and arranged through Mr. Bernard to have a certain section of the "Black Arrow" deck cleaned ready for a comparative test. I wanted the test made for the purpose of finding out if there was anything in this carbo gas that was being used that could be brought out to better advantage, as well as to find out if we could get more steel cut for the labor we were paying for. So I told him to have these decks cleared absolutely on an even basis, so that we

would get an absolutely accurate result from the test. I visited the "Black Arrow" with him and we laid out a portion of the decks between number 2 and 3 hatches, had the decks thoroughly cleaned so that both sides of the deck would be as nearly alike as possible. The Air Reduction sent some calorine down and oxygen, we took tanks of carbo and tanks of oxygen they were using so as to be able to get an accurate measure of the amount of gas used, instead of running the gas out to the manifold that they were using. I did not allow the calorine manufacturer to use any of their men in the test. I wanted a practical working test. So we took on the first day a burner—

By Mr. Haight:

Q. Were you there? A. I was there. And it was made under my direction and my supervision. We took a burner named Evans and started him with the calorine, as I recollect it, I think it was Evans, and a man named Pearson on the carbo, and we started them on an even point on either side, one on the port side and one on the starboard side of the vessel. We let them work all day, or part of the day; we had been some time in getting them organized in the morning; we didn't get started at seven o'clock as usual, in the morning. The next day, in order to eliminate the human element in the matter, I transferred the man who had been working with the calorine to the torch using the carbo, and the carbo operator to the calorine, so as to get a comparative idea of what it would be under practical working conditions. The calorine test showed approximately—didn't show up as well the first day, but the second day it showed up much

better. The man became more familiar with the use of calorine, and he cut approximately, on the two days, calorine cut about fifty per cent. more than the carbo.

(Adjourned until 2 P. M.)

AFTERNOON SESSION, TWO P. M.

WARRAN SCHOENTHALLER, a witness produced on behalf of the defendants, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. What is your business, Mr. Schoenthaller? A. Gas industry.

Q. With what company are you? A. Air Reduction Company.

Q. What is the name of the kind of gas used for cutting metals that they sell? A. Oxygen, acetylene, and calorine.

Q. Did you ever call on any of the officers of the plaintiff, Perth Amboy Dry Dock Company? A. I don't know if they were officers or not.

Q. Did you ever call at their plant? A. Yes, sir.

Q. Whom did you see? Do you know? A. I saw Mr. Olsen, Mr. Preacher, and Mr. Muerer.

Q. How did you come to go there? A. I had heard that they were going to do some ship-cutting.

Q. What was the purpose of your visit? A. To solicit the gas business and apparatus.

Q. When were those visits? A. About, as I recollect, first started around January, 1924, I believe.

Q. How many times were you there? A. Possibly twelve to fourteen times.

Q. By appointment, or how? A. A number of times by appointment.

Q. Were you ever able to sell them any calorine? A. No, sir.

Q. Do you know who made the appointments for you? A. While down there?

Q. Yes. A. I made the appointments with Mr. Muerer and Mr. Preacher.

Q. Do you make those appointments yourself or were they made for you by somebody else? A. Several times they were made by somebody else.

Q. Who? A. Mr. Morny.

Mr. McCarter: Cross examine.

Mr. Haight: No questions.

Mr. McCarter: Now, I have one as a witness here who is only corroborative on the question of reasonable time as an expert, you might say. If I can be assured that the plaintiff is going to hold to strict rebuttal and is not going to be allowed to put in something in the line of testimony which should have been in on his main case, I am not going to call him to save time. But if we are going to have any opening on the main case and any testimony along the line of what is a reasonable time, then I am going to call him.

The Court: I thought we were taking testimony along that line on from the very beginning.

Mr. McCarter: I know we have, and unless your Honor permits the plaintiff to deviate from what would be strict rebuttal, he cannot put any more of that in.

Mr. Haight: I am not going to put any more of that in.

FREDERIC A. MORNY, resumes.

DIRECT EXAMINATION (CONTINUED) BY MR. MCCARTER:

(Last part of the last answer of this witness read.)

Q. Just explain what you mean by fifty per cent. more than the carbo, fifty per cent. with respect to what constant? A. With respect to footage and tonnage.

Q. Did both gases cut during the same period of time? A. Yes, sir, with the exception on the first day, carbo cut for seven hours and the calorine cut for six and a half, The second day they both cut for eight hours.

Q. Why was that difference in the time that first day? A. We were a little slower in getting organized on the calorine cutting than we were on the carbo.

Q. Why were you slower on that? A. The question of connecting up the hose and torches and tips, and so forth.

Q. Was it anything to do with calorine that made that slower? A. Oh, no, not at all.

Q. Did you report the result of the test to anybody in the Perth Amboy Dry Dock Company? A. We did.

Q. When? A. On March 21.

Q. Then, there was another test, wasn't there? A. There was a partial test. It wasn't completed.

Q. Tell us about that test. A. As the result of the conference on March 21 we arranged with Runyon another test, and had it run this time on the "Philippines", and arrangements were accordingly made with the Air Reduction Company to again furnish a quanttiy of calorine and oxygen, and the test was started. And there the test hardly got under way the first day when the operators, the burners, several of them seemed to be acting a little peculiarly, and we discovered that they were being given liquor of some kind to make them intoxicated.

Mr. Haight: I object to that.

A. (Continuing) and we protested.

Mr. Haight. Wait a minute, Mr. Morny. I object to that.

Mr. McCarter: What is the matter with that.

Mr. Haight: It is all the matter in the world. The witness is attempting now to make out that somebody loaded up the burners.

The Witness: They did.

By Mr. Haight:

Q. Do you know that? A. Yes.

Q. How do you know that they were drunk? A. They weren't drunk. They were—

Q. Did you see them drunk? A. I saw the effects of it.

Q. Did you see anybody give them drink? A. No.

Q. How do you know anything about it? A. Because they did it on other occasions.

Q. Did you ever see anybody getting drunk at work? A. No, sir.

Q. You never saw anybody when working getting drunk? A. No, sir.

Mr. Haight: You are wonder.

By Mr. McCarter:

Q. Now, go ahead, Mr. Morny. A. So we protested, and I took it up with Mr. Bernard and he took it up with the foreman on the ship and he asked to have the men discharged, and some of them, one or two were laid off. I forgot just how many. I think two, I think were laid off. The next day they were put back to work again, and when Mr. Bernard protested—

Mr. Haight: I object to that.

By Mr. Haight:

Q. Do you know he protested? A. Yes, I do.

Q. Why didn't you protest? A. Because Mr. Bernard was the active man in giving instructions to the dry dock company.

Q. You were over him, weren't you? A. I was associated with him, I would rather put it, with Mr. Bernard.

Q. You weren't over him? A. No, I only exercised authority over Mr. Bernard in one or two instances.

Q. Go ahead. A. The foreman said, "Well, they are all right now." He says, we put them back to work and they are going to stay back to work.

By Mr. McCarter:

Q. Who was the foreman who said that? A. I don't remember who he was. I don't remember by name.

Q. Go ahead. A. After the calorine had been running, I think, two or three days, the carbo test was started, and they plugged that test very, very hard. They cut them on a good deal easier steel. They made a record of about seventy per cent. of what the calorine would do, but they didn't equal the calorine record even though they tried to wreck the calorine test.

Mr. Haight: I object to that. This witness is going ahead with conclusions of his without any facts to support them.

The Court: Well, he has been warned before.

Q. What was the result of that second test? A. It showed about seventy per cent.—carbo showed about seventy per cent. of the calorine.

Q. Did you at any time, Mr. Morny, make any statement as to the time within which the vessels would or should be scrapped? A. I did not.

Q. I mean to the Perth Amboy Dry Dock Company. A. Not to the Perth Amboy or to anybody else.

Q. Did you ever make any complaints to any representative of the Perth Amboy Dry Dock Com-

pany over the conduct of the work? A. Absolutely, from the very beginning of the job, I realized—

Mr. Haight: I object to generalizations,

A. (Continuing) that their equipment—

Mr. Haight: Mr. Morny, I objected. I object to generalizations.

The Court: Of course. Be specific.

Mr. McCarter: What is the matter with that? From the beginning of the job. Now that is specific. We know when the beginning of the job is.

The Court: Yes, but he has got to say what he said. He can't say in the beginning of the job I made the complaint. He has got to say what the complaint was.

Q. Go ahead, Mr. Morny. What were your complaints? A. I made the complaint to Mr. Preacher and to Mr. Muerer on the first working day I was on the plant, after the job was started, and the men were carrying pipe and pieces of ship fittings off the dock, walking two or three hundred feet up to the upland, two men carrying a fifty-pound piece of pipe and working and loafing around. I found five men in the state rooms of the "Black Arrow" shooting crap, and I went and complained about it to Mr. Muerer and Mr. Preacher that that thing was going to cost us a lot of money for extra labor, and they should put more supervision on the job.

Q. What did they do? A. They said the job is just started. We will get into it presently. Don't mind those little things. We will get organized and things will go better. Things did not go

better, however. They didn't have the locomotive crane there and the work continued in that manner up until the time the crane went on the job, and the stuff was pulled off by hand, and it was a lot of labor there. The material was thrown on the dock in any old way. They broke furniture and fittings that should have been protected, and destroyed thousands of dollars of value by doing the work in that manner.

Q. Did you make any subsequent complaints to Messrs. Preacher or Muerer or anybody else after this first one you told us about? A. Yes, sir, I did. I ordinarily complained to Mr. Bernard and Mr. Preacher about the foreman on the job, Mr. Peterson. He was seldom on the job. He would be hanging around in the timekeeper's office, smoking cigarettes instead of supervising the men.

Q. Who was this timekeeper? A. We protested being charged to us and insisted that they find some foreman competent to run that work, and Peterson said he didn't know anybody.

Q. Peterson said that? A. Preacher said he didn't know anybody. He was the best man he had, but if we knew of anybody he would be glad to put them on. Mr. Bernard spoke up and said he would recommend somebody for that work.

Q. Do you know who was put on after that? A. Mr. Gilbert.

Q. Did you have any complaints after that? A. I made complaints frequently about the lack of equipment, and the fact that the work was being carried on in the "Philippines" in the same manner it had been performed on the "Black Arrow," particularly the crane.

Q. What did they say? A. They said they didn't have any crane and that it would be the best way

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to do it, so they would have it prepared ready for the "Black Arrow" dock when the "Black Arrow" went on the dry dock. And Mr. Preacher and Mr. Bernard and Mr. Gilbert and I went up on the "Philippines" and I suggested to have pipes—it might be well to connect up some of our booms and derricks to the winches on the ship, handle the material as far as possible with those derricks, and the first Mr. Preacher said it wasn't practical, that the ships had to be cut down, and to leave that equipment on the vessel would be impractical, that they were going to cut it down. Subsequently, however, they did install those booms again. They were reinstalled and the winches got the steam abrupt from the shore to the winches to operate them, and the work progressed for a while on that basis.

Q. Do you remember how the masts on the "Black Arrow" were removed? A. Yes, sir. They were—Mr. Muerer came into the office one day and said that they were going to drop the masts on the following Sunday and let them fall on the deck of the vessel, and invited us to come down and see them fall, that it would be an interesting sight to see the smacks. On Saturday afternoon he called up and cancelled the invitation because he said that they were afraid to drop them that way, and they were going to hire Merritt, Chapman, Scott Corporation to take them off by the derrick boat.

Q. Were they taken off that way? A. They were taken off that way.

Q. Do you remember any conversation you ever had with Mr. Runyon with respect to contracts H. L. Crawford & Company had for the disposal of this scrap in specific sizes? A. Yes, sir.

Q. When was that and what was said?

Mr. Haight: I don't see how that can possibly be relevant, if your Honor please, a conference with Mr. Runyon as to the contracts that they had in reference to the disposal of the scrap. They can't bear on the reasonable time or the conduct of the work or anything of the sort.

Mr. McCarter: Look at line 30 on page 77.

Mr. Hight: All right, go ahead.

Q. What did you tell Mr. Runyon? What did he say to you? A. I told him, "Mr. Runyon, that we had been fortunate in having sold 10,000 tons of this charging box steel at a price higher than our estimates provided," and Mr. Runyon replied, "Good. I hope you make a million dollars."

Q. Did you have any other conversation with Mr. Muerer, and if so, when and where? A. I had a conversation with Mr. Muerer on the day coming from Perth Amboy by way of Staten Island, in which Mr. Muerer told me that they did not figure to make very much money on this job, that they were anxious to get the experience, that the government had a large number of vessels to sell, and if there was anything in this business they wanted to get into it; that the shipyards was not busy, there wasn't very much outlook for business for the next few years, and they thought that it would be a good line to get into if they could.

Q. Do you recall a magnet that was installed? A. Yes.

Q. Did you have anything to do with its installation? A. Yes, sir.

Q. Tell us about that. A. I had hardly visited the job and seen the loading of cars with the crane before I realized that the time element there was so great—

Mr. Haight: I object to that.

A. (Continuing) —that they could never load the cars with the crane, and at the same time do the work on the ships if they were ever going to get the job done at all, so I applied for permission at our expense to put in an electric magnet there to operate with the crane so as to facilitate and quicken up the loading of the cars.

Q. What could the magnet handle, charging box siz or larger sizes? A. Charging box.

Q. Why couldn't it handle the larger sizes? A. Because the vibration of the large flat piece is such that it shakes it off the magnet.

Q. Do you recall when Mr. Crawford went to Bermuda? A. I do.

Q. And when he returned? A. Yes, sir.

Q. After his return did you go on a trip? A. I did.

Q. Where did you go and for what purpose? A. I went to Buffalo, Youngstown, Ohio, and to Bethlehem, Pennsylvania, to Pottstown, I think it was, either Pottstown or Pottsville—I can't remember—Easton Steel Company, and endeavored to induce them to buy some of these vessels in large pieces, but I was unsuccessful. None of them wanted it.

Q. Did you ever have any conversation with any officer or representative of the Perth Amboy Dry Dock Company in which there was anything said about refusal to permit cutting of charging box sizes? A. Yes, sir.

Q. Tell us about that. A. Mr. Runyon told me on March 21 after the conference had broken up with Mr. Crawford and Dr. Decker and Mr. Bernard and Mr. Olsen and Mr. Preacher and so forth, that under no conditions, no matter how the piece came out, would he allow us to cut any charging box steel.

Q. Did you have any other such conversations with anybodwy? A. I have had them, but I just can't remember exactly who they were with. I think Muerer once or twice told us that they would not let us cut any more charging box steel.

Q. How large are these so-called shipping sizes, Mr. Morny? A. Why, pieces that would go in a car, from the testimony that I have heard.

Q. What weight do they run on these ships, pieces of that size? A. About eleven tons, ten or eleven tons, twelve tons, according to sections; it might run fifteen tons in some parts.

Q. Was the locomotive crane which was furnished able to handle these pieces? A. No, sir. It could handle it at certain points, but it couldn't handle it at every point.

Q. Tell us what you mean by that? A. The crane was an American Hoisting Derrick crane rated at twenty-five tons lifting capacity on the short radius, which was twelve feet, and at twelve feet it would lift twenty-five tons, and as the radius increased the weight capacity on that crane would decrease in proportion to the increase of the radius, and at its extreme radius—it had forty-seven foot boom, which gave practically almost a fifty-foot radius, because the point at which the boom was hung it would probably lift two and a half tons, three tons maybe, and the extreme radius.

Q. Did anything have to be done with the crane to make it lift twenty-five tons? A. It depends on the position of the boom. At right angles, probably have to have the out-riggers put on it and be fastened down to this track. From the end of the boom straight ahead on the tracks it would probably lift that twenty-five tons at the short radius, twelve feet, or whatever the point is—I forget just what radius it will lift, but there is a point at which it will lift it without the out-rigger.

Q. Was it possible to lift the shipping sizes from the side of the "Black Arrow" farthest from the crane? A. No, sir.

Q. How far across the "Black Arrow" was it possible to handle the shipping sizes with this locomotive crane? A. Couldn't handle it on the ship at all. Could just probably get them over the near side.

Q. Why? A. Because the radius of the boom would be such that it could not lift the piece on to that point.

Q. Was it possible for the crane to drag them from the far side? A. No, sir; it was not.

Q. Why? A. In the first place, the capacity of the crane wasn't great enough. In the second place, the piece would probably drop into the water before it could do it.

Q. Why would it drop into the water? Tell us that? A. Because of the fact that the vessel has a sheer, and when they cut it it would have a tendency to slide out.

Q. What do you mean by "sheer"? I don't know as the jury understands it. A. I am not sufficiently of an able architect to tell exactly what that term is, but the beam of the vessel at the top is greater

than it is at the keel, and as it goes down, the beam of the vessel grows less.

Q. Let me indicate it. Do you mean by sheer that the slides of the vessel separated like that instead of being parallel (indicating)? A. Yes, sir.

Q. At the time of this conference of March 21 were either of the vessels cut below the parts which were above the highest continuous deck? A. No, sir.

Q. How much have been cut on the "Black Arrow"? A. Why, been cut somewhat down to the highest continuous deck, or main deck, and at the bow it was not, and at the stern it was not, but there were one or two points there where it had been cut down to the main deck.

Q. What about the "Philippines"? A. Well, very little had been cut on the "Philippines" that's all. They had cut a few holes in the side for light and to handle some materials out through the side, but as far as practical cutting went, very little had been done. Some of the funnel was off, part of the funnel, and maybe the boat deck, and the bridge, but very little otherwise. The masts were still on, and all had riggings and parts of that kind.

Q. Did you see this accident to the "Philippines"? A. I did not.

Q. Do you know which sea-cock it was that was broken at the time? A. Yes, sir.

Q. Have you ever seen that sea-cock after the accident? A. I have.

Q. When? A. The day after the accident. Or not the day after. About two days after or three days, I think it was, when the pumping had been completed. They pumped out the water and then I went down in there.

Q. Have you ever seen it recently? A. Yes, sir; I saw it on Saturday last.

Q. Will you tell us about its condition, whether or not it is broken as described by the plaintiff's witnesses, who described it, I forget which one? A. No, sir; it was not. The valve stem he said was not in, and the valve stem is in today.

Q. I show you this little sketch which is exhibit P-9 and ask you whether any part of the sea-cock above the blue pencil line is still there. A. Yes, sir.

Q. Is it? A. Yes, sir.

Q. How much? A. It comes up to here (indicating).

Q. Now, make a red pencil line showing how much that sea-cock is still in existence? A. (Witness marked Exhibit P-9.)

Q. Of course, you are familiar with the layout of the "Philippines"? A. Yes, sir.

Q. Do you know whether or not it would be possible for the pipe which dropped on the sea-cocks to have dropped in that manner described by the plaintiff's witnesses? A. No, sir; it was not possible.

Q. Why not?

Mr. Haight: Your own witness said the same thing, and what are you going to do, contradict him?

Q. Why not?

Mr. Haight: I object. They produced their own witness on the stand yesterday who said this happened just exactly as our man did, the only difference between them is that our

men said they threw it, didn't have it in a sling, and he said it slipped out of the sling, but it went over the top.

Mr. McCarter: Our men did not say anything about the condenser. Our men said it was being lowered by a rope which broke. And the plaintiff's witness said it was being pushed over the top of the condenser. Of course, the fall is the fall. It ultimately landed in the same place.

The Court: I will allow it. Because one witness expresses an opinion as to whether a thing can be done, does not prevent that side from having another witness to express an opinion that it could have been done.

Mr. Haight: I wanted to make it perfectly apparent.

Mr. McCarter: It is not apparent, and I do not like your trying to make the jury think it is apparent that our witness said the accident happened the same way. It is quite distinct.

(Question repeated by stenographer.)

A. The condenser, in the first place, is only fifteen inches from the deck above, and in the second place, it is so closely fastened to the shell of the ship, and about the longitudinal beam on the shell of the ship, that nothing can pass behind it, and the two wings of the wing framing, I think they call it, or something to that effect, anyway, two steel plates at the ends of the condensers, to prevent anything from going over the end.

Q. Mr. Morny, did you ever say to anybody in connection with representing the Perth Amboy

Dry Dock Company, or employed by them, that you wanted the work to slack because of the drop in the market, in the price of steel? A. No, sir.

Q. Did you ever make any such remarks to any of the men working on the job, Mr. Gilbert, or any of them? A. No, sir.

Q. What was the fact with respect to the market of steel during 1924? A. Well, the market had some fluctuations. They got a rather high market in January, and in the latter part of February it began to slack off; it dropped slightly and went off about twenty-five cents a ton a week from somewheres in March, and then it would hold a fixed price for a while, and then slide off again another twenty-five cents a ton, until it got down along, probably in May, about $14.50 a ton, Bethlehem.

Q. What was the lowest it got? A. $14.50.

Q. Do you know at what price per ton Crawford & Company estimated, when accepting the Perth Amboy Dry Dock contract? A. Yes, sir. $13. per ton.

Q. At any time until the ships were removed from the Perth Amboy Dry Dock yards did the price of steel fall below the amount which Crawford & Company had estimated they would receive for scrap steel? A. Yes, sir; thirty-nine cents a ton below that price.

Q. When was that? A. That was in the minimum price of $14.50, Bethlehem, would bring us thirty-nine cents a ton less than our estimate showed.

Q. When was that, and how long did it last? A. Lasted about two weeks, I should say, two or three weeks, perhaps. Not over three weeks.

Q. At all other times was the price higher than your estimate? A. Yes, sir.

Q. And what was the average price throughout the whole period?

Mr. Haight: I object to that. It is of no materiality, the average price of steel during the whole period of this contract.

The Court: I think it is. Because it has beens uggested that one of the reasons why there was a delay upon the part of the defendant in the prosecution of this work, was because they were purposely waiting for a high market.

Mr. Haight: I have not objected to the putting in of the concrete prices, and they have testified, and the witness this morning testified to the concrete prices; but the average price does not tell anything. Averages are the things for engineers and accountants to deal with when they juggle figures, but they do not tell anything here.

The Court: Can you reframe that so that we get it from time to time?

Mr. Haight: He has already given it from time to time.

The Court: If he has already given it from time to time, and it is necessary to have an average, the jury could draw that themselves.

Q. Did this period in which there was a loss of thirty-nine cents continue long enough, Mr. Morny, in view of the higher prices prevailing before and after, to have made a loss for H. L. Crawford & Company over the whole period?

Mr. Haight: I object to that.

A. No, sir.

Mr. Haight: I object to it and ask the answer be stricken out. Well, I will not bother with it. The jury has it, and let it go in.

Q. Was there any siding during the seven months that these vessels were at the Perth Amboy Dry Dock Company yard, that you didn't have a market for the charging box steel? A. No, sir. We could sell it at all times.

Q. Was there any time you didn't have a market for steel in shipping sizes? A. Yes, sir.

Q. When? A. From the early part of—I should say the latter part of February, or early part of March, there was no market from then on, for any large pieces of steel.

Q. Do you except from this statement these Chinese orders that you had? A. Yes, sir; I do.

Q. Were you able to complete the Chinese orders with steel cut from these two vessels while they were at the yard of the Perth Amboy Dry Dock Company? A. We were not.

Q. Why not? A. They stopped us. They would not give it to us. Would not let them cut steel in a way that would fit the bill.

Q. And what way was that?

Mr. Haight: I object to that. The Vice-Chancellor has determined insofar as there was any stopping on our part, that we were justified in doing it. This is not going to help elucidate any of the issues here.

The Court: I think it has some evidencial value on the ground of the reasonableness of the time in the performance of the work. I will allow it.

Q. Answer the question. A. The shell plates had to have the angles and channels and attachments cut off of them, so that the plates, when finished, would stow in forty cubic feet per gross ton of 2240 pounds. No pieces to weigh over two tons in that lot.

Q. What experience have you had, Mr. Morny, in scrapping ships? A. I scrapped the "West Eagle." I finished two-thirds of the "Black Arrow." I finished nearly all of the "Andalusia", and a part of the "Western Comet", the bottom of the "Western Comet", and I am working on the "Philippines" today.

Q. How do the sizes of the "Andalusia," "Western Comet", and the "West Eagle" compare with these two ships? A. They are about the same size as the "Black Arrow", perhaps a litle larger in the case of the "West Eagle" and the "Western Comet", but the "Andalusia", I think was a litle smaller. I think she was 397 feet long. I would not want to be sure on that exact length, but approximately the same size, those four vessels. The "Philippines" is twice as large almost as the others.

Q. You, of course, are familiar with the Perth Amboy Dry Dock Company's yard? A. Absolutely.

Q. Where did you scrap these other ships you have told us about, and finish the "Black Arrow"? A. At the plant of the American Shipbreaking Company on Howland Hook, Staten Island.

Q. What are the facilities there? A. We have probably the best plant in the world for that purpose.

Mr. Haight: I object to that.

Q. What are the facilities? A. We have a large dock, one hundred and some feet wide, four hundred feet long; we have two very large gantry cranes, with two cabs on each one.

Q. What is a gantry crane? A. A gantry crane, in this particular type of gantry crane, is a very large steel frame structure traveling on wheels on a railroad track. It travels the length of the plant, the dock, and 525 feet over the land in a continuous runway. Running across the structure on this gantry is a large steel arm, built right into the crane, on which these cabs or trolleys run back and forth so that we can span a vessel completely over a distance of about 56 to 57 feet, and can reach any part of the steel or material on a vessel with those cranes. Each crane has a capacity of forty tons, twenty tons on each cab.

Q. Go on and describe the additional facilities. A. We have a manifold for handling the oxygen piped throughout the plant. We have a railroad siding running the length of the plant, parallel with the crane way. We have a slip in which we put the ships alongside of the dock. We have a steel crane on the end of the dock and we have various trolley cars running up and down our railroad siding for the handling of material back and forth through the yard, as occasion requires, and a fairly large supply of torches and hose, cold cutters, sledge hammers, and all the other necessary tools and devices for work of this kind. Chain blocks, slings, hooks. Anything you need I think I can provide over there.

Q. Would you or would you not say that the facilities at the American Shipbreaking Company's plant at Staten Island are better for speed in scrapping a ship than the facilities of the Perth Amboy

Dry Dock Company? A. Speed of the plant at Staten Island, the American Shipbreaking Plant is very superior to the facilities of the Perth Amboy Dry Dock's.

Q. Did I understand you to say you completely scrapped any ship there? A. Yes, sir. The "West Eagle", from stem to stern and truck to keel.

Q. How long did that take? A. Six months.

Mr. Haight: The same—well, go ahead.

Q. In the light of your experience, Mr. Morny, how long would it reasonably take to scrap both those ships the "Black Arrow" and the "Philippines" at the Perth Amboy Dry Dock Yard, with the facilities there existing? A. Oh, from twelve to fifteen months, perhaps.

Q. Are there any parts of either those two ships the "Philippines" or "Black Arrow" below the main deck that cannot be cut up into larger than charging box sizes? A. Yes, sir.

Q. What parts? A. The double bottom, which on account of tank tops and intercostals, keel, margin plate, and so forth, cannot be cut up into anything but charging box sizes?

Q. Is there any other parts? A. Well, there are numbers of beams and parts around the ship that have to be cut in charging box sizes. They just come naturally that way. You couldn't cut them any other way.

Q. Mr. Morney, I show you another one of our pasteboard models here and ask you if you made it. A. I did.

Q. What does it represent? A. It represents a section of the bottom of the "Black Arrow."

Q. It is drawn to scale or not? A. It is made one-quarter of an inch to the foot.

Q. Will you tell us what that is, or the parts of it are? A. This represents the bottom of the ship after we have cut the sides right down to the bilge framing, and these are the bilge frames that run throughout the length of a ship from stem to stern on both sides. This represents a bulkhead and this represents about 60 feet of the bottom of the ship, and it would represent from one bulkhead to another. As we cut it off at our plant we cut it off ahead of this bulkhead, and the balance of the ship floats at all the time. Of course, we put it on the beach at high tide, and when the tide goes out we cut this off, taking this part in pieces large enough for our cranes to handle, and turn over and re-cut into small pieces. This represents what is left of it, and floats. These are the tanks in here where the fresh water and steaming water and other water that is carried sometimes for trimming and sometimes for ballest, and these represent the intercostals.

Q. What are the intercostals, those small vertical pieces in there? A. Yes, sir.

Q. Which have the little round holes through them? A. Yes, sir.

Q. And what do you call the vertical pieces that run lengthwise the ship, are they also intercostals? A. Call them intercostals; yes, sir. This represents in the center the vertical keel.

Q. What do you call this top piece here? A. That is the tank's top.

Q. Have you cut away the top of the tank top at the end here in order to show the intercostals? A. I have.

Frederic A. Morny. Called by Defendant. Direct.

Q. Now, I wish you would explain to the Court and jury why you cannot cut this portion of the ship into large pieces. A. In the cutting of this part of the vessel we find that all these intercostal plates here riveted to the bottom, and to the top of the tank top. In other words, what one sees in the bottom of a ship when one looks in, looks like the bottom of the ship. The real bottom is there (indicating). This part is riveted to the intercostal plates the same as it is to the bottom of the vessel. The distance is about five and one-half feet this way, and the "Black Arrow," which this represents, was 26 inches between the frames. And the tanks were three feet deep that way. This gives you a fairly good idea of the proportion of a man to the relation of the tanks. To cut this into large pieces requires the removing of all of this tank top. We have to take a torch, cut a piece out five and one-half feet long, 22 or 23 inches wide, and drop it in there. We have to cut all the way across, come back and cut that. After we pull that out we get down in there and cut across those intercostals that way and this way so as to release this partition; we cut out the top from the bottom. Otherwise it couldn't come out. And so on throughout the entire bottom of the vessel from one end to the other. After we have done that, this is all free of that, we turn it up on the inside a little bit, and then when the tide goes out we cut this into large pieces, stand over it with our big crane and pull them out on land, turn them upside down, and with a magnet hanging on the crane we pick up a five-ton cast iron ball and drop it on the bottom, knocking the concrete which is in the bottom of all of these vessels inside of the tanks, knocking that out.

Q. Is it possible to burn through the concrete? A. It is not. Torches will not cut through concrete. Or rust either. Concrete is put in the bottom of all these vessels to prevent rust. They can't get at them to paint them every time, as they do others, so in building they put in concrete to protect the steel from corrosion. That has to come out before it can be cut. You can't cut through it; you couldn't cut through from the bottom, and you couldn't cut through from the top, so it has to be cut the way I say, and release all these from the hull in small pieces. That is the only way it can be done. Otherwise, you couldn't get the concrete out. In the case of the "Black Arrow," there was from one to three feet of concrete in her tanks, from one end to the other. It had been in an accident, it had been repaired, her bottom had been planked over on the outside with three-inch planking, and her entire tanks practically filled with concrete, and when I scrapped it I had to cut these all out, and it was a very costly job and took a long time to do it.

Q. Do you know of your own knowledge, Mr. Morny, anything about wharfage rates on Staten Island Sound? A. Yes, sir.

Q. How do you know it? A. By tying up vessels.

Q. I am not asking you for figures, don't give them until I ask for them, but what has been your experience? A. Well, I had to tie up the "Black Arrow" and the "Philippines" and the "Andalusia" and the "Western Comet", and I had to go out and find what I could get paid for, which I did. And I got paid from—

Mr. Haight: Wait a minute.

Q. Where did you go? A. I went to the Downey Shipyards. I went to the Shupe Terminal and New York Harbor Dry Dock, National Dry Dock, inquired from all of them, and among many others throughout the harbor. I can't remember. Port Johnson on the Kill von Kull and other places. At least the man who controls Port Johnson.

Q. Do you remember the prices they quoted?

Mr. Haight: Don't answer that please.

Q. Yes or no. A. Yes, sir.

Q. What were they?

Mr. Haight: I object to that on two or three grounds, if your Honor please. The witness says that he went to the Downey Shipyard, the New York Shipyard, New York Ship—

The Witness: New York Harbor Dry Dock.

Mr. Haight: New York Harbor Dry Dock and asked for prices. That is not the way to prove prices. Anybody could build up a case in two minutes that way. I go to somebody, "What will you do this for?" He tells me. I come in and I swear that that is what he told me that it could be done for. No value could be predicated upon that. That would be the most vicious kind of hearsay testimony for a man to go around, why, the thing could very easily be crooked up. No oath to support it whatsoever. If the prices of wharfage are different than we charge, he should have produced the people, they should have brought here people from the Downey plant, and the other people, to testify to it.

Mr. McCarter: I submit it is no more and no less hearsay for Mr. Downey to come here and say I quoted $100 a day, to use the same figure, to Mr. Morny, than for Mr. Morny to come here and say Mr. Downy quoted $100 a day to me.

Mr. Haight: Mr. Downsey would come here and say, "That is what we would charge, that was a fair and reasonable price." Mr. Morny can go to some friends of his in the company's plant, and he would say, "Why, we quote you $20 a day," and Morny would come here and so testify they quoted $20 a day to me and the impression would be to the jury that that was the regular price. You can't work anything like that, I do not think.

BY THE COURT:

Q. Do you know, as a matter of fact, from experience or study what the wharfage charges in the port of New York were? A. I know what I secured and I know what they quoted me, and I know what I have tied vessels up at.

Q. That is not answering the question. Do you know what people requiring the use of wharves, in the ordinary course of business, were paying for the use of wharves? A. Yes, sir.

Q. How do you know? A. Because I went out and inquired and I found out, and I found out what people in the shipping business were paying.

Mr. Haight: That is hearsay of the worst kind.

The Court: How else does a man know?

Mr. Haight: Why, they can bring the people that are in the business here.

The Court: Oh, no.

Mr. Haight: They can bring the people who are in the business, who know something about it. They can make all kinds of inquiries of persons, and that will carry nothing with it in the way of evidence to support of it.

The Court: It seems to me, Judge, it is just like in a land case, where a real estate agent testifies to the value of comparative lands, and he can testify, either through the result of actual sales made by himself, or sales which he knows were made in the market, in the same locality, and of the same general character. He does that by simply knowing what the market is, and to a large degree he gets that information by hearsay.

Mr. Haight: That is very true, for a man who is in the business; that is his business, he must know those things. The same thing as wharfage. But this man did not say, and does not say that he tied any of these vessels up to these plants. He went around and made inquiries. Now, that is hearsay. It is just the same as if I should go down to Wall Street and say, what did certain stocks sell for to-day; to make an inquiry of some friend of mine, and come back into this Court and testify to it. I could not do it, because I have no independent knowledge.

The Court: This man was in the business, where it was a necessary part of his business to know what the wharfage charges were in the port of New York, and he made inquiries as to what was being paid generally by others who

used wharves in New York at that time. That is what he says. I am going to allow it. You may take an exception.

Mr. Haight: May I cross examine the witness?

The Court: Certainly.

SPECIAL CROSS EXAMINATION BY MR. HAIGHT:

Q. What kind of wharfage charges did you make inquiry for? A. Wharfage charges for tying up and operating the scrapping of the "Philippines" and the "Black Arrow".

Q. For scrapping? A. Yes, sir.

Q. You went to Downey's and inquired how much they would charge you there to put the "Black Arrow" and the "Philippines" there and scrap them? A. Yes, sir.

Q. The same as at the Perth Amboy? A. The same as the Perth Amboy had been doing; yes, sir.

Q. When was that you made that inquiry? A. At the time the Chancery Court made the decree we had to take them away.

Q. And you did the same thing where else? A. I did that with the National Dry Dock; the Shupe Terminal—

Q. Did you get flat figures? A. I got flat figures.

Q. The figures were too high to suit you? A. No, sir.

Q. You didn't proceed to scrap them there, did you? A. No, sir; we did not.

Q. Why didn't you? A. The facilities were not sufficiently good to permit us to do it on an economical basis.

Q. In the making of this estimate, this flat figure for the use of their facilities and everything, did they separate how much they were going to charge you a day for wharfage? A. Yes, sir. By so much a month.

Q. Was that for the use of the plant and everything else? A. That was for the use of the plant, and it was on a separate basis.

Q. Did you make inquiries as to what was charged for just dead storage? A. Yes, sir.

Q. Where did you make them? A. Downey Shipyard, National Dry Dock, New York Harbor Dry Dock, Shupe Terminal.

Q. For dead storage? A. Yes, sir.

Q. Does Downey Shipbuilding Company take vessels in for dead storage? A. Well, he took two of ours.

Q. For how long? A. For several months.

Q. How many months? A. Well, let us see, the Andalusia was there from January of 1925 until about August, 1925.

The Court: Judge Haight, if his knowledge, upon which he is to express an opinion, is based on knowledge that was not acquired until after six months from the making of this contract, it is not competent.

Mr. Haight: That is the way it appears.

Q. Downey is out of business, isn't he? A. There is a concern operating that plant in the same way.

Q. It has been out of business for several years? A. As a ship building plant; yes, sir.

Q. It is not a ship building plant? A. Why, yes, sir, it was until recently.

Q. How recently? A. Until it was sold at auction.

Q. How long ago? A. Three months.

Q. Don't you know Downey has not been a ship building plant in two years? A. They were a ship building plant, though.

Q. But they were not in operation for two years? A. Well, I don't know that. Not of my own knowledge. I know that there were ships being worked there at that plant up to the time, I think during the time we had our ships there.

Q. They were quite willing, weren't they, to let you tie up your vessels when the plant was not being used for the purpose for which it was designed? A. I don't know the purpose for which it was designed, but there were ships being worked in there.

Q. You knew it was designed as a ship building and ship repair plant? A. Why, no, it wasn't.

Q. Wasn't it? A. No.

Q. Was it ever used as that? A. Yes, it was.

Q. It was used as that? A. It was designed as a structural steel plant by Milliken Brothers.

Q. The time you went there it wasn't being used for that purpose, was it? A. Why, they were scrapping ships there, and doing other work there.

Q. But it wasn't being used as a ship repair plant, was it? A. Not to my knowledge. I don't know. I didn't learn it.

Q. You are going to compare the value of wharfage down at a plant still used for the scrapping of ships, and which is not being used for the repair of ships, with the value of wharfage of a plant like the Perth Amboy, which is being used continually for repair of ships? A. Well, they might have been repairing ships too.

Frederic A. Morny. Called by Defendant. Direct.

Q. Is that what you are going to compare? A. I will on that plant.

Mr. Haight: I submit his evidence is not competent.

The Court: I am sustaining the objection for two reasons. In the first place, he has not drawn such a comparison as shows such a substantial similarity as justifies the comparison and making an opinion as to the value of the Perth Amboy plant; but, particularly for the reason that he is basing his opinion upon inquiries made six months after the making of this contract. You may take an exception.

Mr. McCarter: Your Honor will allow me an exception.

By Mr. McCarter:

Q. Were your inquiries made six months after the making of this contract? A. Not altogether, no.

By the Court:

Q. Well, you just said, under examination by Judge Haight, that you didn't make these inquiries until the Chancery proceedings began. The Chancery proceedings were not started until July 2nd, 1924.

Mr. McCarter: Yes, sir. And, if your Honor please, the question is to the period over which this wharfage charge of the defendants is to run, and it runs for some uncertain time, according to your Honor's own ruling, back from that mo-

ment. The wharfage charge does not commence with January 1st, 1924. At the best of their contention, it does not commence until April, the end of three months. And whatever the evidence may be on that, the reasonable time works for some period backward from the time these ships were moved, so his inquiries are at that very time. Until there is some evidence that there is a change in the wharfage rates in the harbor, with the change in time, I submit that that evidence is competent.

The Court: All right.

BY MR. MCCARTER:

Q. Mr. Morny, when did you make your inquiries? A. When I saw that the Perth Amboy Dry Dock Company was not going to complete the contracts.

Mr. Haight: I object to that, "when he saw that the Perth Amboy Dry Dock Company"—

The Court: This is a conclusion.

BY THE COURT:

Q. About what time? A. Oh, I think somewheres perhaps in May, I began to look around to see what I could do to find a place to complete the contracts in, because the Perth Amboy Dry Dock Company didn't do so. And I interviewed ship yards and other plants all around the harbor for the purpose of getting those contracts completed, in the event that they did not do so.

Frederic A. Morny. Called by Defendant. Direct.

By Mr. McCarter:

Q. Did or did not you find a prevailing rate for wharfage along Staten Island Sound, and those places? A. Yes, sir.

Mr. Haight: I object to that. That is a conclusion. The witness has testified to a condition of affairs where he made his inquiries, that are not comparable with this case.

The Court: He has now said that he inquired from a number of places, but he does not specify them. He first said Downey's. Now he says a number of places.

A. I also said the National Dry Dock, the New York Harbor Dry Dock. I also inquired of W. A. Fletcher in Hoboken, and some others I don't recollect, perhaps, at the moment. But I know I made a very thorough search of the harbor for facilities for this purpose.

By Mr. McCarter:

Q. Did you or did you not find a prevailing rate? A. No, there was no prevailing rate. The prices varied at all places, as far as I recall. The conditions of the plant determined the rates at the different places. The Staten Island Shipyard tied two of our boats up for nothing for six months.

Mr. Haight: I object to that.

The Court: That is stricken out.

Q. Did you find any rates on Staten Island Sound? A. Yes, sir. I found rates at Downey's.

Q. Wait. Let me ask you this in order. What places did you find the rates on Staten Island Sound? A. Found a rate at Downey's ship yard.

Q. Yes. When did you find that rate? A. That was perhaps in May.

Q. 1924? A. May 1924.

Q. What other places? A. National Dry Dock Company.

Q. When did you get that? A. That was along in about the same time.

Q. Yes. A. And the New York Harbor Dry Dock was about that time.

Q. Yes. A. And Fletcher, in Hoboken.

Q. Don't bother about Fletcher. That is on the North River. Any other on Staten Island Sound? A. No. Yes. Port Johnson.

Q. What was the rate quoted by Downey, to begin with?

Mr. Haight: I object.
The Court: Objection sustained.
Mr. McCarter: Prays exception.
The Court: Yes, certainly.

Q. Was there a difference in the rates quoted by these different yards? A. Yes, sir; there was.

Q. What was the rate at Port Johnson?

Mr. Haight: I object.
The Court: Objection sustained.
Mr. McCarter: Prays exception.
That is all. Cross examine.

CROSS EXAMINATION BY MR. HAIGHT:

Q. Mr. Morny, how many tons of steel did you estimate that there were in those two vessels? A.

3,000 in the "Black Arrow" and 6,500 in the "Philippines".

Q. Making altogether 9,500 tons of steel? A. Tons of steel; yes, sir.

Q. It would take 50% more time to scrap a vessel by cutting it in charging box size than it would in shipping sizes, would it not? A. No, sir; it would not.

Q. Didn't you so testify in the Chancery suit? A. I think I did. I know more about it to-day.

Q. How much longer would it take to cut the vessel in charging box sizes than it would to cut it in larger pieces, was the question put to you? A. Yes, sir.

Q. The answer was: "Oh, I should say 50% more time"? A. Yes, sir.

Q. You don't stand by that now? A. No, sir; I do not. Now having scrapped some I know.

Q. You had scrapped a whole lot at that time, hadn't you? A. No, sir.

Q. Been six months in it? A. Yes, sir. I had not. The Perth Amboy and the Staten Island Ship had.

Q. You had four ships under your control, scrapping? A. They weren't under my control.

Q. Weren't you running things for Crawford? A. I was in charge of the business side of it; yes, sir.

Q. You did nothing else but that for Crawford? A. No, sir. My time was exclusively occupied in that, I tell the world.

Q. In that job? A. In that job; yes, sir.

Q. And the scrapping of these four vessels was under your control? A. In the business side of it, yes, sir. The control was under the hands of the contractors.

Q. You are an engineer, aren't you? A. No, sir.

Q. Didn't you so testify? A. I am not a graduate engineer, but I have had a great deal of engineering experience, sir. I think too much of some college men I know to rank myself with them.

Q. You say that you have been in the engineering business for a great many years? A. Yes, sir; I have.

Q. The line of engineering both constructing and selling the engineering materials, and engineering business? A. Yes, sir.

Q. And that you were well acquainted with the scrapping of vessels? A. Yes, sir. Did I say well acquainted with the scrapping of vessels there?

Q. Acquainted with that kind of work? A. Yes, sir.

Q. You said yes? A. Yes, sir; with that kind of work, engineering work.

Q. So that you don't think that it would take 50% longer to cut it in charging box than it would in shipping sizes? A. No, sir; it will not.

Q. What is the difference now? A. Oh, I should think perhaps 20%.

Q. 20% longer. In other words, it would only take 20% longer to cut pieces of steel five feet long by twenty-four inches wide, than it would to cut pieces of steel out of a vessel twenty feet long by six and one-half feet wide? A. Let me get that just quite straight.

(Question repeated by stenographer.)

A. It would take longer to cut the big pieces out than it would to cut the small pieces out.

Q. No. What I am talking about is the cutting up of a vessel, now you know what I am talking about. A. I just want to be specific, that is all.

Q. I will be as specific as I can. You say that it would only take 20% longer time to cut up a vessel in pieces twenty feet long by five and one-half feet wide, than if you cut it up in pieces five feet long by twenty-four inches wide?

Mr. McCarter: You have got that backwards.
(Question repeated by stenographer.)
Mr. Haight: Yes, I have it wrong.

Q. Just reverse that question? A. Why, it would take 20% longer about to cut a vessel up in the small sizes, than it would in the large sizes.

The Court: You were not asked that. You know the sizes.

A. I am trying to answer. I thought I had. I am sorry.

By the Court:

Q. When you say small sizes, do you mean what Judge Haight said? A. Yes, the sizes.

The large size, the dimensions he gave? A. Yes, sir; I do. There is more than steel in a ship.

Mr. Haight: Never mind that. That is all I wanted.

By Mr. Haight:

Q. Why did you make the statement in the Court of Chancery, if you didn't think it was correct? A. I thought it was at that time.

Q. You thought it was at that time? A. Yes, sir. I know today differently.

Q. At this time you had the conference with Mr. Preacher on January 6th, 1924, you spoke about cutting off the angles, and what not, of these plates, didn't you? A. We did.

Q. And he objected to that? A. He certainly did.

Q. Told you there had been nothing of that kind agreed upon, didn't he? A. He did not.

Q. Did not? A. No, sir. Said it was going to cost him a lot of money to do it that way, they had better cut it in charging box.

Q. More to cut it that way than to cut it in charging box? A. Yes.

Q. That included cutting out the rivets, too, didn't it? A. Oh, certainly. Later on we got the specifications modified, so we didn't have to.

Q. Never said anything to you that time about how it was to be cut? A. No, sir: he did not.

Q. Or about how it had been agreed to be cut? A. No, sir; he did not. Never mentioned it.

Q. There wasn't any talk about shipping sizes at that time, though, was there? A. No, sir; never a word.

Q. On the street Mr. Runyon said to you, as I understand it, after this Bankers' Club conference, I am not making any claim, there is one matter that I am not making any claim for, that is the salvaging of the Philippines"? A. Yes, sir.

Q. He said that? A. Yes, sir.

Q. Can you imagine why he said that? A. Why, he was trying to offset the derelictions in their yard which we had complained about, I think.

Q. He hadn't been discussing any derelictions on the street, had he? A. We had up in the Bankers' Club.

Q. You were pleased at that answer you made? A. I didn't think—

Q. I say, you were pleased with the answer you just made to my question, weren't you? A. What was that?

Q. Pleased with the answer you just made to my question? A. Why, no.

Q. Why did you look over at your counsel and laugh? A. Did I do so?

Q. I saw you do it. You were not pleased? A. I wasn't conscious of it, Judge Haight.

Q. You sort of unconsciously went over there with a smile? You always smile, is that it? A. I try to always smile. It is kind of tough sometimes, but I do it when I can.

Q. Didn't it make you smile that day when Runyon said to you, out of a clear sky, when the vessel had sunk, and there had been fifteen hundred odd dollars spent in salvaging her, I am not going to make any charge for that, didn't that make you smile? A. Why, I don't know that it did.

Q. Don't you know whether it did or not? A. I don't think so, no. In fact, I think I would probably have looked sadly at him, because he had that loss to pay.

Q. I have no doubt that you did. You thought he was sort of losing his mind too, didn't you? A. No, sir, I didn't.

Q. This second calorine test and carbo-hydro test that was performed, didn't the Calorine people send a man there? A. Yes, sir.

Q. A man named Sanders? A. Yes, sir.

Q. To conduct their test? A. Saunders, to look after it.

Q. To conduct their test? A. Yes, sir.

Q. And the carbo-hydrogen people sent a man there to conduct their test? A. I think there was a carbo-hydrogen man there; yes, sir.

Q. Did you think that Saunders, the calorine man, was in cahoots with somebody else in getting these men drunk that were working on the calorine test? A. The purpose he was there for was only to watch the result.

Q. But, did you think he had anything to do with getting these men drunk? A. No, sir; he complained about it.

Q. Why didn't you tell us that in the beginning? A. I never give it a thought.

Q. Now, you say you complained to Preacher and Meurer the first time because the men were carrying fittings, pipes and so forth. What was the first day that you were down there? A. The day after January 6th, I think.

Q. The day after January 6th? A. Yes, I think.

Q. Were you down there before that? A. I was there, I think, on January 6th, on a Sunday. I am not sure of the date, but I know that my first visit was on a Sunday.

Q. Why didn't you complain to Bernard about this? A. Because Mr. Bernard didn't happen to be there at the moment, I presume.

Q. Bernard was the man who was running this work, wasn't he? A. Mr. Preacher was running it, I think.

Q. You know that the contract provided that it was ot be under the supervision of Bernard, don't you? A. Yes, sir.

Q. And he was your man? A. Yes, sir.

Q. Now, then, if you went down there and saw men carrying pipes, when you thought they should not be carrying pipes, but that they should be removed in some other way, why didn't you go to your own man and say to this effect, what are you doing the work that way for, why don't you do it some other way, because this is going to take more time and cost more money? A. I certainly complained about it.

Q. You did complain about it? A. I should say I did. We went over that job in detail that night when we got back in the office.

Q. You didn't tell us that at first, though. A. No.

Q. You say they broke fittings and furniture? A. Yes, sir.

Q. That didn't delay the work any, though, did it? A. Why, it might have, yes.

Q. Well, did it? A. I think it did, yes.

Q. What did they break? A. Well, they broke a washing machine, getting it out, which had to be welded, and it was welded badly, it stood on the dock, and the bidder wouldn't take it until it was repaired, and it blocked up the dock right near the head of the dock, where it interfered with the taking and carrying off of hatches.

Q. Didn't stop the burners burning, though, did it? A. Why, yes.

Q. The breaking of a washing machine? A. It might have.

Q. Well, did it? A. Yes.

Q. How did it? A. Any delay of any kind delayed the burners. It all comes back to the burners.

Q. Any delay would delay the burners? A. Yes, sir.

Q. Because a washing machine on one end of the dock happened to be broken, a man could not burn on the "Black Arrow"? A. He would be held up —the burning, I wouldn't say one particular man, but the burning on the "Black Arrow" was held up by every single little delay of that kind.

Q. Suppose you had fifteen men up there? A. Had fifteen?

Q. Suppose you had fifteen burners? A. I don't say fifteen men would suffer as much delay—

Q. Wait a minute. Suppose you had fifteen men working on the "Black Arrow" and this washing machine was broken on the "Philippines"? A. Yes, it wasn't on the "Philippines". It was on the "Black Arrow".

Q. Well, let us reverse it. The washing machine was broken on the "Black Arrow"? A. Yes.

Q. You had fifteen burners on the 'Philippines', do you want this jury to understand that because the washing machine was broken on the "Black Arrow" that the fifteen men working as burners on the "Philippines" were delayed? A. Well, there weren't fifteen burners on the "Philippines" at that time. It wouldn't affect the "Philippines" job, but it would affect the "Black Arrow" job, any accident happened.

Q. Let us assume there were five men, were there that many? A. Why, in the beginning?

Q. Yes. A. I don't think there were at that time.

Q. You don't think there were? A. No. They were getting out the wooden work. There was a large amount of woodwork in the job, and they had to get the wood work out.

Q. How many men were there working on the burners on the "Philippines" at the time the wash-

ing machine was broken on the "Black Arrow"? A. I don't think there were any.

Q. You don't think there were any? A. No.

Q. Then the breaking of the washing machine on the "Black Arrow" did not delay the burners on the "Philippines"? A. No, but it did on the "Black Arrow."

Q. But you didn't have the "Philippines" too. How much per cent. scrapped? A. At that time?

Q. Yes. A. Oh, maybe a tenth of one per cent.

Q. When you got through with the job? A. Ten per cent.

Q. You had her ten per cent. scrapped? A. Yes.

Q. How much did you have the "Black Arrow" scrapped? A. About thirty-three and one-third per cent.

Q. When you got her out? A. Yes.

Q. When you got her out? A. Yes, sir.

Q. Now, let us see about that. How much of the vessel would have been scrapped before she had gotten ready for the dry dock? A. About fifty per cent.

Q. About fifty per cent. scrapped before she had gotten ready for the dry dock? A. Of course, she could have gone on the dry dock in the condition in which she was when she was taken away, but when she was about fifty per cent. you would have to put her on the dry dock.

Q. That is, taking off all the superstructure? A. Yes.

Q. How far down below the main deck? A. How far below the main deck?

Q. Yes. A. Perhaps within—when she was in the water she would have to have a free board to be safe there of about two feet.

Q. All down from the top to about two feet? A. Yes.

Q. Of the water line? A. Yes.

Q. And you say she would only be fifty per cent. scrapped at that time? A. That is all.

Q. Now, here is the "Black Arrow" taken on July 9. Now, then you would have taken her clear down two feet above the water line and she would only be fifty per cent. scrapped? A. Yes. Still have fifteen hundred still in it.

Q. You made an affidavit in the chancery case, didn't you? A. Yes, I think I did.

Q. In it you swore to this: "If the work on the 'Black Arrow' were allowed to proceed in accordance with the defendants' contention, namely, to cut as much as it wished into charging box sizes, the 'Black Arrow' would be ready for dry dock and away from its present position, at the expiration of ten days from the starting out of such work." A. Yes, sir.

Q. And there had been no work done on the "Black Arrow" since the 1st of May? A. Practically none.

Q. Then it would only have taken ten days' work to have put it on the dry dock? A. Yes, sir, she could have been put on the dry dock.

Q. Isn't it a fact that she was ready for the dry dock then? A. I don't know as much as I know now. I know more. I finished her.

Q. But you said she would be ready for the dry dock. You didn't think she was ready then, when you made that affidavit, did you? A. I knew she could have gone on it that day—

Q. Why did you testify it would take ten days, it would be ready for the dry dock, if you knew she

could have gone on that very day? A. I believe that was the case for them. It would not have been cut down within two feet of the water line then. But she still had 1500 tons in it when she was still that ten days or so when she was cut down two feet of the water line.

Q. You stated that Mr. Muerer told you on one occasion when he saw you that they would be lucky if they got the vessels out by July? A. Yes, sir.

Q. That is your recollection of what he told you? A. Yes, sir.

Q. You testified to the same thing in the chancery suit, didn't you? A. I don't recollect.

Q. I read to you from what purports to be a part of your affidavit. "After the vessels arrived at the complainant's plant, Mr. Muerer said to me he thought it would take about three months from that date to cut the steamship 'Black Arrow' to the water's edge, and that they supposed the 'Philippines' would be entirely cut up by July 4, 1924." Did you testify to that? A. I did.

Q. Why didn't you tell us that, that Mr. Meurer said they would have the "Black Arrow" done in three months?

Mr. McCarter: I object to that question as an incorrect recital.

Q. They would have the "Black Arrow" to the water's edge in three months?

Mr. McCarter: That is different from done.

Mr. Haight: I agree with you. I am wrong on that.

Q. Why didn't you tell us that? A. It didn't occur to me. That is why.

Q. I suppose the same thing happened about that conversation you had with Mr. Muerer coming up in the train one day? A. Which particular conversation are you referring to, Judge?

Q. You gave it the first time you were asked this morning of the conversation you had. You said Mr. Muerer said he would have to pay more attention to the job, and he would have to get at it, as the employees were jealous of him, and were scuttling the job? A. That is what he said, yes, sir.

Q. He said that? A. Yes, sir.

Q. And your counsel pressed you for a further conversation you had and you could not recall? A. Yes, sir.

Q. Then you come back this afternoon and tell us about another conversation? A. Yes, sir.

Q. That Mr. Muerer had said? A. Yes, sir, I did.

Q. Didn't you? A. Yes, sir, I did.

Q. Why didn't you tell us that second one this morning? A. I didn't think of it.

Q. Who refreshed your recollection? A. No one. I refreshed your own.

Q. You refreshed your own? A. Yes, sir.

Q. You swore to exactly the same thing in the chancery suit, didn't you? A. Yes, sir.

Q. And you didn't discuss that with anybody? A. No, sir.

Q. Did you suggest to Mr. McCarter before you went back on the stand this afternoon that he should ask you that question? A. No, sir.

Q. Notwithstanding that you said this morning that you didn't know of any other conversation than the first one—that is, about scuttling the job—when Mr. McCarter pointed this out to you— A.

No, sir, I read over my testimony. I told Mr. McCarter I recollected it and what he said.

Q. That is exactly what I asked you. A. You asked me did I suggest the question to ask me.

Q. Did you read that affidavit this noon? A. I did, yes, sir.

Q. You didn't say anything in that affidavit of your answer, did you, about scuttling the job? A. No, sir, I did not.

Q. Why didn't you say it then? A. Because I didn't think of it at the moment.

Q. Your recollection was just as good then as it is now? A. I don't believe it is so good now. A little better then.

Q. Undoubtedly better? A. It ought to have been.

Q. You were putting anything in the chancery suit that you could to prevent those vessels being put out? A. I was answering the questions asked.

Q. You told them what happened. Why didn't you have them put into the affidavit that Muerer told you that everybody was jealous of him and trying to scuttle the job? A. So much pressing on us at the time that I didn't have an opportunity to think over these questions as much as I might have. Otherwise, I might have done so.

Q. Now, on March 21 Mr. Runyon told you to stop cutting charging box, that he wouldn't allow you to cut charging box, but you did continue to cut, didn't you? A. I always assumed that they continued to cut it. I don't believe that we cut it, but they did.

Q. Mr. Morny, as to how this vessel was to be cut, and so forth, was under the direction of Mr. Bernard, wasn't it? A. As to what was to be cut was under the direction of Mr. Bernard.

Q. Don't you know that Mr. Bernard directed and had charging box cut long after March 21 and up until the very time that you stopped work? A. I think undoubtedly that Mr. Bernard wished to cut charging box.

Q. You know that they did? A. Yes, there was the boilers under special agreement.

Q. You didn't pay any special attention to what Mr. Runyon told you on March 21? A. It was up to Mr. Runyon to protect himself, I guess.

Q. Why did you tell him about before this? A. Because they finally did stop it.

Q. They didn't stop you on March 21? A. No, sir, but he said he was going to stop.

Q. Then you kept right on cutting? A. Yes, sir.

Q. He didn't stop you? A. He finally did stop us.

Q. The only time you were stopped was when Muerer told you you couldn't cut the boilers, he wouldn't allow you to cut them until Runyon came back from some trip he was on? A. I don't recollect. He did stop us on the boilers, or it stopped on the other boat. He certainly stopped the angles and channels for the Chinese being cut.

Q. You cut all the Chinese stuff you wanted, didn't you? A. No, sir. I completed the contract from the other yard.

Q. You did? A. Yes, sir.

Q. But you got the contract all filled, didn't you? A. Well, with the help of the Staten Island Shipbuilding Company.

Q. You were stopped—there was no market for shipping sizes in the latter part of February and from then on? A. Yes, sir.

Q. The last bit of shipping size that you sent out was some time in February, wasn't it? A. We sent

three carloads out of very light superstructure that was sheared stock, that could be cut up into shears. It was light enough to be cut up with shears.

Q. This price that you had figured on was how much? $13.50? A. $13 in our estimate.

Q. $13 a ton? A. Yes, sir.

Q. You know that shipping sizes in April were from $11 to $12 a ton, and it may got as low as $11 a ton, don't you? A. Well, I don't know of any being sold to fix that price at.

Q. You heard Mr. Luria tell about that? A. No, sir, I wasn't here then.

Q. You weren't here when Mr. Luria—

Mr. McCarter: Mr. Tyroler.

Q. You weren't here when Mr. Tyroler, Mr. Luria's representative, was here, then? A. I was not.

Q. You know, as a matter of fact, that the shipping size price was at the rate of $1.50 below the price that you had figured on getting for this steel when you got those ships, don't you? A. No, sir. There was no price quoted. I couldn't find anybody to bid on them, even. They didn't want them.

Q. It made it very difficult for you to dispose of shipping sizes, didn't it? A. At what time?

Q. Well, along March and April. A. Certainly. There was no market for it.

Q. And may that have been the reason why you thereafter said you weren't going to cut it up in shipping sizes? A. No, sir. We had the contract for 10,000 tons of charging box steel that had to be filled. That was all there was to it. We never gave a thought to shipping box sizes.

Q. You have seen this letter of March 3 that Mr. Meurer wrote to Mr. Crawford, haven't you? A. I saw it first when the chancery proceedings came up, I saw it.

Q. You read Mr. Crawford's answer that there had been no change in the plans for scrapping the vessels? A. I read those in the chancery case, those two, not at the time the letters were sent out.

Q. Well, on March 6 he wasn't contending that he could only cut it up in charging box sizes, was he? A. I want to go over that letter and see. I don't recollect it very well.

Q. You have read it and know what it is? A. I don't recollect it very well.

Q. Now, did the drop in the price of steel have anything to do in the slackening of the work? A. No, sir, it did not.

Q. Mr. Goggin was employed by Crawford & Company, wasn't he? A. Yes, sir.

Q. First at Perth Amboy? A. Yes, sir.

Q. Then at Staten Island? A. Yes, sir.

Q. You laid him off at Staten Island? A. I did. I discharged him.

Q. You discharged him on May 14 to take effect on May 17? A. I couldn't recollect the exact dates, but I assume that is right.

Q. Was that the letter that you sent discharging him?

Mr. McCarter: I object to that, if your Honor please, as not cross examination in the first place, and in the second place, as irrelevant.

Mr. Haight: Why Mr. Goggin was discharged at Staten Island?

The Court: I don't know whether he was or not. Let me look at the letter.

Q. Did you say whether you wrote that letter? A. Yes, I wrote that letter.

The Court: Proceed.

Mr. McCarter: Does your Honor overrule the objection?

The Court: I don't know whether he is going to offer it or not.

Mr. Haight: I offer it.

The Court: I will admit it. You may take an exception.

Q. Now, in this letter you said to Mr. Goggin, did you not, "Owing to the slackness of work at Staten Island, we find it necessary to dispense with your services as of Saturday May 17th. Kindly explain to Mr. Williams all the details in connection with the time sheets, daily cash reports, etc., so that he may be properly equipped to carry on the clerical work at Staten Island. If the work takes on more activity in the future and you are available, we would be very glad to give you consideration. In the meantime, wishing you every success for your future efforts." A. Yes, sir.

(Letter dated May 14, 1924, entered in evidence and marked Plaintiff's Exhibit P-33.)

Q. I show you another letter bearing initials at the bottom, "F. A. M.," and another bearing the initials "F. A. M.," purporting to have been signed by H. L. Crawford & Company and ask you if you dictated those. A. I would assume that I did and Mr. Crawford signed them.

Q. They bear your initials? A. They bear my initials, as I presume I did.

Q. And they bear exactly the same initials as that letter you have shown me? A. I don't know. If you will show me the letter, I guess they did. Same initials, yes, sir.

Q. One of these letters to which I wish to direct your attention reads as follows. This is May 5.

Mr. McCarter: Is it in evidence?

Mr. Haight: No. "We do not understand your letter of March 28th. In the first place, our Mr. Morny made no such proposition to your Mr. Meurer, or anyone else in the Perth Amboy Dry Dock Company as in that letter you state. In the second place, our contracts do not limit the size to which the vessels may be cut up, or any part of it. We claim the right to have cut as much of either vessel as we see fit into charging box sizes, and that is what has been done from the outset." You recall writing that, don't you?

A. I recall that letter, and I presume with my initials on the bottom I did dictate it.

Q. The letter to which you refer—

Mr. Haight: Let me have that, will you, March 28, the letter to which this is a reply?

Q. The letter which has been produced by your counsel dated March 28 is from the Perth Amboy Dry Dock Company to Crawford & Company, isn't it? A. I believe it is, yes.

Q. Now, in that letter the statement is made—

Mr. McCarter: Now, I think I want to object to that letter. I don't now whether you are going to read from it.

Mr. Haight: I am going to read from it.

Mr. McCarter: I object to this question as not being cross examination.

The Court: I will allow it. You may take an exception.

Q. "In reference to the proposition made by your Mr. Morny to our Mr. Meurer on March 27th, that you be permitted to furnish your own gas, air and manifold for cutting up in charging box sizes such parts of the Steamship 'Black Arrow' and Steamship 'Philippines,' as your contract with us provides should be cut up in larger sizes, we are willing to have you do this provided you furnish the cutting outfits complete with the necessary hose and cutting material, and that no deduction is made by reason thereof from the sums mentioned in our original contract to be paid by you to us." You recall that letter? A. Yes, I recall it.

Q. Now, then, that letter carried the statement that a proposition had been made by you to Mr. Meurer that you be allowed to cut up the balance of the vessels in charging box sizes, didn't it? A. Yes, sir, it did.

Q. And it was written on March 28th, wasn't it? A. Yes, sir.

Q. And marked received on March 28th? A. I didn't notice the received mark, but I guess it was.

Q. Received on March 28th? A. Yes, sir.

Q. Now, will you tell us why you didn't reply to that letter and state that there was no such proposition that had been made by you, until May 5th?

Mr. McCarter: I object to this as not cross examination, your Honor. This is a matter that was not gone into at all.

Mr. Haight: The witness has testified over and over again that there was no such understanding on his part.

The Court: I will allow it. You may take an exception.

A. I didn't follow the question, Judge.

Q. My question is this: Why, if the statement made in this letter of March 28th that you had said to Meurer, you had asked Mr. Meurer for authority to furnish your own gas, air, and manifold for cutting up charging box sizes such parts of these two steamships as the Perth Amboy claimed should be cut up in larger sizes—why, if you had not made any such statements as you state in your letter of May 5th, did you wait from March 28th to May 5th to make the denial? A. Mr. Crawford was in Bermuda, and that and other letters were coming in. The situation at the dry dock had become very strained. I didn't want to do anything to involve Mr. Crawford in any complication with the dry dock until he returned. I took the matter up—that and several matters they were writing letters in evidently for a record—and I took them up with Dr. Decker, and Dr. Decker and I discussed it, and inasmuch as Mr. Crawford's money was so heavily involved, I didn't feel I had the right to take the responsibility for bringing about a breach of our relations until he returned.

Q. When did he return? A. April 2nd, I think.

Q. Then from April 2nd until May 5th, thirty-one days, you let that accusation remain unanswered? A. Yes, sir.

Q. Now, why did you do that? A. In the first place I was out visiting steel mills trying to sell steel in large pieces, and an accumulation of other matters came on my desk when I got back, and all these things had to be taken up and gone into. I cleaned up those and got to that particular matter.

Q. You didn't go away to the steel mills until the middle of April, did you? A. Yes, I did. I went shortly after the 2nd of April, fifth or sixth.

Q. How long were you away? A. Over a week.

Q. So you had twenty-one days to reply to this letter? A. I don't know that I did. I probably was gone two weeks. That letter was written in March and I didn't get away until somewheres in the early week in April. It was a whole week before I had gone away.

Q. When you got this letter stating that you had made a proposition to furnish your own gas, air, and manifold for cutting charging box sizes at your own expense, and that wasn't so, wasn't it a strange thing for you to wait until May 5th before denying that any such statement had been made? A. Absolutely not. The information that I received from Meurer and others down at the dry dock, that Runyon was going to get out of the contract, I had to protect Mr. Crawford's interest until he could get back.

Q. You thought the best way to prevent something being put over on you when you got a letter from them as to something that you had said, was not to say a word about it? A. I waited till Mr. Crawford came back there so as to protect Mr. Crawford and his money.

Q. He came back on April 2nd? A. Yes, sir.

Q. And you had thirty-one days after that to refer this letter to him? A. I did not. I had to go away.

Q. You were at the steel mills two weeks? A. When we were going to sell the steel in large pieces, we got the proposition completed, we couldn't get any satisfactory arrangement.

Q. After you went to the steel mills and found you couldn't sell the large size, then you wrote a letter and said, "I never made any such proposition"? A. Absolutely I never did make any such proposition.

Q. Is that the reason? You waited until after you had gone to the steel mills and found out whether or not you could sell the steel? A. Well, we were trying to bring about an arrangement if possible to let them out of the loss they claimed they were going to have, and complete their contract.

Mr. Haight: That is all. May I offer these letters in evidence? Do you object to my offering these at this time?

Mr. McCarter: I think my objections were overruled.

The Court: Yes, they were.

Mr. McCarter: I do not object to them being offered.

Mr. Haight: I offer in evidence letter of March 28th and of May 5th, about which I have cross examined the witness.

Mr. McCarter: I have no objection to their being offered at this time, but I object to their being offered at any time.

The Court: Oh, I understand. You simply do not make the technical objection that he cannot present as affirmative proof a letter under the cross examination of one of your witnesses. That you waive.

Mr. McCarter: We waive that, absolutely.

(Letter dated March 28th entered in evidence and marked Plaintiff's Exhibit P-34.)

(Letter dated May 5th entered in evidence and marked Plaintiff's Exhibit P-35.)

REDIRECT EXAMINATION BY MR. MCCARTER:

Q. Tell us, Mr. Morny, why it is that to cut a ship entirely in charging box size would take nearly twenty per cent. longer than in shipping size? A. Because the cutting of the steel is not more than half of the job of scrapping a vessel. We had work of cleaning and all that kind of thing, getting out the fittings, anchors and chains off, winches, dock equipment of various kinds represent at least fifty per cent., if not more, than the whole scrapping of the job, completing of the whole job.

Q. I don't know whether I asked you this before and I ask it to you now. How long did it take to load the freight cars at the Perth Amboy plant? A. It took from four to six hours.

Q. From four to six hours? A. Yes, sir.

Q. How many tons of steel did each freight car hold? A. Why, the cars that went out of there ran over the minimum of twenty tons and in the case of where we had anchor chain, couple of cars of them, it ran considerably over that. I should say charging box steel the cars would run, twenty-one, twenty-two, twenty-three tons, and many of them around twenty-five. Over the minimum and under the maximum.

Mr. McCarter: I think that is all.

Mr. Haight: That is all.

Mr. McCarter: The defense rests.

Edward J. Meurer. Called in Rebuttal. Direct.

PLAINTIFF'S REBUTTAL TESTIMONY.

EDWARD JOHN MEURER, recalled for the plaintiff, in rebuttal:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Meurer, the statement has been made by Mr. Morny that at the Bankers' Club after the Bankers' Club in the conference on the sidewalk Mr. Runyon said, "There is a matter I am not making any claim for. That is the salvaging of the 'Philippines.'" Was any such statement made?

Mr. McCarter: I object to that as not rebuttal. My recollection is that Mr. Meurer went all over that Bankers' Club.

Mr. Haight: He stated another conversation, but there might have been something else. I don't know.

Mr. McCarter: He went all over the Bankers' Club.

The Court: Was he asked that specifically, whether he made that statement or not?

Mr. Haight: No, sir.

The Court: I don't remember that he was.

Mr. Haight: He said that Mr. Runyon came out and said, "There is one matter that I neglected to mention." And Mr. Morny thereupon said, "Well, you need not worry about that. Mr. Crawford will take care of it," or words to that effect.

Mr. McCarter: I don't understand his having given his version.

Mr. Haight: All right. We won't waste any time.

Edward J. Meurer. Called in Rebuttal. Direct.

Q. Do you recall a meeting between Mr. Meurer and Mr. Morny and Mr. Preacher and you on the vessels or at the plant on January 6, 1924, at a time when there was some discussion about the sizes into which the vessel was to be cut? A. No, sir.

Q. You don't recall? A. I recall the meeting, but there was nothing said about sizes of plates to be cut, because we had not really started cutting any plates to amount to anything at that time.

Q. At the Bankers' Club meeting Mr. Morny had testified that you said, "We ought to have a manifold," and that the crane had gone off the track.

Mr. McCarter: I object to that as not rebuttal.

Mr. Haight: I didn't relate anything that happened at the Bankers' Club until now.

The Court: I think that is rebuttal.

Q. Do you recall that? A. I recall telling Mr. Runyon that the crane had gone off the dock, which it had, yes, but I never said anything about a manifold for I never knew anything about that.

Q. When did you first determine to put in the manifold? A. After they made the request that day.

Q. Was that the first request that had been made? A. As far as I can remember; yes, sir.

Q. Now, it is said that at this time there was some question about the deductions which have been made from their bills—that is, from your bill rendered to them for labor—and that Mr. Runyon asked and you said that the deductions were proper. Did you make any such statement? A. No, sir.

Q. Did you have anything to do with this calorine and carbo-hydrogen test? A. Why, no. I

didn't have anything to do with it only that a man —we put a man down there to check up and he brought his figures in to me every night, and the amount of consumption of material, or amount of material that was cut.

Q. Were you as willing to use calorine as carbo-hydrogen?

Mr. McCarter: I object to that as not rebuttal.

The Court: Did he say that they were not?

Mr. Haight: I wanted to find out whether they were or not.

The Court: I will allow that.

A. That test proved to us at that time that the carbo-hydrogen was equally as good as the calorine.

Mr. McCarter: That is not rebuttal, and I move to strike it out.

The Court: He has already testified that way before.

Mr. Haight: I don't think he went into the test.

The Witness: No, sir.

Mr. McCarter: It is clearly based on hearsay.

Mr. Haight: All right. We won't waste any time on it.

Q. Do you recall this conversation of March 21st that Mr. Preacher said that the "Philippines" had been scrapped about ten per cent. and the "Black Arrow" about 33 1/3 per cent.? A. No, sir, I do not.

Edward J. Meurer. Called in Rebuttal. Direct.

Q. Was any such statement made by Mr. Preacher? A. I don't remember. I never heard it.

Q. You were present at this conference of March 21st at the plant, weren't you? A. Between who?

Q. Mr. Runyon and Mr. Crawford, Mr. Morny, you and Mr. Preacher, Olsen. A. In Mr. Runyon's office?

Q. Yes. A. Yes, I was present.

Q. Well, was there any such statement made as I have just given you? A. I don't remember.

Q. By Preacher? A. I don't remember.

Q. Do you remember? Is your answer that you don't remember whether any such statement was made or not? A. Yes, that is my answer.

Q. Do you recall on February 7th coming up on the train from South Amboy with Mr. Morny in which you said to Mr. Morny that you had not paid much attention to the job and you would have to pay more attention to it, that the employees were jealous of you and scuttling every job that you brought in? A. No, sir; I never said that.

Q. Was any such statement made? A. No, sir.

Q. Did you at thee same time make a statement to the effect that you didn't expect to make very much, if anything, on this job; you expected to get the experience to learn what it would cost to do this kind of work? A. No, I don't remember ever saying that.

Q. Do you deny that you ever made such a statement as that? A. Yes, sir.

Q. Did you ever refuse to let them cut charging box steel other than for the boilers? A. No, sir.

Q. Did Mr. Runyon ever in your presence tell them he would not permit them to cut charging box sizes?

Mr. McCarter: I object to that as not rebuttal. This is the conference at the plant.

Mr. Haight: I wasn't certain whether Mr. Morny—I thought he said nobody was present except Mr. Runyon when at the conclusion of the conference Runyon said to him, "We will not permit you under any circumstances to cut any more charging box steel." Mr. Carey wasn't clear as to whether there was any such statement in his presence.

Mr. McCarter: I don't think it is rebuttal. I think this witness has been over the whole thing, and I am trying to save some time.

Mr. Haight: All right. I will go with you on the saving of time. I won't say another word. I think that is all.

Mr. McCarter: That is all.

Mr. Haight: There may be some other things that I cannot recall. That is all I can recall just now.

DAVID C. PREACHER, recalled for the plaintiff, in rebuttal:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Preacher, Mr. Morny has testified that when he first came on to the job in the early part of January and spoke about cutting off the angles and rivets and what not, that you said it would be cheaper to cut those pieces in charging box sizes than to cut them in that way. Did you have reference to shipping sizes when you said that?

Mr. McCarter: That is not rebuttal, I submit, if your Honor please. He can ask him if he said that, or not.

Q. Did you say it? A. No, sir.

Q. You didn't say it? A. No.

Q. Did Mr. Morny ever complain to you that the men were carrying fitting and things when they should not be carrying them, and that they were breaking furniture and fittings which he spoke of, in the washing machine? A. No, I had to tell Mr. Bernard about that. He never said anything to me about that.

Q. Did you have any complaints made to you ever by Mr. Morny? A. Not that I can recollect, no.

Q. He says that he complained to you of Peterson, that you said that he was the best man you had, if he didn't like him to get somebody else, or words to that effect. Do you recall that? A. No, sir; I do not.

Q. It is said by Mr. Morny that at the conference on March 21st at Mr. Runyon's office you said the "Philippines" had been scrapped to ten per cent. and the "Black Arrow" to thirty-three. Did you say that? A. I don't recall that.

Q. What is you best judgment? A. I don't remember anything about the proportion that was cut down at the time, now.

Q. Do you know whether you said it or haven't you any recollection of it at all? A. No, I don't believe I said it.

Q. What? A. I don't think I said it. I don't recollect it.

Q. Did you have anything to do with this test? A. With the test?

Q. Yes. A. No.

Q. I mean the gas test. A. No.

Mr. Haight: I don't think of anything else.

WILLIAM A. CAMPBELL, recalled by the paintiff, in rebuttal:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. Mr. Campbell, you are the witness who was on the stand one day last week, are you? A. Yes, sir.

Q. Did you have anything to do with this test on the "Philippines"? A. Yes, sir.

Q, As to the respective merits of the calorine and the carbo-hydrogen gas? A. Yes, sir.

Q. What was your connection with it? A. Well, it was me and Mr. Goggin was sent down there to see that both gas got a square deal.

Q. Who sent you there? A. Mr. Meurer sent me, and Mr. Bernard sent Mr. Goggin, and a man named Jack Sandrews from the calorine people, and a guy named Mr. Kelly sent there from the carbo people. So me and Mr. Goggin laid the work out. It was on the top deck.

Q. You mean Goggin? A. Mr. Goggin, yes. We both laid the work out, and that started on the top deck.

Q. You did continue the test? A. Yes, sir.

Q. What did the test show? A. It proved that the carbo was the best.

Q. Did it cut as rapidly as the calorine? A. In places it cut better.

Q. What? A. In places it cut better.

Q. Did you find that the calorine was doing anything to the burners? A. Yes, sir.

Q. What did you find? A. I found it ruined the burners.

Q. I show you what looks like a tip of a burner and ask you if that is a tip. A. That is one.

Q. You handed that to me this morning? A. Yes, sir.

Q. Is that one of the tips that was used while they were using calorine gas? A. Yes, sir.

Q. What effect did that have on the burner? A. It was so hot it was burning all the tips away.

Q. What was that doing with the burners? Did it put them out of business? A. Oh, yes, put them out of business, put the torches out of business.

Q. It has been testified that there were four men or something like four men one day that were drunk. Do you recall that? A. No, sir. The only thing I ever seen was a couple of men take sick from the calorine gas, and the calorine gas made them sick, dizzy. That is the only thing I remember. I never seen no drink.

Q. There was a man there from the calorine company that was supervising his test, wasn't there? A. Yes, sir.

Mr. Haight: That is all.

CROSS EXAMINATION BY MR. MCCARTER:

Q. How many lineal feet was cut in this test? A. Well, of course I couldn't exactly say that now, it is so long off, but it is according to the thickness of the iron.

Q. How many feet was cut? A. During the test?

Q. Yes. A. Of course I couldn't remember that, it is so long off.

Q. How many feet did the calorine cut during the whole test? A. Of course I couldn't remember that.

Q. Isn't it a fact that the calorine gas cut more of it during the test than the other gas cut? A. I don't know. I couldn't say it did.

Q. You couldn't say it did? A. No.

Q. And you couldn't say it did not? A. I admit Jack said to me—

Q. I don't care what Jack said to you. I am asking you whether to your knowledge you can't say that the calorine cut more than the carbo? A. Not in heavy places, no, the carbo cut the most.

Q. Cut the most? A. Yes, in heavy places.

Mr. McCarter. All right. That is all.

EDWARD JOHN MEURER, recalled for the plaintiff, in rebuttal:

DIRECT EXAMINATION BY MR. HAIGHT:

Q. After this carbo-hydrogen and calorine test was made was a request made to you of which you heard that you change the gas to calorine by Crawford & Company? A. No, sir.

Mr. Haight: We rest.

Mr. McCarter: There is one question I forgot to ask Mr. Morny, if the Court please. It is really reopening my case.

Frederic A. Morny. Called in Sur-Rebuttal. Direct.

DEFENDANT'S SUR-REBUTTAL TESTIMONY.

FREDERIC A. MORNY, recalled for the defendant:

DIRECT EXAMINATION BY MR. MCCARTER:

Q. Mr. Morny, there has been some testimony on behalf of the plaintiff in this case as to how much steel was cut and lying on the "Black Arrow" and the "Philippines" when they were moved. Will you tell us how much steel there was on the "Black Arrow" when it was moved away? A. There was 286 tons of steel on the "Black Arrow" and in the "Black Arrow," including the boilers and the boiler tubes. There was one carload of boilers and 253 tons of charging box steel, and there probably were one or two cars of odd pieces lying around which were oversize and which had to be recut on the "Black Arrow."

Q. How much on the "Philippines"? A. After I took some fifty tons off the "Philippines" to complete a three-hundred-ton contract, I judge, I went over to the "Philippines" and got about fifty tons to complete the contract, and probably left maybe twenty-five or thirty tons scattered on the ship on the "Philippines."

Q. Then am I to understand that it was twenty-five or thirty tons on the "Philippines" when she went away? A. Probably may have been twenty-five or thirty tons.

BY MR. HAIGHT:

Q. How much on the "Black Arrow"? A. Maybe two tons, three tons, I couldn't tell exactly. Maybe ten pieces.

Mr. Haight: I offer this tip in evidence.

(Piece of metal entered in evidence and marked Plaintiff's Exhibit P-36.)

Adjourned until tomorrow, January 13, 1925, at 10 A. M.

NEW JERSEY SUPREME COURT,

MIDDLESEX COUNTY CIRCUIT.

December Term, 1925.

PERTH AMBOY DRY DOCK COMPANY,

vs.

HARDEN L. CRAWFORD, *et al.*, as H. L. CRAWFORD AND COMPANY.

Transcript of stenographer's notes of evidence in the above entitled cause taken before Hon. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the thirteenth day of January, A. D. 1926, at 10 A. M.

APPEARANCES:

Messrs. WALL, HAIGHT, CAREY & HARTPENCE,
WILLIAM H. CAREY, Esq.,
THOMAS G. HAIGHT, Esq.,
JOHN E. TOOLAN, Esq.,
Counsel for the Plaintiff.

Messrs. MCCARTER & ENGLISH,
GEORGE MCCARTER, Esq.,
CLIFFORD, I. VOORHEES, Esq.,
PARKER SILZER, Esq.,
Counsel for the Defendants.

Mr. McCarter sums up the case for the defendants.

Mr. Haight sums up the case for the plaintiff.

Adjourned until two P. M.

Afternoon Session, 2 P. M.

Charge.

Charge to the jury by Hon. PETER F. DALY, Circuit Court Judge, as follows:

Members of the Jury: I have been requested by the counsel for the defendant to charge you a number of requests:

"18. The plaintiff is not entitled to recover any part of the amount claimed by under the seventh count."

That I charge to be so. That refers to the cutting up of the boilers into charging box sizes. That is waived.

"10. In deciding what is a reasonable time in which both ships should be completely scrapped, you must bear in mind that the contracts between the parties put no limit except that of reasonableness upon the sizes of the pieces into which the vessels were to be cut, and that the defendants had the right to requrie as much of the ships to be cut into charging box sizes as the ordinary course of trade done for the market required."

I charge that; subject to what I may say upon that subject in my general charge.

"25. You cannot find the defendants liable to pay for the sum claimed for salvaging the 'Philippines' unless you find there was some negligence by persons who were employed by the defendants."

That is true. Subject to what I may say to you upon that subject in my general charge.

"26. If you believe that the fall of the pipe which broke the sea cock that cause the flooding of the 'Philippines' was due to the breaking of a rope rather than to the dropping of the pipes, as testified to by the plaintiff's witnesses, then you must find the

defendants not liable to pay the sum claimed for salvaging that ship."

That is true, if the breaking of the rope, in case it was the breaking of the rope that caused that damage, was not due to the negligence or the express direction of the defendants, or the defendants' agents or supervisor.

Counsel for the plaintiff requests me to charge as follows: "1. Every matter of law, or of fact, which was litigated and determined in the chancery suit between the parties to this action was there finally and forever settled for all purposes"—so far as this trial was concerned at least—"and cannot be litigated, or disputed by either party in this action."

That is true.

"2. In the chancery suit it was determined that Bernard was the defendants' agent and that they were bound by his actions. That determination is binding upon the Court and jury in this action."

That is true.

"3. In the chancery suit it was finally and for all purposes determined that the work of scrapping the ship was stopped because of the fault and wrongful conduct of defendants and that by reason thereof, the presence of the ship on plaintiff's premises became wrongful, injurious to plaintiff's business, and a nuisance from which plaintiff was entitled to be relieved. That determination is binding upon this Court and jury."

That is true.

"4. In the chancery suit it was finally and for all purposes determined that the work of scrapping the ship was not stopped by any wrongful act or conduct of the plaintiff and that determination is binding upon this Court and jury."

That is true.

"5. Because of the finding and determinations in favor of the plaintiff in the chancery suit, you must find that at the time of bringing the chancery suit, to wit, July 2, 1924, defendants' ships were wrongfully and unlawfully upon plaintiff's premises because of the wrongful and unlawful conduct of defendants, and you must determine defendants' damages therefor."

That is true, if they have proved damages.

"6. In ascertaining the damages of plaintiff arising out of the unlawful presence of defendants' ships upon its premises, you must determine two things. First, what was a reasonable time for the scrapping of the ships and when that reasonable time terminated. Second, what sum constitutes reasonable compensation for the wharfage made necessary because of the presence of the ships upon plaintiff's premises after the expiration of the reasonable time until the date of their removal."

That is true.

"7. In determining what was a reasonable time for scrapping the ships you are to consider all the evidence bearing upon that subject including any and all representations and admissions of the defendants and their agents as to the time the ships would be on plaintiff's premises."

That is true.

"8. The plaintiff let to defendants the use of its plant, to the extent only provided for in the contracts for scrapping the ships. The work of scrapping and the manner of doing the same was under the supervision and control of the defendants."

That is true.

9. I refuse to charge.

10. I refuse to charge in view of the agreement of counsel.

Charge.

"11. By the terms of the contracts, defendants were required to reimburse the plaintiff for expenditures made by it for labor used in scrapping the ship. Defendants are also bound to pay the plaintiff a reasonable price for those things, such as steam, the use of pumps, and other things and implements, if any, which it was not required by the contract to furnish, but which it did furnish and which defendants ordered or accepted. If you find that defendants have not reimbursed plaintiff for expenditures made by it for labor properly used in scrapping the ship, or that defendant has not paid plaintiff a reasonable price for steam, the use of steam, the use of pumps and other things ordered by defendants or accepted and used by them in scrapping said ships"—and which was not included within the terms of the written contract—"then you should include in your verdict a proper amount to reimbuse plaintiff, for labor so paid for by it and not repaid by defendants, and also a proper amount for the reasonable price of the steam and other things including the use of implements, if any, which defendants ordered or accepted and used in connection with the scrapping of the ships."

Provided those implements were such implements as they were not required to furnish under the terms of the written contract.

"12. Plaintiff was not required by the contracts to furnish manifolds. The deductions made by defendants from plaintiff's bills for labor for handling tanks, for labor used because of lack of manifolds and for labor used in repairing tools were improper, and plaintiff is entitled to recover the amount of these deductions. Plaintiff is also entitled to recover for the use of its pumps in pumping out the

vessels, and for the steam supplied for their operations."

That is true, with the exception so far as the removal of the tanks and labor that under the written contract it was clearly their duty to furnish, such tanks as were used and known to the defendants, were used by the plaintiff as part of the plant which the plaintiff rented to the defendant, or which uses is let the defendant have.

"13. By reason of the finding and determinations of the Court of Chancery there can be no recovery by defendants on their counterclaim."

That is so.

"14. By reason of the finding and determinations of the Court of Chancery the alleged breaches of the contracts by plaintiff are disproved and they constitute no defense to plaintiff's action in this court."

That is true, so far as making any claim whatever under the counterclaim is concerned.

Any of the requests on either one side or the other, which I have not charged, I refuse to charge, except as they may be charged or covered by me in my general statement to you. Counsel may take exceptions accordingly.

You have listened, members of the jury, for four days to a rather complicated case, so far as the facts and circumstances surrounding it are concerned, and I have noted with a very real satisfaction the intensive attention with which you have followed the testimony as it was unfolded to you from the witness chair. I know you are going to approach your final and opening reason in your jury room, that will lead up to your determination, with minds that are impartial, and without prejudice or favor, either to the one side or the other.

The thoughtless very often flippantly express the opinion, that when it comes to a case like this, the ordinary trial jury is not competent to intelligently and properly pass upon questions of fact. There was a great deal of evidence which partook of a nature that was based upon technical knowledge and technical experience. Neither you nor I, I assume, had any knowledge, before the opening of this case, as to the detailed structure of ships, such as the ships that were involved in this contract, and certainly were unacquainted, I am confident, of just what was necessary to a so-called scrapping of such vessels; but, you have had the information from men who are familiar with these ships, and who are familiar with this kind of work, and now it will come to a practical application of your rich common sense in determining, from the evidence that is before you, the questions of fact that have arisen between these parties, and when such a situation as that is presented, it is my experience that when we select twelve jurors of honest minds and clean hearts, who have no other desire excepting that of doing justice between the parties, and who will go in the jury room, not with the pride of self opinionations, not with the thought that they are going to advance something of pleasure and so-called self glorification, their own ideas as to what is right and what is wrong, but with the whole-hearted desire of listening to honest discussion from all twelve, with no other purpose excepting to arrive at the truth, that then the ordinary jury is the best agency that has been known to man to arrive at as nearly a perfect result as is conceivable from the standpoint of our human experience.

No doubt you were impressed from the beginning that if two very essential factors had been put down

in black and white, there probably would not have been any necessity for this trial. If the matter of time had been put down in ink, and the detailed method of scrapping had been placed in writing, there would have been occasion for but very little of the testimony that we have been compelled, necessarily compelled, to listen to. But they were not there, and there is no undue criticism because they were not there, because notwithstanding the wealth of human experience along this line, we find every day just those things omitted; it is simply a case that if the foresight was as good as the hindsight, the courts would have but little to do.

Much discussion has been properly had in the trial of this case, between the Court and attorneys, as to the effect of a previous proceeding which was held in the Court of Chancery, and as I have already charged you, whatever that Court of Chancery held, as a matter of law, or as a matter of finding of fact, is conclusive upon us in the determination of this case. Counsel have disagreed with the Court in finding such a determination as that, so far as this case is concerned, and I want to say to you that a counsel who honestly feels that he is right, and the Court is wrong, and does not earnestly argue accordingly, and get his exceptions on record, is not worthy of the name of lawyer; and it may be that he is right and I am wrong, but at the same time, in order to have intelligent disposition of these cases, the law says that in the determination of cases before juries, that it is the law as the presiding judge gives it to you that is all conclusive upon you in the determination of the particular case.

That Court of Chancery found, among other things, as I have already charged you in the requests to charge, that Bernard was not only the supervisor

of the defendants in the prosecution of the work of scrapping the vessels, but he was also their agent and repesentative in the preliminaries which led up to the making of the contract, and as the Vice Chancellor stated in his opinion, when he spoke to the plaintiff, or the plaintiff's representatives, it was with just the same effect as though Mr. Crawford himself had spoken.

What was the time in which this work was to be done? Who is to determine what was the time in which this work was to be done? You men and women are to determine that. From your own personal ideas of it alone? No. But from what your clean, sheer reasoning power, based upon the evidence in this case, finds that time was. This being absent in the written contract, the law says that then the time in which the work was to be consummated or completed was what was reasonable for the prosecution of work of that kind, "in the ordinary course of trade done for the market." And in determining that you are to consider all of the evidence in this case that touches upon that question, as to what was reasonable time, including such evidence as you believe represents the truth as to anything that was said by the parties themselves as to the time in which the work was to be done. It is not all-conclusive, simply because you believe that it was said to them that it was to be done in three months, that it was to be done in three months. Besides that, nobody is saying that it was to be done exactly on the day of the end of three months. But the claim is that approximately three months is the time in which it was to be done. Even if you believe those terms were made, you must understand that the question of the meeting of the minds of the parties is always what is vitally essential to deter-

mine, in order to know whether there is a contract existing at all or not. But where there is a lack of writing to show what that meeting of the mind was, then you do not take it from the mere say-so of one interested part or the other interested party: but you are to apply your own commonsense and clean reasoning power, from all the facts of the case, to determine what was a reasonable time. The contention of the plaintiff is that the time was three months, or approximately three months. The contention of the defendant is that there was no time mentioned, and it was to be determined from the practical standpoint as to the time that was reasonably necessary to properly do this work in the ordinary way. Now, in determining what was a reasonable time, we are not helped much by the contract itself, so far as it details just what this work meant. It simply says the scrapping of a vessel, but it is lacking in any detail as to just how that vessel was to be scrapped. You have heard the testimony that when it came to cutting this vessel up in charging box sizes, which I will refer to as the smaller size, and cutting it up in shipping sizes, which I will refer to as the larger sizes, that it meant a great deal of difference in the time necessary to accomplish the task. From the standpoint of reason, what was a reasonable way of scrapping this vessel, as it was understood and agreed to by the plaintiffs, and as you will determine from what would be reasonable, from all the evidence in the case, in the ordinary prosecution of this work, in the ordinary way, in the ordinary market for that kind of work? In considering that and determining that you will be assisted in determining what was a reasonable time, in short, you are to take all of the evidence in this case, consider it all, discuss it with

one another, with open minds, listening to each other's honest arguments, with no pride of personal opinion, and then form your conclusion as to what you honestly feel is the truth from all the facts in the case, as to what was a reasonable time, in the ordinary prosecution of this work, in the ordinary market.

If you find that a reasonable time in which this work was to be done was such or such a date prior to July 2nd, when, the Vice-Councellor says, those vessels had no right to any longer continue there, if it is any time prior to July 2nd, then the plaintiff is entitled to compensation for the damages and loss that he suffered, as I will explain it to you, for the time that those vessels were kept there beyond what was a reasonable time in which the defendants should have completed the job of scrapping those vessels. What do the plaintiffs claim? It says, on page four, "On or about the 26th day of April, 1924, plaintiffs notified defendants that from that time on it would charge them for the use of the piers to which the said vessels were moored, and the upland and wharfage space occupied by the said vessels and used by the defendants for the storage of material removed from said vessels, at the rate of $100. per day for each ship, which said sum was a reasonable charge for value for the use by the said defendants of the said piers, upland and wharfage space." If you find that up to July 2nd, you cannot hold that up to that time there was more than a reasonable time taken by the defendants, they cannot recover under that which I have just read to you. But if you find that they should have completed their task, from the standpoint of what was reasonable time, on a date before July 2nd, then you are to consider what was a reasonable charge, or what was the rea-

sonable value for the use of the wharf, of the piers, upland and wharfage space which they continued to use after a reasonable time. You have heard much testimony along that line and it is for you to consider all of that testimony; you are not bound by and specific part of it, unless you believe in that part. You are to take it all, however, and determine what was the reasonable value for the use of the piers, the upland, and wharfage space, from the time when the defendants should not have used it, from the standpoint of having gone beyond what was a reasonable time in which to do this work.

There is an item charged also besides that which I have just referred to,—and the last that I have referred to I may properly call the big item, so far as the claim of amount is concerned,—and that is for the salvaging of this vessel. You will remember the testimony along that line; the plaintiffs claim that the breaking of this sea-cock was the result of the express direction of the defendants' agents or representatives, being carried out by the workmen, and that it was done in such a negligent way that this breaking of the sea-cock resulted and the ship was filled with water, and it had to be salvaged and it cost something like fifteen hundred and seventy-two dollars and some cents to salvage it, or to get it afloat again, as I suppose the expression would be.

I have already charged you along that line. If you find that that was due to the negligence of the defendants, or their agents, or their direct representatives, then, of course, the plaintiff is entitled to be reimbursed for what it cost him to float that ship again. You are to pass upon that; and when I say negligence, I mean lack of the care that an ordinarily prudent person would exercise, and if it it was due to lack of ordinary care of an ordinarily pru-

dent person, that was responsible for the sinking, so-called, of that ship, and if that negligence flowed from the defendants or their agents or representatives, then the plaintiff would be entitled to be reimbursed for the cost of the salvaging of that ship.

There is another item claimed, and that is for extra gas and oxygen. You will determine, from the contract, just what they were to do along the line of furnishing gas and oxygen. It is claimed, however, that the defendants, in order to speed the work and lessen the cost to them,—and you will remember that although the plaintiffs furnished the man power to do this work, that the cost of that was to be paid by the defendants,—it is claimed, as I have already stated, by the plaintiff, that in order to speed up the work, to go beyond the facilities of the plant which they had hired, that is, the plant of the Perth Amboy Dry Dock Company, that a different kind of appliance was ordered and directed and requested by the defendants, which resulted in using up more gas than would ordinarily have been used, and, therefore, there was this cost to the plaintiff.

Then there is another item charged by the plaintiff and that is that when they presented their pay rolls to the defendants, that the defendants struck out some of the items which the plaintiff paid. You will remember that under the terms of the contract the plaintiff was to furnish the man power, which man power was to be under the supervision of Mr. Bernard, and they were to present their pay rolls weekly to the defendant, and the defendant was to reimburse them for such pay rolls. It is claimed that when they presented these pay rolls that the defendants struck out some of the money which they had paid, and improperly struck that out, and if you find that is so, according to the terms of this con-

tract, that they had no right to do that, of course, the plaintiff is entitled to be reimbursed for that.

The Court: Is there any other item that I have not covered?

Mr. Haight: I think not.

The Court: I have just been told by counsel that there is no specific evidence that would warrant the fixing of any amount on the gas, and that that is waived, and, therefore, what I have said about gas you will forget.

Counsel in his summing up also stated that a claim was made, under the pleadings, for the difference between what they would have gotten for the use of this wharf, and what they did get, and that claim was based upon the claim that if the defendants had prosecuted their work within a reasonable time the plaintiff would have gotten more money from the use of the wharf than the amount they did get. You will remember Judge Haight referring, in the closing of his argument, that one of the vessels was scrapped to such and such a percentage, and another scrapped to such and such a percentage, and I am speaking about that now, because through agreement of counsel, any claim along that line is waived, so you will ignore that.

So you have the question of the so-called wharfage, which I have fully explained to you what that claim was for, and also of the deductions from the pay rolls, and the salvaging of the ship. Those three items.

So now, members of the jury, you will take this case. You have listened to the argument of counsel, who no doubt have assisted you tremendously in their summations of this case, so thoroughly and dispassionately done by each of these distinguished gentlemen, whose only object, I am sure, notwith-

standing their honest partisan feeling for their clients, has been to assist you in arriving at a proper conclusion. I want you to take this case and show by your verdict, whether it be one way or the other, that kind of a verdict that represents such dispassionate consideration of the facts in this case, as applied to the law as the Court gave it to you, as will reflect to your honor and to the credit of the county which you represent.

I have been requested to state that that last claim was waived because I did not think that it properly should go before you, and counsel both have agreed on that. It is but fair to state that.

As to July 2nd, 1924, that I have mentioned, that was the date on which the Chancery proceedings started, and, of course, the decree held that that proceeding was justified, but, if you find at all that there was unreasonableness on the part of the defendant in the time it took in keeping the vessels there, then from the time you find unreasonableness began, until the time the vessels were removed, the plaintiff would be entitled to compensation.

Mr. Haight: One of the jurors asks what dates the boats were removed. One of them was July 31st, an the other August 2nd.

Mr. McCarter: Yes.

The Court: That is the evidence.

Mr. McCarter: I wish to take some exceptions. I respectfully except to your Honor's refusing to charge any of my requests, a separate exception to each request, and I except to your refusal to charge request number nineteen specifically as requested, without the reference and subject to the rest of your charge.

Mr. McCarter: I make the same exception to my request number twenty-five.

Mr. McCarter: Same exception as to my request number twenty-six.

Mr. McCarter: I take a separate exception to your Honor's having charged each of the following requests of the plaintiff, one, two, three, four, five, six, seven, eight, eleven, twelve, thirteen, fourteen.

Mr. McCarter: I respectfully take an exception to that portion of your Honor's own charge wherein you state substantially that whatever the Court of Chancery held as law, or fact, is conclusive on us in the determination of this case.

Mr. McCarter: I except to that portion of your Honor's charge wherein your honor said that the Court of Chancery found that Mr. Bernard was not only the defendants' supervisor in the course of the scrapping, but also the defendants' agent and representative in the preliminaries to the contract.

The Court: Yes.

Mr. McCarter: And that Mr. Bernard spoke with the same effect as if Mr. Crawford himself spoke.

Mr. McCarter: I respectfully take exception to that portion of your Honor's charge where your Honor said in effect, if you find a reasonable time expired any time before July 2nd, beyond which the defendants should have completed the job of scrapping, then they may find a verdict for such damages as are proved to flow.

Mr. McCarter: I also take an exception to that portion of your Honor's charge wherein your Honor said that if the jury found that the defendants improperly struck out from any part of the pay roll, that the plaintiffs could recover that.

Mr. Haight: I respectfully except to your Honor's charging of the nineteenth, twenty-fifth and twenty-sixth requests of the defendant.

Charge.

Mr. Haight: I except to your Honor's refusal to charge the plaintiff's ninth request.

Mr. Haight: I except to your Honor's refusal to charge the twelfth request in the language in which it was framed.

Mr. Haight: I also except to these two parts of your Honor's general charge:

One: To the effect that the jury should take into account, in determining reasonable time, what was the reasonable time of scrapping these vessels, and so forth.

Two: The latter part of your charge wherein you said that if the jury should find that the sinking of the "Philippines" was due to the negligence of the defendants or defendants' direct representatives, and so forth, my point being that the question of negligence did not enter into the sinking of the "Philippines," but that we were entitled to recover as requested in one of our requests to charge.

Defendants' Requests to Charge.

1. There is no evidence in the case from which you can find that the two vessels in question remained at the plaintiff's yards more than a reasonable time.

2. The plaintiff is not entitled to recover anything under its claim for berthing the two vessels in question.

3. There is no evidence that the defendants have neglected and refused to pay the plaintiff any moneys expended by and due to the plaintiff for labor in and about the scrapping of the vessels in question.

4. The plaintiff is not entitled to recover any damages under its claim for unpaid labor in and about the scrapping of the vessels in question.

5. The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as "deductions for labor in handling tanks."

6. The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as "labor lost on account of lack of manifold."

7. The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as "labor on account of lack of air."

8. The plaintiff is not entitled to recover any part of the moneys demanded by it and described

on Exhibit P-15 as "miscellaneous labor ordered by Bernard."

9. The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as "labor lost on account of crane off track."

10. The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as "labor making wrenches."

11. The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as "labor on steam line."

12. The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as "use of steam, 19½ hours, $117."

13. The plaintiff is not entitled to recover any part of the moneys demanded by it and described on Exhibit P-15 as "use of air pump."

14. The plaintiff, in support of its claim for the various items enumerated on Exhibit P-15, has the burden of establishing, and before it is entitled to recover any part of any such items, must establish, by the preponderance of the evidence that the labor claimed was actually performed, and that it was such labor as, under the contracts in suit, would entitle the plaintiff to require the defendants to reimburse the plaintiff therefor.

15. The plaintiff is not entitled to recover any part of the amount claimed by it under the fourth count.

16. The plaintiff is not entitled to recover any part of the amount claimed by it under the fifth count.

17. The plaintiff is not entitled to recover any part of the amount claimed by it under the sixth count.

18. The plaintiff is not entitled to recover any part of the amount claimed by it under the seventh count.

19. In deciding what is a reasonable time in which both ships should be completely scrapped, you must bear in mind that the contracts between the parties put no limit except that of reasonableness upon the sizes of the pieces into which the vessels were to be cut, and that the defendants had the right to require as much of the ships to be cut into charging box sizes as the ordinary course of trade done for the market required.

20. The contracts between the parties do not require he boilers to be removed intact, instead of being cut up, and you must bear this in mind in deciding what is a reasonable time in which the ships should be completely scrapped

21. There is no competent evidence on which you can award the plaintiff more than nominal damages on the claim for use of piers, upland and wharfage space.

22. The plaintiff has not established by the preponderance of the evidence that the labor claimed to have been performed and for which the plaintiff is asking reimbursement was in fact performed or was such labor as under the contracts in suit would entitle the plaintiff to require the defendants to reimburse the plaintiff therefor.

23. It is established by the evidence that it would have been impossible for the "Philippines" and "Black Arrow" to have been completely scrapped at the plaintiff's plant within the period of three months.

24. The plaintiff has failed to establish by the preponderance of the evidence that the two ships, "Black Arrow" and "Philippines," could with reasonable diligence have been completely scrapped at the plaintiff's plant within a period of three months.

25. You cannot find the defendants liable to pay for the sum claimed for salvaging the "Philippines" unless you find there was some negligence by persons who were employees of the defendants.

26. If you believe that the fall of the pipe which broke the sea-cock that caused the flooding of the "Philippines" was due to the breaking of a rope rather than to the dropping of the pipe, as testified to by the plaintiff's witnesses, then you must find the defendants not liable to pay the sum claimed for salvaging that ship.

Exhibit P-1.

Certified Copy of Record of Court of Chancery.

BILL OF COMPLAINT.
(Filed June 30, 1924)

IN CHANCERY OF NEW JERSEY. TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

Perth Amboy Dry Dock Company, a corporation of the State of New Jersey, respectfully shows that:

1. Complainant was incorporated in the year 1887, for the purpose of doing, and immediately engaged in, a general ship repair and dry dock business, which it has continued since that time at a plant and upon premises (including piers, docks, upland and lands under water) which it owns at Perth Amboy, New Jersey.

2. Harden L. Crawford and James W. Decker, the defendants herein, are partners trading as H. L. Crawford & Co., with their principal place of business at 50 Broad Street, in the City of New York.

3. On December 20, 1923, complainant entered into two certain contracts with the said defendants, partly written and partly oral, whereby the complainant agreed to permit the defendants to use its plant at Perth Amboy, New Jersey, for scrapping two steel steamships known as the "Philippines" and "Black Arrow," and the defendants agreed to pay the complainant for said use in connection with the said vessels, respectively, the sums of $16,554 and $9,948. The complainant further

agreed to berth both ships at the same time at its plant; to furnish the gas and oxygen for cutting up—by burning—such parts thereof as in the scrapping process were to be cut up; to furnish certain hose and burning outfits; to furnish locomotive crane for handling such material as would leave complainant's yard by cars, lighter or trucks; to furnish the use of a floating derrick for lifting up to five tons, the same, however, not to include ordinary scrap material; to furnish general supervision of the work under defendants' representative; to furnish such stage planking as might be necessary; and to pay for labor employed in the scrapping and removing of material from complainant's premises, including assistant foreman, timekeeper and day and night watchmen in actual charge of the work. The defendants agreed, among other things, to pay the bills for labor weekly; to pay for the use of the plant monthly in proportion to the work done, and to complete the scrapping of the vessels so that they would be out of complainant's plant within a period of three months from the time they were brought there. It was mutually understood and agreed that the superstructures of the vessels were to be cut up in what are known as "charging box sizes"; that is to say, pieces 22 inches wide by 5 feet 6 inches long; that the boilers and engines were not to be cut up, but otherwise removed; that the piping, electrical fixtures, conduits and engine room auxiliaries were to be taken apart by hand and removed without being cut up; and that the remaining parts of the vessels were to be cut in what are known as "shipping sizes"; that is to say, pieces not smaller than 20 inches long by 5 feet 6 inches wide. Copies of the written parts of the said contracts are annexed hereto as Exhibits 1 and 2 and made a part hereof.

4. On December 22nd, 1923, the Steamship "Black Arrow" was brought to complainant's plant, and on December 27, 1923, the Steamship "Philippines" was brought there; both vessels being moored to a separate pier; and the work of scrapping them was begun shortly thereafter.

5. Complainant has fully performed, insofar as the defendants have permitted it to do so, all of the provisions of said contracts on its part to be performed.

6. The defendants, in violation of the contracts, cut up large parts of both of the said vessels, other than the superstructures, in charging box sizes, and also cut up the said miscellaneous parts of the vessels, which it had been agreed, as aforesaid, were to be taken apart by hand and removed without being cut up. They thereby caused the complainant to expend for gas and oxygen (which, under the contracts, it was required to furnish) a very much larger sum of money than it would have been necessary to expend had the cutting been done as the contracts provided, the same amounting in the aggregate to over $3,200; and they have refused to reimburse the complainant therefor.

7. The defendants have arbitrarily and without justifiable cause deducted from the bills which complainant has rendered for the moneys expended on behalf of the defendants for labor, large sums of money amounting in the aggregate to over $1,200, and have refused, and still do refuse, to pay the same to complainant.

8. During the scrapping of the Steamship "Philippines," a seacock was broken owing to the manner in which the defendants required the work

of scrapping to be done, and in order to prevent her sinking at the dock, the complainant was required to expend the sum of over $1,500, which said sum the defendants refuse to pay to the complainant.

9. The time within which the "Black Arrow" should have been completely scrapped and out of complainant's plant expired on the 22nd of March last, yet the said vessel, although more than six months have elapsed since she was brought to complainant's plant, is only 80 per cent. scrapped, and, with the exception of cutting up the engines and boilers (which has been done under special agreement with the complainant), no work has been done in the way of scrapping the said vessel since the middle or latter part of May, last.

10. The time within which the Steamship "Philippines" should have been completely scrapped and out of complainant's plant expired on the 27th of March, last, and, although six months have elapsed since the said vessel was brought to complainant's plant, she has been scrapped only to the extent of about 30 per cent., and no work whatsoever in the way of scrapping her has been done since about the first of May, last.

11. After the time within which the vessels, according to the said contracts, should have been completely scrapped and out of complainant's plant had expired, complainant notified defendants that if the vessels were to remain longer at complainant's plant, it would be necessary for defendants to pay wharfage at the rate of $100 per day per vessel, the same being a reasonable charge. The defendants have refused to pay this or any other sum for wharfage.

12. The said vessels are still, of necessity, moored to two of complainant's piers, which it is necessary that complainant use in carrying on its ordinary ship repair and dry dock business, and their presence there is seriously interfering with complainant's ordinary business and causing complainant very serious and irreparable loss and damage. During the spring and summer months, complainant's dry docks, piers and other facilities are in very great demand, and the amount of business that it does during those times is far greater than during the other months of the year.

Complainant entered into the contracts, which were entirely out of complainant's ordinary line, only upon the understandig that the scrapping would be carried on during the winter months, when complainant would have little use for the piers to which the vessels were to be tied and for the facilities which it would be required to furnish under the contracts for the scrapping of them, and would be fully completed in three months, by which time complainant would and did need the said piers and facilities for its regular business.

13. The Steamship "Black Arrow" is now in a dangerous condition and liable to break in two and sink. If this should happen, complainant's pier or dock to which she is moored would be completely put out of use until the wreckage could be raised by some wrecking company, which would entail a heavy expense and would take a considerable length of time, thus inflicting on the complainant a very substantial loss.

14. The Steamship "Philippines" is 500 feet in length and extends about 150 feet beyond the pier to which she is moored. In her present condition she is a menace to navigation.

15. Much more than a reasonable time for the complete scrapping of these vessels has expired since they were brought to complainant's plant, and the defendants are making no effort whatsoever to proceed with the scrapping.

16. On June 19th, complainant served a demand in writing upon the defendants to remove the vessels on or before June 24th, and advised them that in the event of their failure to do so, complainant would be compelled to take legal proceedings to compel them. The defendants have not only failed to make any effort to remove the vessels, but they have refused to do so.

17. Complainant cannot cut the vessels adrift and thus remove them from its plant, because they would become a menace to navigation and the defendants would lay themselves open to serious penalties under the federal laws and claims for damages on the part of anyone whose vessels or property might be injured by them. In order to remove the vessels to some other point, it would be necessary for complainant not only to take the chance of their sinking on their way, but to pay the cost of removal, wharfage, watchmen, pumpmen, and to enter into an agreement with any wharfinger where they might be berthed to indemnify him against any damage which he might ssutain if either or both of the vessels should sink. The expenditure thus required would be very great.

18. Complainant is without adequate remedy in the courts of law and, therefore, prays:

1. That the defendants, Harden L. Crawford and James W. Decker, partners trading as H. L. Crawford & Co., may answer this bill of complaint and each statement therein made.

2. That the defendants may be ordered to forthwith remove the said vessels from the complainant's plant, and to that end, that a preliminary and permanent mandatory injunction, so commanding them, may issue.

3. That the defendants be ordered and decreed to pay to complainant such sum as this Court may determine is reasonable and proper for the wharfage which the complainant has furnished the said vessels since the time that this Court may find that, under the said contracts, they should have been completely scrapped or removed from complainant's plant.

4. That a writ of subpoena may issue, commanding the said defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

WALL, HAIGHT, CAREY & HARTPENCE,
Solicitors for and of Counsel
with Complainant.

EXHIBIT 1. ATTACHED TO BILL OF COMPLAINT.

Cable Address "Padrydock"
Western Union Code

W. Parker Runyon, Pres't.
Chas. D. Snedeker, Treas.

Telephones
Perth Amboy No. 6
Perth Amboy No. 7

PERTH AMBOY DRY DOCK CO.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks, capacity up to 10,000 Tons.

Perth Amboy, N. J., December 19, 1923.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

Any agreement made herein is contingent upon strikes, accidents, delays of carriers, or any other conditions beyond our control.

As per your request, we quote you Sixteen Thousand Five Hundred Fifty Four Dollars ($16,554), for the use of our plant, for scrapping the S.S. "Philippines," as noted below:

1. We to berth ship at yard, taking two ships at one time.

2. We to furnish gas and oxygen for cutting, also use of hose and burning outfits required by Mr. Bernard.

3. We to furnish use of locomotive crane for handling such material as would leave our yard by cars or lighter or trucks.

4. We to furnish use of floating derrick for lifting up to 5 tons, it being understood that we are not to furnish derrick for handling ordinary scrap material.

5. We to furnish general supervision of work under Mr. Bernard.

6. We to furnish such stage planking as may be necessary to do the work.

7. You to pay pay roll costs, of all labor used in scrapping, including assistant foreman, time keeper and day and night watchmen, in actual charge of this work only. Also labor in removing material from yard.

8. You to pay for services rendered by outside contractor for railroad.

9. Bills for labor to be rendered weekly. Bill for use of plant to be rendered monthly and to be proportioned to work done. All bills to be paid within thirty days.

10. We to assume liability for compensation to our employees for injury.

11. We agree to furnish a connection by rail from the dock to present tracks.

Hoping to be favored with your valued order, we remain,

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
(Signed) C. D. Snedeker, Treas.

Accepted Dec. 20, 1923.
H. L. Crawford.

EXHIBIT 2. ATTACHED TO BILL OF COMPLAINT.

Cable Address "Padrydock"
Western Union Code

W. Parker Runyon, Pres't.
Chas. D. Snedeker, Treas.

Telephones
Perth Amboy No. 6
Perth Amboy No. 7

PERTH AMBOY DRY DOCK CO.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks, capacity up to 10,000 Tons.

Perth Amboy, N. J., December 19, 1923.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

Any agreement made herein is contingent upon strikes, accidents, delays of carriers, or any other conditions beyond our control.

As per your request, we quote you Nine Thousand, Nine Hundred Forty Eight Dollars (9,948), for the use of our plant, for scrapping the S.S. "Black Arrow" as noted below:

1. We to berth ship at yard, taking two ships at one time.

2. We to furnish gas and oxygen for cutting, also use of hose and burning outfits required by Mr. Bernard.

3. We to furnish use of locomotive crane for handling such material as would leave our yard by cars or lighter or trucks.

4. We to furnish use of floating derrick for lifting up to 50 tons, it being understood that we are not to furnish derrick for handling ordinary scrap material.

5. We to furnish general supervision of work under Mr. Bernard.

6. We to furnish such stage planking as may be necessary to do the work.

7. You to pay pay roll costs, of all labor used in scrapping, including assistant foreman, time keeper and day and night watchmen, in actual charge of this work only. Also labor in removing material from yard.

8. You to pay for services rendered by outside contractor for railroad.

9. Bills for labor to be rendered weekly. Bill for use of plant to be rendered monthly and to be proportioned to work done. All bills to be paid within thirty days.

10. We to assume liability for compensation to our employees for injury.

11. We agree to furnish a connection by rail from the dock to present tracks.

Hoping to be favored with your valued order, we remain,

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
(Signed) C. D. Snedeker, Treas.

Accepted December 20/23.
H. L. Crawford.

AFFIDAVIT OF EDWARD J. MEURER OF EXHIBIT 2. ATTACHED TO BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

PERTH AMBOY DRY DOCK COMPANY,
Complainant,

vs.

HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY,
Defendants.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

EDWARD J. MEURER, of full age, being duly sworn according to law, on his oath says:

I am at the present time, and have been for about one year, in the employ of the Perth Amboy Dry Dock Company.

On December 16, 1923, I was advised by the office manager of the dry dock company that a Mr. Bernard, representing H. L. Crawford & Company of New York, had called on the telephone and requested a conference with a representative of the dry dock company in reference to the scrapping of two vessels. Accordingly, on the following day, I called at the office of H. L. Crawford & Company and there saw Mr. Bernard, Mr. Mornay and Mr. Crawford. Mr. Bernard stated in Mr. Crawford's presence that H. L. Crawford & Company had purchased five steel ships from the United States Shipping Board for the purpose of scrapping them. He stated that they wished to get our figures for the

use of our plant for the scrapping of two of them, which were located near the Dry Dock Company's plant. We did not go into any detail at that conference, but it was arranged that Mr. Bernard was to meet me and our master mechanic at our office the following day for the purpose of going aboard and inspecting the vessels.

On December 18th Mr. Bernard came to our office and met Mr. Preacher, our master mechanic, and myself. We went on board the vessels "Philippines" and "Black Arrow," which were moored in the Kill von Kull, and examined them. I asked Mr. Bernard how long the vessels were to remain at our plant and he said three months. It was, of course, necessary for me to know how long the vessels were to be tied up at our docks and our facilities used in order to give him a figure for the use of our plant in scrapping the vessels. Mr. Bernard told Mr. Preacher and me that the superstructures of the vessels were to be cut up in charging box sizes (which in the trade, is well understood to mean pieces 22 inches wide by 5 feet 6 inches long), and that the balance of the vessels, except as hereinafter stated, was to be cut up in what are known as "shipping sizes"; that is to say, pieces not under 20 feet long by 5 feet 6 inches wide. He further stated that the engines and boilers would be removed and not cut up, and that the piping, electrical fixtures, conduits and engine room auxiliaries were to be taken apart by hand and removed without being cut up.

In order to show exactly how the vessels were to be cut up, Mr. Bernard went down between decks with us and there marked on the hull of the "Black Arrow" in chalk, the sizes into which the vessels were to be cut. The sizes thus indicated, except the superstructures, were what I have heretofore referred to as "shipping sizes".

At the conference in Mr. Crawford's office before mentioned, it was stated that Mr. Bernard would have charge of the work of cutting up the vessels, but that it was desired that we should procure the men who would do the necessary cutting to work under him; that we should pay the men in the first instance and render weekly bills to Crawford & Company for the amount so paid, and that they would reimburse us for the same.

After inspecting the boats, I made up an estimate of the amount which we would charge Crawford & Company for the use of our plant while the vessels were being scrapped and for the gas and oxygen necessary for the cutting (which, in our preliminary conference in Crawford & Company's office, it was stated they desired us to furnish). The figure, of course, contemplated a reasonable profit to the dry dock company.

In making up my estimate, I was, of course, guided by Bernard's statement that they would use the plant for only three months and that the vessels were to be cut up in the sizes heretofore mentioned. It, of course, would require far more gas and air to cut up a vessel in smaller than shipping sizes.

After having made my estimate, I submitted it to Mr. Preacher and then took it up with Mr. Charles D. Snedecker, the Treasurer of the Dry Dock Company, with the result that we prepared a written estimate, which, on December 19th, I took to the office of H. L. Crawford & Company in New York. I submitted the same to Mr. Crawford. The estimate contained an agreement on the part of Crawford & Company to pay a certain percentage of the cost of labor in scrapping the vessels to cover employers' liability insurance. Mr. Crawford was satisfied with everything else in the estimate,

or proposal, except that. I told him that I had no power to change the proposal in any particular. I thereupon called Mr. Snedeker on the telephone and Mr. Crawford spoke with him. The conversation related to this 5 per cent. item. Among other things, I distinctly recall Mr. Crawford's saying that the ships would be entirely cut up and scrapped within three months' time. He was urging this fact as a reason for having us agree upon a lump sum figure for the employers' liability insurance rather than a percentage of the actual cost of labor. The matter was finally left in abeyance to be settled at a conference of the officers of the Dry Dock Company to be held that day or evening. We had such a conference during the evening at the home of W. Parker Runyon, the President of the Dry Dock Company. At that time, all of the terms of the contract, as outlined in the proposal, and the manner in which the scrapping was to be done, the time the vessels were to remain at our plant, &c., were discussed, and it was finally agreed to accede to Mr. Crawford's request that a lump sum figure be fixed for the employers' liability insurance.

On the following day I drew up a new proposal for each vessel, which Mr. Snedeker signed, and took them to Mr. Crawford's office in New York. He signed them in my presence. A copy of each proposal is annexed to the bill of complaint herein as "Exhibits 1 and 2."

On December 22nd, the "Black Arrow" was brought to our plant, and on the 27th the "Philippines" was brought there. They were moored, as they had to be, alongside two of our docks, which are ordinarily used by us when we are engaged in the repair of vessels. Work of scrapping was begun shortly after the vessels were brought to our plant. I paid no attention to the scrapping as that was not within the scope of my duties.

In the latter part of February or the early part of March, it was brought to my attention that Crawford & Company intended to have other parts of the vessels than the superstructures cut up in charging box sizes. As soon as I learned of this I protested to Mr. Bernard, recalling to him the agreement made in December as to the sizes into which the vessels were to be cut. He did not dispute in any way my statement of the agreement, but told me that he had no choice in the matter, as he was working under instructions from the New York office of Crawford & Company. I thereupon caused a letter to be written to H. L. Crawford & Company under date of March 3, 1924, a copy of which is annexed hereto as "Exhibit 3." On March 6th we received from Crawford & Company a letter, of which a copy is annexed hereto as "Exhibit 4." This letter, of course, is an admission that the original intention was that the vessels, other than the superstructures, were to be cut up in shipping sizes. The statements in the latter part of the letter, however, are without any foundation, because we have never failed to provide all the facilities which Mr. Bernard requested for scrapping the vessels. Indeed, he originally told us that he would require only thirty burners for the two vessels; at times we furnished him as many as forty. The work was entirely under his direction and we had nothing to do with it other than furnishing men and facilities at different times to do the cutting. Indeed, I know that at times the men employed in the scrapping were hired directly by Bernard or his assistant, and not by the Dry Dock Company.

Notwithstanding our letter of March 3rd and their reply of March 6th, they subsequently, as I learned several weeks later, proceeded to cut up parts of the vessels, other than the superstructures,

in charging box sizes. This entailed a considerable additional cost to us through the extra expense of gas and air used, which, up to April 25th we calculated amounted to the sum of $3,226.

I know that further protests against the cutting into charging box sizes were made by Mr. Runyon through letters written to H. L. Crawford & Company. I personally made verbal protests to Mr. Bernard and Mr. Gilbert, Mr. Bernard's assistant.

About May 1st, 1924, all work in the way of scrapping the "Philippines" was stopped and has not been resumed since that time, although we have been at all times entirely willing to furnish them with the facilities necessary to do the cutting and scrapping. With the exception of the cutting up of the boilers, which has been done under an agreement evidenced by certain letters to be attached to one of the other affidavits in this matter, no work in the way of scrapping the "Black Arrow" has been done since the latter part of May, and very little had been done on this vessel for some weeks before that time. If proper dilignce had been exercised in the way of scrapping the vessels, the work would have been completely finished and the vessels out of our plant by the expiration of three months. Indeed, Mr. Bernard told me about two weeks ago that had the people in the New York office of the concern permitted him to cut up the vessels as he originally laid them out, the work would have been entirely completed within three months. The delay in cutting up the vessels has been due to the change in the size of cuttings and a drop in the price of steel and the disinclination on the part of Crawford & Company to cut them up, when to do so, because of the drop in the price of steel, would entail a financial loss. Indeed, Mr. Bernard told me this about a month ago.

In quoting the figures set forth in Exhibits 1 and 2, we were influenced by the fact that the work would be done during the winter, when, in all probability, we would have very little use for the part of our plant where the vessels would be scrapped or the facilities which would be necessary to scrap them. We would, of course, not have made the contract at all had we not been assured that the vessels would be out of our plant by the end of three months, which would be just about the time that the spring work ordinarily commences and when we would need the space occupied by these vessels and the facilities employed in carrying on our usual and general work.

The steamer "Black Arrow" is now in a dangerous condition for the reason that there are approximately 800 tons of scrapped steel distributed on her lower deck, which is the last deck left in the vessel, all above that deck having been removed. The plates of this deck have been practically all cut and are just being held together by a few angle irons and her midthwartship beams. She is thus in a very much weakened condition and is liable to break in two and sink. If this should happen, this dock would be completely put out of use until the wreckage could be raised by some wrecking company. This would entail a very heavy expense and the length of time necessary to accomplish this is very uncertain. The loss to the company would be very great.

These two steamers are moored to two different docks. They are so situated that the company is liable to make but little use of either of the docks, and as located, they are constantly and seriously interfering with the business of the company. Repeatedly the company has been compelled, by reason of the presence of these ships at these docks,

to perform its regular work on other vessels at a great disadvantage and at a large increase in cost.

The steamer "Philippines" now occupies a berth which was arranged for and fitted to receive our No. 3 dry dock. The company has been obliged to move this dry dock to another location, where it is operated at a largely increased expense to the company. This steamer is about 500 feet in length. She extends beyond the end of the company's pier. The water traffic at this season of the year is much heavier than in the winter months, and in her present position she is a menace to navigation.

On March 27th I had a conference with Mr. Mornay, the representative of Crawford & Company in the New York office in charge of the scrapping of the vessels, in reference to cutting them up in smaller than shipping sizes. He at that time asked me if we would have any objection to their cutting up such parts of both vessels as they wished in charging box sizes provided they furnished their own gas, air and manifold. On March 28th Mr. Runyon wrote them a letter, agreeing to the proposition. They never, however, attempted to do this.

EDWARD J. MEURER.

Subscribed and sworn to before me this 28th day of June, 1924.

CHARLES J. GORMLEY,
Master in Chancery of New Jersey.

EXHIBIT 3. ATTACHED TO BILL OF COMPLAINT.

March 3, 1924

Mr. H. L. Crawford
H. L. Crawford & Co.,
50 Broad St.,
New York, N. Y.

Dear Sir:

At the time that your representative Mr. Bernard came down here to talk over the matter of scrapping the "Black Arrow" and the "Philippines" the writer, Mr. Preacher and Mr. Bernard went over to the fleet where these two boats were tied up and looked over both of the ships.

Mr. Bernard at that time informed us that he intended scrapping the ships in the following manner:

The entire superstructure to be cut up into charging box sizes and the rest of the hull cut up into large size plates for shipment to China and the engines and boiler were going to be lifted out without being entirely dismantled for shipment to Germany. Mr. Bernard informed the writer that you had a representative in Germany trying to dispose of the engines and boilers of these ships.

It has been brought to the attention of this company that you now intend cutting up these ships entirely in charging box sizes and that the engines and boilers are to be dismantled, the boilers being cut to suit the requirements of the steel company. Should this plan be carried out, you will realize that there will be a greater amount of gas

and air required to do this work than was originally contemplated, and we do not feel that we should stand this additional expense as the work was laid out to us at an entirely different angle.

Kindly advise us what your opinion is in the matter.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
President.

AMB

EXHIBIT 4. ATTACHED TO BILL OF COMPLAINT.

Affidavit of Edward J. Meurer.

H. L. CRAWFORD & CO.,
50 Broad Street
New York City.

March 6, 1924.

Perth Amboy Dry Dock Co.
Perth Amboy, N. J.

Att. Mr. Meurer

Gentlemen:

Your letter of March 3d states that it has been brought to your attention that we now intend cutting up the two ships entirely into charging box sizes. I would appreciate knowing who has brought this matter to your attention, and where you have gotten your information, as there has been no change in our plans for scrapping of the ships.

We have contracted for the sale and must deliver a quantity of ship plates for export, and are most desirous of getting out these plates and shipping same promptly. If, however, through no fault of ours but of the Dry Dock Company, in not providing facilities to allow us to carry out the sale of the ship plates, then and in that case the only market that we will have will be for charging box sizes.

The time is getting very short, and very little progress is being made, and so far as we can see, it is through no fault of ours.

Very truly yours,

H. L. CRAWFORD & CO.

Affidavit of David C. Preacher.

EXHIBIT 4. ATTACHED TO BILL OF COMPLAINT.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

David C. Preacher, being duly sworn on his oath says that for more than twenty years last past I have been and now am in the employ, as a master mechanic, of Perth Amboy Dry Dock Company, the complainant in the foregoing bill of complaint mentioned; I am familiar with the contracts for the scrapping of the S. S. "Black Arrow" and S. S. "Philippines." My duties in connection with the performance of these two contracts has been to provide the necessary men, gas, oxygen, tools and appliances for carrying on the work provided for in said contracts. My first connection with these contracts and with the performance thereof was when Mr. Meurer and Mr. Bernard, of H. L. Crawford & Company, and I went on board these vessels to inspect the same, and to ascertain the work required to be done thereto. This was on December 18, 1923. On that occasion Mr. Bernard stated to Mr. Meurer and me that the work of scrapping these two vessels would be completed within three months. He also stated that with the exception of the superstructure of these vessels and the engines, boilers, piping and auxiliaries, the vessels were to be cut into pieces known as "shipping sizes," and the superstructures were to be cut in "charging box sizes." In the business "shipping sizes" means pieces five feet six inches in width and twenty feet or over in length; "charging box sizes" means pieces twenty-two inches wide and five feet six inches long. In order to make clear what was indicated by shipping sizes, Mr. Bernard

went in between decks on the "Black Arrow" and marked off on the ship side with chalk, a plate for shipping size. He also marked off by way of illustration a shipping size on one of the bulkheads. We also went into the engine room and Mr. Bernard explained that the engines were to be removed without being broken up as they intended to ship these, with the boilers, abroad. At the same time he pointed out the auxiliaries and stated that those would be removed by hand and not burned; also all the piping and conduits throughout the vessels were to be treated in the same way because they had a market for the material, provided it was not burned or damaged in any way.

On the morning after the meeting on board the ships, Mr. Meurer came to my office with an estimate covering the work to be done in scrapping these vessels, and an estimate of the cost. We discussed the matter and concluded that on the basis of the work as explained to us by Mr. Bernard, when we were on board the ships the previous day, that the estimate as prepared was about right.

On the evening of December 19, 1923, I was requested to attend a meeting at Mr. Runyon's house, which I did. Mr. Runyon, Mr. Snedeker and Mr. Meurer were there and the work as outlined to Mr. Meurer and me by Mr. Bernard when we went on board the ship was discussed in detail. Mr. Snedeker stated the substance of the conversation he had with Mr. Crawford by telephone on that day, and stated, among other things, that Mr. Crawford had said that the work on the vessels would be completed within three months. Mr. Crawford's part of the conversation as stated by Mr. Snedeker was confirmed by Mr. Meurer, who was with Mr. Crawford at the time he was talking with Mr. Snedeker. On the basis of these reports the contracts

Exhibits 1 and 2 were prepared and signed by Mr. Snedeker on behalf of the Perth Amboy Dry Dock Company, and they were later accepted by Mr. Crawford as indicated in the copies of said Exhibits 1 and 2 which are attached to the bill of complaint herein.

The steamer "Black Arrow" was docked at the dry dock company's plant on December 22nd, and the steamer "Philippines" was docked there on December 27th. Shortly after these steamers were docked the work of scrapping was begun. Mr. Bernard had supervision thereof as the representative of Crawford & Company, or in his absence, Mr. Williams and later Mr. Gilbert, acted in his place. From day to day I furnished men, tools, gas, oxygen and other necessary equipment and appliances for carrying on the work in accordance with the requests of Mr. Bernard. Before the work was commenced Mr. Bernard stated that he would require about fifteen burners for each vessel. I always furnished all the men, tools, materials and equipment which he requested, and at times furnished about twenty burners for each vessel, instead of fifteen.

While Mr. Williams was in charge in the absence of Mr. Bernard, he ordered the men to burn the pipes and let them drop, instead of using proper tackle to lower them. I protested against this method of removing the pipes on the ground that it was dangerous, and that damage would result. Mr. Williams insisted that it be done that way, and while it was being so done, a piece of pipe dropped on one of the seacocks, broke it and caused the partial flooding of the "Philippines." It thereupon became necessary to immediately employ a wrecking company to prevent the sinking of this ship.

A few days thereafter Mr. Williams was succeeded by Mr. Gilbert, who acted for Mr. Bernard

in his absence. Within a short time after he took charge he began employing men on his own account, and thereafter he made requisition upon me for burners only. He employed all other labor. About that time Mr. Bernard directed me to remove Mr. Peterson, the foreman supplied by the dry dock company. Thereafter the work done by Mr. Peterson was taken over by Mr. Gilbert.

Toward the end of April the work on these vessels began to slacken materially. This was due entirely to Crawford & Company and was not in any way or to any extent chargeable to any default on the part of the Dry Dock Company. In the very first part of May work on the "Philippines" was entirely suspended and has not been resumed. Since the latter part of May there has practically been no work done on the "Black Arrow," except the cutting up of the boilers, and that has now been completed. At the present time no work in the line of scrapping these vessels is being carried on on either.

At the present time the "Black Arrow" has been cut down to the lower deck, which is only about 16 feet above the water line. On this deck there is stored approximately 800 tons of scrap steel resulting from the cutting up of this vessel. The steamer has been greatly weakened by cutting the plates, and is held together only by the thwartship beams, and because of this materially weakened condition and the heavy load, it is in great danger of breaking apart and sinking. If this should happen the ship would be completely blocked and the pier entirely put out of business, and would probably be greatly damaged. To raise the wreck would be a very costly operation and the time required for so doing is uncertain, but would very likely extend for a considerable period. In this event the

interference with the business of the dry dock company and its loss of earnings would be large, and it would be a very serious matter to the company.

The "Philippines" extends approximately 150 feet beyond the end of the company's pier. The sea traffic is now materially greater than during the winter months, and the present location of the "Philippines" is dangerous to navigation. This steamer also occupies the berth intended for dry dock No. 3. That dry dock has necessarily been removed to another location much further from the machine shop and it is being operated at a materially increased expense. It is in a much less convenient location. The steamer is also in direct line with the company's large 25 ton derrick, and the use of that derrick is thereby very materially interfered with, and the company has been obliged to hire an outside derrick to do the work which otherwise would have been done with this derrick.

DAVID C. PREACHER.

Subscribed and sworn to before me this 28th day of June, 1924.

CHARLES J. GORMLEY,
Master in Chancery of New Jersey.

AFFIDAVIT OF CHARLES D. SNEDEKER OF EXHIBIT 4, ATTACHED TO BILL OF COMPLAINT.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

CHARLES D. SNEDEKER, of full age, being duly sworn according to law, upon his oath, says:

I reside at Perth Amboy, New Jersey, and am and have been for a number of years Secretary and Treasurer of Perth Amboy Dry Dock Company, a corporation organized under the laws of New Jersey. I have read the foregoing affidavit of Edward J. Meurer. I signed on behalf of the Perth Amboy Dry Dock Company the proposals, copies of which are annexed to the bill of complaint as Exhibits 1 and 2. On the 18th day of December, as near as I can fix the date, Mr. Meurer, who was in the employ of the Perth Amboy Dry Dock Company, advised me of the proposition which he had received from H. L. Crawford & Company, to let them use our plant for the scrapping of the Steamship "Black Arrow" and the Steamship "Philippines" which they had purchased from the Shipping Board. He went over the proposition with me and advised me that the work was to be completed within a period of three months and urged that fact as a reason why we should accept the proposition and further that this would enable us to make use of a part of our plant during our dull season which would not otherwise be fully employed. I did not attempt to estimate the amount which we should charge. That was left to Mr. Meurer. I did, however, insist that as Crawford was paying for the labor, he should also pay for the insurance which we would be required to carry in respect to the men who would be employed on the job, as the proposition contemplated the hiring and

paying of the men by us and our reimbursement by Crawford & Co. I, therefore, directed Mr. Meurer to ask that we be paid five per cent. of the labor cost to cover this insurance. The original proposition which Mr. Meurer prepared contained such a provision. The following day, while I was attending a meeting of the Board of Directors of the First National Bank of Perth Amboy, I was called on the telephone by Mr. Meurer from New York and he advised me that he was in conference with Mr. Crawford and that the latter wished to have the insurance item covered by a lump sum rather than a percentage of the labor cost. He suggested that Mr. Crawford talk to me to which I assented. I then had a conference over the telephone with Mr. Crawford in regard to this matter during which I stated to him that our insurance cost would be based on our yearly payroll and he then said that the job would be completely finished within three months. We did not finally settle the matter at that telephone conference, but Mr. Meurer, Mr. Runyon, Mr. Preacher and myself had a conference at Mr. Runyon's house that evening, at which time I repeated the conversation I had with Mr. Crawford that afternoon, and particularly Mr. Crawford's statement that the work would be completed within three months. We determined to accede to Crawford's request and include in the figure that we intended to quote Crawford for the use of our plant approximately $800 for employers' liability insurance premium. This was done and on the following day a new proposition was prepared by Mr. Meurer, signed by me and taken by Mr. Meurer to New York. Subsequently the proposals were brought back by Mr. Meurer bearing the signature of H. L. Crawford, under the words accepted December 20, 1923. I know that shortly after this the boats were

brought to our piers and in the latter part of December, or the first part of January, the work of scrapping them was begun. The proposition provided that bills for the use of the plant were to be rendered monthly and to be paid proportioned to the work done. I went to Europe in the middle of January. Before I went, however, I instructed our office manager to make out the bills for the use of the plant on the basis of three months—in other words, to bill Crawford & Co., for such proportion of the total price named in each of the proposals for the use of the plant, as the period covered by bills respectively bore to three months. I know that a bill was so made out and was paid by Crawford & Co. I did not return from abroad until the latter part of April, at which time I found that the vessels were still at our piers and that the work of scrapping them was nowhere near completion. I know that no work in the way of scrapping the "Philippines" has been done for nearly two months and that with the exception of the cutting up of the boilers of the "Black Arrow," no work has been done on her for over a month. At present these ships are occupying space in our plant which we need for carrying on our regular repair work. Their presence there during the past spring has already cost us considerable financial loss and if they are permitted to remain there any longer, our loss will materially increase. Our business relations with Crawford & Co., have been very unsatisfactory. They have been from the beginning and still continue to arbitrarily deduct from the bills which we render to them for moneys expended by us for labor sums which they claim we should bear rather than they. These deductions now amount to the sum of $1,240.10. We also rendered them a bill for $1,572.43 for moneys which we expended in preventing the "Philippines" from

sinking after a seacock had been broken due to the dropping of material upon it during the process of scrapping, and this bill they have refused to pay. We have also rendered them bills amounting to $3,266 for additional gas and air which we were required to furnish to enable them to cut up parts of the vessel other than the superstructure in charging box sizes. After the three months had expired and the vessels were in an incomplete condition so far as scrapping was concerned before-mentioned, we advised them that we would have to charge them for wharfage at the rate of $100 a day for each ship. These bills amount to the sum of $12,400. They have consistently refused to pay all the before-mentioned bills.

I have been in the dry dock business for thirty years and am familiar with the character of work which is done alongside such piers as those to which these vessels are moored and of the value of the use of such piers. In my judgment, the charge of $100 per day for vessels of this type moored to docks of this characted is entirely reasonable and fair.

CHARLES D. SNEDEKER.

Subscribed and sworn to before me this 28th day of June, 1924.

CHARLES J. GORMLEY,
Master in Chancery of New Jersey.

AFFIDAVIT OF W. PARKER RUNYON OF EXHIBIT 4, ATTACHED TO BILL OF COMPLAINT.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } ss.:

W. PARKER RUNYON, of full age, being duly sworn according to law, upon his oath says:

I reside at Perth Amboy, New Jersey, and am president, as I have been for a number of years, of the Perth Amboy Dry Dock Company, a corporation of New Jersey. I am acquainted with Harden L. Crawford and James W. Decker, the defendants in this suit, who are partners trading as H. L. Crawford & Co., with their place of business at 50 Broad Street, New York City.

On December 19, 1923, Mr. Meurer, the estimator of the Perth Amboy Dry Dock Company, together with Mr. Snedeker, the treasurer, and Mr. Preacher, the master mechanics of the company, called at my home for the purpose of considering a proposition which had been made to Mr. Meurer to use our plant for the scrapping of two vessels belonging to H. L. Crawford & Co. The proposition was outlined to me by Mr. Meurer and the terms discussed. Mr. Meurer stated that the owners of the vessels would agree to have them entirely scrapped within three months and that the superstructure was to be cut up in what are known as charging box sizes, the engines and boilers were to be removed intact, as was also the piping and other miscellaneous parts, and that the balance of the vessels was to be cut up in what are known as shipping sizes.

I have read Mr. Meurer's affidavit in this matter and know that his description of these two sizes of cuttings is correct as the same are understood in the trade. Mr. Meurer also advised me that the scrapping of the vessels would begin very shortly.

As the work would, therefore, be done during the winter when the part of our plant which it would be necessary to use for the scrapping of the vessels would not be needed for our regular business we determined to make a proposal to Crawford & Company for the use of our plant for the scrapping of these vessels. I know that a written proposal was subsequently drawn up by Mr. Meurer, signed by Mr. Snedeker, and accepted by Crawford & Company.

I paid very little attention to this work until it was brought to my attention around the latter part of February or the first of March that other parts of the vessels than the superstructure were being cut up in charging-box sizes, and that the work of scrapping the vessels was proceeding so slowly that in all probability they would not be completely scrapped and out of our plant, as had been understood, by the first of April—the expiration of the three months' period.

The cutting up of the vessels in charging-box sizes entailed a considerably greater expense to the Dry Dock Company than had been originally contemplated because we had agreed to furnish gas and oxygen for this work. Of course, the smaller the sizes of the pieces into which the vessels were cut, the greater were the amounts of gas and oxygen used. Thereupon the letter referred to in Mr. Meurer's affidavit as Exhibit 3 was written.

When I saw Mr. Crawford's letter of March 6th, referred to in Mr. Meurer's affidavit as Exhibit 4, I, of course, felt that Crawford & Company did not contend that they had any right to cut up the parts of the vessels other than the superstructure in charging-box sizes. Subsequently I learned that Crawford & Company were continuing to cut up the vessels in charging-box sizes, and we notified them

that this could not be done unless they would pay the addional cost to us.

Shortly thereafter, I was advised by Mr. Meurer that Mr. Mornay, representing Crawford & Company, had made a proposition that Crawford & Company furnish its own gas and air, and so forth for cutting up the vessels in charging-box sizes. On March 28, 1924, I accordingly wrote Crawford & Company a letter, a copy of which is annexed hereto as Exhibit 5. On March 29th, I wrote them a letter, a copy of which is annexed here to as Exhibit 6. I received no reply to the latter letter and on April 12 I wrote them again asking them to advise us what action they intended to take thereon. On April 16th, I received a reply, a copy of which is annexed hereto as Exhibit 7.

The statements in this letter, particularly the last part regarding my acknowledgment of the propriety of the deductions, made at a conference at the Bankers' Club in New York, were untrue. They had already been furnished with detailed statements as to what was covered by the items which they deducted from our bill, and they or their representatives had, therefore, been advised that the necessity for salvaging the steamship Philippines had been due to the method in which their men had directed the work of scrapping her to be carried on.

Immediately upon receipt of this letter I replied, under date of April 24th, as per the annexed copy of letter marked Exhibit 8.

I call attention to these matters because they indicate the very unsatisfactory manner in which Crawford & Co. have dealt with us. They have not only endeavored to scrap the vessels in a manner different from that originally agreed up thereby entailing considerable additional cost to us for gas and oxygen; but they disputed our bills, declined to pay

them, and have even refused to pay the expenses which we incurred in preventing the Philippines from sinking, under the pretense that the scrapping was being done by us, notwithstanding that the contract calls simply for the use of our plant and notwithstanding that the work was under the direction of their representative Mr. Bernard, and notwithstanding that for practically the entire period their employees and representatives had employed all of the men engaged in scrapping the vessels except some burners who were employees of ours and who we loaned to them.

After the three months' period had expired and the vessels were still at our plant and were still a long way from being completely scrapped, I wrote a letter to Crawford & Company advising them that as we were very much in need of our piers, upland, and wharfage space occupied by these vessels we would have to charge them wharfage at the rate of $100 a day for each ship. We have done so continuously since that time but Crawford & Company have refused to pay for any wharfage and repudiated any obligation to do so.

I have been in the dry dock business for thirty-two years and am familiar with the prices charged for the wharfage of vessels taking the space that these vessels do, in plants such as ours, and to the best of my judgment $100 a day for each vessel is a fair and reasonable charge. Indeed, this sum does not compensate us for the losses which we are sustaining because of our inability to use the piers where these vessels are located for our ordinary and usual work.

On April 26th we received a letter from Crawford & Company sending us a check in payment of one of our statements after deducting various sums, and on April 27th we received a letter suggesting that

Mr. Snedeker call at Crawford & Company's office in New York for a conference. In order to make our position entirely clear, I immediately wrote a letter on April 29th, of which a copy is annexed as Exhibit 9. On May 6th I received a reply, dated May 5th, of which a copy is annexed hereto as Exhibit 10.

This letter contained a series of utterly untrue statements but it did not contain a denial that the original agreement had been that the work was to be completely finished within three months. On the other hand, it seems to me that this letter tacitly admitted that that was the case. For instance, in this letter the statement is made that they "should have been very glad had it been completely finished within three months, and had you supplied sufficient equipment and enough labor it could have been so finished." We had always furnished all of the equipment that had been asked for and the furnishing of labor, as before stated, was not our concern but theirs.

Further on in that letter the statement is made that the "additional time necessary to complete the finishing of the vessels in accordance with the contract will depend directly upon the number of men and the efficiency and quality of equipment furnished by you." This was untrue and could not have been made in good faith because the number of men employed on the work was entirely within the control of Crawford & Company, and no complaint had ever been made as to the efficiency or quality of the equipment furnished by us.

On April 12th I wrote them a letter calling their attention to a large amount of scrap iron which had been deposited on the upland near one of our dry docks and which had been there for a long time. I asked them to remove this material immediately so

that our other work would not be interfered with. They did not reply to this letter until May 5th when they stated in a letter: "The work of cutting up and removing that scrap will proceed as soon as practicable. With the number of men, however, and the tools and equipment furnished by you, it is impossible to cut on both the vessels and on the upland." This was an untrue statement and certainly was not made in good faith.

At that time they had practically ceased work on the Philippines and were employing only a small number of men on the Black Arrow, but as before stated, the number of men employed was entirely within their control. We had nothing do do with it.

I cannot believe that either of these last two letters were written with any other purpose than to make a record for use in a lawsuit which they saw was impending.

Although in my letter to them of March 28th, Exhibit 5, I had called their attention to the proposition which Mr. Mornay had made to Mr. Meurer, that they be permitted to furnish their own gas, they made no reply to this until in a letter, likewise dated May 5, they denied having made any such proposition.

In a further effort to clear up the situation, under date of May 14th, I wrote them a letter, a copy of which is annexed hereto as Exhibit 11. This letter set forth our position and insofar as it states matters of fact it is, to the best of my knowledge and belief, absolutely accurate.

In a letter written to us on May 12, for the first time the statement was made that they had not obligated themselves to scrap the vessels within three months, and the statement was again made that "the time within which the vessels should be scrapped is

so largely dependent upon the number of men and quantity and quality of materials and tools supplied by you that the time within which the vessels shall be scrapped in accordance with the contract is within your control." This was an absolutely untrue statement for the reasons above stated, and was not made, I am sure, in good faith.

On May 14th I replied to this letter, a copy of my reply being annexed hereto as Exhibit 12.

Thereafter an arrangement was made by which they were permitted to cut up the boilers and engines upon the agreement that they would pay for the gas used in doing so if a court of competent jurisdiction should decide that we were not required under the contract to furnish the gas and air for cutting them up. Under date of May 19th they made a reply to our letter of the 14th, a copy of which reply is annexed hereto as Exhibit 13. In their letter of reply they stated that they would not pay for wharfage, or the bills rendered for excess gas, or the amounts deducted from the various labor invoices, or for salvaging the Philippines, or for repairs to the tools. Furthermore they informed us that they would not be responsible for the expense of removing the scrap which had been lying on our uplands for a long period of time and to which reference was made as before stated.

Not only have Crawford & Co. failed to live up to their contract by refusing to pay the bills which we have rendered to them as before stated but they have neglected to complete the scrapping of the vessels within the time agreed upon or to compensate us for the use of our piers and docks beyond that time. These piers and docks (the two vessels in question are using two), are indispensable to us in carrying on our ordinary business and the presence of the vessels there is causing us large damage which it is

quite impossible for us to adequately estimate and for which we will not be compensated by a wharfage charge of $100 a day per vessel.

Based on my experience of thirty-two years in the dry dock and ship repair business, I know that these two vessels could have easily been entirely scrapped and removed from our plant within three months from the time work was begun thereon if reasonable diligence had been used in scrapping them. No work has been done on the Philippines since about the first of May, and no work has been done on the Black Arrow, except to cut up the boilers, since about the middle of May. For some time before the work was actually stopped on the Philippines very few men were employed on her and very little progress was being made. The same applies to the Black Arrow.

The work required to scrap the Philippines has been about thirty per cent. done at the present time, and on the Black Arrow about eighty per cent. of the work has been done. If Crawford & Company should immediately begin work on these two vessels with all of the men who could reasonably work thereon, it would take considerable time to complete the scrapping of them. It will take a longer time to scrap the remaining portions of the vessels proportionately than it has taken to perform the work that has already been done. If the work were carried on as it has been carried on in the past, the vessels would not be out of our plant for many months.

The reason why the scrapping of the vessel has been allowed by Crawford & Company to proceed so slowly, and the reason why work on the vessels has now ceased altogether, is because the price of steel started to decline in February, and at the time the work on the Philippines was stopped it would have cost at least as much, if not more, to have

scrapped her and to ship the steel as the material would have brought. The same condition prevails today. They cannot be further scrapped, considering the amount which Crawford & Company paid for them, without a very considerable loss to Crawford & Company. This loss they are apparently unwilling to bear and are attempting to make us keep the vessels at our wharves until such time as the steel market improves sufficiently to allow them to scrap the vessels at a profit.

The vessels are very large and in their present state are dangerous. As pointed out in Mr. Meurer's affidavit, they are liable to sink, in which event we would sustain very serious damage. They, of course, cannot be turned adrift from our pier because they would become a menace to navigation and thereby subject us to severe penalties under federal laws. It will cost considerable money to move and berth them at some other point.

Not only has the time which was originally fixed for the vessels to remain at our plant expired, but that considerably more than anything which could possibly be viewed as a reasonable time for scrapping the vessels has expired. We could not take them to another berth or pier unless we guaranteed to the owner thereof the wharfage and would employ watchmen, pump-men, and so forth to care for the vessels, and would obligate ourselves to compensate the pier owner for any damage which he might sustain or cost which he might incur in the event that the vessels should sink at the pier.

We have offered Crawford & Company every facility required by our contract and more, and we have extended to them every consideration to which we think they are entitled.

On June 19th, we caused to be served on Crawford & Company, a written demand that they remove these vessels from our plant on or before

June 24th. A copy of this letter is annexed hereto as Exhibit 14. It resulted in a letter being written by Crawford & Co., to us, suggesting a conference. To the suggestion we readily assented and a conference was held between Mr. Crawford, Mr. Snedeker and myself, on June 26th. Nothing resulted, however, from the conference, Mr. Crawford merely making some propositions to us, all of which sought to impose on us some of the loss which he was suffering because of the drop in the price of steel since he purchased the vessels and the large cost of scrapping them. It was impossible for us to accept any of these propositions.

We would not have made the contract in question at all had we not been assured that the vessels would be out of our plant by the end of three months, which would be just about the time our spring work ordinarily commences, and when we would need the space occupied by these vessels and the facilities employed in scrapping them for carrying on our usual and general work.

Unless this Honorable Court orders the removal of the said vessels from our plant forthwith, we will sustain very serious damages for which we cannot be compensated in a suit for damages.

W. PARKER RUNYON.

Subscribed and sworn to before me this 28th day of June, 1924.

GROVER J. CAREY,
Notary Public of New Jersey.

EXHIBIT 5. ATTACHED TO BILL OF COMPLAINT.

March 28th, 1924.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

In reference to the proposition made by your Mr. Morny to our Mr. Meurer on March 27th, that you be permitted to furnish your own gas, air and manifold for cutting up in charging box sizes such parts of the Steamship "Black Arrow" and Steamship "Philippines" as your contract with us provides should be cut up in larger sizes, we are willing to have you do this, provided you furnish the cutting outfits complete with the necessary hose and cutting material, and that no deduction is made by reason thereof, from the sums mentioned in our original contract to be paid by you to us.

Yours very truly,

PERTH AMBOY DRY DOCK CO.
(Signed) W. Parker Runyon,
President.

EXHIBIT 6. ATTACHED TO BILL OF COMPLAINT.

March 29, 1924.

Messrs. H. L. Crawford & Company,
50 Broad Street,
New York City.

Gentlemen:

We have your letter of March 27th, with enclosures.

You of course understand that it is our insistment that the charges against you for labor are correct, and therefore it is not our intention to pay or recognize the correctness of the invoices which you enclosed.

You have deducted from previous bills, on account of labor charges, $575.59. These deductions, as we have heretofore advised you, were unauthorized. We will ask you, therefore, to please send us a check for the above sum by return mail.

We are also sending you herewith a statement of the expenditures incurred by us in saving the Steamship "Philippines" when she was about to sink in the early part of January. These expenditures were not due to any fault or neglect on our part. Please send us your check for the same.

As you have been heretofore advised, your practice in cutting up in charging box sizes a greater part of the vessel than was agreed upon at the time our contract was made, has entailed a very considerable expenditure on our part for gas and air, over and above what we would have been required to expend for those items, had the scrapping of the vessel been carried out in accordance with the plan

agreed upon. We are having this additional expense calculated, and will bill you for the same just as soon as the amount has been ascertained.

As you know, the manner in which you have handled this contract has been very unsatisfactory to us, and unless you comply with our above stated requests, we will feel obliged to stop work on the contract, because of your failure to carry out your part of it.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
Pres't.

H. L. B.

EXHIBIT 7. ATTACHED TO BILL OF COMPLAINT.

H. L. Crawford & Company
50 Broad Street
New York, N. Y.

April 16th, 1924.

Perth Amboy Dry Dock Company,
Perth Amboy, N. J.

Dear Sirs:

We have not replied to your letter of March 29th previously for the reason that we are at a loss to understand the charge which you now claim, and amount to $1572.43, as a charge for stopping a leak in the S. S. "Philippines" which occurred in January, 1924, bills for that month having heretofore been presented covering all labor and use of plant for that month and same paid.

The accident you refer to was entirely due to the gross carelessness of your own men in dropping a piece of pipe, thereby breaking a sea valve, and the responsibility was entirely yours. We, therefore, cannot see any justice in the claim you now make at this late date.

In regard to the others items, mentioned in your letter as amounting to $575.59 as deductions in labor payroll, we are unable to check this amount without a detailed statement from you as to what these cover, but we do know of many deductions which were made after taking up the separate items with your representative who agreed that they were proper adjustments, and these deductions were further confirmed as proper by your President at our luncheon at the Bankers Club.

Very truly yours,

H. L. CRAWFORD & COMPANY.

New Jersey State Library

EXHIBIT 8. ATTACHED TO BILL OF COMPLAINT.

April 24th, 1924.

Messrs. H. L. Crawford & Company,
50 Broad Street,
New York City.

Gentlemen:

In the third paragraph of yours of the 16th inst., you state that the deductions referred to "were further confirmed by your President at our luncheon at the Bankers Club." I positively deny that I made any such confirmation and nobody knows it better than you do.

In reference to the breaking of the sea valve would say that it was not due to any negligence on the part of our men, but to the manner in which the foreman in charge of the work for Crawford & Company directed that the cutting be done. Our bill for the saving of the ship because of the broken sea valve was presented just as soon as it was possible for us to do so.

In relation to the item of $575.59, would say that this is the aggregate of the sums which you have improperly deducted from our bills rendered to you. Please find enclosed itemized bills, Steamer "Black Arrow" $395.65, and "Philippines" $179.94, total $575.59, covering the deductions.

Yours very truly,

PERTH AMBOY DRY DOCK CO.
Pres't.

EXHIBIT 9. ATTACHED TO BILL OF COMPLAINT.

April 29, 1924.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

We have your letters of the 25th and 26th. Doubtless both were written before receipt of our letter of the 26th. A review of some things may help to solve the differences which apparently have arisen between us in connection with the scrapping of the Steamships "Philippines" and "Black Arrow."

It was distinctly understood at the time the contracts were entered into that the work was to be finished within three months, and that the boats should be cut up in shipping sizes, except the superstructures, which were to be cut up in charging box sizes. As you know, the three months' period has expired. When we fixed the flat figures to cover, among other things, berths of the ships at the yard, we were guided by the understanding that the vessels were not to remain at our yard for more than three months. You can, therefore readily see that if they are to remain for a longer period, we must exact a charge for wharfage and the use of the piers and upland. This, as per our letter of April 26th, we have fixed at One Hundred Dollars ($100) a day for each ship. It must be entirely apparent to you that in fixing the flat figures, we also took into account, the sizes to be cut, because the amount of gas to be used, (which the flat figures include) was dependent upon the size of the cuttings. As a great part of the plates cut already, exclusive of the superstructures, were of charging box sizes, we were compelled to use more gas than we would have used had

the cutting been done in accordance with the original agreement. We have billed you for the additional cost to us. We think that you will readily concede that our position in these respects is correct.

We are willing to accede to your claim that you should pay "for the use of the plant" proportionately to the work done, providing that you pay us the amount which we have demanded for wharfage and the use of our piers and upland from now on (after the expiration of three months).

It was also understood at the time the contracts were made that the small miscellaneous stuff, like piping, &c., was to have been taken apart and separated by hand. Instead of doing so you have used gas for this purpose, which we have furnished. We have billed you for such gas. There can be no question that we were justified in doing so.

You have already been fully advised as to our position in respect to the cost incurred by us in saving the "Philippines" when she was about to sink owing to the breaking of the seacock.

Our Mr. Snedeker does not feel that any good can be accomplished by conference between him and your Mr. Crawford, owing to the fact that he has been out of touch with the work for three months. He and Mr. Runyon, however, will be very glad to see your Mr. Crawford, if he cares to call at our office in Perth Amboy, where our records, superintendent, etc., are available. We feel, however, that our position is entirely correct and we are not prepared to recede from it.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
Pres't.

AMB.

EXHIBIT 10. ATTACHED TO BILL OF COMPLAINT.

May 5th, 1924.

Perth Amboy Dry Dock Company,
Perth Amboy, N. J.

Gentlemen:

Answering your letter of April 29th, we should have been very glad if the work had been completely finished within three months, and had you supplied sufficient equipment and enough labor, it could have been so finished. As we have already stated, in answer to your letter of March 28th, our contracts do not limit the size to which steel in the vessels may be cut up, or any part of them. We claim, under the contracts, the right to have cut as much of either vessel as we see fit, into charging box sizes, and that is exactly what we have been doing from the outset. The additional time necessary to complete the finishing of the vessel, in accordance with the contract, will depend directly upon the number of men and the efficiency and quantity of equipment furnished by you. We have never approved of the hydrogen gas used by you, and we have urged the use of other gas, which would enable the work to progress more rapidly and more cheaply both for us and for you. Your refusal to furnish the kind of gas and burning outfits, as required by Mr. Bernard notwithstanding the express terms of the contract to that effect, has, by reason of the delay and expense, caused us damage, the exact amount of which we cannot determine until the scrapping shall have been completed, hereby notifying you at that time we shall bill you for such damages as then ascertained.

In your letter of April 29th, you several times make the statement that certain matters were understood, at the time the contracts were made. We beg to differ with you as to each of these understandings. We rest our position strictly upon the contract, and we believe that we have made ourselves clear as to this. We are no more prepared to recede from our position than you say you are from yours.

Very truly yours,

H. D. CRAWFORD.

EXHIBIT 11. ATTACHED TO BILL OF COMPLAINT.

May 14, 1924.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

Your several letters of May 5th, owing to the writer's absence, have just been brought to his attention. In an effort once more to make our position clear, we will eply to each of them.

1. In answer to our letter of March 25th, (we are at a loss to understand why you delayed an answer so long) our contracts with you make no provision whatever for the use of our tools. We permitted you to use tools from time to time, purely as a matter of accommodation. We, of course, expected that ordinary business integrity would induce you to pay for repairs made necessary by your use of them. Apparently, we were wrong in this respect. We are satisfied, however, that you are under a legal obligation to recompense us for such repairs. We have already billed you for these repairs and must insist upon your paying the same. You have not been billed for repairs to any part of our plant, which, under our contract with you, you are entitled to use.

2. In reply to our letter of March 28th you state that your Mr. Morny made no such proposition to our Mr. Meurer as stated in our letter. In the first place, we are wondering why it took you so long (March 29th to May 5th) to find this out. In the second place we are prepared to prove by at least

two persons who heard the statement, that Mr. Morny did make the proposition stated by us. You are quite right in the statement that the written parts of our contract do not limit the size to which the vessels may be cut up, neither do they state any size for the cuttings. There was, however, a verbal understanding that the sizes of parts of the vessels were to be cut in shipping sizes, after the superstructure had been removed, the latter of which was to be cut in charging box sizes. Of course, it would have been perfectly ridiculous for both of us not to have had some understanding regarding the sizes of the cuttings when the amount of air and gas which would be consumed and the lump sum to be paid would be so largely dependent upon the size of the cuttings. We did not make a formal contract with you covering every detail but rather a short memorandum. We assumed, of course, that you would live up to the verbal understandings which were not specifically incorporated in the written memorandum.

3. Replying to our letter of March 27th (again we wonder at the delay in reply) you state that the engines and boilers will be cut up into charging box sizes. The understanding was that the engines and boilers were to be removed and not cut up. This understanding has heretofore been carried out by you. Last week was the first time that we have heard that you intended to, or claimed, that your contract gave you the right, to cut them up. You will not be permitted to cut up the boilers on either vessel unless you specifically agree to pay for the gas and air used in that work in addition to the amount provided in the contracts.

You state that you are not responsible for damage to our plant or equipment during the scrapping of

the vessels. It is our insistment that you are, and we will endeavor to hold you responsible, if our plant or equipment is in any way injured during the scrapping of the "Black Arrow" and "Philippines" by any neglect or failure to do the work properly on your part.

4. In answer to our letter of April 12th you state that the scrap iron referred to is included in the space we rented to you for $75 per month. You are incorrect in this statement. The majority of the scrap iron is not located there but at the head of No. 5 dry dock, and has been there for over two months. Surely even you do not contend that your contract gives you any right to the use of our upland for storage of scrap. Unless the scrap is removed forthwith we will proceed to have it removed and charge the expense to you. You state that the number of men and the tools and equipment supplied by us makes it impossible for you to cut both on the vessels and on the upland. You have at all times been furnished with all the burning outfits and the men which you have asked for. Indeed, you have refused to hire men whom we have offered to you and for fully three months the hiring of the men has been entirely in your hands. We have had nothing to do with it. We are therefore at a loss to understand your statement and cannot believe that it was made in good faith. We want you to cut up the vessels as rapidly as possible in accordance with your contract, and we do not wish to have our property littered up with a lot of scrap that should have been removed long ago. We do not care whether you cut it or whether you do not cut it, but it must be removed. Our contract did not give you the right to use our premises indefinitely to cut up your scrap iron to suit your convenience.

5. In answer to our letter of April 29th you make the statement that the work would have been finished within three months had we supplied sufficient equipment and labor. This is absolutely untrue and as respects your previous statement we do not think that it was made in good faith. What we have said above applies equally here, both to the statement and to the size of the cuttings.

You state that the additional time to complete the finishing of the vessel will depend upon the number of men and the efficiency and quantity of equipment furnished by us. As before stated, the matter of the employment of the men and the number of men to be employed, has been for three months, and still is, in your hands entirely. You originally asked for thirty burning outfits. We furnished you with forty. You have never used over thirty six. You have never question the efficiency of any of the equipment we have furnished, not even the quality of the gas. At the outset you requested a certain kind of gas. We stated that another kind would prove just as satisfactory. Thereafter, at the request of your Mr. Crawford, a three days' test of the two kinds of gas was made and it was demonstrated that the kind we suggested was just as efficient as the other. Your letter is the first intimation that you were not entirely satisfied with the quality of gas supplied. In reference to the last statement in your letter of May 5th that you repudiate any oral understandings, we have merely this to say—that among business men who wish to deal fairly with each other, oral understandings are quite as binding as those which are written, but in addition to that, as the oral understandings merely supplement those particulars in which the written memorandum is silent, they are, as we are given to understand, as much a part of the contract as that which is written.

We are using your check of May 8th, for $1,939.54, but in doing so we do not recognize your right to make a deduction of $69.82 from our invoice of April 3rd. We expect you to send us a check for this amount at once. It covers items of labor and the use of steam in connection with the pumping out of the ship. These were clearly, under the contract, to be paid for by you.

In conclusion, we wish to state that the handling of this contract on your part has, in general, been most unsatisfactory, as your attitude at the present time is unfair and unjustified.

In order not to prolong the correspondence between us we wish that you would advise us at once specifically, whether you intend to pay for wharfage of your vessels at the rate we have heretofore quoted; whether you intend to pay the bills which we have heretofore rendered you for excess gas; the amounts deducted by you from time to time from our invoices; and the bill for salvaging the "Philippines"; also the small bill rendered for repairs to tools.

Very truly yours,

PERTH AMBOY DRY DOCK CO.
Pres't.

AMB.

EXHIBIT 12. ATTACHED TO BILL OF COMPLAINT.

May 14, 1924.

H. L. Crawford & Co.,
50 Broad Street
New York City

Gentlemen:

We have your two letters of May 12th.

We think we have heretofore made our position, regarding the charge for wharfage and the cutting up of the boilers, clear. We have no disposition to arbitrarily charge you with any sum in addition to those named in the contracts, but, in view of the fact that you have not scrapped the vessels within the time originally agreed upon, we intend to charge you wharfage for the excess time. The written memorandums of our contracts do not specify the time within which the vessels should be scrapped, but it must be perfectly apparent to you that, as part of the money which you were to pay was for wharfage and for use of the plant, that there must have been some understanding as to the time it would take to scrap the vessels before we would or could have named a figure to you. There was such an understanding and we are prepared to prove it. As set forth in our last letter to you this work has never been delayed by anything that we have done or omitted to do. Your attempt, at this late date, to make such a claim looks as though you were attempting to "cover up" for the purpose of the suit which, if you persist in your present attitude, we will eventually have to bring against you. There is likewise nothing in the written memorandum as to how the vessels were to be scrapped. In other

words, there are no written specifications. We have no doubt that we will be able to convince any fair minded person that there must have been some understanding on this score, otherwise, as pointed out in one of our recent letters, we would have been unable to quote you any figure. There was an understanding as to the size of the cuttings, and that the boilers and engines were to be removed and not cut up. In view of this fact, and your attitude, we will not permit you to cut up the boilers and engines unless you agree to pay for the gas and air which will be consumed in that process.

Yours very truly,

PERTH AMBOY DRY DOCK CO.
Pres't.

AMB

EXHIBIT 13. ATTACHED TO BILL OF COMPLAINT.

May 19th, 1924.

H. L. Crawford & Co.
50 Broad Street, New York.
Perth Amboy Dry Dock Co.
Perth Amboy, N. J.

Dear Sirs:

We beg to acknowledge the receipt of your letter of May 14th.

We do not agree with your statements made in that letter, but, as we have said before, we see no advantage to be gained by our stating our position or arguing the matter with you in writing. We wil' not agree to pay over and above the contract prices for gas and air which will be consumed in the process of cutting up the boilers and engines. If you do not proceed in cutting up the boilers and engines we shall treat your action as a breach of the contracts between us.

Very truly yours,

(signed) H. L. CRAWFORD & CO.

EXHIBIT 14. ATTACHED TO BILL OF COMPLAINT.

Perth Amboy, N. J.
June 19, 1924.

H. L. Crawford & Co.
50 Broad Street
New York City, N. Y.

Gentlemen:

Practically six months have now expired since the vessels "Black Arrow" and "Philippines" were brought to our plant. As we have heretofore advised you, the clear understanding was that they were to be completely scrapped and out of the way within three months. On April 26th we advised you that because of the expiration of the three months, we would be compelled to charge you wharfage at the rate of $100 a day for each ship. You have steadily refused to pay the bills which we have rendered for wharfage and have denied our right to charge you for wharfage. You have done no work whatsoever on the "Philippines" for practically a month and for the same period of time you have done substantially no work on the "Black Arrow." If you persist in this course, the vessel will remain at our plant indefinitely and at your pleasure, and if your position regarding your liability to pay wharfage is correct, we would have no redress.

The situation is one which we think that even you must appreciate is impossible and that your position is untenable. You have not lived up to your contract and apparently do not propose to do so. In view of your refusal to pay wharfage, we do not feel that we can permit the vessel to remain at our

wharves any longer. We do not mean by this that we do not intend to sue you for the wharfage, but we do not wish to afford berths to vessels, the owners of which decline to pay for the same. We are, therefore, compelled to demand that you remove these vessels from our plant on or before June 24th. In the event of your failure to do so, we shall be compelled to take legal proceedings to compel you.

Very truly yours,

PERTH AMBOY DRY DOCK CO.
(Sgd) W. Parker Runyon,
President.

AFFIDAVIT OF AXEL OLSEN OF EXHIBIT 14. ATTACHED TO BILL OF COMPLAINT.

STATE OF NEW JERSEY,
COUNTY OF HUDSON, } ss.:

AXEL OLSEN, of full age, being duly sworn according to law, on his oath says:

I am, and have been for a long time, the head bookkeeper of Perth Amboy Dry Dock Company.

I made out the bills to H. L. Crawford & Company for the use of the plant (as distinguished from labor bills), in scrapping the Steamships "Black Arrow" and "Philippines." The first bill that I made out for the "Black Arrow" covered a period of one and one half weeks and was for $1,243.50, which sum was the proportion of the total amount which it was agreed should be paid for the use of the plant in respect to the "Black Arrow" (9,948), which the one and one half weeks bore to twelve weeks. I understood that the vessels were to be berthed at our plant for only twelve weeks. Indeed, Mr. Bernard, the representative of H. L. Crawford & Company on the work, told me to make out the bill on the proportionate basis before mentioned.

I also made out the first bill for the Steamship "Philippines" on exactly the same basis.

The amount of work which had been done on each of these vessels at the times before mentioned was entirely disproportionate to the amount of the bills. For instance: On the "Black Arrow" the bill for labor at that time amounted to only $1,589.70, and on the "Philippines" to only $494.20. Both of these bills were paid by Crawford & Company in due course and without objection.

Crawford & Company, up to the present time, have paid for the use of the plant in connection with the "Black Arrow," $5,219.50, and in connection with the "Philippines," $4,828,25.

During the spring and summer months, our dry docks, piers and other facilities are in very great demand and the amount of business that we do during those times is far greater than during the other months of the year.

AXEL OLSEN.

Sworn to and subscribed before me this 28th day of June, 1924.

GROVER J. CAREY,
Notary Public of New Jersey.

Answering Affidavits Attached to Bill of Complaint.

Answering Affidavit of Harden L. Crawford.

In Chancery of New Jersey.

Between Perth Amboy Dry Dock Company, a corporation, Complainant, and Harden L. Crawford and James W. Decker, partners trading as Defendants.	On Bill, etc.

State of New Jersey, County of Essex, } ss.:

Harden L. Crawford, being duly sworn, according to law, upon his oath deposes and says:

1. I am one of the defendants in the above entitled cause, and together with the other defendant, James W. Decker, compose the firm trading as H. L. Crawford & Co., with its principal place of business at No. 50 Broad Street, in the City of New York.

2. I have read the bill of complaint and the affidavits thereunto annexed. It is not true that my firm entered into two certain contracts with the complainant, partly written and partly oral. The only contracts entered into by my firm with the Perth Amboy Dry Dock Company were in writing, and are correctly quoted as Exhibits 1 and 2 attached to the bill of complaint.

3. Mr. J. M. Bernard, referred to in the affidavits attached to the bill of complaint, was not employed by us until after the execution of the contracts Exhibits 1 and 2. Mr. Bernard came to us in October, 1923, suggesting that we buy some steamships for scrapping and sell the scrap, and that he be employed to supervise the transaction. I stated to Mr. Bernard that we would not be interested in such a proposition unless we could obtain ships at a satisfactory price, and satisfactory arrangements for scrapping the ships could be made and satisfactory contracts for the disposal of the scrap could also be made. Accordingly, we obtained a proposition from the Staten Island Shipbuilding Company to scrap four ships at definite figures. Having that proposition, and have assurances from reliable sources that we could dispose of all of the scrap obtained from the ships within a reasonable time, we put in a bid for five steel ships from the United States Shipping Board, and our bid was accepted December 17, 1923. Thereafter, Mr. Bernard reported to me that his friend, Mr. Edward J. Meurer, of the Perth Amboy Dry Dock Company, would like to bid on scrapping two of the ships. We obtained the consent of the Staten Island Shipbuilding Company to withdraw two of the ships from their contract. Thereafter, propositions in writing were submitted to me by the complainant, substantially as signed, except that they required us, in addition to the prices quoted, to pay for the compensation insurance. The prices quoted were substantially less than the prices quoted by Staten Island Shipbuilding Company for scrapping the vessels in question. These two propositions were brought into my office by Mr. Meurer. I told Mr. Meurer that we were unwilling to pay, or assume liability, for the compensation insurance. Mr.

Meurer, in my presence, telephoned Mr. Snedeker, and, after talking to Mr. Snedeker, put me on the 'phone. I then talked to Mr. Snedeker, and told him that we were not willing to pay for the compensation insurance. I told him that our principal reason for that unwillingness was that we wished to avoid any unknown amounts in the contracts. We wished the cost to us to be, so far as possible, definite. My conversation with Mr. Snedeker above referred to related only to the question of insurance. I did not, in that conversation, or at any other time, tell Mr. Snedeker that the vessels could be, or would be, scrapped in three months, or any other definite period of time. I did not at any time agree with Mr. Snedeker, or any other officer, agent, or representative of the complainant, that the vessels, or any particular part of them, would be cut up in what are described in the complainant's affidavits, as shipping sizes.

4. On the following day, I received by the hand of Mr. Meurer the two contracts, Exhibits 1 and 2, in their final form, and I signed the acceptances on behalf of my firm.

5. As it was our understanding that if the contracts with the complainant should be made, that Mr. Bernard should be employed, we did, accordingly, after the signing of the contracts, and on or before the arrival of the vessels at the complainant's yard for scrapping, employ Mr. Bernard to supervise the scrapping of the "Black Arrow" and the "Philippines" at the complainant's yard, and also the scrapping of our other vessels at the Staten Island Shipbuilding Company's yard. In accordance, however, with the contracts with the complainant, by which they were to do the work of scrapping through their labor, Mr. Bernard was put

on the complainant's payroll for so much of his time as was involved in superintending the work of scrapping at the complainant's yard.

6. My next connection with the matter was a visit I made early in January, last, to the complainant's yard, where I talked with Mr. Snedeker and Mr. Runyon. Our conversation was a very pleasant one. Nothing whatever was said by either side about the size of the pieces into which the vessels were to be cut. I asked Mr. Runyon, the complainant's president, who the complainant had named in charge of the work, and Mr. Runyon referred to Mr. Meurer, with the statement that if he wanted anything and Mr. Meurer agreed that was all right so far as the complainant was concerned.

7. On January 3rd, last, I wrote the complainant a letter of which Exhibit 1, hereunto annexed, is a copy. The exceptions from their charges which Exhibit 1 refers to as being noted on the check, were for the labor incurred in carrying the tanks of gas to and from the dock to the vessel. This I objected to paying, as it was unnecessary, and could be wholly avoided by leaving the tanks on shore and installing a manifold from which the gas and air could be piped directly to the vessel, without the labor of carrying the heavy tanks to and from the vessel.

8. On February 11th, last, having received through Mr. Morny complaints as to the progress of the work, I wrote the complainant a letter, of which Exhibit 2 hereunto annexed, is a copy. We received an answer, a letter from the complainant, of which Exhibit 3, hereunto annexed, is a copy. After the receipt of Exhibit 3, I invited Mr. Runyon, the complainant's president, to a conference in New York.

Accordingly, on February 26th, last, there was held at the Bankers' Club in the City of New York a lunch and conference. For the details of what took place there, I refer to the affidavit of James W. Decker, my partner, hereunto annexed. I wholly concur in Mr. Decker's statement of what occurred at that conference.

9. Shortly after March 3rd, last, I received the complainant's letter of March 3rd, a copy of which is Exhibit 3 attached to the bill of complaint, and I wrote the letter of March 6th, a copy of which is Exhibit 4 attached to the bill of complaint. At the time the contracts, complainant's Exhibits 1 and 2, were entered into on December 20, 1923, we had not made any contract for the sale of ship-plates, but shortly thereafter, we did enter into contracts for the delivery of a quantity of ship-plates for export, and so, were willing that enough of the vessels be cut up into sizes larger than would be accepted by any steel mill, or other purchaser of scrap, to comply with those contracts. They were special contracts by which the ship-plates were to be exported to China. The contracts were very special ones, by which the pieces had to be so cut as to be of certain weight, and so cut as to stow in a certain way, and there was contracted for only a limited amount not sufficient to use all of the hulls of the vessels.

10. It is true, as stated in Exhibit 4 attached to the bill of complaint, that our only market for the steel in the vessels, other than that furnished by those contracts, is for steel cut in sizes sufficiently small to go into the charging boxes of the steel manufacturers, and this fact is well known to any one engaged in the production of scrap.

11. The export contracts referred to in my letter of March 6th, complainant's Exhibit 4, required us to have the plates delivered in a certain time, which time had almost expired on March 6, 1924, and it was that time which I had in mind when, in my said letter of March 6th, I said, "The time in getting very short." As a matter of fact, owing to the delays attributable to the complainant, we were unable to deliver the plates within the contract time, but, happily, were able to obtain an extension.

12. On March 21st, last, last, I attended the conference at the Perth Amboy yard referred to in the affidavit of James W. Decker, hereunto annexed. Everything in that affidavit is true. I wish to add that nothing was said by anybody at that conference to the effect that the contract between the complainant and ourselves required the scrapping of the vessels to be completed within three months, or within any specific time. At that conference, I called Mr. Runyon's attention to the fact that the gas used by them was less efficient than another *case* called calorine, and gave the figures of a test which we had made of the different gases. I also called Mr. Runyon's attention to the fact that they were not getting out of the tanks all of the *case* therein, nor indeed, exhausting it down to air pressure.

13. Immediately after that conference I went to Bermuda, and did not return to New York until April 2nd, last. Upon my return, I was informed that immediately following the conference of March 21st, the complaint had refused to continue to cut any parts of the vessels into charging box sizes, although they had, previously to that date, cut into charging box sizes such parts of the vessels as we

had requested them to cut, amounting to slightly over one thousand tons. In order to avoid, if possible, a dispute or litigation, I sought to find a market for the steel in large pieces, and accordingly, sent Mr. Morny on a trip in an effort to find a purchaser for the steel in larger than charging box sizes. Mr. Morney did not report back to me his total want of success from that trip until on or about April 15th. On my return on April 2nd, I found before me the complainant's letter of March 29th, Exhibit 4, hereunto annexed. I waited to answer it to learn what success Mr. Morny had. Upon finding that he was wholly unsuccessful, I wrote the complainant my letter of April 16th, Exhibit 5, hereunto annexed. Another reason for the delay in answering Exhibit 4 until the date of Exhibit 5, was the time spent in our unsuccessful efforts to check the deductions referred to in Exhibit 5, without the itemized statement therein requested. Shortly after April 26th, I received from the complainant a letter of which Exhibit 6, hereunto annexed, is a copy. This was the first intimation which we had received that it was claimed by the complainant that the scrapping of the vessels was understood to be completed within three months. Upon the receipt of Exhibit 6, I wrote the complainant requesting an interview with Mr. Snedeker, its treasurer, at my office in New York. This request was, on April 29th, answered by a letter from Mr. Runyon, saying that Mr. Snedeker felt that no good could be accomplished by the conference with him saying that Mr. Runyon and he would see me at Perth Amboy. The letter concluded, "We feel, however, that our position is entirely correct, and are not prepared to recede from it."

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14. During this time, having obtained an extension of the ship-plates export contract, the cutting of plates was continuing. Shortly after April 29th, I received a letter of which Exhibit 7 hereunto annexed, is a copy. This refusal made it impossible to continue to supply plates under the export contract, because those contracts required plates to be so shaped that certain of the angles off the backs referred to in Exhibit 7 had to be removed.

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15. I wish to add that at the conference at Perth Amboy of March 21st, Mr. Olsen, one of the complainant's employees, Mr. Preacher and Mr. Meurer, all said in my presence, and in the presence of Mr. Runyon, that at that time the "Black Arrow" was approximately 33% completely scrapped, and that the "Philippines" approximately 10% completely scrapped.

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16. At no time, either before December 20, 1923, or afterwards, did I ever say or agree, nor did my partner; that the boilers of the vessels were not to be cut up, but were to be removed intact, or that the small parts were to be taken apart by hand and not cut.

17. On June 25th last, I had an interview with Mr. Runyon and Mr. Snedeker at the Perth Amboy

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yard. I told Mr. Runyon that the purpose of my visit was to see if it was not possible to make some satisfactory adjustment of the difficulties and disputes which had arisen between us. I asked him if he had any suggestion or proposition. He suggested that we tow the vessels out into the ocean and sink them. I said that that was impossible and unfair to us. He asked me what proposition I had. I stated that I had no proposition, but that

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I could offer several suggestions for his consideration, which I proceeded to offer.

18. I have at all times been ready and willing to meet the complainant in any reasonable adjustment, notwithstanding their treatment of us, and the fact that I am completely satisfied of the legal justice of our position. It is not true, as alleged in the complainant's affidavits that I have written certain of the letters in bad faith, and with a view to making a record for litigation or otherwise. Every letter that has been written by me has been written in good faith, honestly stating our position in the matter.

HARDEN L. CRAWFORD.

Sworn to and subscribed before me this 3rd day of July, 1924.

EDITH S. POWELSON,
Notary Public for New Jersey.
(Seal)

ANSWERING AFFIDAVIT OF JAMES W. DECKER, ATTACHED TO BILL OF COMPLAINT.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

JAMES W. DECKER, being duly sworn according to law, upon his oath deposes and says:

1. I am one of the defendants in the above entitled cause and am partner with the other defendant Harden L. Crawford, in the firm of H. L. Crawford & Co.

2. On February 26, 1924, I attended a luncheon in a private room in the Bankers' Club in New York City, at which there were present my partner, Mr. Crawford, Mr. Morny, Mr. Bernard, Mr. Runyon, president of the plaintiff, and his employee, Mr. Meurer. At the luncheon, Mr. Crawford explained to Mr. Runyon that he had asked Mr. Runyon to go to New York to discuss the work which was being done for H. L. Crawford & Co., in the yards of the Perth Amboy Dry Dock Co., as the present methods were resulting in unnecessary expense not only to us but to them, and he mentioned specifically the delay in furnishing the manifold for the gas and air, the quality of the gas, the delay in furnishing a locomotive crane, and placing, by them, of a quantity of lumber on the dock in front of the "Philippines" in a space which they had reserved for us, also the inefficient operation of the locomotive crane, resulting in its having been derailed and out of commission on various occasions.

3. Mr. Runyon said he had not given the work much personal attention and he referred to Mr.

Meurer who corroborated Mr. Crawford's statement in every particular, going to some pains to explain the delay in furnishing the manifold which had been caused by their inability to secure the master valve, but which he expected in a day or so, that the previous Sunday he had gone to the Staten Island Shipbuilding Co. and had made a sketch of the manifold in use there, without the knowledge of the Staten Island Shipbuilding Co. There was then considerable discussion of the ability of the operator of the locomotive crane, and then Mr. Runyon made the remark that now that we had made our complaints, they too had a grievance, and wanted to know what right we had to deduct from their bills certain items of labor in carrying the tanks of gas and oxygen on and off the boats and connecting them up for the burners. Mr. Crawford told Mr. Runyon that under our contract that was a proper charge to them, but that they would be relieved of it as soon as they put the manifold in operation, and that this had been agreed to between us and Mr. Meurer. Mr. Runyon turned to Mr. Meurer and asked him if this was so, and if the Perth Amboy Dry Dock Co. should be charged with these expenses, to which Mr. Meurer replied that it was, and that he had agreed that it should, and Mr. Runyon then agreed that these deductions should be allowed. On leaving Mr. Runyon seemed most cordial and admitted that our complaints were justified and said he would take the necessary steps to have these matters promptly attended to. At no time during this luncheon was any reference made in my hearing, to a time limit within which the work was to be completed nor was any statement made with reference to the size of the pieces into which the vessels were to be cut, nor was any claim made by Mr. Runyon for expenses incurred in saving the S. S. "Philippines."

4. On March 21st, last, I accompanied Mr. Crawford and Mr. Morny to the plaintiff's yard to investigate the work. When we arrived at the ship yard we were shown into Mr. Runyon's office and Mr. Crawford suggested that Mr. Runyon accompany us looking over the work Mr. Runyon refused, but said he would be in his office when we had finished. On reaching the dock, we found that a new battery of tanks were being connected to the manifold and on examination these showed only 1,200 to 1,500 lbs. pressure, as nearly as I recall, instead of 2,200 lbs. We then proceeded to go over the boats upon our return to the office, Mr. Runyon offered Mr. Crawford a cigar with the remark "We may as well meet as friends, no matter how we part." This was the first intimation of a hostile attitude that I had noticed. Mr. Runyon then began by stating we were using much more gas than they had estimated, because we were cutting the vessels into what he called "charging box sizes," instead of larger sizes, claiming that we were to cut all but the superstructure into larger sizes, and claiming also that we had used a lot of gas in cutting up non-ferrous metals which he said we had no right to do. There were present at this interview Messrs. Runyon, Meurer, Preacher, Olsen, an employee of the plaintiff; Crawford, Morny, Bernard and I. Mr. Morny was out of the room a short time. Mr. Preacher went into some detail in explaining how Mr. Bernard had gone on board one of the ships with him and had designated by chalk marks just where the plates were to come from. Mr. Preacher then drew on a piece of paper just how he understood the larger sizes were to be cut off. Mr. Crawford then told Mr. Runyon the condition of the tanks and explained that if all the tanks tested as the ones we had examined, the plain-

tiff was paying for considerable gas which they were not getting and Mr. Crawford called Mr. Runyon's attention again to the greater efficiency of the gas "Calorine," as compared with the gas now being used, and suggested that both of these might explain the complaint of excessive consumption of gas. Mr. Runyon was very arbitrary and would not listen to any request to change the gas used, but finally he consented to make a comparative test of the gas then being use and of Calorine.

5. I wish to add that at the conference at Perth Amboy of March 21st, Mr. Olsen, one of the complainant's employees; Mr. Preacher and Mr. Meurer, all said in my presence, and in the presence of Mr. Runyon, that at that time the "Black Arrow" was approximately 33% completely scrapped, and that the "Philippines" approximately 10% completely scrapped.

JAMES W. DECKER.

Sworn to and subscribed before me this 3rd day of July, 1924.

EDITH S. POWELSON,
Notary Public for N. J.

ANSWERING AFFIDAVIT OF FREDERIC A. MORNY, ATTACHED TO BILL OF COMPLAINT.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

FREDERIC A. MORNY, being duly sworn, on his oath deposes and says:

I am and have been ever since before the controversy with the complainant in this cause, associated in business with the defendant, H. L. Crawford & Co.

I was present when Mr. Meurer brought the contracts, Exhibits 1 and 2, attached to the bill of complaint into the defendant's office. I have heard read Mr. Crawford's affidavit annexed hereto on that subject and concur in what Mr. Crawford says.

My first visit to the complainant's yard was on Sunday, January 6, 1924. Then I went to the complainant's plant with Mr. Bernard and a friend of mine, a Mr. Gould, and we met Mr. Preacher and Mr. Meurer and went over the ships for the purpose of learning what ship plates we might get out, the defendant having shortly before and after December 20, 1923, made contracts for the export of ship plates. I explained personally to Mr. Preacher and Mr. Meurer what size and shape plates we wanted. Mr. Preacher stated it was objectionable to the complainant to cut the steel into large sizes as it would cost more than to get it out in charging box sizes due to the fact that since the plates had to be so cut as to stow forty cubic feet to the gross ton and as the channels making the frame work of the vessel and supporting the plates were all twenty inch centers, the number of cuttings to get the steel out in such shapes as to measure forty cubic feet would be more expensive than to cut

it into charging box sizes. I again visited the vessels on Wednesday, January 9th, in company with Messrs. Armstrong and Bernard and went over the matter in order to see what we could get out of the vessels suitable for export as ship plates. Messrs. Preacher and Meurer again protested against the cutting of the ship in that way. It was not until March 21st, that I first heard any objection from any one representing the complainant to cutting in charging box sizes. That was the day of the conference at Perth Amboy, mentioned in the affidavits of Messrs. Crawford and Decker hereto annexed, which affidavits as to that conference Ifully concur in.

After several conferences, the complainant, attended by Mr. Bernard and me, laid out a general plan of work by which the work on the "Black Arrow" should proceed first, the "Philippines" during that while being tied up at another pier on which no facilities were provided other than one stiff leg derrick, it being contemplated that the "Black Arrow" would be cut down to as near the water line as practicable and then put on the dry dock for final cuttings, and the "Philippines" then moved over to that pier on which the railroad track and locomotive crane would be placed and the "Philippines" cut up at that point.

After the vessels arrived at the complainant's yard, Mr. Meurer said to me he thought it would take about three months from that date to cut the S.S. "Black Arrow" to the water's edge and that they supposed the "Philippines" would be entirely cut up by July 4, 1924.

Notwithstanding the provisions of the contracts, the complainant was almost six weeks in determining what gas, oxygen and equipment they would use, holding back the work materially on this score, and when they finally did enter into a con-

tract for gas, etc., they did so with a concern of which we did not approve and in fact protested against the use of. Owing to the failure of the complainant to provide a manifold until March 8, 1924, it was necessary before that date to move the heavy tanks of gas and air back and forth from the land to the vessels. This greatly increased the labor cost to the defendant, in an amount of at least one hour per day per man burner at a cost of Seventy-two cents ($.72) per hour for every working day. The result of the cost we have deducted from the labor bills rendered us. This was one of the deductions discussed at the luncheon at the Bankers' Club and which, at that meeting, Messrs. Meurer and Runyon agreed was a proper charge to be made against the complainant. I have heard read the affidavits of Messrs. Crawford and Decker with respect to the occurrences at the luncheon at the Bankers' Club on February 26, 1924, and fully concur in those affidavits in this connection.

After luncheon, as we were all leaving the building, and standing near the Pine street entrance, Mr. Runyon said to me, "There is a matter on which we are not making a charge, and that is the matter of salvaging the 'Philippines'."

On February 7, 1924, I was riding back on a train to New York from Perth Amboy with Mr. Meurer. In the course of our conversation, Mr. Meurer said to me that the complainant did not expect to make very much of anything on this job but expected to get the experience of learning what it would cost them to do work of this kind.

In order to handle the loading of charging box steel efficiently, I wished to install an electric magnet at the defendant's expense. I had been given to understand this would be satisfactory, but as the work involved an expenditure by the defendant of approximately $2,500.00, I wished to have the com-

plainant's permission in writing. I accordingly wrote on February 23rd, and again on March 1st, asking for a decision, and on March 3rd, Mr. Meurer wrote it would be satisfactory. By this time, tons and tons of steel had been cut into charging box sizes from other parts of the vessel than the superstructure thereof.

On March 31, 1924, I wrote to the complainant a letter, of which Exhibit 8, hereto annexed, is a copy.

It was planned originally to remove the steel masts from the "Black Arrow" by cutting them and letting them fall, and all arrangements were made to have that occur on Sunday, March 9th. On Saturday, March 8th, I was notified that the masts would not be cut. We were told that the complainant was going to hire the Merrit & Chapman Company to take down the masts. The complainant did so hire the said company and the company did take down the masts and that company's bill was paid by the complainant and charged to us as a regular item of labor charge.

I frequently over the course of the job, protested to Messrs. Preacher and Meurer over the excessive labor costs, telling them that men were standing around loafing on the job and carying material off by hand, all of which greatly increased the labor cost which the defendant would have to bear.

At no time did I say to any representative of the complainant that the vessels would be completely scrapped within three months or that no part of the vessels except the super-structure would be cut up into charging box sizes, nor did I ever, on behalf of the defendant agree that there was to be any limitation as to how much of the vessels would be cut up into charging box sizes nor did I ever express my opinion that such was the agreement.

I told the representatives of the complainant on different occasions that the defendant had contracted to dispose of steel from these vessels in charging box sizes. One of these occasions was in the early part of January. I told Mr. Runyon that we had contracted for delivery to the Bethlehem Steel Company a large quantity of steel in charging box sizes, at a price higher than our estimate and he said, "Good work, I hope you make a million dollars."

I never said to any representative of the complainant that the boilers were to be taken out intact and sold abroad or elsewhere. I have shown Mr. Meurer the terms of the advertisement from the United States Shipping Board, pursuant to which the defendant bought the ships, from which Mr. Meurer saw that we were obligated to scrap the vessels completely within the United States and within a year. I also told Mr. Meurer the defendant was under a $100,000.00 bond to comply with the terms of its contract with the Shipping Board.

The only destination for scrap steel is the melting pot in the steel mills and there is no trade term known in the scrap metal trade known as "shipping sizes." The trade term for scrap steel coming from ships is No. 1 heavy melting steel and to comply with that term the steel must be of a size to go in the mill's charging boxes. In other words, it must be a charging box size. Steel of any other size must be cut up before it becomes available for sale as scrap to the steel mills.

I wish to deny specifically having ever on March 27th, or any other day, asked Mr. Meurer if the complainant would have any objection to the cutting up of such parts of both vessels as the defendant wished in charging box sizes, provided the defendants furnished their own gas, air and manifold.

Mr. Crawford went to Bermuda immediately after March 21st and did not return till April 2nd. As Mr. Decker, the other partner, was quite unfamiliar with the matter, neither he nor I wished to take any action pending Mr. Crawford's absence.

No work in cutting up either vessel, except the boilers (as to which I refer to the affidavit of Mr. Bernard hereto annexed) has been done since early in May, last, because the boats are now in such a physical condition that it is impossible even to get out the large sizes without cutting some smaller pieces that are in the way, and the complainant has refused to cut the small pieces following its decision not to cut charging box sizes. If the work on the "Black Arrow" were allowed to proceed in accordance with the defendant's contention, namely, to cut as much as it wished into charging box sizes, the "Black Arrow" would be ready for dry dock and away from its present position, at the expiration of ten days from the starting of such work.

In my opinion, there is nothing dangerous in the present condition of the "Black Arrow" while tied up, but it would be extremely dangerous to attempt to move it to any other point. I fear very much that if it should be attempted to move the "Black Arrow" she would capsize. It would be impossible to anchor either of the vessels in the harbor. In the first place, neither is any longer equipped with anchor and chain. There is no way of putting an anchor and chain on the "Black Arrow" and I doubt if there is any way of putting them on the "Philippines." There is no windlass on the "Philippines" and so no means of handling an anchor, and there is, of course, no windlass or even a hawse pipe on the "Black Arrow." If either vessel is to

be moved from its present position, it must be moved to another pier or dock. I know of no such pier or dock now available, and have no idea how long it would take to find a berthing place for either or both vessels, assuming that either could be moved without danger. In order to arrange for a new berth and to put the vessels into condition to be moved, and even then it would be dangerous to move the "Black Arrow", thirty days would be required at least. Both vessels, in their present condition, are worth at least $50,000.

FREDERIC A. MORNY.

Sworn and subscribed to before me this 5th day of July, 1924.

GEO. A. SMITH,
Atty. at Law of Jersey City.

aforesaid. I have heard read to me the affidavit of Harden L. Crawford, hereunto annexed, and he correctly states the circumstances of my employment and the time thereof.

2. I have known Mr. Edward J. Meurer for some time. Some time before December 20, 1923, Mr. Meurer, after phoning me, came to see me, saying that he understood H. L. Crawford & Co. was about to scrap some ships, and asked for an opportunity for the Perth Amboy Dry Dock Company to scrap two of them. I told him that he would have to give me a figure promptly as H. L. Crawford & Co. was just about to close with the Staten Island Shipbuilding Company for the scrapping of all four of the vessels to be scrapped in this neighborhood. Mr. Meurer said he knew nothing about the scrapping of ships and could not figure, and asked me what figures the Staten Island Shipbuilding Company had quoted. I refused to give him those fig-

ANSWERING AFFIDAVIT OF JAMES L. BERNARD ATTACHED TO BILL OF COMPLAINT.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } SS.:

JAMES L. BERNARD, being duly sworn according to law, upon his oath deposes and says:

1. I am and have been since immediately after Christmas, 1923, employed by H. L. Crawford & Co., the defendant herein. I was not employed by it before that date, and did not represent it. All my activities in connection with the S. S. "Philippines" and "Black Arrow" before that date, were in an effort to bring into existence a situation under which I should be employed. I was acting on my own behalf until the date of my employment as

ures, but obtained for him at his request, a copy of the proposal of the Staten Island Shipbuilding Company, omitting the figures. He asked me if I could not give him some idea of the figures, and I told him that if he quoted around $15,000 for the "Philippines," and around $8,000 for the "Black Arrow," Mr. Crawford might be interested. He took the copies of the contracts, and the next day I went to the Perth Amboy yard, and Mr. Meurer and Mr. Preacher and I went by launch to the two vessels where they were anchored. We went over the vessels, and Mr. Meurer asked me what sizes the vessels were to be cut up into. I said charging box sizes. I said there might be some ship plates taken out, but there would be a very small amount of ship plates on account of the angles and channels. I indicated on the vessels themselves why the angles and channels would prevent the taking out of but a very small proportionate amount of ship plates. I referred to the non ferrous metals, and said they would be taken off, and the boats and flanges, where possible, burned off with torches, and otherwise cut off by air hammers or chisels. At no time in any of my talks with Mr. Meurer, or Mr. Preacher, did I say that the vessels were to remain at the complainant's plant for three months or any other definite time. No time was specified in any of my conversations with either of those gentlemen, or any one else representing the complainant. I did not say that only the super-structures were to be cut up into charging box sizes. I did not say that the engines and boilers would be removed and not cut up, or that the piping, electrical fixtures, conduits, and engine-room auxiliaries were to be taken apart by hand, and removed without being cut up.

3. It was, I believe, the day following my visit with Messrs. Meurer and Preacher to the vessels at anchor, that Mr. Meurer brought into the defendant's office the first draft of their proposal, to which Mr. Crawford objected with respect to the workmen's compensation.

4. The same day that Mr. Meurer and I inspected the vessels at anchor, he showed me where they would be berthed at the complainant's yard. He said that railroad tracks would shortly be constructed on each pier. Today there are no railroad tracks on the pier along side of which the "Philippines" is berthed, and the tracks on the pier alongside of which the "Black Arrow" is berthed were not connected up with the railroad until at least the middle of January. On the same day, Mr. Meurer said that they had a crane. I said that to be useful the crane would have to have a sixty foot boom, with a goose neck able to lift at least thirty tons. After the vessels arrived on the job, I discovered that they had no crane. I busied myself looking for a crane, and found a man who had a crane in Plainfield, New Jersey, that would be satisfactory. I told Mr. Meurer of this, and he and Mr. Preacher went to inspect that crane. They did not buy that crane, but ordered a crane from Ohio, which was not delivered for three weeks, or more, after the vessels arrived at the yard. This crane had a forty foot boom and no gose neck, and could lift only twenty-five tons. This crane, not having a goose neck could, when it was boomed all the way down, scarcely lift a ton. The crane frequently went off the tracks on which it traveled, owing to the improper construction of the tracks. Mr. Meurer said that the services of a derrick lighter able to lift five tons would be available.

They had such a lighter at the yard, but there were days and days when its services were not available for our job. At the same time, Mr. Meurer said that in unloading material cut from the "Philippines" it would be possible to place the material on a car float which coud be pushed right up above the bulkhead with a bridge to be built, so that trucks could drive right on the float. This was not possible, because there was lots of lumber piled in the way by the complainant, and because the fill directly back of the bulkhead was so soft that no truck could drive over it.

5. Mr. Meurer may have spoken to me in the latter part of February or early part of March, objecting to the cutting up of the vessels into charging box sizes, but if he did he did not refer to any agreement made in December as to the sizes into which the vessels were to be cut, and, as I have state, no such agreement was ever made by me. If he did object to me with respect to the sizes of the pieces, I may have referred him to the New York office of the defendant, but I never said anything to him from which it could be inferred that I understood that the agreement was that nothing but the superstructure was to be cut up into the charging box sizes. I never told Mr. Meurer that thirty burners would be required for the two vessels. I told him that we might have to have up to fifty burners. At no time in the month of June, or any other time, did I tell Mr. Meurer that had the people in the defendants' New York office permitted me to cut up the vessels as I originally laid them out, the work would have been entirely completed within three months, or within any other definite time, nor did I say that the delay in cutting up the vessels was due to the disinclination

of the defendant to cut them up because of a drop in the price of steel.

6. It is not true that the S. S. "Black Arrow" is now in a dangerous condition. She is lying on an even keel, without a list, all her rivets are in good condition, and she is not leaking. All of the scrap steel within her is steel from her own hull, which has been cut up, and it is evenly distributed throughout.

7. During all the first part of the scrapping, it was necessary to carry the tanks containing the compressed gas and air on and off the vessels. I told the representatives of the complainant when I first went on the job that if they bought their gas and air from the Air Reduction Company, that company would supply equipment including manifolds, so that the tanks might all be left ashore, and the gas and air piped to the vessels. This they refused to do and there was not for a long time that they had manifolds in operation. The carrying of the tanks on and off the vessels delayed the work and caused an addition expense for labor.

7. I remember very well the occasion of the accident to the S. S. "Philippines", which caused its partial flooding. Mr. Williams, either one or two days before, had left the job at Perth Amboy and was over at the Staten Island job. The day of the accident the work on the "Philippines" was in charge directly of the machinest foreman, Walter Peterson, an employee of the complainant, who was its employee before this job commenced. Mr. Preacher and I were both on the "Black Arrow" when we heard the shouts from the "Philippines" and immediately rushed over there and saw the

water pouring in. Mr. Preacher afterwards told me that the cause of the breaking of the sea-cock was the failure of his men to protect it by boarding it as he had told them to do.

8. I had a long been dissatisfied with Peterson's work as foreman. He was unable to get work out of the men who I frequently found loafing on the job, with Peterson not around. Shortly after the accident to the "Philippines" in the presence of Mr. Morny, I complained of Peterson, and asked Preacher to discharge him from our job, which Preacher agreed to do and did. The complainant had no man then in its employ available to take Mr. Peterson's place. I knew John Gilbert, and knew him to be a satisfactory man for that position, and I recommended him to Mr. Preacher. Mr. Preacher acted on my recommendation and employed him as Peterson's successor on our job. Although recommended by me, he was an employee of the complainant. As such he may have hired and discharged men working on the job. I never hired or discharged a single man. If I found fault with any man, I complained of him to either Preacher, Peterson or Gilbert. Indeed, I was unable to control the employment of men on the job. At one time, while a test of gas was under way, I requested the discharge from our job of some when who I thought were drinking, and the complainant's representatives refused to discharge them from our job.

8. Except for the cutting up of the boilers which continued longer under some special arrangement, no cutting up of either of the vessels has been done since about the middle of May. The complainant refused to cut up any more charging box sizes, and

the vessels were by that time in such a condition that no more ship-plates could physically be taken out without the cutting up of some interfering small pieces which the complaint refused to cut up on the ground that they would not cut up charging box sizes. That is the reason why no more work of any kind on the vessels had been done. The cutting up of the boilers under a special arrangement continued, and was completed about a week ago.

9. While both vessels are in no danger in their present berths, it would be very unsafe to move the "Black Arrow" in her present condition. I fear very much that if an effort should be made to move the "Black Arrow" she might turn over. This danger does not exist with the "Philippines," but, owing to the absence of anchors and chains, from both vessels, it would be impossible to get insurance against the risk of moving them.

10. I have had five years' experience in scrapping vessels, both steel and wooden. I have never scrapped a vessel which was not cut up into what we have called charging box sizes, except in the case of one vessel as in the case of these vessels, a small amount of ship plates were shipped out. Unless the owner of the vessel, being scrapped, can make an unusual special contract for the large size plates, the vessels have to be cut into charging box sizes in order to dispose of the scrap. Except for such extraordinary contracts, a vessel cut up into larger sizes than charging box sizes is only partially scrapped, and the scrapping is incomplete until the vessel is reduced to sizes which will be purchased by the steel mills who insist upon charging box sizes.

11. Some time in the early part of March, Mr. Meurer came to me when we were alone, and said "We're going to lose our shirt on this job, because it is taking more gas and air than we figured. We've got to get an extra of some kind to pull us out. Now can't we fix this thing up between ourselves and I'll take care of you?" I said "nothing doing."

JAMES L. BERNARD.

Sworn to and subscribed before me this 3rd day of July, 1924.

EDITH S. POWELSON,
Notary Public for New Jersey.
(Seal)

ANSWERING AFFIDAVIT OF EDWIN T. WILLIAMS ATTACHED TO BILL OF COMPLAINT.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

EDWIN T. WILLIAMS, being duly sworn according to law, on his oath deposes and says:

1. I was, but am not now, employed by H. L. Crawford & Co., the defendant in this cause.

2. I was employed to assist Mr. Bernard in and about the scrapping of two vessels being scrapped at the yard of the Perth Amboy Dry Dock Co., but I left the Perth Amboy yard and went to the yard of the Staten Island Shipbuilding Company, where other vessels of the defendant were being scrapped, some time before the doing of the work which caused the accident resulting in the flooding of the S.S. "Philippines."

3. It is not true, therefore, that I ordered the workmen to conduct their burning in any method which resulted in the aforesaid damage to that vessel, and Mr. Preacher did not protest to me against the method of cutting any part of that vessel on the ground that it was injurious and might cause damage.

EDWIN T. WILLIAMS.

Sworn to and subscribed on the 2nd day of July, 1924, before the subscriber, a Notary Public of the County and State aforesaid, as witness my hand and seal of office.

HENRY C. MEYER.
Notary Public,
(Seal) Westchester County, N. Y.
Certificate filed in Register's Office.
Certificate filed in New York County.
New York County Clerk's No. 118.
New York County Register's No. 6178.
Term expires March 30, 1296.

DEFENDANTS' EXHIBIT 1.
ATTACHED TO BILL OF COMPLAINT.

January 31, 1924.

Perth Amboy Dry Dock Co.,
Perth Amboy, New Jersey.

Gentlemen:

Beg to enclose our check herewith to your order for the sum of $4,670.24 in payment of the enclosed bills for the period from December 22nd to January 2nd inclusive, for S.S. "Black Arrow" and "Philippines," with such exceptions as are shown thereon.

Yours very truly,

H. L. CRAWFORD & Co.

3M-S

DEFENDANTS' EXHIBIT 2.
ATTACHED TO BILL OF COMPLAINT.

February 11th, 1924.

Mr. W. Parker Runyon,
Perth Amboy Dry Dock Company,
Perth Amboy, N. J.

Dear Mr. Runyon:

Because of your expressed desire to cooperate with us in the efficient and economical cutting up of the two ships which we now have in your yard, I feel free to write your frankly of matters which I know if complied with in the spirit in which the suggestions are made, will result to our mutual advantage in hurrying the work to its completion.

We are having difficulty and delays in loading cars due to the condition of the Railroad siding and the abrupt curve of same to the dock. I understand that an hours time was required Saturday last in getting one car off the dock because of the care necessary to prevent it from leaving the track on this curve. We will never be able to get the number of cars out per day with this condition to contend with.

As we have contracted to deliver definite quantities of scrap within a definite time, it is assential that we be placed in position so as to be able to ship not less than 200 tons per day from now on. This means speeding up the work of cutting to the limit.

In order to accomplish this we need right now, two manifolds on the dock for the use on the S.S. "Black Arrow" and one in the ward for cutting up the large pieces, also two additional on the dock for use on the S.S. "Philippines." This would save

many hours of labor in changing the cylinders and would make possible the use of as many as 50 burners. We need at least 30 burners immediately. The burning equipment should therefore also be acquired right away.

In view of the fact that the location of the "Philippines" makes necessary the need of a lighter, we feel that such should be constantly available at least until the "Black Arrow" is placed on the dry dock and the "Philippines" moved to the dock with the railroad siding.

Thanking you for the interest you have taken in our matters to date, and that you may see your way clear to carrying out the suggestions made above, we remain,

Very truly yours,

H. L. CRAWFORD & CO.

6-M-S

DEFENDANTS' EXHIBIT 3.
ATTACHED TO BILL OF COMPLAINT.

PERTH AMBOY DRY DOCK CO.

Perth Amboy, N. J.
Feb. 14, 1924.

Mr. H. L. Crawford,
H. L. Crawford & Co.,
50 Broad Street,
New York City.

Dear Sir:

Replying to your letter of February 11th, 1924, in reference to the time required for getting the car load of material off the dock because of the care which had to be taken to prevent the car from leaving the track at the curve, beg to advise that the writer has looked into the matter very carefully, and am very sorry to say that you must have been misinformed.

Our Mr. Preacher tells me that it did not take more than twenty minutes at the very most to get this car off the dock, and the reason it took that long was because he wished to satisfy himself that everything would be O. K. as this was the first car, loaded to capacity, that we had ever had all the way down our new dock.

The writer has also been informed that our lighter has been placed at your disposal and can be used on either ship as your Superintendent sees fit. We are also giving you the use of a carfloat, which we have purchased, when we find it necessary to use the lighter for our own work, although this was not stated in our contract.

We note in your letter that you will require approximately fifty burners, although your Mr. ernard has told the writer and our Mr. Preacher that you would never require more than thirty, which we are making provisions for. At the present time we do not think it would be advisable to put the thirty burners on because they could not work to advantage nor to your satisfaction.

The manifolds which you speak of are being taken care of, although we do not think it would be practical to set them up on the dock at present due to the fact that they are still throwing things from the ships on to the dock.

We are doing everything in our power to assist you and hope you will be thoroughly satisfied when this work is completed.

Yours very truly,

PERTH AMBOY DRY DOCK CO.

AMB (Sgd) Edward J. Meurer.

DEFENDANT'S EXHIBIT 4, ATTACHED TO BILL OF COMPLAINT.

PERTH AMBOY DRY DOCK COMPANY.

Perth Amboy, N. J.,
March 29th, 1924.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

We have your letter of March 27th, with enclosures.

You of course understand that it is our insistment that the charges against you for labor are correct, and therefore it is not our intention to pay or recognize the correctness of the invoices which you enclosed.

You have deducted from previous bills, on account of labor charges, $575.59. These deductions, as we have heretofore advised you, were unauthorized. We will ask you, therefore, to please send us a check for the above sum by return mail.

We are also sending you herewith a statement of the expenditures incurred by us in saving the Steamship "Philippines" when she was about to sink in the early part of January. These expenditures were not due to any fault or neglect on our part. Please send us your check for the same.

As you have been heretofore advised, your practice in cutting up in charging box sizes a greater part of the vessel than was agreed upon at the time our contract was made, has entailed a very considerable expenditure on our part for gas and air,

over and above what we would have been required to expend for those items, had the scrapping of the vessel been carried out in accordance with the plan agreed upon. We are having this additional expense calculated, and will bill you for the same just as soon as the amount has been ascertained.

As you know, the manner in which you have handled this contract has been very unsatisfactory to us, and unless you comply with our above stated requests, we will feel obliged to stop work on the contract, because of your failure to carry out your part of it.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
(Sgd) W. PARKER RUNYON,
Pres't.

H. L. B.

DEFENDANTS' EXHIBIT 5, ATTACHED TO BILL OF COMPLAINT.

April 16, 1924.

Perth Amboy Dry Dock Company,
Perth Amboy, N. J.

Dear Sirs:

We have not replied to your letter of March 29th previously for the reason that we are at a loss to understand the charge which you now claim, and amounting to $1572.43, as a charge for stopping a leak in the S. S. "Philippines" which occurred in January, 1924, bills for that month having heretofore been presented covering all labor and use of plant for that month and same paid.

The accident you refer to was entirely due to the gross carelessness of your men in dropping a piece of pipe thereby breaking a sea valve, and the responsibility was entirely yours. We therefore cannot see any justice in the claim you now make at this late date.

In regard to the other items mentioned in your letter as amounting to $575.59 as deductions in labor payroll, we are unable to check this amount without a detailed statement from you as to what these cover, but we do know of many deductions that were made after taking up the separate items with your representative who agreed that they were proper adjustments, and these deductions were further confirmed as proper by your President at our luncheon at the Bankers Club.

Very truly yours,

6-M-I

DEFENDANTS' EXHIBIT 6, ATTACHED TO BILL OF COMPLAINT.

PERTH AMBOY DRY DOCK COMPANY.

Perth Amboy, N. J.,
April 26th, 1924.

Messrs. H. L. Crawford & Co.
50 Broad Street,
New York City.

Gentlemen:

In accordance with our letter of March 29th, 1924, we enclose herewith our bill covering the amount for additional gas and air used in cutting the ship structure in the small sizes above the amount that would have been used to cut the structure into large sizes.

We have also billed you for the cost of the gas and air used in cutting up the miscellaneous fittings not contemplated to be cut but to be removed by your labor without cutting.

We also direct your attention to the fact that it was understood at the time the contract was made that the vessels would be completely scrapped within three months, this time has expired. We are very much in need of our piers, upland, and wharfage space occupied by these ships, and we will therefore, from now on, have to charge you an additional sum of One Hundred Dollars ($100) per day for each ship. We will bill you for this plant weekly beginning next week.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
(sgd) W. PARKER RUNYON,
Pres't.

DEFENDANTS' EXHIBIT 7, ATTACHED TO BILL OF COMPLAINT.

PERTH AMBOY DRY DOCK COMPANY.

Perth Amboy, N. J.,
April 29, 1924.

Attention: Mr. Gilbert.

H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

We hereby beg to inform you that we will, under no condition, allow you to continue cutting the angles off the backs of the plates which you are preparing for shipment, as it was originally agreed that these plates were to be shipped with the angles and all intact.

We are figuring the amount of footage used for cutting these angles and will bill you for same.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
(Sgd) W. PARKER RUNYON,
Pres't.

AMB

DEFENDANTS' EXHIBIT 8, ATTACHED TO BILL OF COMPLAINT.

March 31st, 1924.

Perth Amboy Dry Dock Company,
Perth Amboy, N. J.

Attention: Mr. W. Parker Runyon.

Dear Sir:

We again remind you of the fact that we have sold a large part of the shell of the S. S. "Black Arrow" for export shipment, and that this shipment must be made between the 8th and 10th of April. Owing to your refusal to continue the cutting up of the S. S. "Black Arrow" we are unable to give out the shell pieces to cover this contract.

The ocean freight has been booked on this steel, and if shipment is not made and this space is unused, the loss will be for your account.

We regret the necessity of having to send you this notice, but your continued refusal to scrap the S. S. "Black Arrow" in accordance with your contract compels us to do so.

Kindly advise us what you intend to do. If you do not intend to allow us to get this steel out, we desire to know it as long in advance in order to try and cancel the ocean space in order to eliminate loss as much as possible, even though such loss is for your account.

Very truly yours,

FAM M-1

H. L. CRAWFORD & CO.

STIPULATION AS TO AMENDMENT OF BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

PERTH AMBOY DRY DOCK COMPANY, Complainant, vs. HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & COMPANY, Defendants.	On Bill, Etc. Stipulation.

It is hereby STIPULATED between the parties to the above-entitled suit as follows:

1. That the bill of complaint is deemed to have been amended at the trial hereof adding thereto two paragraphs—the first alleging certain representations found by the Court to have been disclosed by the evidence herein, made by defendants to plaintiff, whereby the plaintiff was induced to enter into the written agreements set out in the complaint, and the second charging fraudulent evasion of said representations by the defendants.

2. That the affidavits filed by the defendant herein stand as their answer to the bill of complaint.

WALL, HAIGHT, CAREY & HARTPENCE,
Solicitors for Complainant.
McCARTER & ENGLISH,
Solicitors for Defendant.

Opinion of Justice on Bill in Court of Chancery.

IN CHANCERY OF NEW JERSEY.

Between
Perth Amboy Dry Dock Company,
a corporation,
Complainant,

and

Harden L. Crawford and James W. Decker, partners trading as H. L. Crawford & Co.,
Defendants.

Backes, V.-C. (Orally).

The bill was filed July 2nd to compel the defendants to remove their boats from the complainant's docks at Perth Amboy, and upon the return of the order to show cause affidavits were submitted but because of the nature of the relief sought, a mandatory injunction—a writ that is sparingly issued preliminarily—and the pressing necessity for relief, the cause was immediately set down for final hearing. If the complainant was to be relieved, relief could only have been afforded by an immediate hearing and a prompt decision. No formal answer was filed, but it was agreed by counsel that the defendants' affidavits submitted should be treated by the court as the answer to the bill. We have been for three days threshing out this case and I think every possible feature of it has been developed. All phases have been presented and the Court is in a position to decide between the parties. The bill does not plead the cause made by the proofs and must be re moulded from one setting up, so-called, two

contracts, contemporaneous written and oral contracts, to one charging representations inducing the written contract and fraudulent evasion of the representation.

I look upon the bill as one in the nature of a nuisance bill—a bill to remove or to prevent a continuing trespass—a nuisance. If the complainant's cause be sustained then the ships are in its docks interfering with its business unlawfully, and constitute a nuisance to the complainant, and it is upon that theory that relief may be granted in equity. The law courts cannot help adequately, if the complainant is molested. The complainant is obliged to come into this court in order to get full and exact relief. True, the complainant may go into the law court, setting forth to a jury the same set of facts presented here and if the jury find in favor of the complainant it could assess damages, but money damage is not always—money damage seldom is—an adequate remedy—adequate relief. The law courts can only award damages by way of compensation for the injury sustained. In this court we remove the injury. If there is an adequate remedy at law equity will not interfere, but an award of damages in a case of this kind, to be determined by a jury is a precarious thing. The award may or may not be adequate to the complaint. It ought not to be subjected to the whim and caprice of a jury. It would be quite difficult to present to a jury all of the elements of damage. It would be difficult, as instanced by counsel, if they had a large job coming in tomorrow. and lost it, to be able to explain to a jury and to measure the amount of that loss. It would be impossible to demonstrate to the jury the loss sustained in the loss of the use of the docks. It is said that the company itself fixed the amount at a hundred dollars a day. The argument would appeal if the de-

fendants had agreed to it, but claiming a hundred dollars a day as the damage, is far from recovering a hundred dollars a day from a jury.

I have no question as to the jurisdiction of this court to act in this case because the remedy—adequate remedy is in this court which the law court cannot furnish.

Whether the ships are a nuisance, or a continuing trespass in the nature of a nuisance, in the docks of the complainant, and whether this court will exercise its jurisdiction, depends entirely upon who created the nuisance, in other words, which of the contending parties is responsible for the present impasse. The complainant agreed to hire to the defendants the use of its docks for the purpose of scrapping two ships, the Philippines and the Black Arrow at a fixed price for each. Generally speaking the complainant was to furnish all the means for scrapping—docks, man power, chemicals, burning power and the means of application. The manner in which the scrapping was to be done was to be under the direction of the defendants. So the contract reads. Some question has been raised as to whether the labor—the man power—was that of the Docks Company or Crawford & Company in the course of the work. It might be interesting to decide for which of these the men were working or by whom they were employed, but it strikes me as being entirely immaterial. The contract failed to fix the time of the use of the docks and the method of scrapping. As to these two items, which have become very important in the case, the contract must be read in the light of what the law says, that the Dry Dock Company and the defendant agreed —understood that the work was to be done within a reasonable time in the ordinary course of trade done for the market. Reading the contract there is no limitation except reasonableness. Now that

is the legal view but it is not controlling in this case.

The bill alleges that there were two contemporaneously made contracts, written contract and a verbal contract, which I think is an impossible situation where the parties have reduced that which they have agreed to to writing. There cannot be a written and verbal contemporaneous contract where the written contract of and in itself is a complete contract. So much of the allegations of the bill as charge a contemporaneous verbal contract I shall read and regard as allegations of representations preceding and accompanying the making of the written agreement in determining the cause.

When two parties enter into written agreement the law says they are bound by their written agreement, but equtiy says you are not bound by your written agreement if the agreement was procured by false representations, made to induce the contract, or, where the representations are not false but are thereafter violated; in other words, fraudulent conduct in the execution of the contract. I feel I do not express myself as precisely as I want to on that point but it is this, that if one makes representations to inducing another to enter into a contract and then in its performance repudiates the representations, the repudiation is a fraud and equity will intervene.

The complainant claims that it was induced to make this contract upon representations as to the manner in which it was to be performed. Those representations, if made, no one will deny were vital to the contract, and vitally important to the complainant in entering into the contract. It is claimed that Crawford & Company's agent represented that the ships were to be scrapped within approximately three months—that it was a winter job, when the docks of the complainant were not in

much demand—were usually idle, and further that the ships would be cut up in shipping sizes, where convenient, which are, as I understand, sizes of six and a half feet wide by twenty feet long, and that the boilers were to be removed intact. I have no doubt that the representations were made as to the manner in which the ships were to be scrapped, because on them depended the Dry Docks Company's estimate of the amount of power that would be used, and which is of no inconsiderable sum. Ordinary experience would teach us that. The first question a man would ask upon being approached to submit a lump sum bid for such work, well, how are you going to cut them up? If you cut them up in the larger sizes we will use less gas and air than to cut them up in smaller sizes. Now it is proved, and I think to the satisfaction of every one in this room, including Mr. Crawford, that Bernard, his agent, represented to Meurer and Preacher of the Dry Docks Company how the ships were to be cut up, in substance and effect that were the ships could be cut up—conveniently in shipping sizes they were to be so cut up and where the parts of the ships were so small that shipping sizes could not be cut then in charging box size. Not only do the complainant's witnesses testify to it, but Bernard testifies to it, and every circumstance in the case indicates that it was made. Now, that representation was undoubtedly made to induce the lowest figure the Dry Docks would give. Crawford & Company's attitude is that Bernard did not represent them. Bernard was sent by them to get prices. The estimates from the Dry Docks Company to Crawford & Company were procured by Bernard. Crawford & Company acted upon what Bernard procured; they took the benefit and advantage—and must be charged with the responsibility. He

was their agent—their representative—and his acts were as chargeable to Crawford & Company as though Mr. Crawford himself had made the representation.

Now, as to the time in which the work was to be done, I think there is not the shadow of a doubt that it was represented that the work was a winter job—a three months' job. Not necessarily that the work was to be done within three months, but approximately three months. The work was undertaken; both sizes were cut and shipped. There came a time when the defendants disregarded the representations and undertook to scrap the ships only in charging box sizes; the complainant objected that this was not according to the representation upon which it estimated and refused to cut up the ships in charging box sizes unless the defendants would pay the additional cost. The defendants said no, we will not do anything of the kind; the contract is silent as to time and manner of doing the work and our representations go for nothing; we will cut up in charging box sizes or not at all; the complainant said no, unless you agree to pay the difference in price, an answer not wholly unwelcome to the defendant for at that time the steel market was very low; prices had fallen considerably, and the market was extremely dull.

Now, it is plain who is responsible for the distressing condition at the complainant's docks. The defendantss hould have and were in duty bound to comply with the request to pay the additional cost of gas. It was justly due the complainant. The complainant properly refused to do that which the defendants had no lawful right to require it to do. The defendants have since and for a long time refused to go on with the cutting under the terms legally laid down by the complainant, and that re-

fusal is an abandonment of performance of the contract. Their ships are unlawfully in the yards of the Dock Company and The Dock Company has the right to call upon this court for their removal. That will be the decree.

Now concerning the inconvenience, attending a decree of removal which counsel argued. It may be of considerable inconvenience to remove the boats at this time, but the doctrine of inconvenience does not apply on final hearing. We weigh the inconveniences on application for a preliminary injunction, but on a solemn determination of the rights of the parties the element of inconvenience has no place. I cannot consider that phase of it as between the inconvenience to the complainant in permitting them to remain or the inconvenience of the defendants in removing them. The complainant has the right to have them removed and it is the duty of the defendants to see that they are taken away. It may be that after both sides have considered the view I have expressed they can arrive at some amicable arrangement. The only thing for me to do now is to fix the time within which the boats are to be removed. Counsel may appear before me at ten o'clock tomorrow morning at Trenton unless they can agree upon the time.

FINAL DECREE ON BILL ON COURT OF CHANCERY.

IN CHANCERY OF NEW JERSEY.

Between PERTH AMBOY DRY DOCK COMPANY, a corporation, Complainant, and HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & Co., Defendants.	On Bill, etc. Final Decree.

This cause coming on to be heard in the presence of Wall, Haight, Carey & Hartpence, solicitors for the complainant, and McCarter & English, solicitors for the defendants, and the Court having examined the pleadings, and taken proofs orally in open court, and having heard and considered the arguments of counsel, and the Court being of the opinion that the complainant is entitled to the relief prayed for in the bill of complaint as hereinafter granted.

It is, on this thirtieth day of December, 1924, as of the seventeenth day of July, 1924, on motion of Wall, Haight, Carey & Hartpence, solicitors for the complainant, ORDERED, ADJUDGED and DECREED that the defendants forthwith and as speedily as possible remove the said vessels "Philippines" and "Black Arrow" referred to in the bill of complaint from the complainant's plant, at Perth Amboy, New Jersey.

And counsel for the defendants having announced in open Court that the defendants would

remove the said vessels from the complainant's plant as speedily as possible.

It is, thereupon, ORDERED, ADJUDGED and DECREED that the issuance of the mandatory injunction prayed for in the bill of complaint be suspended and withheld.

AND IT IS FURTHER ORDERED, ADJUDGED and DECREED that the defendants pay to the complainant the costs of this suit to be taxed; that execution issue therefor according to the practice of this Court; and that there be included in the complainant's said taxed bill of costs the sum of $2500., which is hereby fixed and allowed to complainant as a reasonable and proper counsel fee.

Respectfully advised,

E. R. WALKER,
C.

JOHN H. BACKES,
V.-C.

NOTICE OF APPEAL FROM DECREE IN COURT OF CHANCERY.

(Filed January 9, 1925.

IN CHANCERY OF NEW JERSEY.

Between PERTH AMBOY DRY DOCK COMPANY, a corporation, Complainant-Respondent, and HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & Co., Defendants-Appellants.	On Bill, etc. Notice of Appeal.

The defendants hereby appeal from the final decree made in this court in the above stated cause on the thirtieth day of December, 1924, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

McCARTER & ENGLISH,
Solicitors of Defendants.

G. W. C. McCARTER,
Of Counsel.

Dated, January 7, 1925.

I conceive there is good cause for appeal in the above stated cause.

G. W. C. McCARTER,
Of Counsel with Defendants.

DECREE OF AFFIRMANCE ON APPEAL FROM COURT OF CHANCERY.

NEW JERSEY COURT OF ERRORS AND APPEALS.

June Term, 1925.

Between
PERTH AMBOY DRY DOCK COMPANY,
Complainant-Respondent,

and

HARDEN L. CRAWFORD, *et al*,
partners, &c.,
Defendants-Appellants.

This cause coming on to be heard at the June Term, one thousand nine hundred and twenty-five, and being argued by George W. C. McCarter, counsel for the appellant, and Thomas G. Haight and William H. Carey, counsel for the respondent, and the Court having taken time to consider the same, and being of the opinion that the decree of the Chancellor should be affirmed in all things—

It is now, on this Nineteenth day of October in the year of our Lord one thousand nine hundred twenty-five, ordered, adjudged and decreed, that the decree of the Chancellor be in all things affirmed with costs; and that the record and proceedings be remitted to the Court of Chancery, to be therein proceeded on according to law and the practice of said Court.

On motion of
WALL, HAIGHT, CAREY & HARTPENCE,
Solicitor and of Counsel for Respondent.

CERTIFICATION OF RECORD IN COURT OF CHANCERY.

I, THOMAS BARBER, Clerk of the Court of Chancery of the State of New Jersey the same being a Court of Record, do hereby certify that the foregoing is a true copy, Bill of Complaint filed June 30, 1924, Affidavits & Exhibits, Stipulation filed February 16, 1925, Opinion, and Final Decree filed January 2, 1925, also Notice of Appeal filed January 9, 1925 in the cause wherein Perth Amboy Dry Dock Co., a corp., are Compts. and Harden L. Crawford and James W. Decker, partners trading as H. L. Crawford & Co. are defts., now on the files of my office.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of said Court, at Trenton, this 4th day of January A. D. nineteen hundred and twenty-six.

THOMAS BARBER,
Clerk.

(Seal)

I, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, do hereby certify that Thomas Barber whose name is subscribed to the above certificate, was, at the date thereof, and now is, the Clerk of the Court of Chancery of the State of New Jersey, that said attestation is in due form, that the seal thereto annexed is the seal of said Court, and that the signature of the said Thomas Barber is in his own proper handwriting.

WITNESS my hand at the City of Trenton this Fourth day of January A. D. nineteen hundred and twenty-six.

E. R. WALKER,
Chancellor.

NOTE.—This certificate is made pursuant to an act of Congress (Rev. Stat. U. S. 1875, sec. 905, p. 170).

Exhibit P-5.

1/6/26 LDB

PERTH AMBOY DRY DOCK CO.
Perth Amboy, N. J., March 3, 1924.

Mr. H. L. Crawford,
H. L. Crawford & Co.,
50 Broad Street,
New York City

Dear Sir:

At the time that your representative Mr. Bernard came down here to talk over the matter of scrapping the "Black Arrow" and the "Philippines," the writer, Mr. Preacher and Mr. Bernard went over to the fleet where these two boats were tide up and looked over both of the ships.

Mr. Bernard at that time informed us that he intended scrapping the ships in the following manner:

The entire super-structure to be cut up into charging box sizes and the rest of the hull cut up into large size plates for shipment to China and the engines and boilers were going to be lifted out without being entirely dismantled for shipment to Germany. Mr. Bernard informed the writers that you had a representative in Germany trying to dispose of the engines and boilers of these ships.

It has been brought to the attention of this Company that you now intend cutting up these ships entirely in charging box sizes and that the engines and boilers are to be dismantled, the boilers being cut to suit the requirements of the steel company.

Should this plan be carried out, you will realize that there will be a greater amount of gas and air required to do this work than was originally contemplated, and we do not feel that we should stand this additional expense, as the work was laid out to us at an entirely different angle.

Kindly advise us what your opinion is in the matter.

Yours very truly,

PERTH AMBOY DRY DOCK CO,.

AMB (Signed) Edward J. Meurer.

Exhibit P-6.

H. L. Crawford & Co.,
50 Broad St., New York.
Telephone 2741-2 Broad.

March 6th, 1924.

Perth Amboy Dry Dock Co.,
Perth Amboy, N. J.

Attention Mr. Meurer.

Gentlemen:

Your letter of March 3rd states that it has been brought to your attention that we now intend cutting up the two ships entirely into charging box sizes. I should appreciate knowing who has brought this matter to your attention, and where you have gotten your information, as there has been no change in our plans for the scrapping of the ships.

We have contracted for the sale and must deliver a quantity of ship plates for export, and are most desirous of getting out these plates and shipping same promptly. If, however, through no fault of ours but of the Dry Dock Company in not providing facilities to allow us to carry out the sale of the ship plates, then and in that case the only market that we will have will be for charging box sizes.

The time is getting very short and very little progress is being made, and so far as we can see it is through no fault of ours.

Very truly yours,

(Signed) H. L. Crawford & Co.

6-M-S

Exhibit P-7.

April 9th, 1924.

Furnish Steam
Philippines for fire pumps

Jno. P. Gilbert
Apr. 9, 1924.

P.A.D.D.

Steam from 5 P. M. to 12 midnight for Philippines—

Jno. P. Gilbert.

Stipulation in Lieu of Exhibits P-11 and P-12.

NEW JERSEY COURT OF ERRORS AND APPEALS.

PERTH AMBOY DRY DOCK COMPANY, Plaintiff-Respondent, vs. HARDEN L. CRAWFORD, *et al.*, Defendants-Appellants.	Stipulation in lieu of Exhibits P-11 & P-12.

IT IS STIPULATED AS FOLLOWS:

1. Exhibits P-11 and P-12 be not printed as part of the state of the case.

2. Exhibit P-11, if printed, would show, among other things, bills rendered by the plaintiff to the defendants for labor claimed by the plaintiff to have been performed in and about the contract for the scrapping of the S. S. "Black Arrow," and for other sums claimed by the plaintiff to be due from the defendants to it under the said contract.

3. All of the items listed in Exhibit P-13 are taken from and appear on the aforesaid bills included in P-11.

4. Exhibit P-12, if printed, would show, among other things, bills rendered by the plaintiff to the defendants for labor claimed by the plaintiff to have been performed in and about the contract for the scrapping of the S. S. "Philippines," and for other sums claimed by the plaintiff to be due from the defendants to it under the said contract.

5. All of the items listed in Exhibit P-14 are taken from and appear on the aforesaid bills included in P-12.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Plaintiff.
McCARTER & ENGLISH,
Attorneys for Defendants.

Exhibit P-13.

W. Parker Runyon, Pres't.
Chas. D. Snedeker, Treas.
Telephones { Perth Amboy No. 6. / Perth Amboy No. 7.

Cable Address "Padrydock"
Western Union Code

Perth Amboy, New Jersey, Aug. 1, 1924.

H. L. Crawford & Company and Owners

Duplicate.

To Perth Amboy Dry Dock Co. Dr.
Shipwrights, Machinists and Boiler Makers
Five Dry Docks, capacity up to 10,000 Tons

Terms Cash

S. S. "Black Arrow"

Deductions not allowed.

1924					
Jan.	18	3 hrs. Auto Truck	2.00	6.00	
	22	No. 620-546-578 Moving Tanks		12.00	
	23	No. 594-582½ dy. No. 598-617-637-546		16.00	34.00
	24	No. 597-617-582-620-546 Moving Tanks		16.00	
	25	No. 582-606 Moving Tanks		8.00	
	26	No. 582-606 " "		6.50	
	28	No. 582-606 " "		8.00	
	29	No. 582-606 " "		8.00	
	30	No. 582-606 " "		8.00	54.50
Jan. Feb.	31- 6	30 hrs. due to locomotive crane going off track		17.07	

Jan.	31	No. 582-598 Moving Tanks			8.00	
Feb.	1	No. 582-598 " "			8.00	
	2	No. 582-598 " "			8.00	
	4	No. 582-598 " "			8.00	
	5	No. 582-598 " "			8.00	
	6	No. 598-5 hrs. No. 617-7 hrs. No. 529-5 hrs. No. 631-8 hrs.			12.50	
	1–6	30 hrs. due to change of tanks		.72	21.60	91.17
	7	No. 616-589 Moving Tanks			8.00	
	8	No. 616-631-589 Moving Tanks			12.00	
	9	No. 616-631-532 " "			9.50	
	11	No. 616-631-614-673 Moving Tanks			15.50	
	13	No. 614-616-631-673 Moving Tanks			150.00	
	7–13	52 hrs. Making tank connections		.72	37.44	97.44
	15	½ hr. Power boat	6.00	3.00		
		3 " Labor	.72	2.16		
		3 " Auto	1.50	4.50		
		Ferry for auto		1.00	10.66	
	14	No. 631-673-616-614 Moving Tanks			16.00	
	15	No. 631-673-616 Moving Tanks			12.00	
	16	No. 631-673-614 " "			10.50	
	18	No. 631-673-616 " "			12.00	
	19	No. 616-631-534-614 Moving Tanks			12.50	
	20	No. 631-673-614-616 Moving Tanks			6.00	
	14-19	54 hrs. Making tank connections		.72	38.38	118.54

	May	8–14	2 Burner Tips	2.50	5.00	
			Coppersmith's bill		4.48	9.48
		15–21	4 hrs. W. Martin	.72		2.88
		22–28	Cutting 6737 ft. angles off back of plates, not included in contract			336.00
	June	12-				
		18	3 Burner Tips	2.50		7.50
		19–25	2 " "	2.50		5.00
10	July	10-				
		16	12 hrs. Air Pump	2.00	24.00	
			C. Patten's Salary		35.00	59.00
						815.51
	Apr.	25	Additional amount of gas and air used to April 1, in cutting structure of S. S. "Black Arrow", into small			
20			sizes instead of large sizes as originally laid out by your representative		2,383.00	
			Gas and air used to April 1, in cutting miscellaneous material, not included to be cut, but to be removed by labor without cutting		843.00	3,226.00
	May	26-				
30	June	25	Air and gas for cutting boilers as per itemized bill rendered			792.64
	May	5-				
	Aug.	1	Wharfage as per bills rendered			9,600.00
	Feb.	28-				
	Mar.	26	Use of plant—4 weeks at $497.00		1,988.00	
	May	28	Use of plant—balance due		2,241.50	
40	July	2	Use of plant—balance due on contract		499.00	4,728.50
						19,162.65

Exhibit P-14.

Cable Address "Padrydock"
Western Union Code

W. Parker Runyon, Pres't.
Chas. D. Snedeker, Treas.

Telephones { Perth Amboy No. 6. / Perth Amboy No. 7.

Perth Amboy, New Jersey, Aug. 1, 1924.

H. L. Crawford & Company and Owners

Triplicate.

To Perth Amboy Dry Dock Co. Dr.
Shipwrights, Machinists and Boiler Makers
Five Dry Docks, capacity up to 10,000 Tons

Terms Cash

S. S. "Philippines"

Deductions not allowed.

1924					
Jan.	25	No. 546 Moving Tanks			4.00
Feb.	6	No. 665, 639, 515, 516, moving tanks		16.00	
	4	No. 570-4 hrs. No. 618-657-541 Time lost due to air		13.68	
	1–6	26 hrs. on account of change tanks	.72	18.72	48.40
	9	No. 516-5 hrs. handling tanks	.50	2.50	
	11	No. 639-516-550 handling tanks		12.00	
	7–13	34 hrs. Making tanks conn.	.72	24.48	
	13	No. 516-590-630 handling tanks		12.00	50.98
	14	No. 516-590-639 " "		12.00	
	15	No. 628-639 " "		8.00	
	16	No. 639-516 " "		8.00	

	18	No. 516-639 " "			8.00	
	19	No. 516 " "			4.00	
	19–20	8½ hrs Blksmth on tools		8.50		
		8½ " Helper " "		5.10		
		2 Hammers		2.80	16.40	
	14–19	28 hrs making tank connections		.72	20.16	76.56
Apr.	9	2 hrs Labor		.80	1.60	
10		23 hrs "		.72	16.56	
		16 hrs "		.56	8.96	
		2 hrs "		.35	.70	
		7 hrs Steam—overtime		6.00	42.00	69.82
	15	2 hrs Steam—overtime		6.00	12.00	
	16	2 hrs Steam—overtime		6.00	12.00	24.00
	17	8 hrs Fireman, keeping steam—overtime		.56	4.48	
20		4 hrs Steam		6.00	24.00	
		Repairing torches		1.60	1.60	30.08
	19	Repairing air guns			5.76	
		4 hrs Fireman—keeping steam		.56	2.24	
		1½ hrs Steam		6.00	9.00	17.00
	21	Repairing air guns			5.76	
		Fittings for torches			21.70	27.46
30	23	" " "				8.19
May	1	2 hrs Steam		6.00		12.00
	2	1 " Steam			6.00	
		6 Burner Tips			15.00	21.00
	6	18 hrs Labor		.56	10.08	
		½ " Power Boat		6.00	3.00	13.08

40

	20	Martins time—6 hrs	.72		4.32
	21	" " 4 "	.72		2.88
	19	10 hrs Labor	.72	7.20	
		4 " "	.60	2.40	
		12 " "	.56	6.72	
		16 " "	.50	8.00	
		1 " Power Boat		6.00	30.32
	28	Cutting 1012 ft. of angles off back of plates, not included in contract			56.00
July	10-16	18 hrs Steam Pump	2.00	36.00	
		on account Paten's salary		12.50	48.50
Jan.	3–6	Salvage bill			1,572.43
Apr.	28-				
July	30	Wharfage as per bills rendered			9,400.00
Mar.	26	Use of plant, Feb. 28—March 26, 1924		689.75	
Apr.	30	Use of plant, balance due		689.75	
May	28	" " " " "		689.75	
July	2	" " " " "		9,656.50	11,725.75
					23,242.77

Exhibit P-15.

			Philippines	Black Arrow
	Labor handling tanks		86.50	264.00
	Labor lost on a/c of lack of manifolds		63.36	97.92
	Labor on a/c of lack of air		13.68	
	Miscellaneous labor ordered by Bernard		41.60	5.04
10	Labor lost on a/c crane off track			17.07
	Labor making wrenches		13.60	
	Labor on steam line		34.54	
			253.28	384.03
	Use of Steam 19½ Hrs. @ 6.00		117.00	
	Use of air pump		36.00	24.00
20			406.28	408.03
		431.90		
		447.51		
		879.41	406.28	
		65.10	408.03	
		814.31	814.31	

30

40

Exhibit P-16.

1/8/26 CDS
Perth Amboy Dry Dock Co.,
Perth Amboy, N. J.

Date January 8, 1924.
Your Order
Our Order W-11134

To MERRITT-CHAPMAN & SCOTT CORPORATION Dr.
17 Battery Place,
New York.
Telephone Whitehall 0140-0150

(Bill Attached)

To wrecking services rendered pumping out engine room of S.S. "Philippines" leaking and in danger of sinking at your yard, Perth Amboy, N. J. and keeping same pumped out until plug had been placed in hole in bottom of ship.

Pumpboat		
Jan. 3—10 hours @ $18.75 per hour, night work		$187.50
" 4—1 day		125.00
13 hours @ $18.75 per hour, night work		243.75
" 5—1 day		125.00
Diving, Jan. 4 & 5—2 days @ $35.00 per day		70.00
Pump engineer, 2 days @ $10.00 per day		20.00
Overtime, 23 hours @ $2.00 per hour		46.00
Bills of New York Marine Co.		
Jan. 3—Towing pumpboat, Clifton, S. I. to Perth Amboy, N. J. special tug	$90.00	
" 5—Towing pumpboat from Perth Amboy, N. J. to Clifton, S. I.—in tow	20.00	
	$110.00	
Plus 15%	16.50	
		126.50
		$943.75

E. & O. E.

Paid
MERRITT-CHAPMAN & SCOTT CORPORATION.
C.

Original sent Attorneys.

W. Parker Runyon, Pres't.
Chas. D. Snedeker, Treas.

Telephones: Perth Amboy No. 6; Perth Amboy No. 7.

Cable Address "Padrydock"
Western Union Code

Perth Amboy, New Jersey, Jan. 6, 1924.

S.S. "Philippines" Damage Duplicate and Owners

To PERTH AMBOY DRY DOCK Co. Dr.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks, capacity up to 10,000 Tons.

Terms Cash

1924				
Jan 3-6				
	16	hrs. Foreman	1.25	20.00
	49	" Labor	1.00	49.00
	64	" "	.80	51.20
	188	" "	.72	135.36
	22½	" "	.64	14.40
	19½	" "	.60	11.70
	4	" "	.65	2.60
	44	" "	.58	25.52
	44½	" "	.56	24.92
	33	" "	.55	18.15
	316½	" "	.50	158.25
	4	" Acetylene Machine	2.50	10.00
	½	" Punch & Shears	1.50	.75
	½	" Saw & Planer	2.00	1.00
	Shifting & Tug Expenses			55.00
	Merritt-Chapman & Scott Corp.			943.75
	4 ft. White Pine		.10	.40
	114 ft. Yellow Pine		.07	7.98
	50 lbs. Sheet Steel		.04	2.00

½	"	½" C. P. Hex Nuts	.15	.08	
2	"	Washers	.04½	.09	
21	"	Wire Nails	.04½	.95	
30	"	Manila Rope	.15	4.50	
21	"	Ratline	.30	6.30	
6	"	Screw Bolts	.05	.30	
4½	"	¼" C. I. Sheet Rubber	.30	1.35	
6	"	Rainbow Packing	.50	3.00	
1	"	W I " "		.90	
20 yds. No. 6—30" Canvas			.57	11.40	
2—½" Galv. Shackles			.22½	.45	
1—⅜"x5" Carriage Bolts				.02	
4—Machine Bolts			.04	.16	
1—¼" x 2" Stove Bolt				.01	
1 gal. Kerosene Oil				.14	
2—Flashlight Batteries			.12	.24	
1—1 x 6 Blk Nipple				.08	
1—1½" x 4" Blk. Nipple				.08	
1—1½" x 3" Galv. Nipple				.14	
1—1" Dart Union				.52	
1—3" M I Reducer				.54	
1—1½" C. I. Tee				.20	
Telephone calls				3.60	
Sandwiches for the men				5.40	1,572.43

Original sent Attorneys.

Exhibit P-17.

Cable Address "Padrydock"
Western Union Code

Telephones
Perth Amboy No. 6
Perth Amboy No. 7

W. Parker Runyon, Pres't
Chas. D. Snedeker, Treas.

Ex. 6 Attach Bill of Complt.

PERTH AMBOY DRY DOCK COMPANY
Shipwrights, Machinists and Boiler Makers
Five Dry Docks, Capacity Up to 10,000 Tons

Perth Amboy, N. J., March 29th, 1924.

Received Mar. 29, 1924.

Messrs. H. L. Crawford & Company,
50 Broad Street,
New York City.

Gentlemen:

Any agreement made herein is contingent upon strikes, accidents, delays of Carriers, or any other condition beyond our control.

We have your letter of March 27th, with enclosures.

Your of course understand that it is our insistment that the charges against you for labor are correct, and therefore it is not our intention to pay or recognize the correctness of the invoices which you enclosed.

You have deducted from previous bills, on account of labor charges, $575,59. These deductions, as we have heretofore advised you, were unauthor-

ized. We will ask you, therefore, to please send us a check for the above sum by return mail.

We are also sending you herewith a statement of the expenditures incurred by us in saving the Steamship "Philippines" when she was about to sink in the early part of January. These expenditures were not due to any fault or neglect on our part. Please send us your check for the same.

As you have been heretofore adviced, your practice in cutting up in charging box sizes a greater part of the vessel than was agreed upon at the time our contract was made, has entailed a very considerable expenditure on our part for gas and air, over and above what we would have been required to expend for those items, had the scrapping of the vessel been carried out in accordance with the plan agreed upon. We are having this additional expense calculated, and will bill you for the same just as soon as the amount has been ascertained.

As you know, the manner in which you have handled this contract has been very unsatisfactory to us, and unless you comply with our above stated requests, we will feel obliged to stop work on the contract, because of your failure to carry out your part of it.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
W. Parker Runyon,
Pres't.

H. L. B.

Exhibit P-18.

H. L. Crawford & Co.
50 Broad St., New York
Telephone 2741-2 Broad

Ex. 7 Attached to Bill of Complaint.

April 16th, 1924.

Perth Amboy Dry Dock Company,
Perth Amboy, N. J.

Dear Sirs:

We have not replied to your letter of March 29th previously for the reason that we are at a loss to understand the charge which you now claim, and amounting to $1572.43 as a charge for stopping a leak in the S.S. "Philippines" which occurred in January 1924 bills for that month, having heretofore been presented covering all labor and use of plant for that month and same paid.

The accident you refer to was entirely due to the gross carelessness of your men in dropping a piece of pipe thereby breaking a sea valve, and the responsibility was entirely yours. We, therefore, cannot see any justice in the claim you now make at this late date.

In regard to the other items mentioned in your letter as amounting to $575.59 as deductions in labor payroll, we are unable to check this amount without a detailed statement from you as to what these cover, but we do know of many deductions were made after taking up the separate items with your representative who agreed that they were proper adjustments, and these deductions were further confirmed as proper by your President at our luncheon at the Bankers Club.

Very truly yours,
H. L. Crawford & Co.

6-M-1
Copy to H.

Exhibit P-19.

April 24th, 1924.

Messrs. H. L. Crawford & Company,
50 Broad Street,
New York City.

Gentlemen:

In the third paragraph of yours of the 16th inst., you state that the deductions referred to "were further confirmed as proper by your President at our luncheon at the Bankers Club." I positively deny that I made any such confirmation and nobody knows it better than you do.

In reference to the breaking of the sea valve would say that it was due to any negligence on the part of our men, but to the manner in which the foreman in charge of the work for Crawford & Company directed that the cutting be done. Our bill for the saving of the ship because of the broken sea valve was presented just as soon as it was possible for us to do so.

In relation to the item of $575.59, would say that this is the aggregate of the sums which you have improperly deducted from our bills rendered to you. Please find enclosed itemized bills, Steamer "Black Arrow" $395.65, and "Philippines" $179.94, total $575.79, covering the deductions.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
W. Parker Runyon,
Pres't.

Exhibit P-20.

PERTH AMBOY DRY DOCK CO.

Perth Amboy, N. J., April 26th, 1924.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

In accordance with our letter of March 29th, 1924, we enclose herewith our bill covering the amount for additional gas and air used in cutting the ship structure in the small sizes above the amount that would have been used to cut the structure into large sizes.

We have also billed you for the cost of the gas and air used in cutting up the miscellaneous fittings not contemplated to be cut but to be removed by your labor without cutting.

We also direct your attention to the fact, that it was understood at the time the contract was made that the vessels would be completely scrapped within three months. This time has expired. We are very much in need of our piers, upland, and wharfage space occupied by these ships, and we will therefore, from now on, have to charge you an additional sum of One Hundred Dollars (100) per day for each ship. We will bill you for this plant weekly beginning next week.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
Signed W. Parker Runyon,
Prest.

Original letter with original invoice sent to attorneys.

Perth Amboy, N. J., April 25, 1924.

H. L. Crawford & Co. and Owners.

To Perth Amboy Dry Dock Co. Dr.
Shipwrights, Machinists and Boiler Markers.
Five Dry Docks, Capacity up to 10,000 Tons.

Terms Cash

April 25. To the additional amount of gas and air used to April 1st, in cutting structure of Black Arrow into small sizes instead of large sizes are originally laid out by your representative	2,383.00	
To gas and air used to April 1st in cutting miscellaneous material, not included to be cut but to be removed by labor without cutting	843.00	
	3,226.00	

Exhibit P-21.

Telephones
Perth Amboy No. 6
Perth Amboy No. 7

C-3

W. Parker Runyon, Pres't.
Chas. D. Snedeker, Treas.

PERTH AMBOY DRY DOCK CO.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks—Capacity Up to 10,000 Tons

Perth Amboy, N. J., April 29th, 1924.

Received April 30, 1924.
Ans'd.

H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

We have your letters of the 25th and 26th. Doubtless both were written before receipt of our letter of the 26th. A review of some things may help to solve the differences which apparently have arisen between us in connection with the scrapping of the Steamships "Philippines" and "Black Arrow".

It was distinctly understood at the time the contracts were entered into that the work was to be finished within three months, and that the boats should be cut up in shipping sizes, except the superstructures, which were to be cut up in charging box sizes. As you know, the three months' period has

expired. When we fixed the flat figures to cover, among other things, berths of the ships at the yard, we were guided by the understanding that the vessels were not to remain at our yard for more than three months. You can, therefore readily see that if they are to remain for a longer period, we must exact a charge for wharfage and the use of our piers and upland. This as per our letter of April 26th, we have fixed at One Hundred Dollars ($100.) a day for each ship. It must be entirely apparent to you that in fixing the flat figures, we also took into account the sizes to be cut, because the amount of gas to be used (which the flat figures include) was dependent upon the size of the cuttings. As a great part of the plates cut already, exclusive of the superstructures, were of charging box sizes, we were compelled to use more gas than we would have used had the cutting been done in accordance with the original agreement. We have billed you for the additional cost to us. We think that you will readily concede that our position in these respects is correct.

We are willing to accede to your claim that you should pay "for the use of the plant" proportionately to the work done, providing that you pay us the amount which we have demanded for wharfage and the use of our piers and upland from now on (after the expiration of three months).

It was also understood at the time the contracts were made that the small miscellaneous stuff, like piping, etc., was to have been taken apart and separated by hand. Instead of doing so you have used gas for this purpose, which we have furnished. We have billed you for such gas. There can be no question that we were justified in doing so.

You have already been fully advised as to our position in respect to the cost incurred by us in

saving the "Philippines" when she was about to sink owing to the breaking of the seacock.

Our Mr. Snedeker does not feel that any good can be accomplished by conference between him and your Mr. Crawford, owing to the fact that he has been out of touch with the work for three months. He and Mr. Runyon, however, will be very glad to see your Mr. Crawford, if he cares to call at our office in Perth Amboy, where our records, superintendent, etc., are available. We feel, however, that our position is entirely correct and we are not prepared to recede from it.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
W. Parker Runyon,
Pres't.

MB.

Exhibit P-22.

H. L. Crawford & Co.,
50 Broad St., New York.
Telephone 2741-2 Broad.

Ex. 10 Attached to Bill of Complaint.

May 5th, 1924.

Perth Amboy Dry Dock Co.,
Perth Amboy, N. J.

Gentlemen:

Answering your letter of April 29th, we should have been very glad if the work had been completely finished within three months, and had you supplied sufficient equipment and enough labor, it could have been so finished. As we have already stated, in answer to your letter of March 28th, our contracts do not limit the size to which steel in the vessels may be cut up, or any part of them. We claim, under the contracts, the right to have cut as much of either vessel as we see fit, into charging box sizes, and that is exactly what we have been doing from the outset. The additional time necessary to complete the finishing of the vessels, in accordance with the contract, will depend directly upon the number of men and the efficiency and quantity of equipment furnished by you. We have never approved of the hydrogen gas used by you, and we have urged the use of other gas, which would enable the work to progress more rapidly, and more cheaply both for us and for you. Your refusal to furnish the kind of gas and burning outfits, as required by Mr. Bernard, notwithstanding the express terms of the contract to that effect,

has, by reason of the delay and expense, caused us damage, the exact amount of which we cannot determine until the scrapping shall have been completed. We hereby notify you at that time we shall bill you for such damage as then ascertained.

In your letter of April 29th, you several times make the statement that certain matters were understood at the time the contracts were made. We beg to differ with you as to each of these understandings. We rest our position strictly upon the contract and we believe that we have made ourselves clear as to this. We are no more prepared to recede from our position than you say you are from yours.

Very truly yours,

FAM-M-1 (Sgd) H. L. CRAWFORD & Co.

Exhibit P-23.

Telephones
Perth Amboy No. 6
Perth Amboy No. 7

W. Parker Runyon, Pres't.
Chas. D. Snedeker, Treas.

PERTH AMBOY DRY DOCK CO.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks—Capacity Up to 10,000 Tons

Perth Amboy, N. J. April 12th, 1924.

Received April 14, 1924.

Messrs. H. L. Crawford & Company
50 Broad Street
New York City

Gentlemen:

The scrap iron now deposited on the upland near and in front of our Dry Dock No. 5 has been lying there a good while and interferes much with the conducting of our regular dry dock business.

It is our understanding that all material was to be removed at once from our yard, and not lie here indefinitely.

Kindly dispose of this material and remove it immediately so that our other work will not be interfered with.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
W. Parker Runyon,
Pres't.

H.L.B.
Read by J. H. B.

New Jersey State Library

Exhibit P-24.

April 25th, 1924

Perth Amboy Dry Dock Company
Perth Amboy, N. J.

Dear Sirs:

We are enclosing herewith our check to your order for $3372.07, in payment of your statement dated March 20th, S. S. "Black Arrow" $3614.20, and "Philippines" $2335.62. From both of the statements as rendered we have deducted the charge that appeared thereon for the use of plant from February 28th to March 26th, namely from the "Black Arrow" the sum of $1988., and the "Philippines" $689.75, leaving the net amount of said bills that we are herewith paying, amounting on the "Black Arrow" to $1626.20, and the "Philippines" of $1745.87.

This deduction is made in view of the fact that the percentage of work completed for that period has already been remitted in previous payments, which by referring to your records you will see that the proportionate amount paid on both contracts is in excess of the percentage of the work done on the boats, and we were advised by Mr. Olson that it would not appear on this bill.

Very truly yours,

H. L. Crawford & Co.

3-M-I

Exhibit P-25.

April 26, 1924.

Perth Amboy Dry Dock Company
Perth Amboy, N. J.

Dear Sirs:

Without desiring to prolong the discussion by correspondence of the matters covered in your various letters, it would seem to me that if Mr. Snedeker, your Treasurer, whom I understand acted for your company at the time the contract was entered into, could find it convenient when next in New York to stop in the office it might be possible to straighten out many of the differences between us that seem to exist at the present time.

I have taken the liberty of suggesting the meeting here, due to the fact that ever since my return from Bermuda my time has been wholly taken up on matters that keep me continually in the office.

Yours very truly,

H. L. CRAWFORD.

6-M-I

Exhibit P-32.

Cable Address "Padrydock"
Western Union Code

Telephones
Perth Amboy No. 6
Perth Amboy No. 7

W. Parker Runyon, Pres't.
Chas. D. Snedeker, Treas.

PERTH AMBOY DRY DOCK CO.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks—Capacity Up to 10,000 Tons

Received May 15, 1924

Perth Amboy, N. J., May 14, 1924.

Messrs. H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

Any agreement made herein contingent upon strikes, accidents, delays of carriers, or any other conditions beyond our control.

Your several letters of May 5th, owing to the writer's absence have just been brought to his attention. In an effort once more to make our position clear, we will reply to each of them.

1. In answer to our letter of May 25th, (we are at a loss to understand why you delayed an answer so long) our contracts with you make no provision whatever for the use of our tools. We permitted you to use tools from time to time, purely as a matter of accommodation. We, of course, expected that ordinary business integrity would induce you to pay for repairs made necessary by your use of them. Apparently, we were wrong in

this respect. We are satisfied, however, that you are under a legal obligation to recompense us for such repairs. We have already billed you for these repairs and must insist upon your paying the same. You have not been billed for repairs to any part of our plant, which, under our contract with you, you are entitled to use.

2. In reply to our letter of March 28th you state that your Mr. Morny made no such proposition to our Mr. Meurer as stated in our letter. In the first place, we are wondering why it took you so long (March 29th to May 5th) to find this out. In the second place, we are prepared to prove by at least two persons who heard the statement, that Mr. Morny did make the proposition stated by us. You are quite right in the statement that the written parts of our contract do not limit the size to which the vessels may be cut up, neither do they state any size for the cuttings. There was, however, a verbal understanding that the sizes of parts of the vessels were to be cut in shipping sizes, after the superstructure had been moved, the latter of which was to be cut in charging box sizes. Of course, it would have been perfectly ridiculous for both of us not to have had some understanding regarding the sizes of the cuttings when the amount of air and gas which would be consumed and the lump sum to be paid would be so largely dependent upon the size of the cuttings. We did not make a formal contract with you covering every detail but rather a short memorandum. We assumed, of course, that you would live up to the verbal understandings which were not specifically incorporated in the written memorandum.

3. Replying to our letter of March 27th (again we wonder at the delay in reply) you state that the engines and boilers will be cut up into charging box sizes. The understanding was that the

engines and boilers were to be removed and not cut up. This understanding has heretofore been carried out by you. Last week was the first time that we have heard that you intended to, or claimed, that your contract gave you the right to cut them up. You will not be permitted to cut up the boilers on either vessel unless you specifically agree to pay for the gas and air used in that work in addition to the amount provided in the contracts.

You state that you are not responsible for damage to our plant or equipment during the scrapping of the vessels. It is our insistment that you are, and we will endeavor to hold you responsible, if our plant or equipment is in any way injured during the scrapping of the "Black Arrow" and "Philippines" by any neglect or failure to do the work properly on your part.

4. In answer to our leter of April 12th you state that the scrap iron referred to is included in the space we rented to you for $75. per month. You are incorrect in this statement. The majority of the scrap iron is not located there but at the head of No. 5 dry dock, and has been there for over two months. Surely even you do not contend that your contract gives you any right to the use of our upland for storage of scrap. Unless the scrap is removed forthwith, we will proceed to have it removed and charge the expense to you. You state that the number of men and the tools and equipment supplied by us makes it impossible for you to cut both on the vessels and on the upland. You have at all times been furnished with all the burning outfits and the men which you have asked for. Indeed, you have refused to hire men whom we have offered to you, and for fully three months the hiring of the men has been entirely in your hands. We have had nothing to do with it. We are, therefore, at a loss to understand your statement and

cannot believe that it was made in good faith. We want you to cut up the vessels as rapidly as possible, in accordance with your contract, and we do not wish to have our property littered with a lot of scrap that should have been removed long ago. We do not care whether you cut it or you do not cut it, but it must be removed. Our contract did not give you the right to use our premises indefinitely to cut up your scrap iron to suit your convenience.

5. In answer to our leter of April 29th you make the statement that the work would have been finished within three months had we supplied sufficient equipment and labor. This is absolutely untrue and as respects your previous statement, we do not think that it was made in good faith. What we have said above applies equally here, both to the statement and to the size of the cuttings.

You state that the additional time to complete the finishing of the vessel will depend upon the number of men and the efficiency and quantity of equipment furnished by us. As before stated, the matter of the employment of men and the number of men to be employed has been for three months, and still is, in your hands entirely. You originally asked for thirty burning outfits. We furnished you with forty. You have never used over thirty-six. You have never questioned the efficiency of any of the equipment we have furnished, not even the quality of the gas. At the outset you requested a certain kind of gas. We stated that another kind would prove just as satisfactory. Thereafter, at the request of your Mr. Crawford, a three days' test of the two kinds of gas was made and it was demonstrated that the kind that we suggested was just as efficient as the other. Your letter is the first intimation that you are not entirely satisfied with the quantity of gas supplied. In reference

to the last statement in your letter of May 5th that you repudiate any oral understandings, we have merely this to say—that among business men who wish to deal fairly with each other, oral understandings are quite as binding as those which are written, but in addition to that, as the oral understandings merely supplement those particulars in which the written memorandum is silent they are, as we are given to understand, as much a part of the contract as that which is written.

We are using your check of May 8th for $1,939.54 but in doing so we do not recognize your right to make a deduction of $69.82 from our invoice of April 3rd. We expect you to send us a check for this amount at once. It covers items of labor and the use of steam in connection with the pumping out of the ship. These were clearly, under the contract, to be paid for by you.

In conclusion, we wish to state that the handling of this contract on your part has, in general, been most unsatisfactory, as your attitude at the present time is unfair and unjustified.

In order not to prolong the correspondence between us we wish that you would advise us at once specifically, whether you intend to pay for wharfage of your vessels at the rate we have heretofore quoted; whether you intend to pay the bills which we have heertofore rendered you for excess gas; the amounts deducted by you from time to time from our invoices; and the bill for salvaging the "Philippines" also the small bill rendered for repairs to tools.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
W. PARKER RUNYON,
Pres't.

AMB.

Exhibit P-33.

H. L. CRAWFORD & Co.
50 Broad Street
New York
Telephone 2741-2 Broad

May 14, 1924

Mr. J. J. Goggin,
c/o Staten Island Shipbuilding Co.,
Mariners Harbor, S. I.

Dear Mr. Goggin:

Owing to the slackness of work at Staten Island, we find it necessary to dispense with your services as of Saturday, May 17th.

Kindly explain to Mr. Williams all the details in connection with the time sheets, daily cash reports, etc., so that he may be properly equipped to carry on the clerical work at Staten Island.

If the work takes on more activity in the future and you are available, we would be very glad to give you consideration. In the meantime, wishing you every success for your future efforts, we are

Yours very truly,

(Sgd) F. A. MORNY.

FAM-M-I

Exhibit P-34.

PERTH AMBOY DRY DOCK CO.
Shipwrights, Machinists and Boiler Makers.
Five Dry Docks, Capacity up to 10,000 Tons.
Perth Amboy, N. J.

March 28, 1924.

Messrs. H. L. Crawford & Company
50 Broad Street
New York City

Gentlemen:

In reference to the proposition made by your Mr. Morny to our Mr. Meurer on March 27th, that you be permitted to furnish your own gas, air and manifold for cutting up in charging box sizes such parts of the Steamship "Black Arrow", and Steamship "Philippines", as your contract with us provides should be cut up in larger sizes, we are willing to have you do this provided you furnish the cutting outfits complete with the necessary hose and cutting material, and that no deduction is made by reason thereof from the sums mentioned in our original contract to be paid by you to us.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
By W. PARKER RUNYON,
President.

J.W.

Please Return
I. A. M.

Exhibit P-35.

H. L. CRAWFORD & CO.
50 Broad St., New York
Telephone 2741-2 Broad

May 5th, 1924

Perth Amboy Dry Dock Company
Perth Amboy, N. J.

Gentlemen:

We do not understand your letter of March 28th. In the first place, our Mr. Morny made no such proposition to your Mr. Meurer, or anyone else in the Perth Amboy Dry Dock Company as in that letter you state. In the second place, our contracts do not limit the size to which the vessels may be cut up, or any part of it. We claim the right to have cut as much of either vessel as we see fit into charging box sizes, and that is what has been done from the outset.

Very truly yours,

(Sgd) H. L. CRAWFORD & CO.

FAM-M-I

Exhibit D-5.

March 27th, 1924.

Perth Amboy Dry Dock Company,
Perth Amboy, N. J.

Gentlemen:

We hand you herewith our checks in payment of your invoices as follows:

Your invoice of February 21st, covering labor and plant use on the S. S. "Philippines" for the week beginning February 21st and ending February 27th, amounting to $4,021.03

Your invoice February 21st, covering labor and plant use on the S. S. "Black Arrow" for the week beginning February 21st, and ending February 27th, amounting to 3,191.20

From these two invoices we have deducted the $2069.25 deducted for the use of the plant on the S. S. "Philippines" from January 31st to February 27th inclusive.

According to the statement of your Mr. Runyon, Mr. Meurer, and Mr. Preacher, to us on Friday last, March 21st, you estimated that the "Black Arrow" was 33 1/3% completed and the "Philippines" 10% completed on that date (March 21st). On this basis we would have been called upon according to the contract with you, to pay for the use of the plant $3316. for the S. S. "Black Arrow" and $1655.40 for the S. S. "Philippines". Inasmuch as the proportion of the work done on two vessels was on February 27th very much less than the proportion you now estimate, we find we have considerably overpaid your account of the plant

use, inasmuch as we have paid you $3231.50 on the "Black Arrow" and $4138.50 on the "Philippines" or a total of $7370.00 for plant uses, whereas the total payment we should have made up to and including the work done up to Friday March 21st, would be $4971.40, or approximately $2400. overpayment on account of plant use up to this later date.

We regret the necessary of having to deduct these amounts from your invoices, and if your office staff will see that these extra charges are not placed on the invoices, deductions will not be necessary.

In reference to the labor items for which we have been overcharged, we are not deducting anything on this account, inasmuch as you object to these deductions and we are enclosing invoices covering these extra charges. However, we make strong exceptions to our being asked to pay them. By invoicing them to you it will get them into the records and they will therefore not be lost sight of in the adjustment of our accounts.

Regretting the necessity of making these various deductions and countercharges, and expressing our desire at all times to cooperate to the best of our ability in the completion of these contracts, we are

Yours very truly,

H. L. CRAWFORD & CO.

FAM-M-I

Exhibit D-33.

Purchase Contract

LURIA BROTHERS & COMPANY, INC.
Iron and Steel
Woolworth Building

New York, N. Y., Dec. 18th, 1923

No. 16510 NY

Luria Brothers & Company, Inc., New York, N. Y., agree to buy and H. L. Crawford & Company, 50 Broad Street, New York, N. Y., agrees to sell:

Material—#1 heavy melting steel scrap in charging box size.

Quantity—Approximately 10,000 tons.

Price—$16.50 per gross ton FOB Bethlehem, Pa.

Delivery—To Bethlehem Steel Co., Saucon Plant, Bethlehem, Pa., via CRR of NJ or LVRR—During January, February, March, and April of 1924.

Terms—90% against Bs/L, balance on reports from mill.

Remarks—Mill reports to govern.

Note—Material must be Way-billed as Scrap Iron and be loaded in not less than minimum carload lots. Unless otherwise instructed, material must be loaded in Gondola Cars.

LURIA BROTHERS & COMPANY, INC.,
By M. Luria.

Accepted—H. L. Crawford & Co.

Date, Dec. 18th, 1923.

Exhibit D-34a.

PERTH AMBOY DRY DOCK COMPANY

Perth Amboy, N. J., April 29th, 1924.

H. L. Crawford & Co.,
50 Broad Street,
New York City.

Gentlemen:

We enclose herewith a copy of a letter which we handed to your Mr. Gilbert at the plant this A. M.

Yours very truly,

PERTH AMBOY DRY DOCK Co.,
Signed W. Parker Runyon,
Pres't.

AMB.

Exhibit D-34b.

PERTH AMBOY DRY DOCK COMPANY

Perth Amboy, N. J., April 29th, 1924.

H. L. Crawford & Co.,
50 Broad Street,
New York City.

Attention Mr. Gilbert

Gentlemen:

We hereby beg to inform you that we will, under no condition, allow you to continue cutting the angles off the backs of the plates which you are preparing for shipment, as it was originally agreed that these plates were to be shipped with the angles and all intact.

We are figuring the amount of footage used for cutting these angles and will bill you for same.

Yours very truly,

PERTH AMBOY DRY DOCK CO.,
Signed W. Parker Runyon,
Pres't.

AMB.

29 OCT.T.1926

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

PERTH AMBOY DRY DOCK COMPANY, *Plaintiff-Respondent,* *vs.* HARDEN L. CRAWFORD and JAMES W. DECKER, partners trading as H. L. CRAWFORD & Co., *Defendants-Appellants.*	*On Appeal from Supreme Court.*

REPLY BRIEF FOR APPELLANTS.

The attention of the Court is directed to typographical errors commencing on page 49 of the state of the case. The grounds of appeal following No. 71 are improperly numbered. This error was not noticed until after the printed records had been delivered to the Court. In the appellants' brief, the grounds of appeal are referred to as if properly numbered.

Replying to the Respondent's Point VI-1.

We do not argue that the Parol Evidence Rule has a different application in equity from what it has in law. We contended at all times that Backes, *V.-C.*, was in error in his application of the Parol Evidence Rule both before him and in this Court on appeal. This Court did not consider that question, holding that the appellants in that case were not aggrieved. Be they right or wrong, the rulings of Backes, *V.-C.*, must stand as the law of the case, and the only question before this Court, under the heading of *res adjudicata,* is how far the Chancery decree is conclusive upon the Supreme Court. At no point in our

argument do we urge that the Chancery decree should be disregarded or not given effect to because it is erroneous.

Reply to the Respondent's Point VI-2.

The respondent says in effect that the issues in the two cases are exactly, or at least substantially, the same. We say that the issues in this case (eliminating the count for damages for salvaging the "Philippines," which stands by itself), are the legal rights of the parties under the contracts. The issues in the Chancery suit were the equities of the parties in the light of the contracts *plus the equities given by the oral representations.* That Vice-Chancellor Backes relied for his decision wholly upon the equities given by the representations, appears obviously from the extract from his opinion quoted on pages 26 and 27 of our main brief. Our position is that those equities cannot be considered by the Supreme Court in this action, but the rights of the parties in this action must be determined by their legal rights under the contracts themselves, which rights Backes, *V.-C.,* himself said would be different from their rights when the equities based on the representations are taken into consideration.

Reply to the Respondent's Points VI-3 and 4.

The same reply can be made to this argument as has just been made to the next preceding point.

Reply to the Respondent's Point VI-5.

The respondent's argument based on the fact that the prior action of this Court was an affirmance of the Chancery decree, rather than a dis-

missal of the appeal, has no bearing. The opinion of this Court, which is copied as a supplement to our main brief, shows clearly the ground on which this Court proceeded. In the face of that opinion, to argue that there should have been a dismissal, is, in effect, saying that this Court does not know what kind of a decree to enter. The opinion shows that this Court refused to review the merits of Vice-Chancellor Backes' decision because the then and now appellants were not aggrieved. Having refused to entertain that timely appeal, for this Court now to say that the appellants are in all respects concluded by the Chancery decree which they then complained of as erroneous, would be a rank injustice. This Court decrees justice not injustice. The only just and intelligent effect to be given to this Court's prior action is that it then decided that the Chancery decree would not preclude the parties in an action at law on the contracts.

The Cases Cited Under Point I of the Respondent's Brief.

The Court will find upon an examination of these cases that insofar as they are inconsistent with the cases cited by us, they are cases in which the second suit was upon the same cause of action as the first suit. In the case at bar, of course, this is not the fact.

Respectfully submitted,

G. W. C. McCARTER,
Of Counsel with Appellants.

29 OCT.T.1926

New Jersey Court of Errors and Appeals

PERTH AMBOY DRY DOCK COMPANY, a Corporation, *Plaintiff-Respondent*, v. HARDEN L. CRAWFORD, et al., Partners as H. L. CRAWFORD & COMPANY, *Defendants-Appellants.*	ON APPEAL FROM SUPREME COURT.

BRIEF FOR PLAINTIFF-RESPONDENT.

This appeal brings up for review a judgment for $19,490.87 recovered by the plaintiff at the Middlesex Circuit in a trial before Judge Peter Daly and a jury.

Plaintiff's business is building and repairing boats (Case, p. 368, line 28).

This litigation arose out of two contracts for the use of certain specified facilities of plaintiff's dry dock plant at Perth Amboy, New Jersey, for the scrapping by defendants of two ships—the S. S. "Philippines" and the S. S. "Black Arrow." The contract price for the use of these facilities and for the necessary gas and oxygen for burning processes was $16,554 for the "Philippines" and $9,948 for the "Black Arrow." With the exception of the amount and name of the ship the two contracts are identical.

These contracts did not expressly state the time within which the ships were to be scrapped or the size of the pieces into which they were to be cut. *Both of these matters were covered by represen-*

tations made by defendants to plaintiff before the contracts were signed. These representations induced plaintiff to enter into the contracts.

Plaintiff sues in this case to recover:

> (1) Reasonable compensation for the occupation and use of the specified facilities, docks and upland beyond a reasonable time for the scrapping of the ships.
>
> (2) Certain sums paid by plaintiff for labor used by defendants in scrapping these ships, for which payments the contracts required defendants to reimburse plaintiff.
>
> (3) The expense incurred by plaintiff in preventing the "Philippines" from sinking at plaintiff's dock, the threatened sinking being caused by defendants' negligence in connection with the scrapping of that vessel.

A former litigation between these same parties, which arose out of these identical contracts, has already been before this Court on appeal by the defendants herein from a decree of the Court of Chancery. The opinion affirming the decree below is reported in 98 Eq., p. 692.

Statement of Facts.

We believe it will aid the Court if the facts are set out in considerable detail before discussing the questions involved in the case.

Prior to December 19, 1923, defendants requested plaintiff to submit a proposal for the use of certain of plaintiff's facilities for scrapping these vessels, including the furnishing of the necessary gas and oxygen for the burning processes. (Case, p. 88, line 20.)

This request was made to Mr. Meurer, plaintiff's representative, at defendant's office, 50 Broad Street, New York City. At that interview there were present on behalf of the defendants Mr. James L. Bernard, defendant's agent; Mr. H. L. Crawford, a member of the firm of H. L. Crawford & Company, and Mr. Morny, who was interested with the defendants in the scrapping of the vessels. (Case, p. 89, line 1.)

As a result of that interview, Mr. Crawford directed Mr. Bernard to meet Mr. Meurer and Mr. Preacher, plaintiff's master mechanic, at plaintiff's plant and go with plaintiff's representatives to the ships, examine them, and explain to Meurer and Preacher the method that would be pursued by defendants in scrapping them. This was on December 16 or 17, 1923. (Case, p. 89, line 32.)

At this conference Crawford or Morny (erroneously printed "Meurer") told Meurer that Bernard would have charge of the scrapping for defendants. Crawford was present when that statement was made. (Case, p. 96, line 35 to p. 97, line 40.)

On the following day Bernard met Meurer and Preacher and went with them on board the ships. He explained to them that in scrapping the ships he would in general cut the superstructure of the vessels into charging box sizes and the hulls into shipping sizes, and that the engines and boilers, with certain piping and accessories, would be removed intact for shipment abroad. He stated that the charging box sizes were 5 feet 6 inches long by 22 inches wide, and the shipping sizes were not less than 20 feet long by 5 feet 6 inches wide. He further stated that the vessels would be scrapped in *three months'* time. (Case, p. 90, line 10; p. 96, line 10; p. 98, line 8; p. 112, line 24; p. 165; line 1; p. 183, line 10; p. 184, line 1.)

Not only do Meurer and Preacher testify that these representations were made, but various incidents occurred during the process of scrapping the ships which corroborate this testimony, viz:

(a) Edgar W. Peterson, an employe of plaintiff, was introduced to Bernard by Mr. Preacher, Peterson's superior. Preacher told Peterson to help out Bernard with tools and to furnish laborers for him. (Case, p. 270, line 25.) Bernard made requisitions on Peterson for men. (Case, p. 271, line 1.)

A few days afterward Bernard introduced Williams to Peterson, saying, "This is my superintendent; I want you to work under him the same as you did under me," and Peterson did so. (Case, p. 204, line 10.)

When Williams was introduced by Bernard to Peterson, Williams told Peterson he could start sending men tomorrow. "He said, 'Send them over, we will start tomorrow morning, because we have got to hurry up on this job, *we have got to scrap them in three months'* " (p. 272, line 25).

(b) George Connors, a machinist in the employ of plaintiff, was directed by Peterson, plaintiff's machine shop foreman, to take four laborers and go to the "Philippines." He did so, and began work under Mr. Williams. He was removing pipes by burning the bolts from the flanges, putting the pipes in slings, and lowering them to the decks. In a day or two thereafter Williams complained that this method was too slow, and directed that Connors should let the pipes drop to the decks. The reason he gave for it was that he *wanted to get through with the ships in three months—by the 1st of April.* (Case, p. 282, line 10 to p. 284, line 28.)

(c) William Campbell, employed by plaintiff as a ship boilermaker, met Bernard and Williams on the "Philippines." Bernard asked if he (Campbell) would like to go to work "for us people." Campbell hesitated about leaving the plaintiff for a long period, and Bernard said, *"Well, there is about three months' steady work, will you take it."* On that representation Campbell took the job. (Case, p. 296, line 25.)

Mr. Morny (who was interested with the defendants in these ships) (Case, p. 589, line 25) employed Joseph Goggin as timekeeper and checker on this scrapping job. He went to work January 12, 1924. Morny told him *the job was good for only three months.* (Case, p. 301, line 10.)

(d) Charles R. Patten was a timekeeper for plaintiff in the winter and spring of 1924. Preacher introduced him to Bernard, who then employed Patten as a timekeeper for defendant. Patten wanted $5 per week more than Bernard wished to pay. Bernard told him that he would give the additional $5 because *the job was a short one "and would last for a period of three months."* (Case, p. 322, line 15.)

James O'Hagan, in the winter and spring of 1924, was foreman of the plaintiff's boiler shop. The people in charge of the scrapping for defendant were Mr. Williams (Case, p. 463, line 15), Mr. Gilbert and Mr. Bernard. He furnished burners from time to time on the request of these men. (Case, p. 312, line 28.)

After Bernard had explained to Meurer and Preacher while on board the ships the manner in which they would be scrapped, particularly with reference to the size of the pieces to be cut and the length of time within which the vessels would be scrapped, Meurer, in consultation with the responsible officers of plaintiff, prepared proposals

in the form of letters and submitted them to the defendants at their offices in New York. The proposals were satisfactory with one exception, and Meurer called Mr. Snedeker, plaintiff's treasurer, and explained this fact to him. During that conversation by telephone Crawford took the phone and told Snedeker that the job would be completed in three months. (Case, p. 370, line 27 to p. 372, line 10.)

The length of time that the vessels would be at plaintiff's docks, as well as the season of the year, was a very important element and inducement in connection with signing the contracts. From November to April, inclusive, is the dull season in plaintiff's business, and the scrapping of the ships would not interfere greatly with their work. From the 1st of April to the 1st of November is plaintiff's busy season and the time when they needed all their facilities. (Case, p. 371, line 38.)

The proposals were dated December 19, 1923, and defendants' acceptance was endorsed thereon on December 20, 1923. (See Exhs. 1 and 2 annexed to complaint, pp. 13, 15.)

In making his estimates Meurer was influenced in fixing the price by the fact that Bernard had told him that the vessels would be scrapped in three months. (Case, p. 99, line 10). Snedeker, plaintiff's secretary and treasurer, was also induced to sign the contract because of this representation. (Case, p. 371, line 15).

The "Black Arrow" was brought to plaintiff's plant on December 22 and the "Philippines" on December 27, 1923. (Case, p. 101, line 20.) The scrapping began within a week. Bernard was there and took charge of the scrapping. (Case, p. 102, line 2.)

During the month of February defendants began cutting up in charging box sizes parts of the

ship which, according to Bernard's statements, made before the contracts were signed, were to be cut up in shipping sizes. It also came to the attention of plaintiff that the defendants contemplated cutting the engines and boilers instead of removing them intact. Thereupon, on March 3, 1924, plaintiff wrote the defendants calling attention to the statements made by Bernard at the time he, Preacher and Meurer had inspected the vessels, with reference to the sizes into which the ships would be cut and the removal of the engines and boilers intact, and continued:

> "It has been brought to the attention of this Company that you now intend cutting up these ships entirely in charging box sizes and that the engines and boilers are to be dismantled, the boilers being cut to suit requirements of the Steel Company. Should this be carried out you will realize that there will be a greater amount of gas and air required to do this work than was originally contemplated and we do not feel that we should stand this additional expense, as the work was laid out to us at an entirely different angle.
>
> "Kindly advise us what your opinion is in this matter." (See Exh. P-5, p. 805.)

To this plain statement of the representations made by Bernard the defendants replied, under date of March 6, 1924. Not only did they not deny that Bernard made these statements and representations, but their answer, in effect admitted he had made them, and *that they purposed to live up to them.* They say:

> "Your letter of March 3 states that it has been brought to your attention that we now intend cutting up the two ships entirely in charging box sizes. I should appreciate knowing who has brought this matter to your attention, and where you have gotten

> your information, *as there has been no change in our plans for the scrapping of these ships.*" (See Exh. P-6, p. 807.)

If defendants intended to deny either that Bernard had made these representations or that he was authorized to make them, *surely that was the time to have said so plainly and without equivocation.*

Under date of March 29, plaintiff again called defendants' attention to the fact that they have continued to depart from the representations made by Bernard with respect to the sizes into which the ships were to be cut. This letter reads in part as follows:

> "As you have been heretofore advised, your practice in cutting up in charging box sizes a greater part of the vessels than was agreed upon at the time our contract was made, has entailed a very considerable expenditure on our part for gas and air, over and above what would have been required to expend for those items, had the scrapping of the vessel been carried out in accordance with the plan agreed upon. We are having this additional expense calculated and will bill you for the same just as soon as the amount has been ascertained." (See Exh. P-17, p. 820, beginning at line 10, p. 821.)

Defendants did not answer this letter until April 16, *and then they made no reply whatever to that part of Exhibit 17 quoted above.* (See Exh. P-18, p. 822.)

Under date of April 26 plaintiff wrote defendants, referring to the letter of March 29, and enclosing a bill covering the cost of additional gas and air used in cutting the ships into the small sizes above the amount that would have been used

to cut them into larger sizes. Plaintiff in that letter also wrote defendants as follows:

> "We also direct your attention to the fact that it was understood at the time the contract was made that the vessels would be completely scrapped within three months. This time has expired. We are very much in need of our piers, upland, wharfage space occupied by these ships, and we will therefore, from now on, have to charge you an additional sum of one hundred dollars ($100) per day for each ship. We will bill you for this plant weekly beginning next week." (See Exh. P-20, p. 824.)

Under date of April 29 plaintiff again wrote defendants calling attention both to the three months' period and to the fact that the boats, with the exception of the superstructures, were to be cut in shipping sizes, and reiterating that a charge of $100 per day would be made on account of the delay in finishing the job and removing the ships. (See Exh. P-21, p. 826.)

Not until May 5 did defendants answer plaintiff's repeated contentions, covering a period of two months, that the job was to be finished and the ships removed within three months, and that the vessels, other than the superstructure, were to be cut into shipping sizes. In a letter of that date *they expressly concede that the scrapping could have been completed within three months,* but attempt to fix blame upon the plaintiff for the delay. They say:

> "Answering your letter of April 29, we should have been very glad if the work had been completely finished within three months, and had you supplied sufficient equipment and enough labor *it could have been so finished.* (Exh. P-22, p. 829.)

Defendants' contention that plaintiff delayed the work of scrapping by failure to supply sufficient equipment and labor pursuant to the terms of the contracts, is wholly without support in the evidence. Gilbert, their foreman, who was in charge of the work for defendant from January 16th to May 16th, testifies that he did not get laborers through the plaintiff *but hired them himself.* (Case, p. 116, line 9.) He further testifies that during the time he was connected with the work there was never delay to any appreciable extent by failure of plaintiff to supply facilities, adding:

> "I think there were at times trivial delays that would come up on any work of that sort, but couldn't be avoided. I wouldn't say there never was any delay but I do not think there was any delay that amounted to anything." (Case, p. 117, line 38.)

Ackerman, defendants' timekeeper, testified to numerous trivial delays, but on his cross examination, however, it was conclusively shown that these delays were of the most trivial character and without important bearing upon the time involved in scrapping the ships. (Case, pp. 444 to 453.)

The verdict of the jury in favor of the plaintiff must be taken as conclusive that there was no breach of the contracts by plaintiff which interfered with the progress of the work; otherwise they would not have found as they did, that a reasonable time had expired. Likewise the decree of the Court of Chancery adjudging that the complainant in that suit was entitled to the relief prayed for (i. e., the removal of the ships), is also conclusive evidence that plaintiff was without fault and was not chargeable with any breach of the contracts.

In their letter of May 5, defendants *for the first time* make plain their position with reference to the contract period and to the sizes into which they intended to cut the ships. It is a most significant coincidence that in March and April defendants had begun to lay off men and that early in May they reduced their force rapidly until they practically ceased work on the "Philippines" May 5 to May 10 and on the "Black Arrow" (with the exception of cutting up the boilers and engines under a special agreement) on May 15 to May 20. (Patten, defendants' timekeeper, p. 324, line 20 to p. 325, line 25.)

The work came to a standstill at a time when the "Black Arrow" was approximately 80 per cent scrapped and the "Philippines" 30 per cent scrapped. Thus work on the ships was abandoned by defendants in plaintiff's busy season, and they were then occupying the most important part of plaintiff's plant and practically putting it out of business for the larger and better paying class of work. (Case, p. 96, line 28; p. 239, line 35.)

The controlling reason for stopping work on these ships was that the market for scrap steel had become so dull and the price so low that defendants could not market it at a profit. (Gilbert, p. 117, line 18; Connors, p. 289, line 32 to p. 290 line 18; Exh. P-33, p. 839.)

The work had stopped. There was no prospect of its early resumption. It was evident that defendants had determined to stop work until such time as they could obtain a satisfactory price for the steel and until it should suit their convenience to continue the scrapping, regardless of the effect upon plaintiff's business. The plant was blocked and plaintiff was suffering irreparable damage. Thereupon on June 30th, 1924, plaintiff filed its verified bill of complaint in the Court of Chancery

in which it set out the identical contracts, Exhibits 1 and 2, annexed to the complaint herein. It alleged the same representations by Bernard with respect to the sizes into which the ships were to be cut and the time they would occupy plaintiff's plant, and it alleged the same departure from these representations by defendants in their scrapping operations, and the occupation of plaintiff's property far beyond a reasonable time, and far beyond the time represented by Bernard when he induced plaintiff to enter into the contracts in question. It set out the refusal of defendants to recognize and conform to the representations of their agent, Bernard, the stopping of work on the ships, the resulting deadlock, and the damage to plaintiff's business. The relief prayed for was that defendants be ordered forthwith to remove the ships from complainant's plant.

The essential facts of the bill of complaint were verified by affidavits annexed thereto.

Defendants filed answering affidavits, and subsequently additional affidavits were filed and served by both parties. The case was referred to Vice Chancellor Backes, and he set it down for final hearing on July 14, 1924. The affidavits of defendants were by agreement taken for defendants' answer at the trial. These affidavits were taken as the direct examination of the witnesses and they were called for cross-examination. Additional witnesses were called by both parties. (Exh. P-1, p. 689.)

On July 17, 1924, at the conclusion of a four-days' trial, Vice-Chancellor Backes stated orally his findings and determination, concluding as follows:

> "Their ships are unlawfully in the yards of the Dock Company and the Dock Company has the right to call upon this court for their removal. That will be the decree.

> * * * The complainant has the right to have them removed and it is the duty of defendant to see that they are taken away." (Case, p. 798.)

The Vice-Chancellor then made the following statement:

> "It may be that after both sides have considered the view I have expressed they can arrive at some amicable agreement. The only thing for me to do now is to fix the time within which the boats are to be removed. Counsel may appear before me at 10 o'clock tomorrow at Trenton unless they can agree upon the time." (Case, p. 798.)

On the following morning counsel for defendants announced in open court that they would remove the ships as speedily as possible. In accordance with this announcement they were removed, the removal of one being completed on July 30 and of the other on August 2. Thereafter, on December 30, 1924, the Vice-Chancellor advised a final decree as of July 17, 1924 (the date upon which he decided the case), adjudging that the complainant was entitled to the relief prayed for in its bill of complaint and "that defendants forthwith and as speedily as possible remove said vessels, 'Philippines' and 'Black Arrow' referred to in the bill of complaint, from complainant's plant at Perth Amboy, New Jersey."

The decree then recites that the defendants having announced in open court that they would remove the vessels as speedily as possible, and it was thereupon "ordered, adjudged and decreed that the issuance of the mandatory injunction prayed for in the bill of complaint be suspended and withheld." In this decree the complainants were awarded a counsel fee of $2,500. (Case, p. 799.)

Defendants appealed from this decree to this Court, and the decree below was "in all things affirmed with costs." (Case, p. 802.)

The record in the Chancery suit was received in evidence herein as "Exhibit P-1," and is printed at pages 689 to 804, inclusive. It consists of complainant's bill and affidavits, defendants' answering affidavits (which constitute their answer), the stipulation for amendment of complainant's bill, the opinion of Vice-Chancellor Backes, the final decree, defendants' notice of appeal, and the decree of affirmance in the Court of Appeals.

Subsequently defendants filed a petition for rehearing and this petition was denied.

Questions Involved.

The questions involved in this appeal are:

(1) The application of the doctrine of *res adjudicata* to plaintiff's demand for reasonable compensation for the occupation and use of the facilities specified in Exhibits P-1 and P-2 annexed to the complaint herein (pp. 13 and 15), beyond a reasonable time.

(2) The sufficiency of the evidence to warrant submitting to the jury the right of the plaintiff to recover:

(a) Certain extras supplied by plaintiff for defendants' use, and certain items for labor paid by plaintiff in the first instance, this labor being used by defendants in scrapping the ships;

(b) The expense incurred by plaintiff in preventing the sinking of the "Philippines" at plaintiff's dock.

These questions arose out of the rulings of the Trial Judge on the admission and rejection of evidence and the Court's charge and refusals to charge.

ARGUMENT.

I.

This action is between the same parties as was the former suit in the Court of Chancery. So far as this action is for the recovery of reasonable compensation for the occupation and use beyond a reasonable time of plaintiff's facilities specified in the contracts, it arose out of the same identical cause of action as did the Chancery suit. Hence, in this action, the determination in the Chancery suit is *res adjudicata* as to every matter which was offered and received to sustain or defeat this cause of action in the Chancery suit.

What constitutes *res adjudicata,* and its effect when it exists, has been thoroughly established by the courts of this State.

In *City of Paterson* v. *Baker,* 51 N. J. Eq. 49, John Petrie purchased bonds of the City of Paterson. Two of these bonds were stolen from him about January 1, 1866. Prior to 1870 Petrie indemnified the City against loss, and the City thereupon paid him the full value of the two bonds.

Thereafter these two bonds came into the possession of the defendant Baker. Coupons from these bonds due December 1, 1874, were presented by Baker for payment, and payment was refused. In May, 1881, Baker brought suit against the City to recover on 13 coupons attached to each of the stolen bonds. He declared in a special count on the coupons and also on the common counts. The

City pleaded the general issue and specified as grounds of defense that Baker was not a *bona fide* holder of the bonds from which the coupons had been taken. At the trial of the issue in November, 1884, judgment was rendered against Baker. Thereafter Baker died, and his widow, as executrix of his will, became possessed of the bonds. The City then brought suit in Chancery against the executrix to compel a surrender of the bonds for cancellation, claiming that the adjudication in the suit to recover *on the coupons* constituted an adjudication that Mrs. Baker was not a *bona fide* holder of the bonds and that they were invalid in her hands. In determining the right of the parties Vice-Chancellor Van Fleet said (at p. 52):

> "The first and most important question presented is, is it true, that it was adjudged by the Supreme Court, in the suit just mentioned, that the defendant's testator was not the *bona fide* owner or holder of the instruments in question? In other words, that they were invalid in his hands as against the complainant. If so, that question is *res adjudicata* between these litigants. For, in my judgment, nothing is better settled, as a principle of jurisprudence, than that the judgment of a court of competent jurisdiction, on a *point of law* or a question of fact, or on a question of blended law and fact, does, so long as it remains unreversed, have the effect, as between the parties and those standing in privity with them, to put the question or matter adjudged at rest finally and forever and for all purposes. The principle and the reason on which it rests were stated by Chief Justice Shaw, in *Sawyer* v. *Woodbury,* 7 Gray 499, 502, as follows:
>
> 'It is a principle lying at the foundation of all well-conducted jurisprudence,

> that when *a right* or *a fact* has been judicially tried and determined by a court of competent jurisdiction, the judgment thereon, so long as it remains unreversed, shall be conclusive upon the parties, and those in privity with them in law or estate.' * * * There can be no doubt, then, that if the complainant's right to relief in this suit *rests upon the same point or question* which, in essence and substance, was litigated and determined in the suit at law, the matter in controversy here must be regarded, as between these parties, as having been finally and conclusively settled by the judgment at law, and to stand *res adjudicata.* After judgment final, in case no appellate proceedings are taken, in the words of Mr. Justice Field, in *Bissell* v. *Spring Valley,* 124 U. S. 225, 236, 'the fact and the law are adjudged matters between the parties, and not open, therefore, to any further contest.'

"Now, while it is true that the suit at law was not founded on the bonds which the complainant, by this suit asks to have surrendered, but rested wholly on certain coupons issued with the bonds in question here, still, it does not at all follow that the point or question litigated and determined in the suit at law is not, in every essential respect, the same precisely that the defendant attempts to agitate in this suit. There is a plain difference, resting on obvious considerations of justice, as was held in *Cromwell* v. *Sac County,* 94 U. S. 351, and again in *Bissell* v. *Spring Valley, supra,* between the effect of a judgment, as a final and conclusive determination of the rights of the parties, when it is set up in a second action resting on the same claim or demand on which the first was founded, and its effect, when it is set up in a subsequent litigation between the same parties, founded upon a different claim or cause of action. In the

first, where the second suit is based upon the same claim or demand involved in the first, the judgment in the first must be treated as a finality, concluding, in the language of Mr. Justice Field, in *Cromwell* v. *Sac County, supra* (at p. 352), 'parties and those in privity with them, *not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.* Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defences actually existed, of which no proof was offered, such as forgery, want of consideration for payment. * * * But where the second action is upon a different claim or demand, but between the same parties, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the *finding or verdict was rendered.* In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined, for it is only upon such matters as were actually litigated and determined that the judgment is conclusive.' And Chief Justice Shaw, in stating the same principle, in *Sawyer* v. *Woodbury, supra,* said (at p. 502): 'It is not necessary that the action in which it (the judgment) is found, and that in which it is relied on as an estoppel, *should be of the same kind, or for the same cause of action.* If a question upon the execution

> or validity of a deed in fee be put in issue in an action of trespass, and expressly found by the jury, such verdict and the judgment upon it, may be relied on as conclusive evidence of such fact, on the trial of a real action or writ of right, between the same parties, for the same estate. It has become a fixed fact between these parties for all purposes.' ''

After examining numerous leading cases in the United States Supreme Court, Massachusetts and New York, the Vice-Chancellor continued (p. 57):

> ''This summary of some of the leading cases shows, I think, that it is now established, beyond dispute or doubt, that the judgment of a court of competent jurisdiction, on a question of law or fact, or on a question of mixed law and fact, once litigated and determined, is, so long as it remains unreversed, conclusive upon the parties and their privies, not only as to the particular property involved in the suit in which it is pronounced, but as to all future litigation between the same parties or their privies, touching the same subject-matter, though the property involved in the subsequent litigation is different from that which was involved in the first. As I understand the principle established by the decisions, all that is required, in cases where the prior and subsequent litigations involve different things, to render the judgment in the first conclusive upon the parties in the subsequent, is that there shall be substantial identity in the subject-matter of the two, and that must always be the case, *as is obvious, where the judgment in the first rests on a decision of the same question substantially which is presented for decision by the subsequent.*''

Held, therefore, that the judgment against defendant's testator, in the action at law to recover

on the coupons was *res adjudicata* against defendant in a suit to compel a surrender of the bonds.

In *Clark Thread Co.* v. *William Clark Co.*, 55 N. J. Eq. 658, Vice-Chancellor Reed, in discussing the effect of a judgment as an estoppel, said (p. 662):

> "The effect of an estoppel by judgment may present two aspects—one where a second suit between the same parties is brought for the same cause of action; the second where a second suit between the same parties is brought not for the same cause of action, but for a cause of action so related to the cause in the preceding suit, that some matter, the establishment of which is essential to the recovery by the complainant in the last suit was in issue and determined in the preceding suit.
>
> "In respect to the first phase in which the question of estoppel presents itself, it is entirely settled that after one judicial determination by a court of competent jurisdiction, a second suit for the same matter, between the same parties or their privies, cannot be relitigated in the same or any other court. Nor does it matter that, in the first suit, evidence existed which was withheld or undiscovered, *or that the law was misconceived by the court,* or left uncited by counsel, or that no defence was made and judgment went by default, or that only one of several defences was interposed by the defendant; in spite of any of these defects in the prosecution or defence of the action, the judgment stands as an absolute bar against a second litigation of the same cause of action.
>
> "When, however, a second suit is brought not for the same demand, but for a cause which was a part of the same matter, but was not included in the first action, the estoppel is not so sweeping. In such in-

> stance only those issues which are common to both suits, *and which had to be or were actually decided in the first suit,* are regarded as *res adjudicata* in the second. This distinction between the two kinds of estoppel is lucidly stated by Mr. Justice Field in *Cromwell* v. *Sac County,* 94 U. S. 351. In that case there had been an action upon certain county bonds, in which action the county succeeded. In a subsequent action by substantially the same parties, upon other coupons on the same bonds, the previous judgment was set up as an estoppel. Mr. Justice Field, after speaking of the absolute estoppel as to every ground which might have been presented in the preceding case, when a second action is brought for the same cause, goes on to say: 'When a second action is upon a different claim, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding of the verdict was rendered. In all cases, therefore, when it is sought to apply the estoppel of a judgment in one case to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been litigated or determined.'
>
> "In accordance with this view, it had been held in *Steam Packet Company* v. *Sickles,* 65 U. S. 333, that where the record of the first suit does not show that the point involved was actually decided, *parol evidence is admissible to show the state of affairs that existed at the trial, with a view to ascertain what was decided.*"

In *Fennimore et al.* v. *Wagner,* 73 N. J. Eq. 367, two of the daughters of Elizabeth Walsh, deceased, residuary legatees named in her will, filed a bill against Ida E. Wagner, another daughter of

the deceased, in which they charged that deceased had been fraudulently induced by the defendant, Mrs. Wagner, and unduly influenced by her, to assign and transfer to defendant, without consideration, certain personal property specifically set forth in the bill, and that such transfer was made after Mrs. Walsh had executed her will bequeathing all her property equally to her daughters. The prayer of the bill was that all of the personal property so assigned to Mrs. Wagner should be adjudged to be a part of the personal estate of deceased.

The defendant, Mrs. Wagner, filed a plea alleging that "for the asignment and transfer by Elizabeth Walsh to this defendant of the bonds and mortgages and shares of stock *and other personal property in the bill mentioned,* good and valuable consideration passed from this defendant to said Elizabeth Walsh."

Complainants joined issue upon this plea. The Court of Chancery held that the defendant had failed to support by proof the allegation of her plea, and the decree went in favor of the complainants. The decree was affirmed on appeal.

Mrs. Wagner, therefore, accounted in the Orphans' Court, charging herself with the items of personal property mentioned in the bill of complaint, but prayed allowances with respect thereto as follows: For an item of $1,000 cash, alleging that she had no knowledge concerning that item; also, for the sum of $816.80, the proceeds of one of the mortgages in question, on the ground that she had paid the testatrix said proceeds. She further prayed an allowance to herself for having furnished the testatrix with a home for the remainder of her days according to contract, for which she claimed $7,726.18. The Orphans' Court sustained exceptions to these claims for allow-

ances, on the ground that the determination of the Court of Chancery, affirmed by the Court of Appeals, constituted a binding adjudication with respect thereto.

The decision of the Orphans' Court was affirmed by the Prerogative Court, and the decree of the Prerogative Court was affirmed by this Court under the title "In re Walsh's Estate," 80 Eq. 565, in a *per curiam* opinion, stating that we "are satisfied to rest our conclusion upon the very satisfactory opinion of Judge Joline" (the Judge of the Orphans' Court).

The opinion of Judge Joline is printed in full in 80 N. J. Eq. 565.

At page 569 Judge Joline quotes extensively from Vice-Chancellor Van Fleet's opinion in *City of Paterson* v. *Baker,* 51 N. J. Eq. 57, and from Vice-Chancellor Reed's opinion in *Clark Thread Co.* v. *Wm. Clark Co.,* 55 N. J. Eq. 658. In resting its conclusions upon Judge Joline's opinion, this Court approves and adopts the above-mentioned opinions of Vice-Chancellor Van Fleet and Vice-Chancellor Reed.

In *Rosenstein* v. *Burr,* 80 N. J. Eq. 424, suit was brought to compel the specific performance of an agreement, dated July 25, 1917, whereby Burr agreed to sell certain premises to Rosenstein.

On September 18, 1917, and before the time for the performance of the contract had arrived, Burr filed a bill to cancel the agreement, on the ground, first, that it had been obtained by fraud, and, second, that it was executed on Sunday, and for that reason was void. On final hearing this bill was dismissed.

The bill for specific performance alleged the agreement, tender of the purchase price, and refusal to convey, and prayed for a decree of specific performance.

The answer to this bill denied due execution of the agreement and the tender alleged by the bill. At the trial two additional defenses were interposed: first, that the agreement set out in the complaint was invalid, for the reason that its terms were rejected by Burr before they could have been accepted by Rosenstein; second, that there was a stipulation that the agreement relied upon should not be binding upon Burr until it should have been put into final form by a scrivener and formally executed.

Vice-Chancellor Howell, discussing the evidence produced at the trial, said (p. 426):

> "The defenses now interposed appear to be an after-thought devised for the purpose of evading the prayer of the bill. When the first suit was brought to set aside the so-called agreement the facts on which these defenses are based existed and could have been used by Burr as affirmative weapons of attack. In addition to his allegations of fraud and violation of law he might have added the matters on which he now relies; they are entirely consistent with the causes that he did allege and they tended toward the result for which he then prayed. It is the duty of one who brings a suit to include in it every cause of action which is consistent with the general purpose of his bill, to put all his grounds of action in one complaint."

In *Sarson* v. *Maccia,* 90 N. J. Eq. 433, complainant brought suit in Chancery to restrain the prosecution of an action in the Supreme Court for deceit, on the ground that the cause of action in the suit at law had theretofore been determined on its merits adversely to Maccia, and that such determination was *res adjudicata.*

The history of the litigation disclosed that Maccia had sold to Sarson certain property in Newark, receiving therefor $1,100 cash, a promissory note for $800, and a second mortgage for $1,500. The mortgage was subsequently wiped out by the foreclosure of a prior mortgage and the note proved to be worthless because of lack of financial responsibility of the maker. Maccia in the suit at law alleged that the mortgage was worthless, to the knowledge of Sarson, who, with intent to cheat and defraud her, falsely represented it to be a gilt-edged mortgage, and that, by reason of this false representation, she was induced to part with her property.

The former suit in Chancery, which was alleged to be an adjudication of the matters involved in the action at law, was brought by Maccia to procure a rescission of the contract of sale and the restoration to her of her property. In the bill of complaint she set up the alleged false representations of Sarson with respect to the mortgage and also with respect to the promissory note. Issue was joined on these allegations of fraud and deceit, and the case was tried before Stevens, V. C., who dismissed the bill. The decree adjudged that there had been no false representations or fraud practiced upon Maccia.

Backes, V. C., who tried the suit to restrain the prosecution of the suit at law, had before him for his consideration a part of the transcript of testimony taken in the suit tried before V. C. Stevens, and held that the former suit was *res adjudicata* upon the essential elements presented in the action at law, and a perpetual injunction was awarded to complainant.

In the course of his opinion Vice-Chancellor Backes said (p. 436, top):

> "The record of the case exhibits beyond question all the essential elements of a plea of *res adjudicata*—the identity of the parties, the cause of action, and the subject-matter. The only difference between the suit in equity, decided, and the action at law, pending, is the forum, the form of the remedy and the nature of the relief. In the former, had the defendant been successful, the recovery would have been *in specie*; in the latter the award would be damages *pro tanto* of the property lost. This difference does not prevent the decree from operating in estoppel. (23 Cyc. 1116, 1169.)"

In *O'Keefe* v. *Barry, &c., Assn.*, 74 N. J. L. 435, plaintiff brought suit in the District Court to recover a death benefit claimed to be due her as the representative of her deceased husband, Daniel O'Keefe, who had been a member of the defendant association.

The issue tried in the District Court was agreed to be whether plaintiff's husband at the time of his death was a member in good standing so as to obligate defendant to pay the death benefit. If he was in such standing, defendant agreed to pay the benefit to plaintiff.

The judgment of the District Court was in favor of defendant.

The constitution of defendant provided that "on the death of any member who has been six months in good standing on the books of this association, there shall be the sum of seventy-five dollars appropriated to defray the funeral expenses of the deceased member,"

The constitution also provided that "no member shall be entitled to sick or mortuary benefits who allows his indebtedness to remain unpaid for over three months."

Defendant contended that O'Keefe was not in good standing at the time of his death, because, it was alleged, he had allowed his "indebtedness to remain unpaid for over three months." At the trial there was admitted in evidence the record of a former suit in the District Court, in which a judgment had been recovered for sick benefits, amounting to $55, due to Daniel O'Keefe from the defendant, and it appeared that that judgment had been paid.

Under another provision of defendant's constitution, no member was entitled to sick benefits unless he had been a member for six months and was clear of all debts on the books of the association.

The Court said (bottom p. 437):

> "It seems to be conceded by the defendant that O'Keefe's dues were paid up to the date of the payment of that judgment. But whether it is conceded or not, such, we think, is the legal implication. If he were not 'clear of all debts on the books of the association' at the time the suit for sick benefits was started, such indebtedness would have been a complete defence to that action, under Article 21, above mentioned, and was a material issue, as it is in this action. The parties in both actions represent the same interests. The fact that the subject-matters of the two actions are different is immaterial, as a judgment necessarily affirming or denying a fact is conclusive of its existence whenever that fact becomes a matter in issue between the same parties or between parties in privity with them where the same question is involved, whether the subject-matter be the same or not." (Citing authorities.)

In *McMichael* v. *Horay, et als.*, 90 N. J. L. 142, the defendants, Horay and others, had brought

suit in the District Court against McMichael for damages sustained as a result of trespasses of McMichael's cattle on the respective lands of Horay and the other defendants. Each defendant had recovered judgment against McMichael, who then applied for a new trial. His application was denied. Executions were thereupon issued upon the judgments, and McMichael unsuccessfully sought to restrain proceedings under these writs by a suit in Chancery. McMichael then instituted a suit at law in the Supreme Court against Horay and others for damages for an alleged conspiracy in prosecuting their suits in the District Court upon which they had recovered judgments, alleging gross exaggeration of their damages and the procuring of false testimony which resulted in the recovery of excessive damages. Judgment of non-suit was entered in that action upon the opening of McMichael's counsel. On appeal this Court affirmed the judgment of non-suit, holding that the judgments in the District Court were *res adjudicata.* Chancellor Walker, speaking for this Court, said (p. 144):

> "The thing most prominently appearing upon the state of the record before us is that the appellant is precluded from recovery by estoppel of record, that is, by the judgments recovered against him in the three suits by the respondents in the Camden District Court. These judgments operate to defeat the appellant's present suit *res adjudicata. It is true that the respondent's suits against the appellant were for damages for trespass, and that appellant's present suit against respondents is for damages of alleged conspiracy, and the procuring of false testimony to be given in the very suits in which the recovery by the respondents against the appellant was had.* These matters alleged and relied upon by the appellants were available to him as de-

> fences in the trespass suits brought by the respondents. It may be that he was surprised by the testimony on the trial. If so, that fact could be availed of on a motion for a new trial, and, in fact, as we have seen, a motion for a new trial was made and denied."

In *Northern Pacific Ry. Co.* v. *Slaight,* 205 U. S. 122, a predecessor of the Railway Company had claimed title to certain premises under a deed of one Powers. In the second suit the Northern Pacific Co. claimed the same land under a Federal statute. The Court held that the former judgment was a bar to the second action, and that the principle of *res adjudicata* and the cases enforcing and illustrating that principle barred the second suit.

In *U. S.* v. *C. & O. Land Co.,* 192 U. S. 355, the United States first sought to re-establish title to lands by a suit to forfeit patents thereto. Failing in that, the Government brought a second suit to recover the same lands, on the ground that originally the lands in question were excepted from the grant. *Held,* that the determination in the first suit was *res adjudicata* and a bar to the second action.

To the same effect, see:

> *Cromwell* v. *Sac County,* 94 U. S. 351;
> *Bissell* v. *Spring Valley,* 124 U. S. 225;
> *Sawyer* v. *Woodbury,* 7 Gray 499, (cited and relied upon by Vice-Chancellor Van Fleet in *Paterson* v. *Baker,* 51 N. J. Eq. 49).

Also:

> *Steam Packet Co.* v. *Sickles,* 65 U. S. 333, (cited and relied upon by Vice-Chancellor Reed in *Clark Thread Co.* v. *Wm. Clark Co.,* 55 N. J. Eq. 658).

Applying the principles established by the foregoing authorities to the present case, it is clear that the adjudication in the Chancery suit determined finally and conclusively that, because of the wrongful conduct of defendants, the presence of their ships on plaintiff's premises became unlawful, and that, by reason thereof, plaintiff became entitled to reasonable compensation for such unlawful occupancy.

The Chancery decree has all the elements of *res adjudicata* as will clearly appear from an examination of the record in that case.

It is undisputed that the parties in the Chancery suit and in this action are the same.

The issue tried in the Chancery suit was whether defendants' ships were unlawfully on the premises of the plaintiff.

These ships were brought upon plaintiff's premises by agreement of the parties. They were then lawfully there. Their presence could become unlawful only through the wrongful conduct of defendants.

The prayer of the bill in the Chancery suit was:

> "That the defendants may be ordered to forthwith remove the said vessels from the complainant's plant, and to that end, that a preliminary and permanent mandatory injunction, so commanding them, may issue." (Exh. P-1, at p. 695, line 1.)

On the issue thus presented to the Court of Chancery, that Court found, among other things, as follows:

> "Now, it is plain who is responsible for the distressing condition at the complainant's docks. The defendants should have and were in duty bound to comply with the request to pay the additional cost of gas. It was justly due the complainant. The

> complainant properly refused to do that which the defendants had no lawful right to require it to do. *The defendants have since and for a long time refused to go on with the cutting under the terms legally laid down by the complainant, and that refusal is an abandonment of performance of the contract. Their ships are unlawfully in the yards of the Dock Company and The Dock Company has the right to call upon this court for their removal. That will be the decree.*" (Exh. P-1, at p. 797, line 29.)

The Court also found the following:

> "The complainant has the right to have them removed and it is the duty of the defendants to see that they are taken away." (Exh. P-1, at p. 798, line 18.)

The decree of the Court recited that the Court being of the opinion that the complainant was entitled to the relief prayed for in the bill of complaint as hereinafter granted, it was thereupon, on December 30, 1924, as of July 17, 1924,

> "ORDERED, ADJUDGED and DECREED that the defendants forthwith and as speedily as possible remove the said vessels 'Philippines' and 'Black Arrow' referred to in the bill of complaint from the complainant's plant, at Perth Amboy, New Jersey."

These findings of the Court of Chancery and the decree entered thereon were necessarily an adjudication, *not only that defendants were at fault, but that plaintiff was free from fault.*

In the present suit, the adjudication of the Court of Chancery that the ships were unlawfully upon the plaintiff's premises was final and conclusive as between these parties. Because of that determination, the Court of Chancery, by way of relief to the plaintiff, said to the defendants, "Re-

move the ships." Bound by the determination that the ships were unlawfully upon plaintiff's premises, the Supreme Court said to the defendants "compensate the plaintiff for the use of its docks beyond the time you should have used them under the contracts." The cause of action in each case, i. e., the state of facts which gave to plaintiff the right to demand relief through the judicial action of the Court, was the same. The only difference was in the character of the relief granted—the removal of the ships by the Court of Chancery, because they were unlawfully there, and compensation in the Supreme Court, for the same reason. On this phase of the case the only open question in the Supreme Court was the amount of compensation to which plaintiff was entitled.

We have shown that the Chancery suit was based on the same identical cause of action as the present suit, so far as this suit is brought to recover reasonable compensation for the period beyond a reasonable time during which these ships occupied plaintiff's premises, *the cause of action in each case being primarily and fundamentally the unlawful presence of defendant's ships on plaintiff's premises.* The only difference between the two actions *is the difference in the remedy.*

If, however, it should be held that the suit in Chancery and the present suit are based on different causes of action, then under the doctrine of *res adjudicata* every question or matter which was litigated or judicially determined in the Chancery suit is final and conclusive upon the parties in the present suit. But every essential element necessary to establish the right of the plaintiff to recover reasonable compensation for the unlawful occupancy of its premises was litigated and determined in the Chancery suit. Likewise, every mat-

ter of defense raised on this phase of the case, in the present action was also raised, litigated and determined against the defendants in the Chancery suit.

Again examining the record in the Chancery suit we find that the agency of Bernard was an essential matter in the Chancery suit, and necessary to its decision. So also were the representations claimed to have been made by him.

In their answering affidavits in that suit, defendants alleged and set up by way of defense that Bernard was not their agent; that they were not bound by his representations and that he did not in fact make the alleged representations, nor did any one else.

(See in Exhibit P-1:
Affidavit of defendant Crawford, p. 752, line 1; p. 753, line 10, line 28; p. 756, line 12; p. 757, line 21;
Affidavit of defendant Decker, p. 761, line 34;
Affidavit of Morny, p. 765, line 8; p. 767, line 30;
Affidavit of Bernard, beginning on p. 771 and continuing on pp. 770 and 772; p. 772, line 11, line 25; p. 774, line 15.)

They also set up by way of defense the same alleged breaches of the contracts by complainant, as they have set up in their answer and counterclaim in this action.

In their second defense to all counts (Case, p. 18) they allege:

> "(a) The plaintiff failed and refused to furnish gas and oxygen for cutting, of the kind and quality required for the proper prosecution of the work."

They set up this defense in the Chancery suit.

(See in Exhibit P-1:
Affidavit of Crawford, p. 756, line 20;
Affidavit of Decker, p. 763, line 2;
Affidavit of Morny, p. 765, line 36.)

They also set up as a defense herein (Case, p. 18):

"(b) Plaintiff failed and refused to furnish the use of a locomotive crane for handling the material to leave the yard by cars, lighters or trucks within a reasonable time after the making of the contracts."

This defense was presented in the Chancery suit.

(See in Exhibit P-1:
Affidavit of Decker, p. 760, line 30; p. 761, line 9;
Affidavit of Bernard, p. 773, line 17.)

As a further defense to this action they say (p. 18):

"(c) Plaintiff failed and refused to supply necessary equipment for the doing of said work and in particular failed and refused to supply a manifold in connection with the use of gas, thereby causing greater expense and delay in the prosecution of the work."

This defense was made in the Chancery suit.

(See in Exhibit P-1:
Affidavit of Crawford, p. 754, line 21;
Affidavit of Decker, p. 760, line 15;
Affidavit of Morny, p. 766, line 3;
Affidavit of Bernard, p. 775, line 12.)

As a further defense to this action, defendants say (p. 18):

"(d) Plaintiff failed and refused to cut up the said steamships in sizes which would render the material taken therefrom commercially available for sale."

This defense was made in the Chancery suit.

(See in Exhibit P-1:
Affidavit of Crawford, p. 755, line 32; p. 756, line 1;
Affidavit of Morny, p. 768, line 1; p. 768, line 22; p. 769, line 5.
Affidavit of Bernard, p. 777, line 22.)

Defendants plead as a further defense to this action (Case, p. 18) as follows:

"(e) Plaintiff failed and refused to cut in small pieces from the said steamships as it was obligated to do under its contracts."

This defense was raised in the Chancery suit.

(See in Exhibit P-1:
Affidavit of Crawford, p. 754, line 9;
Affidavit of Decker, p. 762, line 18.)

Defendants allege the same facts as a basis for their counterclaim found on page 19 of the printed case.

In addition, and as a third defense to all counts, the defendants say (Case, p. 18):

"1. The plaintiff broke the contracts Exhibit 1 and Exhibit 2 annexed to the amended complaint by failing and refusing to continue with the prosecution of the work contemplated thereby and by notifying defendants that it would no longer continue with the performance of said contracts."

The same defenses were made in the Chancery suit.

(See in Exhibit P-1:
Affidavit of Crawford, p. 756, line 32; p. 758, line 1;
Affidavit of Morny, p. 768, line 1; Exh. 8, p. 790;
Affidavit of Bernard, p. 776, line 35.)

At the trial of the Chancery suit evidence in addition to these affidavits was presented by defendants in support of each of the matters now pleaded by way of defense and counterclaim in this action.

The Court of Chancery expressly determined that Bernard was defendants' agent; that he made the representations alleged by plaintiff, and that defendants were bound thereby. (Case, p. 796, line 18, to p. 797, line 10.)

The adjudication in Chancery that the defendants refused to comply with plaintiff's lawful demands; that plaintiff properly refused to do that which defendants had no lawful right to require; that defendants for a long time had refused to go on with the scrapping of the ships under terms legally laid down by the plaintiff and had thereby abandoned the contracts, and that the ships were unlawfully on plaintiff's premises and must be removed (Case, p. 797, line 10, to end of opinion), conclusively determined that defendants' conduct was wrongful, and that plaintiff was free from fault. This determination is *res adjudicata* as to all these matters, and completely overthrows all the defenses set up in this action, as well as defendants' counterclaim.

It would be unthinkable that defendant could counterclaim damages alleged to have been sustained either because of the things which the Court of Chancery decided against them, or because they were compelled by that Court to render otherwise. Yet that is exactly what the defendants sought to do in this case.

II.

On the evidence in this case it was a question for the jury to determine what constituted a reasonable time for the scrapping of these ships and statements of defendants and their agents, before and after the contracts were made, as to the time within which the scrapping would and could be completed were admissible to show reasonable time.

As the contracts are silent as to the time, the law presumes the agreement was for performance *in a reasonable time.* Since the Vice-Chancellor did not determine what constituted a reasonable time, that question was open for determination by the jury.

For the purpose of determining what was a reasonable time, evidence was admissible of all the circumstances surrounding the parties and of all the facts that came to their knowledge respectively, at the time the contracts were entered into. These circumstances included the declarations of the parties as detailed on pages 4-6 above. What better evidence, except the express admission in the letter of May 5 (Exh. P-22), could be had of what the defendants themselves considered a reasonable time than their declarations, and particularly their representations intended to induce the making of the contracts?

It is to be observed that the representations which were admitted in evidence, did not purport to constitute a contract fixing the time. They were representations indicating what the defendants regarded as a reasonable time, *and what they wished the plaintiff to understand would be a reasonable time.*

Furthermore, the defendants were to do the scrapping. They had already had experience in that kind of work. The plaintiff had no experience. The defendants knew the methods they would employ in scrapping the ships, the number of men they would employ to do the work, and the appliances they would use. They had control of all these things. The plaintiff knew none of them. This was not a case in which the parties had equal knowledge and were dealing with each other at arm's length. On the contrary, it was a case in which all the knowledge was on the side of the defendants, and the plaintiff was justified in relying, and in fact did rely, upon their representations. The representation as to time was one of the controlling inducements to the plaintiff to enter into the contracts. Bernard, p. 777, l. 21; Morry, p. 619, l. 9, p. 636, l. 15

The admissibility of this evidence is supported by very eminent authority.

In *Ellis* v. *Thompson, et al.,* 3 M. & W. 445, there was a written contract for the sale of "200 tons of Bog Mine lead, deliverable in the River Thames." No time was fixed for the delivery. At the time the contracts were entered into the broker stated to the purchaser "that the lead was ready for shipment." At the trial this statement was admitted in evidence against objection. On a rule to show cause the Court unanimously held that this statement was admissible evidence.

In discussing the question of reasonable time and the method of proving the same, Baron Alderson said:

> "It seems to me the correct mode of ascertaining what reasonable time is in such a case as this, is by placing the court and jury in the same situation as the contracting parties themselves were in at the time they made the contract; that is to say, *by placing before the jury all those circum-*

stances which were known to both parties at the time the contract was made, and under which the contract itself took place. By so doing, it will enable the court and jury to form a safer conclusion as to what is the reasonable time which the law implies, and within which the contract is to be performed. Now, applying that principle to the present case, here is a contract for Bog Mine lead, sold by persons who deal in lead of that particular description. That would reasonably open for the plaintiff the inquiry what was the situation of the mine, and where the lead was usually found in a salable state. Then the inquiry on the other side would be, what was the actual state of manufacture and situation of the lead, so that the buyer might judge within what time he would be likely to have it. The answer is, 'it is ready for shipment'. What is the meaning of the term? It turns out that the usual place of shipment is Gloucester or Liverpool. I should therefore understand the meaning to be, 'I have lead either at Gloucester or Liverpool in a situation to be shipped'. The jury were in possession of these facts, and they are to judge; and I think they might reasonably be required to say, upon the evidence they had heard, that this meant lead ready to be put on board a ship at Gloucester or Liverpool, and so to be carried by sea to London, and therefore that a reasonable time was that which would be occupied in a voyage to London from the more distant of these two places. It seems to me that the verdict was right, and the case was correctly left to the jury.''

In *Cocker et al.* v. *Franklin Hemp & Flax Mfg. Co.,* 5 Fed. Cas., page 1152 (case No. 2932), plaintiff contracted to manufacture and deliver to defendants certain gill pins. The contract was silent as to the time. The principal ground of defense

was that the pins were not furnished within the period agreed upon between the parties at the time the contract was entered into. Parol evidence was offered to show that at the time the contract was made certain conversations were had between the respective agents of the parties in which the agent of the plaintiffs expressly agreed to furnish the articles at New York within four months. The plaintiffs alleged that the articles were furnished within a reasonable time.

Mr. Justice Story, sitting at circuit at the trial ruled that the parol statement as to time was admissible, "not for the purpose of establishing the specific time when the contract was to be performed, for that would be to add to and vary the written contract; but to show the circumstances under which the contract was made, and what the parties then thought was a reasonable time for furnishing them." In his charge to the jury Justice Story said:

> "The parol evidence was admitted of the conversations, *to show what, at the time, the parties understood was a reasonable time,* within which, under ordinary circumstances, the contract might be fulfilled. In this view, the parol evidence did not contradict or vary the written contract, but went merely to show the opinions of the parties as to the reasonable time for executing it. I thought, and still think, that in this view the evidence was clearly admissible."

Justice Story cites the above case of *Ellis* v. *Thompson et al.,* 3 M. & W. 445, as confirming his opinion.

In Story on Contracts, Vol. 2, 5th Ed., Sec. 1325, the author says:

> "Parol evidence of the situation of the parties and of their conversations, is ad-

> missible to determine their intentions in respect to the time of performance, *Ellis* v. *Thompson,* 3 Mees. & W. 445; *Cocker* v. *Franklin H. & F. Co.,* 5 Fed. Cases 2932; *Sewell* v. *Wilkins,* 14 Me. 168."

In *Bowser & Co.* v. *Fountain et al.,* 128 Minn. 198, a written order was given for goods without designating the time of delivery. At the trial of a suit by the vendor, evidence was admitted to the effect that at the time the order was given "plaintiff's salesman was advised that defendant wanted the outfit for the installation in a garage then under construction, that they wanted it delivered before the floor of the garage was in, and for that reason wanted it within two weeks' time, that the salesman did not know whether he could make delivery within that time or not; he said he could do so if he could get the outfit in Minneapolis, but that if it was necessary to ship from Fort Wayne, it would be impossible to do so, and that the defendants then gave the written order on condition that if he could deliver the goods in two weeks time or thereabouts, it would be a deal; otherwise it would be thrown out."

The Court said:

> "We think this evidence was sufficient to sustain a finding that the delivery of the order was conditioned upon ascertainment of the fact that the goods could be delivered 'in two weeks' time or thereabouts.' "

In *Coates et al.* v. *Sangsten* (garnishee of Cunningham, 5 Miller, 121 Md. Court of Appeals), the Court had before it a contract which was silent with respect to the time of performance. The Court held that the law allowed a reasonable time "which could only be ascertained by evidence *dehors.*" The evidence tended to show that Cunningham said, about the time the contract was

entered into, and afterwards, that he had agreed to finish the work in sixty days. The Court said (p. 131):

> "The fact that Cunningham had said that he was to do the work in sixty days is evidence that he considered that a reasonable time; and his opinion, if not conclusive, was surely admissible against himself. The evidence merely tended to prove a fact, in regard to which the contract was silent."

In *Whiting* v. *Gray*, 27 Fla. 482, the Florida Supreme Court had under consideration a contract which fixed no time of performance. With reference to the admissibility of statements made by the parties during the negotiations of the contract, the Court said:

> "Though where an entire contract fails to express the time for its performance or the commencement of performance, parol evidence cannot be introduced to show *that a specific time was agreed upon by the parties,* or that the time for performance is other than a reasonable time, yet it seems to be the law that the circumstances surrounding the parties at the time, *including even conversations between them,* may be introduced to aid in the ascertainment of what was a reasonable time. Cocker *v.* Franklin H. & F. Mfg. Co., 3 Sumn. 530; Ellis *v.* Thompson, 3 M. & W. 445."

This question was considered by the Indiana Supreme Court in *Fort Wayne Electric Light Co.* v. *Miller,* 131 Ind. 499. The Court said:

> "The court, over the objection of the appellant, allowed the appellees to prove by certain witnesses what was said by the directors of the appellant, at the time of making the written guaranty, as to when it would be practicable and convenient for

> them to make the invoice mentioned in that writing. * * *
>
> "We have already construed the contract as imposing upon the appellant the duty of making and furnishing an invoice within a reasonable time. What would be a reasonable time must be determined from the evidence. We think it was competent and proper to show in that connection as bearing upon that question, what the directors said when they gave the guaranty, about the time when it would be practicable and convenient for them to make the invoice."

In *Atlantic Pebble Co.* v. *Lehigh Valley R. R. Co.*, 89 N. J. L. 336, the contract under consideration was silent as to time of performance. This Court held that, under those circumstances, the law presumed performance within a reasonable time. Discussing what constituted a reasonable time, the Court said (p. 339):

> "What that is depends upon the circumstances of each case. Both parties are presumed to have had in mind, as an expressed term of the contract they entered into, a period for complete performance, which, in view of the existing conditions, and *viewed in the light of their own actions*, it is reasonable to suppose they had in contemplation. Not having seen fit to reduce it to definite, expressed form, the circumstances surrounding the transaction, taken in connection with its character or nature, and the actions of the parties themselves, will determine this unexpressed and otherwise indefinite term of the contract."

"The circumstances of each case," and "the circumstances surrounding the transaction" will certainly include the statements made by the party desiring to induce the contract, especially where

that party has knowledge of important elements which the other party has not, and where for that same reason the party who is without this knowledge is justified in relying upon the statements of the other party.

This evidence of Bernard's statements with respect to time does not stand alone or by itself. It is to be taken in connection with other significant and important circumstances surrounding the parties at the time the contracts were negotiated. Among these were the following:

The price charged was a fixed sum for each ship. The two ships were to be berthed at one time. They were to occupy the most important part of plaintiff's plant, the dock needed and used in connection with their largest and most profitable work. The ships were to be, and were, delivered at the end of December during the slack season. Three months' time thereafter would bring them to the opening of their busy season, when they needed all their facilities. These facts were known to defendants, and would naturally call for a statement of the time necessary for scrapping the ships. Meurer testifies that before the contracts were signed Bernard said, "Within three months the ships would be out of our way, because when we went over the whole thing I explained it to Bernard we would have to have these docks. They occupied the two most important wharves and he said they would be completed within that time." (Case, p. 96, line 30.) (See also testimony of Dendel, p. 239, line 35; p. 242, line 30; testimony of Bonnett, p. 265, line 215; Snedeker, p. 379, line 30.)

Furthermore, that the job was represented by Bernard to be a three months' job was definitely established by the finding of the Vice-Chancellor

(Case, p. 797, line 5). *And under date of May 5, 1924, defendants expressly admitted that the work could have been finished within three months.* (Exh. P-22, p. 829.)

Another very significant fact is that the first bill rendered by plaintiff for use of the plant was on the basis of a 12-weeks' period for completing the job, and that bill was paid. (Case, p. 342, line 1.)

On principle as well as on the authority of these cases we submit that the representations as to time were clearly admissible on the question of what was a reasonable time.

But even if the representations were not admissible, there remained in the case the defendants' written admission (as contained in the letter of May 5, 1924, Exh. P-22), that the work *could have been finished within three months.* What more conclusive evidence of reasonable time could possibly be adduced than the defendants' own admission that the work could have been completed within three months' time? The testimony of experts as to the time within which the work could have been done, while admissible, naturally would not carry the same weight, as it evidently did not, as the deliberate statement of the defendants, *after a controversy had arisen between the parties,* that they could have completed the work within three months had the plaintiff furnished the proper facilities. There was ample evidence in the case that the plaintiff did furnish the proper facilities, and the attempt of the defendants to show to the contrary, as evidenced by the cross-examination of Ackerman (Case, p. 442 to page 458), signally and completely failed.

The question of what was a reasonable time was clearly one for the jury under the evidence.

III.

Plaintiff's testimony with respect to the reasonable charge for wharfage was admissible and amply sufficient to sustain the verdict.

Plaintiff called two experts to testify on this point—Mr. Dendel and Mr. Bonnett.

Mr. Dendel is Vice-President of the Tietjen & Lang Dry Dock Company, whose plant is located on the Hudson River in Hoboken. It is the third largest plant in New York Harbor, and is engaged in the ship repair business. Witness was familiar with plaintiff's plant—had seen it many times and as recently as two days before he testified. (Case, p. 226, line 18.) He had made charges for berthing vessels alongside piers at the Tietjen & Lang yards after repairs on them had been completed. (Case, p. 227, line 30.) Wharfage charges rule practically the same in and about New York harbor, including Kill von Kull, and the Perth Amboy plant. (Case, p. 228, line 35.) His information with reference to wharfage charges was obtained from his knowledge of general practice throughout the entire New York harbor, including the Perth Amboy plant (p. 230, line 10.) A fair and reasonable charge for wharfage for the "Black Arrow" and the "Philippines" would be about $125 a day for each. The charge for the "Black Arrow," although the smaller of the two vessels, would be practically the same as for the "Philippines," because the "Black Arrow" occupied a pier that was more valuable to the plaintiff than that occupied by the "Philippines", on account of the important equipment on that pier. (Case, p. 238, line 38 to p. 240, line 20; p. 243, line 3; p. 246, line 30.)

Mr. Bonnett had been connected with the Robbins Dry Dock & Repair Company and with the Todd Yard about twenty years. The latter company had taken over the Robbins plant about six years ago. (Case, p. 252, line 20.)

The Robbins yard is located in the Erie Basin at Brooklyn, and has six dry docks and necessary piers for berthing purposes alongside the dry docks. Their business is ship repairing, and is similar to that of the plaintiff. The witness had made charges and fixed a price for berthage or wharfage of vessels alongside of piers ordinarily used for repair work. He was familiar with the plaintiff's plant. (Case, p. 253, line 5.) He was also familiar with berthage charges made at the Tietjen & Lang yards. The value of the plant makes no difference in the wharfage charges. (Case, p. 255, line 38.) The value of wharfage at Perth Amboy would be the same as at the Robbins yard in Brooklyn. (Case, p. 256, line 25.) The value of the space at Perth Amboy plant is determined by the value of space in the Port of New York, of which Perth Amboy is a part. (Case, p. 263, line 10.) A reasonable charge for wharfage of these vessels would be $125 per day each. (Case, p. 265, line 12.)

Undoubtedly these witnesses were qualified to testify as to the value of wharfage and their testimony amply sustains the verdict.

In addition to the foregoing testimony of these two witnesses, Mr. Snedeker, plaintiff's Secretary and Treasurer, testifies that he took part in fixing the charge of $100 per day for wharfage of each ship, and that he considered that charge reasonable. (Case, p. 381, line 8.) At page 379, line 30, he explains the interference of these ships with plaintiff's regular business.

The only attack which the defendants make on the plaintiff's evidence as to what was a reasonable charge is that the witnesses produced by the plaintiff were not competent to fix a charge. Counsel for defendants, while recognizing that the question of the competency of a witness is in the first instance for the trial judge, contends that the trial judge should have held that they were incompetent. We submit that the testimony, above detailed, shows beyond question that these witnesses were not only competent, but highly qualified.

But in addition to this, it is a most significant fact that the *defendants did not offer a particle of evidence to show what a reasonable charge for wharfage was, or that the figures submitted by the plaintiff's witnesses were excessive.*

IV.

Payments for labor made by plaintiff and charged against the defendants pursuant to the contracts, and certain extras charged against the defendants, were fully proved, and plaintiff is entitled to recover therefor.

These items aggregate $814.31 and are shown in Exhibit P-15, page 816.

Exhibit P-15 was compiled by Mr. Olsen, plaintiff's office manager, and a representative of the defendants, and was used for the purpose of saving time (Case, p. 347, line 15).

These items were billed to the defendants by plaintiff, and defendants refused to pay them. Defendants noted on the several bills the items which they refused to pay, and stated their rea-

sons for not paying them. The bills, with these notations, were returned to plaintiffs, and the amounts thereof, less these deductions, were paid. (Case, p. 342, line 20.) P-15 was compiled, as above stated, by a representative of each party, and the source of information used by them in making the compilation was defendants' notations on plaintiff's bills. (Case, p. 343, line 1; p. 348, line 12.)

There was never any dispute that plaintiff had actually paid for labor the first seven items of Exhibit P-15. Defendants deducted these items from the bills because they claimed that the laborers were idle on various occasions, due to the fact that their work was interrupted because of some failure on the part of plaintiff to perform the requirements of the contracts; or that extra labor was required because plaintiff had failed to provide proper equipment. By reference to Exhibit P-13 (p. 810), relating to the "Black Arrow," and to Exhibit P-14 (p. 813), relating to the "Philippines," where copies of the notations defendants made on the bills appear, it will be noted that the labor items objected to, as repeatedly appears, were shown to be for "moving tanks," "changing tanks," "making tank connections," "handling tanks," etc.

Olsen testifies (p. 349, line 10, to p. 352, line 28) to these deductions, and defendants' reasons for making them as shown by their notations on the bills. He says that "Labor Handling Tanks," in Exhibit P-15 refers to moving tanks by laborers from the place where they were left by the delivering truck, to the place of use on board the ship—a distance of about 100 feet. The claim of the defendants was that the gas and air should have been delivered to them on shipboard, instead of 100 feet away.

"Labor Lost on Account of Lack of Manifolds" was for making tank connections, the claim being that more time was required for making these connections than if a manifold had been used. It is to be observed, however, that plaintiffs had no manifold at the time the contracts were made and that the contracts do not call for manifolds.

"Labor on Account of Lack of Air" was a deduction made because one day there was a short delay in delivery of air at the plant, occasioned by the breaking of a delivery truck. This item appears in Exhibit P-14, under date of February 4. Defendant deducted the aggregate time of all the laborers who were claimed to be idle because of this delay.

"Miscellaneous Labor Ordered by Mr. Bernard" applies to clearing off the car float used in connection with the scrapping operations. The material was from the "Philippines." Just why defendants should not pay for this item does not appear.

"Labor Lost on Account of Crane Off Track" was a deduction made by defendants because the laborers were idle for a short time on account of a derailment of the crane. It does not appear that the crane ran off the track through any fault of plaintiff.

"Labor Making Wrenches," referred to a charge made by plaintiff for mechanics' time in making some special wrenches found necessary in connection with scrapping the "Philippines." At the time the contracts were made plaintiff had no wrenches of that character in its equipment. These were ordered by Gilbert or Bernard.

"Use of Steam 19½ Hours" is a charge for steam used in pumping out the "Philippines"

after she was opened up. Steam was ordered for this purpose on two occasions by Gilbert. It was absolutely necessary to remove the water from that ship. Gilbert so testifies. (Case, p. 136, line 15; Exh. P-7, p. 808.) This was a reasonable charge (Case, p. 351, line 25).

Defendants also refuse to pay for the "Use of Air Pump" used in connection with pumping out the vessels when water accumulated in them, either from snow, rain or leakage.

Patten was defendants' timekeeper (Case, p. 323, line 5); so was Ackerman (Case, p. 397, line 3).

The bills from which these deductions were made were made up from the records of Patten and Ackerman and the records of plaintiff's timekeeper (Case, p. 362, line 30). Defendants are bound by the records of their own employees.

Defendants refused to pay these disputed items, and by notations on the bills themselves they stated the grounds of their refusal. These grounds do not include the contention that the labor and supplies in question had not been furnished. Having at the time assigned specific reasons for refusing to pay these items, as shown by Olsen's testimony, defendants cannot now add to those reasons a claim that the labor and supplies were not furnished.

These items were paid by plaintiff, and defendants have never repaid plaintiff (Case, p. 352, line 28).

Under these circumstances, it is futile to contend that plaintiff's right of recovery should not have been submitted to the jury, and the labored argument of defendants' counsel under Point VI, page 65, goes for naught.

V.

The right of plaintiff to be reimbursed for expenses incurred in connection with preventing the "Philippines" from sinking was clearly a question for the jury.

That this ship was in danger of sinking because of the breaking of a sea cock is undisputed. It is admitted also that the amount charged—$1,572.43—is a reasonable amount, and that the work done was necessary in order to save the ship. (Admission of counsel, Case, p. 352, line 28.) The only question involved is the liability of the defendants to pay.

If the accident was caused by the negligence of plaintiff, then, of course, the defendants should not pay this charge. If, however, there was no fault on the part of plaintiff in this connection, then defendants should pay. There is a conflict in the evidence with respect to the question of fault. The evidence submitted on behalf of plaintiff, if believed by the jury clearly entitled plaintiff to recover this amount. (Testimony of Connors, p. 282, line 25, to p. 285, line 35.)

VI.

Specific answers to certain of defendants' arguments.

Counsel for defendants show a studied and determined purpose to reargue questions determined by this court on the appeal in the Chancery suit.

1. They contend that the doctrine of *res adjudicata* should not be applied, and assigned several reasons therefor.

Under "Subpoint 1," page 28, of defendants' brief it is contended that the doctrine of *res adjudicata* should not have been applied, "because evidence in the suit in Chancery was different from that admissible in the law suit."

The argument under this subpoint is based upon the assumption that the parol evidence rule, so-called, is not applied in equity, or is applied differently in equity from what it is at law. The rule established in this State is directly to the contrary. *Van Horn* v. *Van Horn,* 49 N. J. Eq. 327; *Russell* v. *Russell,* 60 N. J. Eq., at p. 287, top (aff'd by this Court, 63 Eq. 282).

All the English cases cited under this subpoint are wholly inapplicable. Those cases deal with different causes of action, triable in different courts, as to which evidence is admissible in one court and is prohibited in the other.

As we have pointed out above (pp. ~~24~~ 30 to ~~29~~ 36), the cause of action in the present suit, so far as it claims compensation for use of plaintiff's piers and facilities beyond a reasonable time, is identically the same as the cause of action tried in the Court of Chancery. Hence, any parol evidence admissible in the Court of Chancery is equally admissible in a court of law, and the adjudication in the Court of Chancery on this phase of the case is *res adjudicata* in the present action.

The opinion of Beasley, C. J., in *Putnam* v. *Clark,* 34 N. J. Eq. 532, sustains our contention, for in that case it was held that the adjudication of the Court of Chancery barred the action at law, although had the action at law been first brought, evidence would have been admitted therein which was excluded in the Chancery

Court for the reason that the parties in the Chancery suit differed from the parties in the action at law.

At the trial of the Chancery suit defendants' counsel earnestly argued that the parol evidence in question was inadmissible. They made the same argument on the appeal to this Court. They failed in both Courts. They are now driven to the contention that, although the parol evidence was admissible in Chancery, it was inadmissible in the action at law. As already pointed out, this contention is entirely contrary to the decisions of the courts of this State.

But even if the parol evidence were improperly admitted in the Chancery suit (which we deny), it would not aid defendants' appeal, for the determination in the Chancery suit would be *res adjudicata* in this action, notwithstanding it may have been rested upon an erroneous application of the law.

In *City of Paterson* v. *Baker,* 51 N. J. Eq. 49, Van Fleet, V. C., said:

> "For in my judgment, nothing is better settled, as a principle of jurisprudence, than that the judgment of a court of competent jurisdiction, *on a point of law* or a question of fact, or on a question of blended law and fact, does, so long as it remains unreversed, have the effect, as between the parties and those standing in privity with them, to put the question or matter adjudged at rest finally and forever and for all purposes." (See p. 16, this brief.)

In the course of that opinion the Vice-Chancellor also said:

> "I think that it is now established, beyond dispute or doubt, that the judgment of a court of competent jurisdiction, *on a*

> *question of law or fact, or on a question of mixed law and fact,* once litigated and determined, is, so long as it remains unreversed, conclusive upon the parties and their privies, not only as to the particular property involved in the suit in which it is pronounced, but as to all future litigation between the same parties or their privies, touching the same subject-matter, though the property involved in the subsequent litigation is different from that which was involved in the first." (See this brief, p. 19.)

Speaking on this subject, Vice-Chancellor Reed in *Clark Thread Co.* v. *Wm. Clark Co.,* 55 N. J. Eq. 658, said:

> "Nor does it matter that, in the first suit, evidence existed which was withheld or undiscovered, *or that the law was misconceived by the court,* or left uncited by counsel, or that no defence was made and judgment went by default, or that only one of several defences was interposed by the defendant; in spite of any of these defects in the prosecution or defence of the action, *the judgment stands as an absolute bar against a second litigation of the same cause of action.*" (See this brief, p. 20.)

Speaking of this question, in *Isham* v. *Cooper,* 56 N. J. Eq., at page 409, Vice-Chancellor Emory said:

> "The treatment of this defence by the court of law *after admitting it as a legal defence* may be ground of error, *but cannot be ground of retrial of the defence in equity,* for the purpose of correcting this supposed error of the court of law."

This same question was before the New York Court of Appeals in *Lorillard* v. *Clyde,* 122 N. Y.

41, in which a former judgment of the Superior Court of that State had erroneously held that the contract involved was divisible. The Court of Appeals said:

> "*Even if it was wrongfully adjudged that the contract was divisible as to the second, third and fourth sums falling due,* it follows from the binding force that the law gives to a judgment between the same persons and upon the same point that, as between these parties it is divisible as to the fifth also."

Hence, the record of the Chancery suit is *res adjudicata* in this suit and between these parties without regard to correctness of the Vice-Chancellor's ruling in the admission of parol evidence.

2. Under Subpoint 2, page 32, of their brief, defendants' counsel contend that the questions involved in the present action came only collaterally in question and were only incidentally cognizable by the Court of Chancery.

It is necessary only to recall the issues raised and decided in the Chancery suit to demonstrate that this contention is untenable.

In the course of the scrapping of these ships the time came when plaintiff said to the defendants, in effect, "Your ships are unlawfully on our premises; remove them." The defendants replied, in effect, "Our ships are lawfully there; we decline to remove them." Plaintiff's assertion was, that its rights were infringed by the presence of the ships on its property. As a remedy it demanded their removal. Defendants' reply was a denial of the infringement of plaintiff's rights, and they refused to grant the remedy demanded. This issue was presented to the Court of Chancery and was there adjudged in favor of the plaintiff in

this action. There is nothing collateral or incidental about this issue; *it is the very crux and heart of the controversy.*

As heretofore pointed out, the only difference is in the remedy awarded by these different courts for the infringement of the same right, and that right was fully and for all purposes determined by the Court of Chancery. Since defendants' ships were unlawfully upon plaintiff's premises, it rightfully demanded and obtained their removal and it now has a right to just compensation for this unlawful occupancy.

Not only is the main issue determined by the Court of Chancery *res adjudicata* in the present suit, but, as stated by Vice-Chancellor Reed in *Clark Thread Co.* v. *Wm. Clark Co.* (p. 15 of this brief), so are all the "issues, which are common to both suits, and which had to be or were actually decided in the first suit."

This language, in substance, is used in most of the cases cited under Point I of this brief, and the rule enunciated must be accepted as established law in all cases where the doctrine of *res adjudicata* is applicable.

In reaching the determination it did, the Court of Chancery had to determine whether or not Bernard was defendant's agent. Having determined that question in the affirmative, it had next to determine whether he made the representations attributed to him as to the time necessary for scrapping the ships and the sizes into which they were to be cut. The Court also had to determine which party was blamable for the condition which arose with respect to these ships.

Not one of the foregoing matters was collateral or incidental to the Chancery jurisdiction; all were necessary to the determination of the issues presented. All of them were, in fact, determined by

that Court in favor of this plaintiff, and none of them can be further litigated in the present action.

The argument under Subpoint 2 is based on a false premise, and none of the cases cited have any bearing upon the question here presented for solution.

3. Defendants' Subpoint 3 (their brief, p. 39) is but a restatement, in a little different form, of their argument under Subpoints 1 and 2. Counsel confuses the wrong which is the subject-matter of the controversy, with the remedy which the Court grants because of the existence of that wrong. They fix their entire attention upon the remedy and disregard the *wrong* which gives the right to the remedy. It is incorrect to say that the decree adjudged nothing but that the ships should be removed, and that defendants should pay costs. That was the remedy granted because of the existence of the wrong which the Court found and determined had been inflicted upon the plaintiff.

4. Defendants' Subpoint 4 (their brief, p. 39) alleges that it was beyond the jurisdiction of the Court of Chancery in the former suit to conclude the Supreme Court on the points in controversy in this action. Here again counsel confuses the issue tried in these suits with the remedy administered therein. The relief granted by the Court of Chancery was the removal of the ships. The relief administered in the court of law is an award of compensation. Both of these remedies, however, were based on identically the same wrongful conduct of the defendants, namely the unlawful keeping of their ships on plaintiff's property. Certainly, the Court of Chancery had jurisdiction to determine what wrong, if any, had been inflicted by defendants upon the plaintiff. That Court hav-

ing determined that, because of the wrongful conduct of the defendants, the presence of their ships on plaintiff's property had become unlawful, that determination became a fixed and indisputable fact in the action tried in the court of law.

If defendants' argument were sound, the result would be that no adjudication of the Court of Chancery would ever be *res adjudicata* in an action at law, and, conversely, no adjudication in a court of law would ever be *res adjudicata* in a suit in Chancery. There is no support in law or in reason for such contention.

Here, again, a false premise renders the cases cited under this subpoint of no application to the issues now to be determined.

5. On page 44 of their brief defendants' counsel present the novel contention that the affirmance of the decree of the Court of Chancery by this Court supports their contention that the suit in Chancery does not constitute *res adjudicata* in this action.

If this Court had dismissed the appeal from the Chancery decree, on the ground that there was nothing for this Court to pass upon, there would possibly be some plausibility to defendants' argument; but this Court in its opinion said, "The decree under review *will be affirmed;*" and its decree of affirmance "ordered, adjudged and decreed that the decree of the Chancellor *be in all things affirmed with costs.*" (Case, p. 802.)

Thus, the decree in Chancery was affirmed, although it awarded costs and a counsel fee of $2,500 to the complainant. Defendants petitioned for a rehearing, on the ground that the Court had overlooked the fact that in their brief defendants had presented the question of the propriety of the awarding of costs and counsel fee to plaintiff. Although this matter was thus brought directly to

the attention of the Court, and if the Chancery decree had been wrong the awarding of costs and counsel fee to complainant would have imposed a serious injury upon the defendants, yet the Court denied a rehearing.

The defendants gain no support for their appeal from the opinion of this Court on the appeal from Chancery.

6. Defendants' Point II (their brief, p. 45) attacks the ruling of the trial Court with respect to the application of the parol evidence rule.

Grounds of Appeals 3, 4, 5, 10, 26 and 27 relate to statements made by Bernard and Crawford to Meurer, Preacher and Snedeker with respect to the time and manner of scrapping the vessels before the contracts were signed. We have already shown abundant authority for the admission of these statements on the question of reasonable time and as admissions against interest. We think that nothing further need be said in respect to these grounds of appeal.

Ground of Appeal No. 2 merely states a general rule by which the Court proposed to govern itself in the trial of the case. It had no bearing upon any specific matter, and defendants were not injured thereby.

Grounds of Appeal 6, 7 and 24 relate to letters written and statements made after the contracts were signed. They were evidential as admissions against interest and as showing the interpretation put upon the contracts by defendants and as confirmations of plaintiff's understanding with respect to these contracts.

Ground 28 goes to the admissibility of a question put to Mr. Snedeker as to why he was influenced with respect to signing the contract by Crawford's statement that the vessels would oc-

cupy the plant for a period of three months. The statement made by Crawford as to time being admissible, it was perfectly proper to ascertain what effect this statement had upon Snedeker's determination to sign the contracts. His answer (p. 371, line 34) discloses that the period of three months beginning with January 1, would be during the dullest part of the year for plaintiff, thus showing this statement to have had a most important influence with respect to entering into the contracts.

The 31st Ground of Appeal is claimed to point out a particularly erroneous ruling of the trial Court. The ruling complained of is permitting the following question:

> "Q. Mr. Snedeker, when the offer was taken down by Mr. Meurer to Mr. Crawford, before the question of the compensation insurance arose, did Mr. Meurer tell you whether or not there had been any representations made to him as to the time the vessels were to remain in the plant?"

The answer to this question is "Yes." It is impossible to see any injury to defendants arising out of the fact that Meurer had told Snedeker at the time mentioned that representations had been made to him as to the time these ships would remain at the plant. The question does not call for a disclosure of what these representations were nor does the answer disclose them. Counsel contends that this question and answer constituted a proof of the declaration by hearsay evidence. This, of course, is not true, because the answer makes no disclosure with respect to the representations made to Meurer. Clearly, this "particularly erroneous ruling" was entirely harmless.

7. Defendants' counsel have evidently devoted much time and research to ascertain the exact meaning of the word "plant" as applied to a factory (their brief, p. 70). If some small portion of the time devoted to this research had been applied to a study of the contracts, counsel would have observed that plaintiff was to provide "the use of our plant, for scrapping the S. S. 'Philippines' *as noted below.*" Just what was included in the term "plant" is clearly set out, and the learning of eminent lexicographers, interesting though it is, is of no importance in determining the rights of the parties to this action.

8. It is argued that the record of the suit and decree in the Court of Chancery (Exh. P-1, p. 589) was inadmissible. This doubtless on the theory that the suit in Chancery is not *res adjudicata* in this action. This theory, as we have shown, is without substance.

If it be contended that in a case where the doctrine of *res adjudicata* is applicable the record in the first suit is inadmissible to ascertain what was actually involved and decided in that suit, such contention is wholly lacking in merit.

In *Oklahoma* v. *Texas,* 256 U. S. 70 (65 L. Ed. 831), Justice Pitney, speaking for the Court, said (p. 88).

> "What was involved and determined in the former suit is to be tested by an examination of the record and proceedings therein, including the pleadings, the evidence submitted, the respective contentions of the parties, and the findings and opinion of the court; there being no suggestion that this is a proper case for resorting to extrinsic evidence." (Citing many cases.)

In *Carleton* v. *Lombard, Ayres & Co.*, 149 N. Y., the Court of Appeals, in discussing the admissibility of the record, as well as of parol proof to ascertain what was actually litigated and determined, said (p. 152):

> "They (the plaintiffs) were not confined to the record in order to show the point passed upon, but could show by parol proof what questions were actually litigated and decided. (Citing cases.) * * * It (i. e., the record) could not be excluded, however, because it did not prove the plaintiff's entire case. If it proved any material fact in support of it, it was admissible."

In *Isham* v. *Cooper and Fowler*, 56 N. J. Eq., p. 398, a bill was filed to restrain the defendants from proceeding to enforce a judgment obtained in an action at law. The entire record in the suit at law, including the evidence taken at the trial, was filed with the bill of complaint. Vice-Chancellor Emery considered these matters at length and in detail to ascertain precisely what the court of law had passed upon and determined.

On appeal to this Court "the evidence submitted on the motion for injunction, including the proceedings *on the trial at law,*" was carefully examined to ascertain exactly what was determined in the suit at law. (See opinion of Justice Dixon, at page 410).

9. The sixty-fourth ground of appeal complains of the alleged failure of the Court to charge defendants' tenth request. The Court did charge this request, "subject to what I might say on the subject in my general charge". There was nothing in the general charge which at all detracted from the effect of the request.

10. On page 47 of defendants' brief the testimony of Peterson, O'Hagan, Patten, Williams, and Campbell is cited as showing erroneous rulings of the trial judge with respect to permitting these witnesses to testify to declarations made by Bernard. Although this testimony was objected to at the trial, these objections are not stated as grounds of appeal relied upon by defendant.

We respectfully submit that the judgment should in all things be affirmed.

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