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Bill of Complaint.

(Filed September 26, 1944.)

Docket No. 148/216.

In Chancery of New Jersey

*To the Honorable Luther A. Campbell, Chancellor
of the State of New Jersey:*

The complainant, Irvington Varnish & Insulator Company, a corporation of the State of New Jersey, with principal office located at 6 Argyle Terrace, in the Town of Irvington, County of Essex and State of New Jersey, respectfully shows that:

1. Complainant was incorporated in the year 1906, and in or about that year established a plant in the Town of Irvington aforesaid for the manufacture of varnishes, insulating materials and kindred products. Ever since, it has continued in this business; as the same has expanded, at said place and is presently engaged therein. (As to the balance of this paragraph, and as to the three paragraphs next following, there has been no substantial change in the situation to be described, at least during a period considerably prior to January 30, 1942 down to the present time). Complainant's plant and facilities occupy an area of approximately two and a half square blocks and it employs approximately six hundred fifty persons. Its business through the sale of its products extends throughout the United States. These products, consisting chiefly of flexible coated materials, especially materials for industrial and technical use, notably for electrical insulation, container-closure sealing, and rubber separation; paints, varnishes and other coatings for industrial and technical purposes; extruded and calendared thermoplastics; and resins, are sold to industrial

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Bill of Complaint.

and technical users located in every State of the Union, the entire United States being divided by complainant into some twenty territorial jurisdictions and a sales agency, consisting of one or more sales representatives, being maintained in each such territory (several such agencies being
10 located on the West Coast), these agencies handling and being responsible for the sales of complainant's products within such designated territory (except as it may, in certain cases, make sales therein from its Home Office at Irvington, direct), its customers including the United States Government, itself, through its war agencies, the Army and Navy.

2. The manufacture of satisfactory products,
20 both from the standpoint of the physical and chemical properties and characteristics (such as flexibility, surface smoothness, dielectric strength, tensile strength, tear- heat- acid- abrasion- light- and water-resistance, color and fastness of the color, thickness or thinness, durability, and other technical factors) and from the standpoint of the cost thereof, depends upon the processing of the materials concerned therein. The proper and efficient processing of said materials, in turn,
30 depends upon the apparatus; i. e., the machinery and equipment by which such processes are carried on. Complainant's industry is a highly competitive one, requiring the meeting of demands, becoming increasingly exacting with the development of scientific knowledge and the application thereof to our industrial life, for new and improved products as well as older products of uniform excellence, all produced at a minimum of cost. Complainant has been able to obtain the
40 desired properties or characteristics in its prod-

Bill of Complaint.

ucts, with substantial uniformity, and at relatively low cost through the use of methods and processes, including the necessary machinery and equipment, which it has developed and perfected over the years of its business life. Thus, through years of endeavor—research, experimentation and practical operation—complainant has developed and constructed much new and improved machinery and equipment for the conduct of its particular manufacturing processes—custom-built items, not generally known or available to the industry. In some instances, the novelty or improvement has consisted of the design or function of the machine itself; in other instances in some device or part thereof; but, in every case, the effect has been to enable complainant to obtain a competitive advantage, either from the standpoint of creation of a new and useful product; improvement of an existing product; or increasing of the speed, efficiency or economy of the manufacturing process with consequent lowering of manufacturing costs. Thus, the manufacturing methods and processes so achieved by complainant, particularly in the case of the design and function of its machinery and equipment, represent a huge, but incalculable, investment to complainant. This investment on complainant's part is, in part, represented by the cost of maintenance of its laboratory and engineering forces; but additionally is represented by a very substantial cost of what might otherwise be considered wastage of labor and materials in the inevitable trial-and-error means of attaining superiority and efficiency in actual manufacturing operations; also of the construction and operation of its machinery and equipment, including experimental work on a small scale in the operation and testing of new ideas in connection therewith.

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Bill of Complaint.

3. It is impossible to economically duplicate complainant's products, meeting specified and exacting tests of performance, without the pirating in a material degree of complainant's said methods and processes, including as to the design and function of its machinery and equipment, except
10 as other techniques might be independently arrived at as a result of prolonged research and experimentation and the costly and time-consuming "trial-and-error" operations above described. In consequence of all the foregoing, complainant guards and preserves its methods and processes, including as to the design and function of its machinery and equipment, as its own business secrets and property, and has always so guarded
20 and preserved them, making and permitting only such disclosure thereof as may be necessary for the purposes of its business in the manufacture and sale of its products. Thus, no unauthorized persons are allowed on complainant's factory premises, guards being maintained at all entrances with instructions to keep out all persons except employees and others having legitimate call to go upon such premises in connection with the conduct of complainant's business thereat. Additionally, those employees whose duties and
30 responsibilities have been such as to require disclosure to them, in any substantial degree, of information concerning complainant's aforesaid methods and processes, including as to the design and function of its machinery and equipment as aforesaid, have been required, as a condition of employment or continued employment with complainant, to agree to respect the secrecy thereof (via contracts of the kind hereinafter referred to—Schedule A, attached).
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Bill of Complaint.

4. In or about the year 1918, defendant Peter Van Norde, then a young man without formal technical training, and with no practical experience in complainant's line of work, sought, and was granted, employment by complainant in its machine shop. Defendant was thereafter continuously in complainant's employ until June 1, 1944 when he resigned. From this beginning in 1918, he was advanced in complainant's organization in successive stages, attaining a salary of \$4,200 yearly (exclusive of additional contingent compensation) which was his rate of compensation from March 1, 1943 until he resigned. For some time prior to January 19, 1943, he was complainant's plant superintendent in charge of all of complainant's machinery and equipment, the designing, construction and maintenance thereof. Subsequent to January 19, 1943, he was designated complainant's chief engineer, engaged primarily in machine design work for which he showed particular aptitude. In this capacity, he was responsible for the making of all needed improvements in complainant's existing machinery and equipment; also for the creation of all new machinery and equipment as needed—his duties embracing machine design, i. e., the designing of machines to accomplish designated production operations; initiating specifications for new machines; redesigning of existing machines to overcome faulty operation. By reason of his position, he had access to and was familiar with complainant's manufacturing processes and machine design and function, likewise having access to all records of complainant insofar as they bore on the design, construction and operation of complainant's machinery. In the line of his duties, as complainant's trusted supervisory employee,

Bill of Complaint.

he not only became, and is, thoroughly familiar with all of complainant's machinery and equipment, its design and function, and the manufacturing processes accomplished thereby as aforesaid, but, while so in complainant's employ, and on complainant's premises and with complainant's facilities, he, himself, created, designed and aided in the construction of a considerable part of complainant's machinery and equipment, among others their "Cap Seal" equipment created, as it was, only after experimentation and trial-and-error operation over a two-year period, and involving abandonment and scrapping of numerous intermediate designs; also their "slitting machine", the basic design of which originated with complainant many years ago, but which was materially improved by parts or devices called the "double slitting head" and the "winding-up shaft" created and designed by defendant. On the other hand, a further considerable part of the special machinery and equipment created for complainant and now in use represents the work, either alone or in collaboration with defendant, of consulting engineers and others whom complainant employed and paid; but defendant, by reason of his position, became fully familiar therewith, and with the design, construction and operation thereof.

5. Defendant thereby occupied to complainant a relation of trust and confidence, imposing upon him a duty, implied from the confidential nature of his employment, to wholly abstain and refrain from utilizing for himself and/or in the interests of others and from communicating to others, any knowledge or information as to complainant's said machinery and equipment whereby to deprive complainant of the exclusive benefit thereof.

Bill of Complaint.

6. On or about January 30, 1942, defendant entered into a written contract with complainant, a true copy of which is annexed hereto, made a part hereof and designated "Schedule A", whereby in consideration of the continued employment of the former by the latter, defendant expressly undertook and agreed (among other things therein): 10

"That he will, both during his employment by Employer and after cessation thereof (howsoever the same shall occur), keep secret (neither disclosing to others nor himself making use of, except as to disclosure and use in the line of duty, as authorized by Employer) confidential information concerning Employer's business, a knowledge whereof may be acquired by Employee in connection with his said employment * * *." 20

In order to better protect complainant in respect to confidential information concerning its business coming to the knowledge of defendant as its employee, defendant also undertook and agreed therein:

"That he will, for a period of two years following the cessation of his employment by Employer, howsoever the same shall occur, refrain from engaging in, being employed by, or otherwise connected with, directly or indirectly (whether as proprietor, partner, associate, consultant, officer, director, agent, employee, or in any other capacity) any competing business enterprise located in the United States." 30

Complainant has fully performed the said agreement on its part whereby to entitle it to like performance on the part of defendant. 40

Bill of Complaint.

7. By reason of defendant's aforesaid familiarity with complainant's machinery and equipment, the design and function thereof and the processes accomplished thereby, defendant has been enabled to duplicate the same for a competitor without the expenditure of time, effort and materials necessary to the independent development and perfecting thereof and which were expended by complainant in such accomplishment. Complainant also avers that, by reason of the position of trust and confidence occupied by defendant as aforesaid, he has had opportunity to covertly obtain blueprints, photographs and other written data concerning said machinery, equipment and processes belonging to complainant, or to make copy thereof, for his own purposes; but complainant has, at present, no knowledge or information as to the extent, if at all, to which he may have done so.

8. On or about July 1, 1944, defendant Van Norde, after having represented to complainant that he was resigning his position with complainant for the purpose of taking employment with Kolb Sheet Metal Works, which was not in any way a competitor of complainant, and thus procuring from complainant a "Statement of Availability" under the Federal laws and rules and regulations of the War Manpower Commission governing the hiring of employees during the current war emergency, entered the employ of Electro-Technical Products, Inc., a corporation of the State of New Jersey (hereinafter, for brevity's sake, called "Electro"), at its plant in Nutley, Essex County, New Jersey. Electro is a competitor of complainant, producing and selling in the United States flexible coated materials,

Bill of Complaint.

such as for electrical insulation, in direct competition with complainant. However, while Electro makes and sells products which are similar to, and which, in the use and application thereof, compete with products now made and sold by complainant and which were made and sold by complainant during defendant's employment with complainant, Electro has not made and sold all of the products which complainant makes and sells. Moreover, as to the majority of the products which Electro has made and sold, the relative sales volume of the two companies reflects a marked preference for complainant's products, in turn, reflecting superiority therein. The broader scope and superior qualities of complainant's products are due to complainant's aforesaid manufacturing technique, including, in a very substantial degree, as to the machinery and equipment with which it produces these products, the design and function thereof and the processes accomplished thereby—acquired by complainant only after an extraordinary expenditure of time, effort and capital, as aforesaid. Accordingly, Electro will be greatly aided in competing with complainant by acquiring complainant's said technique without the necessity of any such expenditure therefor, to the end of pirating complainant's machines, equipment and processes whereby to produce corresponding products, of corresponding merit, with corresponding efficiency. And complainant verily believes, and therefore charges, that, unless restrained by this court, defendant, in connection with his position with Electro, is able to, and will, for a consideration moving to himself and not to complainant, impart and make available to Electro the knowledge thereof so acquired by him on complainant's

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Bill of Complaint.

10 behalf while in complainant's employ, the probability that Electro seeks to obtain and utilize such knowledge being enhanced by the fact that they had previously acquired as one of their employees one Edward C. Homan, a former employee of complainant who had held the position of research chemist in its laboratory and who, by reason of his position, had similarly acquired confidential information concerning complainant's business. As a result of this circumstance, complainant has been more susceptible to injury by defendant's breach of contract than otherwise since it must tend to facilitate Electro's use of confidential information concerning complainant's machinery, equipment and manufacturing processes so obtainable from defendant.

20 9. It having recently become known to complainant that defendant had taken employment with Electro in violation of his contract aforesaid, complainant promptly remonstrated with defendant, pointing out to him complainant's rights in the premises under its said contract. Defendant thereupon admitted to complainant that he was employed by Electro; that Electro had made him an attractive offer and that he intended to continue in its employ. Subsequent thereto, complainant, by its counsel, notified defendant that unless he terminated said employment so violating his contract with complainant that complainant would bring suit to enjoin continuance of the violation. Defendant, however, ignored said warning and to the best of complainant's information and belief still continues in said employment in violation of his contract aforesaid.

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Bill of Complaint.

10. Unless defendant is restrained by this court from continuing the course upon which he has thus embarked of working for complainant's competitor and in the course of such activity divulging to and/or utilizing on behalf of, such competitor confidential information as to complainant's machinery, equipment and processes, a knowledge whereof was obtained by him from complainant in trust for complainant as aforesaid, complainant will be deprived of all further control thereof and of its property therein and of the exclusive benefit therefrom to which it is properly entitled. 10

Complainant is without adequate remedy in the courts of law and, therefore, prays:

1. That Peter Van Norde, who is the defendant to this suit, may answer this Bill of Complaint and each statement herein made. 20

2. That said defendant, Peter Van Norde, be restrained and enjoined, during a period ending May 31, 1946 from engaging in, being employed by, or otherwise connected with, directly or indirectly (whether as proprietor, partner, associate, consultant, officer, director, agent, employee, or in any other capacity), any business enterprise located in the United States competing with complainant, including, specifically, Electro-Technical Products, Inc., a corporation of the State of New Jersey, located in Nutley, Essex County, New Jersey. 30

3. That said defendant, Peter Van Norde, be further restrained and enjoined, during a period ending May 31, 1946 from disclosing to others and from himself making use of confidential informa- 40

Bill of Complaint.

tion concerning complainant's business, a knowledge whereof was acquired by him in connection with his former employment with complainant, including, specifically, all information, whether written or unwritten, concerning complainant's machinery, equipment and processes.

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4. That the State's Writ of Injunction may issue out of, and under the Seal of, this Honorable Court, directed to said defendant, Peter Van Norde, enjoining him in accordance with the two next preceding prayers.

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5. Whereby to protect complainant from intervening irreparable injury, that said defendant, Peter Van Norde, may be restrained and enjoined in accordance with said prayers pending the final hearing of this cause and the Order of the court thereon.

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6. That complainant may have discovery of the extent to which defendant, Peter Van Norde, has heretofore disclosed to others and has himself made use of, in violation of the contract between complainant and defendant set forth in the Bill, confidential information concerning complainant's business, a knowledge whereof was acquired by him in connection with his former employment with complainant, including, specifically, all information, whether written or unwritten, concerning complainant's machinery, equipment and processes, and as to the extent of the knowledge of third parties receiving such disclosure of complainant's rights in the premises, to the end that complainant may seek suitable redress with respect to the further use thereof.

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Bill of Complaint.

7. That the court grant complainant such other and further relief as it may deem equitable and just.
8. That a Writ of Subpoena may issue commanding said defendant, Peter Van Norde, to answer this Bill of Complaint and to abide by such Orders and Decrees as this court may make in the premises. 10

CHARLES C. TRELEASE,
Solicitor for and of Counsel
with Complainant.

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Schedule A, Attached to Bill of Complaint.**C. Employment Contract.**

Same as Exhibit C-2

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Answer.

(Filed October 27, 1944.)

IN CHANCERY OF NEW JERSEY.

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Between

IRVINGTON VARNISH & INSULATOR
COMPANY, a corporation of the
State of New Jersey,
Complainant,

and

PETER VAN NORDE,
Defendant.

On Bill, etc.
Answer.

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The defendant, Peter Van Norde, residing in the Town of Summit, in the County of Union and State of New Jersey, answering the bill of complaint in the above entitled cause, says that:

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1. Defendant has not sufficient information to either admit or deny the allegations contained in the first paragraph of the bill of complaint and leaves the complainant to its proof as to the truth thereof.

2. Defendant neither admits nor denies the allegations contained in the second paragraph of the bill of complaint as he has not sufficient information and leaves the complainant to its proof as to the truth thereof.

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3. Defendant neither admits nor denies the allegations contained in the third paragraph of the bill of complaint as he has not sufficient information and leaves the complainant to its proof as to the truth thereof.

4. Defendant admits so much of paragraph four of the bill of complaint as alleges that he

Answer.

went to work for complainant in 1918 and continued to work for them as an engineer until some time in 1943, and that in the course of his employment he designed certain machinery and equipment for complainant, but denies each and every other allegation therein contained.

5. Defendant denies each and every allegation contained in paragraph five of the bill of complaint. 10

6. Defendant admits that on or about January 30, 1942 he entered into a written agreement or contract with complainant containing the clauses set forth in said paragraph, but denies each and every other allegation therein contained and avers that said contract was obtained through duress and fraud practiced upon defendant by said complainant. 20

7. Defendant denies each and every allegation contained in paragraph seven of the bill of complaint.

8. Defendant denies each and every allegation contained in paragraph eight of the bill of complaint.

9. Defendant admits so much of paragraph nine of the bill of complaint as alleges that he is presently employed by Electro-Technical Products, Inc., but denies each and every other allegation therein contained. 30

10. Defendant denies each and every allegation contained in paragraph ten of the bill of complaint.

Defendant prays that the bill of complaint herein be dismissed.

GEORGE R. SOMMER,
Solicitor for Defendant. 40

Amended Answer.

(Filed November 20, 1944.)

IN CHANCERY OF NEW JERSEY.

148/216.

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Between

IRVINGTON VARNISH & INSULATOR
COMPANY, a corporation of the
State of New Jersey,

Complainant,

and

PETER VAN NORDE,

Defendant.

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On Bill, etc.
Amended Answer.

The defendant, Peter Van Norde, hereby amends with leave of the Court, the answer heretofore filed by him in the above entitled cause so that paragraph six thereof shall read as follows:

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6. Defendant admits that on January 30, 1942 he entered into a written agreement or contract with complainant containing the clauses set forth in the 6th paragraph of the bill of complaint but denies each and every other allegation therein contained and avers that said contract was obtained through duress and fraud practised upon defendant by said complainant, which fraud and duress consisted of the following:

40

Defendant entered the employ of complainant in 1918 and continued in their employ until on or about January 30, 1942 without any formal or written contract. On or about January 30, 1942 complainant requested defendant to sign a contract of employment with the understanding

Amended Answer.

that it was merely a matter of form to keep the records of the company straight. Believing this to be true, defendant executed the contract and thereafter complainant proceeded in a course of conduct which finally resulted in defendant being compelled to resign his position, which fact was the hope and desire of complainant at the time the contract was executed. 10

GEORGE R. SOMMER,
Solicitor for Defendant.

Service of a copy of the within Amended Answer is hereby acknowledged this 13th day of November, 1944.

CHARLES C. TRELEASE,
Attorney for Complainant. 20

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Replication.

(Filed November 27, 1944.)

IN CHANCERY OF NEW JERSEY.

148/216.

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Between

IRVINGTON VARNISH & INSULATOR
COMPANY, a corporation of the
State of New Jersey,

Complainant,

and

PETER VAN NORDE,

Defendant.

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On Bill, Etc.
Replication.

The Complainant joins issue on the Answer of the Defendant, as amended.

RESERVATION

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Complainant having duly moved to strike out of Paragraph 6 of the Answer filed by the Defendant herein the allegation "and avers that said contract was obtained through duress and fraud practiced upon Defendant by said Complainant" and having obtained an Order striking out said allegation and the Defendant having filed an amendment to his Answer wherein the above allegation is again repeated with the addition of the phrase "which fraud and duress consisted of the following:" followed by an additional paragraph, Complainant hereby respectfully reserves its right at or before the trial of this cause to move to

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strike out all or any portion of said allegation of amended Paragraph 6 of the Answer upon the grounds that they do not constitute any defense

Order of Contempt.

to Complainant's case, and are not properly pleaded in accordance with the rules of this court; additionally, that as to the defense of duress, no facts whatever are offered in support thereof.

CHARLES C. TRELEASE,
Solicitor of Complainant.

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Order of Contempt.

(Filed June 25, 1945.)

Docket No. 148/216.

IN CHANCERY OF NEW JERSEY.

IN THE MATTER

of

PETER VAN NORDE, charged with
contempt.

On Petition, etc.
Order.

20

This matter coming on to be heard in the presence of Mr. Charles C. Trelease, solicitor appointed by the Court to prosecute this cause, (Mr. H. Preston Coursen of the New York bar appearing with Mr. Trelease) and Mr. George R. Sommer, solicitor of the respondent, (Mr. Seymour M. Heilbron of the New York bar appearing with Mr. Sommer) on the return of an Order to Show Cause made on the 5th day of June, 1945, duly continued to the date hereof;

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And Peter Van Norde, who is the respondent herein, having appeared personally and by counsel as aforesaid and pleaded not guilty to the contempt charged in the Petition herein;

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Order of Contempt.

And proof in support, and in defense, of said charges having been taken in open court in the presence of said respondent;

10 And the Court having considered the proofs, and the arguments of counsel, and being satisfied that the said respondent, Peter Van Norde, is guilty as charged in the Petition herein; it is on this 25th day of June, 1945,

20 ORDERED, ADJUDGED, and DECREED that the said respondent, Peter Van Norde, is guilty of contempt of this Court in violating and disobeying the Restraining Order of this Court made on the 3rd day of October, 1944 in that certain cause in this court entitled "Between Irvington Varnish and Insulator Company, a corporation of the State of New Jersey, complainant, and Peter Van Norde, defendant," Docket No. 148/216.

FURTHER ORDERED that said respondent, Peter Van Norde, appear before the Chancellor for sentence at ten o'clock in the forenoon on Tuesday, July 3, 1945 at Chancery Chambers in the City of Newark.

Respectfully advised:

30 ALFRED A. STEIN, LUTHER A. CAMPBELL,
V. C. C.

Order for Restraint Pending Final Hearing.

(Filed October 3, 1944.)

IN CHANCERY OF NEW JERSEY.

Between

IRVINGTON VARNISH & INSULATOR
COMPANY, a corporation of the
State of New Jersey,
Complainant,

and

PETER VAN NORDE,
Defendant.

On Bill, etc.
Order for
Restraint
Pending Final
Hearing.

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This matter being opened to the Court by Nor-
bury C. Murray, associated with Charles C. Tre-
lease, solicitor of complainant, on an application
of the complainant for preliminary restraint, and
it appearing by affidavit that notice of such appli-
cation, together with copy of the Bill and affi-
davits annexed thereto were served upon the de-
fendant at least two days (Sundays and holidays
excluded) before the return day of said applica-
tion, and counsel having stipulated the postpone-
ment thereof to September 26, 1944, and the mat-
ter having been moved on that date in the pres-
ence of George R. Sommer, solicitor of defendant,
and there having been filed with court the bill of
complaint and affidavits thereto attached together
with answering affidavit on behalf of the defend-
ant, also by leave of the court, reply affidavits on
behalf of complainant, and the court having read
the said affidavits and heard and considered the
arguments of counsel, and it appearing to the
court that the restriction in Paragraph (d) of the
agreement between the parties, enforcement of
which is sought in this cause, is reasonable with

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Order for Restraint Pending Final Hearing.

respect to time and space, that the complainant has secret methods of operation which the defendant had ample opportunity to learn and which should be protected, and that complainant is equitably entitled to immediate relief in the premises as hereinafter provided, and complainant having, 10 on the presentation of this order, filed therewith its bond to the defendant in the sum of \$5,000, without surety, conditioned for the payment of any damages that the defendant may suffer from the injunction or restraint hereinafter to be imposed if the bill be dismissed or said injunction or restraint be vacated in an amount to be ascertained as this court may direct, as required by this court, the form of such bond being hereby approved;

20 It is on this 3rd day of October, 1944, ORDERED that until the final hearing of this cause and the further order of the court in the premises, the defendant Peter Van Norde be and he is hereby enjoined and commanded to desist and refrain from engaging in, being employed by, or otherwise connected with, directly or indirectly (whether as proprietor, partner, associate, consultant, officer, director, agent, employee or in any other capacity), any business enterprise located in the 30 United States competing with complainant, including, specifically, Electro-Technical Products, Inc., a corporation of the State of New Jersey, located in Nutley, Essex County, New Jersey, and from disclosing to others and from himself making use of confidential information concerning complainant's business, a knowledge whereof was acquired by him in connection with his former employment with complainant,

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Order for Restraint Pending Final Hearing.

FURTHER ORDERED that defendant have leave to move, in accordance with the practice of this court, to dissolve and vacate the injunction and restraint hereby imposed if complainant fails to prosecute the cause diligently;

FURTHER ORDERED that the allowance of costs on this application shall await the outcome of the final hearing. 10

Respectfully advised,

J. O. BIGELOW,
V. C.

LUTHER A. CAMPBELL,
C.

Approved as to form.

GEORGE R. SOMMER,
Solicitor for Defendant. 20

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Order of Reference.

(Filed December 18, 1944.)

IN CHANCERY OF NEW JERSEY.

148/216

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Between

IRVINGTON VARNISH & INSULATOR
COMPANY, a corporation of the
State of New Jersey,

Complainant,

and

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PETER VAN NORDE,

Defendant.

On Bill, &c.
Order of
Reference.

This matter being opened to the Court by Charles C. Trelease, Solicitor of the Complainant, and it appearing that the Solicitor of the Defendant has consented thereto,

30 It is on this 18th day of December, 1944, on motion of Charles C. Trelease, Solicitor of Complainant, ORDERED that the above entitled cause be referred to Hon. John O. Bigelow, one of the Vice Chancellors of this Court to hear the same for the Chancellor and to report thereon to him and to advise what Order or Decree should be made therein.

LUTHER A. CAMPBELL,
C.

The entry of the above order is hereby consented to.

40

GEORGE R. SOMMER,
Solicitor of Defendant.

Opinion.

(Filed August 23, 1945.)

Reported 137 N. J. Eq. 134.

IN CHANCERY OF NEW JEREEY.

148-216.

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Between IRVINGTON VARNISH & INSULATOR COMPANY, Complainant, <i>and</i> PETER VAN NORDE, Defendant.	}	On Bill, etc. Opinion.	20
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August 23, 1945.

Defendant, in consideration of his employment by complainant, entered into certain covenants, one that he would keep secret, neither disclosing to others nor himself making use of, confidential information concerning employer's business, a knowledge whereof may be acquired by employee in connection with his said employment. Complainant prays an injunction to enforce the covenant. The evidence embraced only the design of machines. 30

1. There may be confidential information with respect to things not patentable. What comprises confidential information about complainant's machines is knowledge of a mechanical device or principle, or application thereof, which is not known generally to its competitors' engineering staffs and which they cannot readily learn by consulting an expert. 40

Opinion.

2. An injunction in general terms forbidding the defendant from himself using, or divulging to others, confidential information which he had acquired in the course of his employment, would not inform him with reasonable certainty what he is forbidden to do. It would be most difficult for
10 the court to enforce the injunction. A general injunction of this sort should be denied.

3. To authorize an injunction, the court must be reasonably satisfied that the defendant actually intends to do the act sought to be enjoined, or that the act probably will be done unless the court prevents.

Defendant further agreed for a period of two years following the cessation of his employment by complainant, to refrain from being engaged in,
20 or employed by, any competing business enterprise located in the United States. Complainant prays an injunction.

4. Sound public policy encourages employees to seek better jobs from other employers, or to go into business for themselves. Contracts which hinder their so-doing are strictly construed and rigidly scanned and are declared void unless
30 necessary for the reasonable protection of the employer.

5. The ordinary object of such a covenant is the protection of the good will of the employer. Injunctions preventing a former employee from working for a competitor are issued almost exclusively in cases where the defendant is in a position to influence the customers of his former employer. The use of such injunctions should be extended to other cases only with great caution. They should not issue in the absence of special
40 equities.

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MR. CHARLES C. TRELEASE and MR. H. PRESTON COURSEN (of New York), for the Complainant.

MR. GEORGE SOMMER and MESSRS. ARTHUR GARFIELD HAYS (of New York), JOHN SCHULMAN (of New York) and SEYMOUR M. HELBRON (of New York), for the Defendant. 10

Opinion.

BIGELOW, *V.-C.*

Complainant prays that defendant, a former employee, be restrained from disclosing confidential information and from working for a competitor. Complainant's principal product is electrical insulating material made of textiles or paper coated with varnish. In this field, it does about one-third of the total business of the country. It has secret formulas for making the varnish but these are unknown to defendant and do not figure in the suit. It claims that its machines and mechanical processes, or some of them, are secret, and bases its case in large degree upon this allegation. 20

Defendant, in 1918, when he was 22 years old, entered the employ of complainant and remained with it until June 1, 1944, when he resigned. He started in as a mechanic in the department charged with the maintenance of machinery; in 1922, he became machine shop foreman and thereafter, at different times, had sundry titles—plant superintendent, chief engineer, master mechanic. His highest pay was at the rate of \$350 a month. Early in 1942, complainant prepared a form of agreement which it persuaded 73 of its principal 30 40

Opinion.

employees to execute, among them, the defendant. In consideration of his employment, he entered into certain covenants; one that he would keep secret, neither disclosing to others, nor himself making use of, "confidential information concern-
10 may be acquired by employee in connection with his said employment; provided, however, that except as to matters which are technically trade secrets of employer * * * the operative effect of this paragraph shall be confined to the United States and to a period of two years from the date of cessation of employment aforesaid."

Complainant prays that defendant be enjoined during a period ending May 31, 1946, from disclosing or using confidential information "includ-
20 ing specifically all information whether written or unwritten concerning complainant's machinery, equipment and processes." Observe that complainant does not rely upon so much of the covenant as relates only to "matters which are technically trade secrets."

Defendant further agreed, for a period of two years following the cessation of his employment, to refrain from being engaged in, or employed by, any competing business enterprise located in the
30 United States. Shortly after defendant resigned his position, he applied to Electro-Technical Products, Inc., for work and was engaged by that company and given the title of plant engineer. His salary was fixed at \$400 a month, or \$50 more than he had been paid by complainant. Two of Electro's products are in competition with complainant's. Complainant prays that defendant be enjoined until May 31, 1946, from being engaged
40 in, or employed by, any business enterprise located in the United States, competing with complainant, including specifically Electro.

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Much of complainant's machinery has been designed by its own staff and most of it has been altered to meet its special and changing needs. Its machines, however, are all of well known types. The differences between its apparatus and that in other plants performing like service, do not seem to be important. Complainant's engineers are continually trying to develop new products within its field, to improve quality and to reduce costs. A new raw material may be introduced, or some other change made in a varnish formula; more heat must be applied; economy will be advanced if a machine operates more rapidly. Gears are changed; a different kind of cutting edge is substituted. Occasionally, something novel is developed and in such case complainant may procure a patent, but usually there is nothing patentable, merely the ingenious application of well known devices or methods to the particular problems presented. The process of experimentation, of trial and error, and adjustment, is going on continually and has been a large factor in establishing and maintaining the competitive position of complainant.

Complainant confined its proofs to machines as distinguished from processes. It did not attempt to show that defendant has confidential information concerning the speed at which a machine should run, or the degree of heat to be applied, or anything of that sort. The evidence embraces only the design of machines, and even here the proofs are most general. A few details did come out, however, which assist the court in reaching a decision. For instance, on one set of machines, complainant uses ball bearings; the corresponding machines of a competitor have, instead of bearings, bushings or sleeves on the axles to reduce

Opinion.

friction. Both are standard devices employed for the usual purpose. Whether the one or the other be adopted, depends on such factors as load and speed. Van Norde's knowledge that complainant's machines had bearings is not confidential.

- 10 There are other difficulties. Complainant has not taken proper measures to protect the secrecy of its so-called refinements and improvements of the machinery. Some of the work was done by outside machine shops, without any request to regard the designs as confidential. In one instance, complainant lent its blueprints to another company so that it might duplicate the machine for its own use—without a pledge of secrecy. Lastly, complainant has procured patents on everything patentable, except where its patent counsel considered it inadvisable to apply for a patent. Of course there may be confidential information with respect to things not patentable. We may say that what complainant has a right to protect, that what comprises confidential information about its machines, is knowledge of a mechanical device or principle, or application thereof, which is not known generally to its competitors' engineering staffs, and which they cannot readily learn by consulting an expert. Complainant has failed to prove that defendant has such information.
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- Let us assume, however, that defendant possesses confidential information. An injunction in general terms, forbidding the defendant from himself using or divulging to others confidential information which he had acquired in the course of his employment, would not inform him with reasonable certainty what he is forbidden to do. If such an injunction were to issue and the defendant were charged with its breach, it would be most difficult for the court to determine his guilt or in-
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Opinion.

nocence. But the proofs which have been presented, do not permit the drafting of a more specific injunction. A general injunction of this sort should be denied. *Taylor Iron & Steel Co. v. Nichols*, 73 N. J. Eq. 684, 689; *Evening Times etc. Co. v. American etc. Guild*, 124 N. J. Eq. 71, 76.

There is still another reason why complainant cannot succeed on this branch of the case. The case is devoid of proof of inequitable conduct of a character frequently found in litigation of this general type. Electro did not entice the defendant away from his employer in order to gain complainant's secrets. Defendant became dissatisfied with his position with complainant, voluntarily resigned and then applied to Electro for work. Despite the demand for skilled machine men, he went with his new employer for a salary of only \$400 a month. This circumstance alone is an indication that he did not agree to sell confidential information. When defendant left complainant, he did not abstract from its files any papers, he took no tracings of machinery designs, no memoranda of any kind. There is no proof that he has divulged or intended to divulge confidential information. He was employed by Electro from June 15 to October 3, 1944, when an interlocutory injunction issued in this cause. While there, his principal tasks were renovating the system for heating the building and superintending the construction of additional office space. He also did some work on the machinery, a friction calendar—not used in making a product which is competitive with complainant—and a drying oven or festooning machine which is used for coating wall paper, but which could be used, and which Electro perhaps intended to use, in making bottle cap liners in competition with complainant. He made some

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Opinion.

changes in the gearing so that the machine would take wider paper than it had theretofore, and he installed "idlers to take up the slack." There is no proof whatever that defendant had recourse to any confidential information, or that he was guilty of any disloyalty to complainant, in what he did
 10 to solve Electro's problems.

To authorize an injunction, the court must be reasonably satisfied that the defendant actually intends to do the act sought to be enjoined, or that the act probably will be done unless the court prevents. *Meyer v. Somerville Water Co.*, 82 N. J. Eq. 572; *Schmidheiser v. States etc. Co.*, 94 N. J. Eq. 522; *West Long Branch v. Home etc. Co.*, 99 N. J. Eq. 738.

20 True, defendant denies having any confidential information, and such a denial sometimes indicates an intention to divulge. But not in the instant cause. Defendant's attention was not directed to anything specific—such and such a device on a certain machine. He might readily have conceded that it ought not be divulged. I have no reason to believe he intends to violate any confidence.

30 Let us now proceed to defendant's covenant against employment with a competitor of complainant. "Sound public policy encourages employees to seek better jobs from other employers or to go into business for themselves. Contracts which hinder their so doing are strictly construed and rigidly scanned, and are declared void unless necessary for the reasonable protection of the employer." *Haut v. Rossback*, 128 N. J. Eq. 77, 478. The ordinary object of a covenant like that under consideration is the protection of the good
 40 will of the employer. In *Mandeville v. Harman*, 42 N. J. Eq. 185, Vice Chancellor Van Fleet

Opinion.

stated it more strongly: "The legality of restrictions of this kind is put, it will be observed, exclusively on the ground that they must be upheld as valid, to prevent the destruction of a property right or interest called the good will of a trade or business." In the great majority of our reported decisions on such covenants, the defendant had been employed as a route salesman for the complainant. In all except one, of the many New Jersey cases to which I have been referred, in which the injunction was granted, the contacts between the employee and the employer's customers had been such as to enable the employee to influence in whole or in part the business of such customers. In *Sternberg v. O'Brien*, 48 N. J. Eq. 370, was considered an agreement by the employee not to work for any competitor within one year after he ceased to be employed by the complainant. The defendant had not been a salesman but had collected installment payments as they became due. His intercourse with customers had not resulted in his acquiring sufficient influence over them to enable him to exercise any appreciable control over their trade. Vice Chancellor Van Fleet denied the injunction, stating the general principle, "A court of equity in exercising its prohibitory power, must always proceed with the utmost caution and see to it that its power is not so exercised as to do more harm than good. The power exists to prevent irreparable wrong and should not therefore be used in any case when its use will produce the very result it was designated to prevent. The rule is fundamental that an injunction should never be granted when it will operate oppressively or contrary to the real justice of the case, or where it is not the fit and appropriate method of redress under all circumstances

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Opinion.

of the case, or when the benefit it will do the complainant is slight in comparison with the injury, it will do the defendant. The great office of the writ is to protect and reserve, not to destroy."

10 The solitary case in which an injunction has gone although the defendant was not in touch with complainant's customers, is *Ideal Laundry Co. v. Gugliemone*, 107 N. J. Eq. 108. The defendant had been an assistant floor supervisor of complainant's float-ironed department. While the methods of doing business used in various laundries are much alike, the complainant had developed some unique and secret methods, and the purpose of defendant's employment with complainant's competitor was to obtain the benefit of his knowledge of complainant's business methods
 20 and secret. Justice Trenchard stated the rule that courts of equity will protect an employer against a breach of an agreement not to accept employment with a competitor where, among other things, "the purpose of the subsequent employment resulting in the breach was to obtain the benefit of those secrets and that there is imminent danger that, through such subsequent employment, such secrets would be disclosed." I have already stated the absence of proof that Electro
 30 employed Van Norde in order to get confidential information about complainant's business, or that Van Norde intends to use for the benefit of Electro, or to divulge such information,—if he has any. The present suit, therefore, does not come within the rule of the *Ideal Laundry* case and the question is whether the principle of that case should be enlarged to embrace the facts which have been proved before me.

40 We can say broadly that all important manufacturing enterprises have their own engineering

Opinion.

staffs, who are continually trying to improve their employer's manufacturing processes. They all have secrets in the same sense that complainant has, not confined to manufacturing, but extending to credit relations and financial matters, to the purchase of raw materials, to almost every branch of business. Most business men seem to consider everything connected with their own business to be highly confidential. If a contract of this sort were to be enforced by injunction against Van Norde, similar contracts could be exacted from, and enforced against, all classes of skilled employees. 10

In the making of such contracts, there is no bargaining, no give and take. The contract which complainant uses, obviously prepared by counsel, was printed and presented to the 73 employees for signature without alteration. The covenant is in a different category from one made upon the sale of a business. The vendor gets a higher price if he signs; the employee is apt to lose his job if he refuses to sign. Probably a most important effect of such covenants when made by employees, is to tie them to their employer. He need have little fear of losing key men for if they leave him, they must go into a line of business with which they are unfamiliar, and where their salaries will be smaller for a while. 20 30

There is a strong tendency today toward specialization. Van Norde, for instance, has been specializing for 25 years in machinery of the type used by complainant and its competitors. If he cannot work for a competitor, both he and society will lose a great part of the benefit of his intimate knowledge of this kind of machinery. He will have to start over again, on a lower level, in some other machinery line. 40

Final Decree.

10 Injunctions preventing a former employee from working for a competitor are, as I have pointed out, at present issued almost exclusively in cases where the defendant is in a position to influence the customers of his former employer. The use of such injunctions should be extended to other cases only with great caution. They should not issue in the absence of special equities. The contract alone is not a sufficient ground for the injunction. In the present instance, the injunction does not appear warranted and will be denied. Let the bill be dismissed.

Final Decree.

20 (Filed September 11, 1945.)

IN CHANCERY OF NEW JERSEY.

148/216

30 Between
 IRVINGTON VARNISH & INSULATOR
 COMPANY, a corporation of the
 State of New Jersey,
 Complainant,
and
 PETER VAN NORDE,
 Defendant.

On Bill, etc.
 Order.

40 This matter coming on to be heard on motion of George R. Sommer, solicitor of and of counsel with the defendant, in the presence of Charles C.

Final Decree.

Trelease, solicitor for and of counsel with the complainant, and the court having considered the pleadings filed in this cause and the testimony given at the final hearing of the matter, and the arguments of counsel for the respective parties, and being of the opinion that an injunction is not warranted in this matter, and having written an opinion more fully expressing the views of the court; and it further appearing that counsel for the complainant has indicated the intention of the complainant to appeal from this order; 10

It is on this 11th day of September, 1945;

ORDERED that the bill of complaint be and the same is hereby dismissed, however, the questions of cost to be paid by the complainant to the defendant, counsel fees, and assessment of damages, are expressly reserved until the final determination of this cause on appeal. 20

Respectfully advised,

JOHN O. BIGELOW,
V.-C.

LUTHER A. CAMPBELL,
C.

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Notice of Appeal.

(Filed September 12, 1945.)

IN CHANCERY OF NEW JERSEY.

148/216

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Between

IRVINGTON VARNISH & INSULATOR
COMPANY, a corporation of the
State of New Jersey,
Complainant-Appellant,

and

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PETER VAN NORDE,
Defendant.

On Bill, &c.
Notice of Appeal.

The complainant, Irvington Varnish & Insulator Co., hereby appeals from the final decree made by the Chancellor on the advice of Vice-Chancellor John O. Bigelow in the above entitled cause on September 11, 1945 and from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in all causes.

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Dated: September 11, 1945.

CHARLES C. TRELEASE,
Solicitor for and of Counsel
with Complainant.

I conceive there is good cause for Appeal in the above entitled cause.

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CHARLES C. TRELEASE,
of counsel with Complainant.

Petition on Appeal.

(Filed September 19, 1945.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

IRVINGTON VARNISH & INSULATOR
COMPANY, a corporation of the
State of New Jersey,

Complainant-Appellant,

and

PETER VAN NORDE,
Defendant-Respondent.

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On Appeal from
the Court of
Chancery
Petition of Appeal.

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*To the Honorable, the Court of Errors and
Appeals in the Last Resort in all Causes:*

The petition of Irvington Varnish & Insulator Company, a corporation of the State of New Jersey, the complainant-appellant in the above-entitled cause, respectfully shows that:

Petitioner finds itself aggrieved by an order (final decree) made in the Court of Chancery by his Honor Luther A. Campbell, Chancellor of the State of New Jersey, bearing date the 11th day of September, 1945, upon the advice of Honorable John O. Bigelow, Vice Chancellor, in a cause wherein said Irvington Varnish & Insulator Company was complainant and Peter Van Norde was defendant, in this respect, to wit: that the said decree orders, adjudges and decrees that the Bill of Complaint filed in said cause be dismissed.

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Petition on Appeal.

10 Petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, and that the court should have granted the prayers of the Bill of Complaint, and should have restrained and enjoined the defendant from violating the negative covenants of his employment contract with complainant (against disclosure and use by defendant of confidential information concerning complainant's business and against activity on the part of defendant in competition with the business of complainant) set forth in the said Bill of Complaint.

 Petitioner further appeals from said decree upon the following grounds:

20 1. On the law and the facts, complainant was equitably entitled to a decree restraining and enjoining defendant from violating his negative covenants with complainant (against disclosure and use by defendant of confidential information concerning complainant's business and against activity on the part of defendant in competition with the business of complainant) set forth in the bill; but the court below, refusing such relief, dismissed the bill.

30 2. The court below erred in failing to find that complainant has business methods and secrets which it is entitled to protect by means of the negative covenants in suit, on the part of employees acquiring such information by reason of their employment with complainant.

40 3. The court below erred in failing to find that defendant, by reason of his employment with complainant, is in possession of confidential information relative to complainant's business methods

Petition on Appeal.

and secrets, entitling complainant to obtain and enforce the negative covenants in suit.

4. The court below, in dismissing the bill, erroneously held (or implied) that the negative covenant on the part of defendant with complainant against activity in competition with complainant was not reasonably necessary to the protection of complainant with respect to the subject-matter of the contract of which said covenant formed a part; namely, the employment relationship between complainant and defendant. 10

5. The court below, in dismissing the bill, erroneously held that complainant's developments, to protect which the negative covenants in suit were obtained, are not secret.

6. The court below erroneously held complainant to proof of inequitable conduct above and beyond the requirement of proof that complainant has business methods and secrets, a knowledge whereof was acquired by defendant by reason of his employment with complainant. 20

7. The court below, in dismissing the bill, erroneously held that "the case is devoid of proof of inequitable conduct of a character frequently found in litigation of this general type", instancing alleged want of proof of enticement or disclosure of trade secrets. 30

8. The court below erroneously held complainant to proof of defendant's divulgence or use, or intention to divulge or use, confidential information relative to complainant's business.

9. The court below, in dismissing the bill, erroneously held that complainant had not proved defendant's divulgence or use, or intention to 40

Petition on Appeal.

divulge or use, confidential information relative to complainant's business.

10 10. The court below, in dismissing the bill, disregarded proper inferences from the proven facts with respect to the necessity for such covenants in suit and the enforcement thereof, particularly as to defendant's intention to divulge or use confidential information relative to complainant's business to or on behalf of complainant's competitor, Electro-Technical Products, Inc.; as to such competitor's purpose in employing defendant; and as to the likelihood that such divulgence and use will occur in the course of defendant's employment with that company.

20 11. The court below, in dismissing the bill, erroneously considered complainant's developments to protect which this suit was brought to be unimportant, whereas the same are of paramount importance to complainant.

30 12. The court below, in dismissing the bill, erroneously held, as a matter of law, that negative covenants of the kind in suit (i.e., injunctions to enforce the same) are available to an employer "almost exclusively" to protect customer lists or other good-will factors of a business (i.e., "in cases where the defendant is in a position to influence the customers of his former employer") and are not equally available to protect all confidential information relative to the employer's business coming to the knowledge of the employee in the course of such employment.

40 13. The court below, in dismissing the bill, erroneously considered that the policy of the law is opposed to negative covenants of the kind in suit when included in an employment contract,

Petition on Appeal.

notwithstanding the employee is a trusted key employee whose duties are such as to afford a knowledge of confidential matters relative to the employer's business, unless such matters relate to the customer lists or other good-will factors of the business.

14. The court below, in dismissing the bill, erroneously held that the case does not come within the rule of *Ideal Laundry Co. v. Gugliemone*, 107 N. J. Eq. 108.

15. The court below, in dismissing the bill, disregarded the undisputed proofs on complainant's case, coupled with admissions on defendant's case (a) of the existence of complainant's business methods and secrets in its machine design and construction (b) of the value thereof to complainant from the competitive viewpoint (c) of the defendant's knowledge thereof, as head of complainant's engineering staff and designer or co-designer of much of complainant's equipment, and his consequent ability to apply such knowledge to the use of a competitor of complainant.

Petitioner, therefore, prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

CHARLES C. TRELEASE,
Solicitor for and of Counsel
with Complainant-Appellant

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Testimony.

IN CHANCERY OF NEW JERSEY.

	Between	}	
10	IRVINGTON VARNISH & INSULATOR COMPANY, a corporation of the State of New Jersey, Complainant,		On Bill, etc.
	<i>and</i>		148/216.
	PETER VAN NORDE, Defendant.		

20 Transcript of shorthand notes taken in the
above matter at Chancery Chambers, 1060 Broad
Street, Newark, New Jersey, on Wednesday, Feb-
ruary 21, 1945, before his Honor, JOHN O. BIGELOW,
Vice Chancellor.

Appearances:

MR. CHARLES C. TRELEASE (MR. H. PRESTON
COURSEN, of the N. Y. Bar), for the
Complainant.

30 MR. GEORGE R. SOMMER (MESSRS. ARTHUR
GARFIELD HAYS and SEYMOUR HEILBRON,
both of the N. Y. Bar), for the Defendant.

40 Mr. Trelease: I would like to introduce to the
Court Mr. Preston Coursen, of the New York
Bar, and ask permission of the Court to have
him associated with me in the conduct of the
complainant's case as examining counsel, and
also Mr. Arthur Garfield Hays, of the New York

Fred M. Miller, for Complainant—Direct.

Bar, who would like to conduct the examination for the defendant. Mr. Sommer had to leave before the Court came in because of his being engaged in a criminal case in the Federal Court. I would also like to introduce Mr. Hays' associate, Seymour Heilbron.

Mr. Coursen: Your Honor issued a temporary injunction in this case. Do you want an opening? 10

The Court: No. I read Mr. Trelease's brief.

FRED M. MILLER, being duly sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Coursen:

Mr. Coursen: With your Honor's permission and for the sake of brevity, I will refer to the complainant as "Irvington" and the concern now employing the defendant being the Electro-Technical Products, Inc., I will refer to as "Electro", and it will save time. 20

The Court: Alright.

Q. You are employed by Irvington? A. Yes.

Q. In what capacity? A. Secretary and controller. 30

Q. How long have you had that position? A. Since 1942.

Q. In that capacity, did you have charge of all the complainant's records? A. I have.

Q. Do you know when Irvington was incorporated, what year? A. In March, 1926.

Q. It was organized as a corporation? A. Yes.

Q. Are you acquainted with the defendant in this action? A. Yes, I know Peter Van Norde. 40

Fred M. Miller, for Complainant—Direct.

Q. Do you know when he entered the employ of the corporation? A. Our records indicate in 1918.

Q. In what capacity? A. Well, from 1918 until 1938, he was always engaged in handling machinery, repairs, maintenance, construction, etc.

10 Q. And in 1938, was there some change in his duties? A. Yes, he was made plant superintendent.

Q. What salary was he paid in 1938? A. In 1938, he was receiving \$60 a week.

Q. Had he had a raise in salary shortly before that time? A. Yes, periodically.

Q. Do you recall when he next received a raise? A. I believe it was a year later; I couldn't tell you definitely. He received a few since.

20 Q. Have you the record? A. Yes, October 4, 1939, he received \$5 a week increase to \$65. As of January 15, 1941, his salary was increased to \$300 a month; and February 1, 1942, it was increased to \$325; and March 1, 1943, it was increased to \$350 a month. That was final.

Q. What was that last date? A. March 1, 1943, he received \$350 a month.

Q. 1943? A. Yes.

30 Q. Where are the products sold which Irvington manufactures? A. We sell them, I would say, all over the United States and all over the world, for that matter. We have agents in the United States and agents in foreign countries. Of course, the agents in the foreign countries have been curtailed.

Q. How many agents are there in the United States? A. About twenty.

40 Q. Do I understand they are scattered throughout the United States? A. Yes, in various states in the East, the West and the South.

Fred M. Miller, for Complainant—Direct.

Q. Can you give us some idea as to the investment of Irvington? A. We have invested about two and one-half million dollars, I would say.

Q. Are you generally familiar with the competitors in the industry? A. I know some of them, not intimately. I know them by name and contact in business. 10

Q. Would you say that Irvington occupies a dominant or subordinate position in this industry? A. I would say they are the uppermost in the electrical industry.

Q. Will you give us the total figures for 1943? A. About \$10,200,000.

Q. Was any of that business done with the United States Government for War work? A. Yes.

Q. About what percentage was it? A. Roughly, 20 about 70 percent. was government business.

Q. What was the figure in 1944? A. Eight and one-half million dollars.

Q. Again, what percentage was War work? A. Approximately the same, about 70 percent.

The Court: Something over \$10,000,000 in 1943?

The Witness: Yes.

Q. Where is the Irvington plant? A. In Irvington, New Jersey. 30

Q. Will you give us some idea of the approximate size of that plant? A. We occupy, I would say, the bigger portion of three square blocks. It is on vacant land,—about two and one-half square blocks.

Q. How many people do you employ? A. Right now, 650.

Q. Have you employed that many for some time? A. Yes, we went over that last year. 40

Fred M. Miller, for Complainant—Direct.

Q. Has the company any other plant other than the Irvington? A. Yes, a wholly owned subsidiary in Passaic, the Casob Corporation.

10 Q. Will you give us some idea what that plant consists of? A. That plant was erected to aid the War effort. The Navy was after us to varnish
10 cambric and cambric cloth, and it was a plant that was available which we took over. Since then, we enlarged the plant, the Navy spending money and so did we.

Q. What is the size of the plant? A. It occupies four buildings. It is rented property. We rent four buildings there.

Q. How many people do you employ in that plant? A. Somewhere around 20.

20 Q. Have you a plant in Canada? A. Yes, in Hamilton, Ontario.

Q. What size is that? A. That is a large plant; I would say it would occupy the better portion of one square block, comparable with our city block.

Q. How many employees there? A. I think about 80 there. I would say about that.

30 Q. Did you have a conversation with the defendant when he left Irvington? A. Yes, I met Mr. Van Norde. He came around when saying goodbye, and he sat down with me. I asked him what his plans were and he said he expected to go with some friend of his. I understand that his friend had an established business, something to do with machinery installations or maintenance installations, something of that sort, and was going with him. I said it was very nice, and I said, "Are you going to be a partner?" And he said, "Not exactly, I will participate in some of the profits received, in the form of a silent partner."

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Fred M. Miller, for Complainant—Cross.

Cross examination by Mr. Hays:

Q. In this conversation to which you refer, did Mr. Van Norde say he expected to go with the friend of his, or did he say he had an opportunity to go with the friend? A. Those were his plans, he said he was going.

Q. He told you that he had it under contemplation; he didn't say he had already arranged employment? A. I don't think he was definite.

Q. What he was talking of was his intention? A. I would say so.

Q. You say that Mr. Van Norde, in 1943, earned \$350 a month? A. Yes.

Q. I am a little confused; my copy of the contract refers to \$450; am I wrong about that? A. I have no record of the contract.

Mr. Coursen: I have the original.

The Court: Is this the contract of 1942?

Mr. Hays: Yes. My copy says \$450 a month.

The Court: The one attached to the bill of complaint says \$300.

Mr. Hays: Apparently I am wrong.

Q. Your records show that Mr. Van Norde first came to the Irvington company when? A. Our records indicate he was with us in 1918; I can't tell you the month; that is the year.

Q. When did you first join them? A. 1931, the latter part of the year.

Q. At the time you were there, what positions did Mr. Van Norde hold? A. From contact, I know he was always working on the mechanical end of the shop. If we wanted any installations or repairs, Mr. Van Norde was always called upon.

Fred M. Miller, for Complainant—Cross.

Q. Do your records show any title for Mr. Van Norde at that time? A. I did not check that. I couldn't tell you that definitely. I didn't see any particular title.

10 Q. In 1940, did he have a title, designating his work? A. May I look at this record (looking at paper)?

Q. Yes. A. Yes, in 1940 he was plant superintendent.

Q. What was he in 1942, the contract having been signed the 30th of January? A. He was also plant superintendent.

Q. When was his position changed in the plant? A. On January 19, 1943.

20 Q. I show you notice that was apparently sent out to the various employees of the plant, and ask if I am right if that was sent to all employees, and it had to do with Mr. Van Norde's position (showing witness paper)? A. Yes, I recognize that.

Mr. Hays: I offer that in evidence.

(Notice, sent to employees, relating to Mr. Van Norde, admitted in evidence and marked Exhibit D-1)

30 The Court: Mr. Miller, I understand in January, 1943, Mr. Van Norde got a new title?

The Witness: Yes.

The Court: What was it then?

The Witness: He was then called chief engineer.

Mr. Coursen: To be accurate in the reference to the exhibit, it refers to many things, but it does include Mr. Van Norde.

40 Mr. Hays: That is correct.

Fred M. Miller, for Complainant—Cross.

Q. At that time, Mr. Petersen was appointed factory manager? A. Yes.

Q. And Mr. Van Norde was superior in position to Mr. Petersen? A. I believe so.

Q. Prior to that time, Mr. Van Norde, and at the time Mr. Van Norde signed the contract, he was plant superintendent? A. Yes. 10

Q. Who was his superior at that time? A. I wouldn't state, he reported to Mr. Mezger, chief of management.

Q. After the contract was made, someone else was appointed by Mr. Mezger who had charge of production? A. Yes.

Q. And Mr. Van Norde became subject to the orders of Mr. Petersen? A. Yes.

Q. And his title changed from plant superintendent to chief engineer? A. Yes. 20

Q. Let me ask, before he was plant superintendent, he was known before as master mechanic? A. I don't know. I came to the company in 1931. I didn't have contact then.

Q. When was he first plant superintendent? A. Plant superintendent was the time of the issuance of that bulletin.

Q. Plant superintendent prior to the issuance of this bulletin, when did he first become plant superintendent? A. I don't know. 30

The Court: Didn't you say in 1938?

The Witness: Yes, that is right, March, 1938.

Q. Perhaps that will refresh your memory, if before that time he was known as a master mechanic? A. As far as title, I don't know.

Q. Would the salary that he was getting indicate what his title was and what his work was? 40

A. No, that would not indicate it to me.

Fred M. Miller, for Complainant—Cross.

Q. Subsequent to this notice of January 19, 1943, on March, 1943, a further notice was sent to the factory heads, supervisors, and foremen, which referred to the future work of the plant, and is this not the notice (showing witness paper)? A. Yes, I recognize it.

10

Mr. Hays: I offer this in evidence.

The Court: Has that a date?

Mr. Coursen: March 29, 1943.

(Notice of March 29, 1943, admitted in evidence and marked Exhibit D-2.)

Q. I refer to the sheet that has been marked in evidence as Exhibit D-2, and it shows Mr. Mezger is in charge of manufacturing? A. Yes.

20

Q. And under Mr. Mezger is Mr. Petersen, who has charge of factory management? A. Yes.

Q. And under Mr. Petersen is Mr. Van Norde? A. Yes.

Q. When Mr. Van Norde signed the contract, he was directly under the orders of Mr. Mezger, was he not? A. He signed the contract January 30, 1942, and that is March, 1943,—right.

Q. Mr. Petersen also had charge of production? A. Yes, planning.

30

Q. I show you what purports to be a bulletin and notice to factory department heads, supervisors and foremen, dated August 16, 1943, and ask you if that was sent out to employees of your organization? A. Right.

Mr. Hays: I offer that in evidence.

(Bulletin dated August 16, 1943, admitted in evidence and marked Exhibit D-3.)

40

Fred M. Miller, for Complainant—Cross.

Q. From this notice, Exhibit D-3, I gather that Mr. Petersen left the employ of the company some time around August 16, 1943? A. Right.

Q. At that time, what happened to Mr. Van Norde's job; he was no longer to report to Mr. Petersen? A. He was to report to Mr. Gloss.

Q. Who was Mr. Gloss? A. He was one of our manufacturing men, in charge of factory engineering department. 10

Q. What had Mr. Gloss been doing before that? A. I don't know. He was in the manufacturing department.

Q. He was put over Mr. Van Norde? A. Yes.

Q. And Mr. Van Norde was to report to him instead of Mr. Petersen? A. Yes.

Q. When was the next change of Mr. Van Norde's position in your plant? A. In April, 1944. 20

Q. Was he demoted then? A. He was made master mechanic at that time.

Q. I didn't ask that. I asked if he was demoted?

Mr. Coursen: I object, it asks for a conclusion.

The Court: I will sustain the objection. You can tell if his salary was reduced or his duties lessened. 30

A. His salary was not reduced. As far as his duties, I personally do not know about his duties. We only got the bulletin, and that is all I can say about the details.

Q. Who does know as to what his position was?

A. The vice president in charge of manufacture.

Q. Don't you know that the position he was assigned to by the notice of April, 1944, was not a 40

Fred M. Miller, for Complainant—Cross.

position of as great responsibility as before? A. I do not know that.

Q. Don't you know that he was subject to the orders of other men? A. Yes.

Q. Men who had formerly been holding positions where they were subject to Van Norde's orders? A. I don't recall that.

Q. I show you a notice dated April 24, 1944, changing Mr. Van Norde's position. A. That is the one I just mentioned.

Mr. Hays: I offer that bulletin in evidence.

(Bulletin dated April 24, 1944, admitted in evidence and marked exhibit D-4.)

Q. What had been the work of Mr. D. H. Garrison in 1942? A. I am slow on dates, but Mr. Garrison was in charge of one of our manufacturing divisions at that time. I would assume that is the date.

Q. Do you know what his title was? A. No, I do not know. I believe, department manager.

Q. Who is Charles F. Brinkman, who joined your organization as plant engineer, had Mr. Brinkman been in your employ? A. Yes, he was on our payroll.

Q. What was his work before April, 1944? A. Exactly what it was, I am sorry, I do not know. It was something to do with plant maintenance.

Q. Do you know what it means, Charles Brinkman is shown on the organization bulletin as plant engineer. Did he join it at that time? A. Yes, that is the notice of his coming with our company.

Q. He had not been with you before? A. Brinkman before,—no.

Fred M. Miller, for Complainant—Cross.

Q. He was coming in in April, 1944? A. I would say so.

Q. He was placed in your organization as plant engineer? A. Yes.

Q. And was superior to Mr. Van Norde? A. I would say so, yes.

Q. And Mr. Van Norde, according to this notice, was then designated as master mechanic? A. Yes. 10

Q. I am right, am I not, when Mr. Van Norde signed the contract, he was plant superintendent, then chief engineer, and then, in 1944, he became master mechanic? A. Yes.

Q. Was he ever consulted as to these changes before they were made? A. I don't know.

Q. You never consulted him? A. No.

Q. You have no knowledge of anyone consulting him? A. I did not have any knowledge— 20

Q. Do you know if he had any knowledge of the men being brought in and put over him? A. I don't know.

The Court: Were you consulted about these changes?

The Witness: I was not. My work is secretary and accounting. I don't get into that. 30

Q. Attached to exhibit D-2 is a sheet showing the set-up of your plant, and the positions that various men hold. Will you show me where master mechanic would appear on that plan; where Mr. Van Norde would be after 1944?

Mr. Coursen: Is that a supposition; does it appear from this exhibit?

Mr. Hays: I want to know where he would be in the general organization. 40

Fred M. Miller, for Complainant—Cross.

The Court: Just a moment. I understand what Mr. Hays wants you to point out is Mr. Petersen's name?

Mr. Hays: No. I want to find out on that sheet what position Mr. Van Norde would occupy in 1944, according to that sheet.

10

The Court: You want him to show where Mr. Van Norde would be?

Mr. Hays: I know where Van Norde is there. After 1944, I want to know, on that, where master mechanic would appear.

The Witness: There is no master mechanic as such, shown on this sheet.

Q. In other words, the sheet in evidence does not show the position of master mechanic? A. No.

20

Q. Can you show me on the sheet the next thing to master mechanic and duties? A. Chief engineer.

Q. You would say chief engineer? A. Yes.

Q. Referring to whom? A. To Mr. Petersen and to Mr. Mezger.

Q. Why was the title changed to master mechanic? A. I couldn't tell you.

Q. You think his duties as the same?

30

The Court: This witness is evidently a man who works with figures. He wasn't offered as a factory man.

Mr. Coursen: I intend to put Mr. Mezger on the stand.

Q. Is Mr. Dale employed by Irvington? A. Ozzie Dale, yes.

Q. How long is he there? A. Mr. Dale's association with the company dates back before I

40

Charles E. Garneau, for Complainant—Direct.

came with the company. He left the company at various times.

Q. Do you know where Mr. Dale came from when he came to Irvington? What his previous employment had been? A. Would you tell me when he came? I think he came to Irvington on several occasions. 10

Q. Immediately before going to Irvington, hadn't he been employed by the Electro? A. Yes, he was employed by Electro.

Q. And before that, hadn't he been with Irvington? A. Sometime, yes.

Q. Before going to Irvington, he was with Electro? A. Yes.

Q. He is one of the important men in Irvington today? A. It is all in accordance with what you call important. 20

Q. What is his title? A. I don't know if he actually has a title. Mr. Mezger will tell you. He is in charge of certain factory work.

CHARLES E. GARNEAU, being duly sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Coursen: 30

Q. Are you employed by Irvington? A. Yes, I am vice president.

Q. What are your particular duties? A. I have various duties.

Q. Are you in any particular division of the business? A. One individual division of the business, the bottle-cap materials.

The Court: I can say that you are vice president in charge of bottle-caps? 40

The Witness: Yes.

Charles E. Garneau, for Complainant—Direct.

Q. How many competitors has Irvington got in the bottle-cap business? A. A maximum of three, two definitely.

Q. Are you able to tell us the percentage of the bottle-cap business Irvington does approximately? A. Approximately?

10 Q. In percentage? A. It would be 40 percent.

Q. Is that an important portion of the Irvington business? A. Yes.

Q. Do you know Mr. Van Norde, the defendant? A. Yes, for quite a long time.

Mr. Hays: 40 percent. of the Irvington business?

The Witness: Of the total industry.

Mr. Hays: Of the bottle-cap business of the United States?

20

The Witness: Yes, that is right.

Q. Do you know a person by the name of Homan? A. Yes, he was one of the research chemists of Irvington.

Q. When did he leave Irvington? A. Two or three years ago.

Q. In order to be more specific, may I suggest, do you recall that it was in 1941, about August, 1941? A. Someone else would have the record.
30 It strikes me two years ago.

Q. For whom did Mr. Homan go to work? A. My records indicate that he left Irvington in August, 1941.

Q. Do you know where he went to work? A. With the Electro-Technical Products, Inc.

Q. Do you know Mr. Homan's signature? A. I think I do.

Q. Did Mr. Homan write that letter to Irvington (indicating letter)? A. That is his signature.
40

Charles E. Garneau, for Complainant—Direct.

Q. Was that letter received by Irvington with your knowledge? A. Yes, it was received by Irvington, with my knowledge.

Mr. Coursen: I offer the letter in evidence.

Mr. Hays: I object. It is incompetent, irrelevant and immaterial. 10

The Court: What is the purpose of it?

Mr. Coursen: The purpose is to show that Electro, at this time, intended to enter, or had plans of entering the bottle-cap paper business, in which they hadn't before engaged.

The Court: I will receive it, but I may disregard it later.

(Letter from Electro to Irvington dated September 24, 1943, admitted in evidence and marked exhibit C-1.) 20

Mr. Coursen: This man Van Norde developed special machinery for the bottle-cap industry and retains in his head that knowledge, and if he went to Electro—

Mr. Hays: I think the last comment is a good time for me to say what I think is the issue: I think you can enjoin a man from revealing secrets, but I don't think you can prevent him from revealing knowledge. This man started in 1918 and continued to work up to 1944, and he was bound to get certain knowledge. And so far as this was a trade secret, he could be enjoined from revealing it. Insofar as the matter of knowledge, a matter of experience, I don't think he can be enjoined. It is true he is being restrained. 30

Charles E. Garneau, for Complainant—Direct.

The Court: Isn't there a restraining covenant in the contract?

Mr. Hays: Yes.

The Court: Do you think it is not enforceable?

10 Mr. Hays: I think the contract shows the distinction. In paragraph 2, reference is not using knowledge and information he had obtained, for a period of two years, and is not allowed to reveal.

The Court: There is no covenant about going to his competitor?

Mr. Hays: They covenant that he is not to use his knowledge and experience, which is contrary to law. It is an unreasonable covenant. Trade secrets is different.

20 The Court: I probably have a mistaken idea of the law. I had an idea enforcing by injunction a covenant not to work in a certain line or with certain people, competitors within a certain period, and if they applied that covenant, it was reasonably necessary for the protection of the other party. I gathered that was what the complainant in this case was asking for.

30 Mr. Hays: I don't think your cases go far back. I went back to the English cases.

The Court: We have a good many New Jersey cases, and will not be influenced by English or New York cases.

40 Mr. Hays: This covenant would practically put a man in servitude if he was not able to use his experience. A second point I make is that none of the concerns in the same line of business would require such a covenant. I intend to make an argument that from 1918 to 1942 they required no

Charles E. Garneau, for Complainant—Cross.

such covenant from Mr. Van Norde, and at that time they thought the covenant was necessary and that was when he was doing more important work than in 1942; and the third is that the complainant does not come in with clean hands. They put him in a position that any self-respecting man 10 wouldn't stay.

The Court: Couldn't they have fired him?

Mr. Hays: Whether they fired him or he resigned, I say that the covenant is not good.

The Court: You may be right. As I said at the start, I think of the case where a doctor has been restrained from practicing medicine within ten miles of New York.

Mr. Hays: There is a distinction. 20

The Court: And we have cases where injunctions were issued where there was no contract, where there were secrets to be protected.

Mr. Coursen: One word in connection with what Mr. Hays said. He has made something of the fact we did all of the business without a contract until in 1942, and then we inaugurated this system of requesting contracts from confidential employees. 30 I want to point out the reason we did that was, we were forced to. So many of our key employees were enticed away by competitors. We had to set up a program so that we could be protected.

Cross examination by Mr. Hays:

Q. Who are the competitors of Irvington in connection with bottle-cap? A. The General Felt 40

Charles E. Garneau, for Complainant—Cross.

Products Company and the Standard Insulating Company.

Q. Who is the chief competitor? A. Both are on the same basis.

The Court: General—what?

10 The Witness: General Felt Products Company, that is one name. The main office and factory is in Brooklyn; also the Standard Insulating Company of East Rutherford, New Jersey.

The Court: Did you mention the third that might be considered?

The Witness: You have from time to time in a period of 20 years manufacturing some bottle-cap paper the Mica Insulating Company of Schenectady, New York.

20

Q. Do you have a man in your employ by the name of Bowzer? A. In Irvington?

Q. Yes. A. What name?

Q. Bowzer? A. I believe so.

Q. You know there is? A. To be honest, I don't know his name. There is an employee—

Q. Do you know where he came from? A. The Standard Insulating Company.

30 Q. Is the Standard Insulating Company your chief competitor, under your department? A. Not under my department.

Q. Didn't he have anything to do with that? A. With sales.

Q. Didn't you have a man come from the General Felt to Irvington? A. Not lately.

Q. One of your men came from Standard Insulating Company, in your sales department? A. This man, if that is his name, in another division of the sales.

40

Eric A. Gloss, for Complainant—Direct.

Q. How recently did he come? A. I wouldn't say. Not more than six months.

Q. So when in this paper you speak of protecting contracts—

Mr. Coursen: I object to that.

The Court: As far as you know, when your company employed this man, was there any contract between him and this company? 10

The Witness: I had no knowledge of it.

Q. The Electro isn't in the bottle-cap business? A. Not that I know of.

Q. They are not a competitor of Irvington in the bottle-cap line, are they? A. Not a sales competitor, except to produce samples. 20

Q. When you received this letter of September 24, 1943, you interpreted it to mean that the Electro-Technical Products Company wanted to go in that business in the future? A. They definitely said they were going into it.

Q. In the future? A. Right away. When they wrote that letter.

Q. Did you furnish them with a price list? A. I did, sir.

30

ERIC A. GLOSS, being duly sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Coursen:

Q. Are you an employee of Irvington? A. I am.

Q. In what capacity? A. Chief engineer.

Q. How long have you been employed in that capacity? A. Since approximately last September; I don't recall the exact date. 40

Eric A. Gloss, for Complainant—Direct.

Q. Before last September, what position did you occupy? A. Industrial engineer.

Q. For how long a period? A. That goes back to January of 1943, as closely as I can recall.

Q. When did you first enter the employ of the company? A. July 14, 1942.

10 Q. Do you know Mr. Van Norde? A. I do, sir, very well.

Q. I show you Exhibit D-4, and ask you if you recall that paper? A. I recall it.

Q. Did you have a conversation with Mr. Van Norde about that paper before it was issued to the employees? A. I did.

Q. Will you tell his Honor what was said? A. I can recall the circumstances very well. It happened to be the Friday before the bulletin was
20 issued.

The Court: What is that?

30 The Witness: Exhibit D-4, that would have been Friday, the 31st of April, as I recall. I remember the date, because my birthday is on the 23rd. We were out to lunch, Mr. Mezger and a few others, and I, and when we came back from lunch, I would say that would be about 1:30 or thereabouts, I asked Mr. Van Norde to come into my office. I can't recall verbatim but the substance of our conversation was something like this: I said, "Pete, we have come to the conclusion that our present organization set-up is not the most satisfactory. It is not the best that we could have, both for the interests of the company and for the interests of the employees." And I said to him that due to the divided
40 set-up, the maintenance under one head

Eric A. Gloss, for Complainant—Direct.

and engineering under another, that it was difficult to coordinate and maintain the engineering function.

Q. What do you mean "engineering and maintenance", what do you mean? A. Engineering would mean factory design, design of new equipment and re-design of existing equipment. 10

Q. Go ahead. A. I told Mr. Van Norde that we had come to the conclusion that we should have those two functions, that is, maintenance and engineering, under one head so that we could coordinate the two functions. And we felt in order to get the right man in the job, that we had to go outside of the company to get a man of the particular qualifications we needed. I showed Mr. Van Norde a copy of this bulletin and told him that this would probably explain as well as I could verbally further. However, I was perfectly willing to discuss it with him, after he had an opportunity to read it. Mr. Van Norde read the bulletin and I pointed out that the bulletin was tentative and asked him what comments he had. I don't remember his exact words; it was to the effect, "Well, it is alright." I pointed out to him that the set-up in this bulletin would be the most beneficial to the company and if it was most beneficial to the company, it would reflect in benefits to himself. Mr. Van Norde went so far as to say, "Well, I never liked paper work." I said, "Pete, that is one of the reasons we want to make the change; you are burdened with quite a lot of paper work, in the engineering department, making up estimates, writing letters." And for which Mr. Van Norde wasn't so well equipped. I pointed out that he would be relieved of these responsibilities and that he would have more time 20 30 40

Eric A. Gloss, for Complainant—Cross.

to spend on machinery and equipment which Mr. Van Norde knows very well. He is an excellent mechanic. I pointed out that he would have more time to assist and direct the re-designing on authoritative basis. He would be in a position of authority to assist in the re-design of our present
 10 equipment and designing of new equipment. That is about the substance of the conversation at that time and Mr. Van Norde left me with the feeling—

Mr. Hays: I object to the statement of feeling.

The Court: How about stopping right there.

The Witness: I am sorry.

20 Q. This tentative draft that you discussed with Mr. Van Norde, do you recall the contents of the tentative draft? A. Exactly what is in that bulletin. There were no changes made.

Cross examination by Mr. Hays:

Q. What date was your birthday? A. April 23rd.

Q. April 23rd? A. Yes.

30 Q. This conversation was a couple of days before your birthday? A. Yes.

Q. At that time, it was distinctly the same as the final one? A. Yes.

Q. After you talked with Mr. Van Norde, not a word was changed? A. That is correct.

Q. Didn't Mr. Van Norde say, "There isn't anything I can do, if you have made up your mind to do that." Isn't that what he said? A. I believe he may have made some such statement.

40

Eric A. Gloss, for Complainant—Cross.

Q. You were trying to relieve Mr. Van Norde of some of his burdens? A. Yes.

Q. And by taking away some of the burdens, would you say that he had as great a position of responsibility as he had before? A. I would say—

Q. It wasn't so important? A. In our opinion, 10
it was.

Q. Some of the things taken away was re-designing of new equipment? A. I don't think so.

Q. He wouldn't have to be burdened with designing? A. I don't think I said that.

Q. Perhaps I am wrong; you correct me. Referring to the fact that he would not have anything to do with re-designing of existing equipment, that wasn't coming within the new job? A. No. 20'

Q. His job would be just with maintenance? A. I didn't say that.

Q. What would you say his new job was? A. He would be relieved of paper work, engineering estimates, writing of letters.

Q. Who was put in charge of the work then taken away from Mr. Van Norde? A. I would say that that would have come under the supervision of Mr. Brinkman.

Q. Who was Mr. Brinkman. A. A new man 30'
who came in as plant engineer.

The Court: As I recall, you told Mr. Van Norde that under the existing set-up there was a lack of coordination between maintenance and designing?

The Witness: Yes.

The Court: Those two duties were to be put under one person and you didn't have the right man in the organization, so 40
you were going to bring in someone?

Eric A. Gloss, for Complainant—Cross.

The Witness: Right.

The Court: Before this change was made, had Mr. Van Norde been in charge of maintenance or of engineering or both?

10 The Witness: Mr. Van Norde had charge of engineering.

The Court: And someone else had charge of maintenance?

The Witness: Someone else had charge of maintenance.

The Court: And both reported with others to Mr. Petersen or to you?

20 The Witness: At that particular time, Mr. Petersen was not with the company any more. Mr. Van Norde reported to me and I reported to Mr. Mezger, maintenance superintendent getting a different division to Mr. Mezger.

The Court: After this change was made, was Mr. Norde still in the designing branch or was he shifted to maintenance?

30 The Witness: Actually, your Honor, Mr. Van Norde left the company so soon after that, we had no real opportunity to get Mr. Van Norde functioning in a way that we would like to have.

Q. What did you intend he should do? A. It was our intention that he work in a consulting capacity on the designing of new equipment, on the redesigning of existing equipment. Also the investigation of machinery and equipment breakdowns in the plant, direction of maintenance, efforts to correct same, or rather to install new equipment; also redesign equipment.

40 The Court: You said in a consulting capacity.

Eric A. Gloss, for Complainant—Cross.

The Witness: Yes.

The Court: He was to be put on a salary retainer capacity?

The Witness: No, he was to be a staff employee, responsible direct to the plant engineer.

Q. Who was the plant engineer? A. Mr. Brinkman. 10

Q. What was your job? A. Industrial engineer, at that time. That was my title.

Q. What work is ordinarily designated by the title "master mechanic" in your business? A. I can't say in our business, because we have no master mechanic.

Q. You mean that Irvington never had a master mechanic? A. I don't know. My association with the company goes back to July, 1942. There was no master mechanic during my stay with the company outside of this proposed change we made in 1944. 20

Q. What work do you think is indicated by the term "master mechanic"? A. Well, a master mechanic can be most anything, actually. I have known—

Q. Tell me, you went over this bulletin with Mr. Van Norde? 30

The Court: Is master mechanic mentioned in that?

Q. Yes; I want to know what you told Mr. Van Norde about the title "master mechanic". It meant something to you. A. Yes.

Q. What did it mean to you? A. To me and the management of Irvington, it means a man who works on a consultive basis on the designing of new equipment, re-designing of existing 40

Eric A. Gloss, for Complainant—Cross.

equipment, working with the maintenance department on installation of new equipment, or re-designing of new equipment. In general, to be in the nature of a consultant on engineering and maintenance work.

10 Q. Any question at that time if he shouldn't be called consultant? A. I don't think it came up.

Q. Or what he was to have after April, 1944?

A. We thought it the most descriptive title we could give for that duty.

The Court: Didn't the lawyer use that term, didn't they use "master mechanic"?

20 Mr. Hays: I am thinking coming down from plant superintendent to plant engineer and then to master mechanic, is down hill. That is the title he had 20 years ago, Van Norde held.

Q. Were you present when the discussion took place regarding this notice that was sent out? A. Merely on that occasion I mentioned.

Q. With Mr. Van Norde? A. Yes, with Mr. Van Norde.

30 Q. Were you present and did you discuss the bulletin with another officer of the company? A. With Mr. Mezger.

Q. When you discussed it with Mr. Mezger, did he mention the title "master mechanic" or did you? A. I believe Mr. Mezger mentioned that title.

Q. You think that Mr. Mezger was the source of the title? A. I wouldn't say the sole source; we discussed it and we felt that that title was the most descriptive.

40 Q. What would you say the term "master mechanic" means? A. I would say a master me-

Eric A. Gloss, for Complainant—Cross.

chanic is a man who knows and understand machinery, how to repair it and how to keep it in operation.

Q. And also a man who works at machinery, right? A. Works at machinery?

Q. Physical work. A. I wouldn't say so.

Q. Did Mr. Van Norde tell you that he was known as that in the plant many years ago? A. I don't think so. 10

Q. Where did you come from? A. Cormark Products Company.

Q. What do they do? A. Zippers.

Q. What was the title you received when you came in? A. Factory engineer.

Q. Was Mr. Van Norde already in a position where he was to report to you? A. No, he was not. 20

Q. I notice in the bulletin of August 16th, Mr. Gloss, industrial engineer, and that Mr. Peter Van Norde, chief engineer of the engineering department, will report to Mr. Gloss. Isn't it the fact that when you came in, Mr. Van Norde was to report to you? A. You mean when I first came to the company?

Q. Yes. I think you came in September, 1943. A. In July, 1942.

Q. July, 1942. A. Correct. 30

Q. When did the time come when Mr. Van Norde was put under your supervision? A. In August, 1943. I can't give you the exact date.

Q. When you first came there, Mr. Van Norde was not one of your subordinate officers? A. No.

Q. Do you know who he reported to when you first came there? A. I believe, I am not certain, I was too new with the company.

Mr. Coursen: I object. 40

Robert Mezger, for Complainant—Direct.

Q. Do you know, when you were first there, what was Mr. Van Norde's position? A. I understand he was plant superintendant.

10 ROBERT MEZGER, being duly sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Coursen:

Q. Are you employed by Irvington? A. Yes.

Q. When did you join the company? A. In 1928, September.

Q. What is your position? A. Works manager and vice president in charge of manufacturing.

20 Q. Will you please tell the Court what products Irvington produces? A. Irvington produces insulating varnishes, varnish fabric insulation of textiles and papers, produces varnished insulation of paper, electric insulation, and for sealing purposes, and in bottle caps. They produce extruded protected tubing, certain process of coated paper, for the bottle-cap industry by laminating the paper, a process that intends to strap on into caps.

30 The Court: Those are the things that are pasted around the top of the bottle?

The Witness: No, you are referring to the top of the milk bottle.

The Court: No, I am thinking of a whiskey bottle.

40 The Witness: This is what you really see inside of a mayonnaise or a whiskey bottle. The inside lining, not on the outside. That produces an insulation of cap installation for the cap manufacturer.

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Resins for the brake-lining industry. We make flexible varnish sleeving and varnish tubing used by the electrical industry for insulation of light wires, for equipment. That is about the majority of the line we make.

Q. Will you please describe to us how each one of these products are made? A. The products are very technical products, having to be made to a very exacting specification, both as to physical and electrical properties.

Q. What properties do you refer to specifically? A. I refer to very close specifications on dimensions, both thickness and width, the physical properties, tear strength, normal and bursting strength, elasticity and tensile strength. In the case of bottle caps materials, resistance to various agencies that might be in the material, that are being packed. And thickness of the coating so that they have proper clearance in the cap. The same electrical and physical properties on the electric, dielectric strength, power factor, dielectric consonant. Those apply to all the varnish insulations, both the sheet and coat weaving and tubing, as well as the physical properties, tearing, etc. Because of the exacting specifications of these materials, this requires equipment that has been developed especially so as to insure production of material that will meet the exacting specifications. Over a period of years, those specifications have become more reformed and reformed resulting in constant change of equipment in order to assure the production of material that will meet specifications that, in former years, were not known. Therefore, the company has built practically all its own equipment. What equipment it

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Robert Mezger, for Complainant—Direct.

has bought, it was necessary to modify the equipment, re-designing it, or even rebuilding it, in order to assure satisfactory products.

- 10 Q. Go ahead and tell us how each product is actually made? A. Flexible electrical insulation, used by the cable manufacturers or electrical manufacturers, motor manufacturers, that insulation is made by preparing cotton cloth in a technical way to assure a smooth, continuous film of varnish on the cloth. It requires special equipment in applying the varnish. Irvington has vertical towers in which the varnish is applied. Those towers were built, from the records of the company, started in 1906 by Irvington, and we have evidence of the type of the towers in 1906 which were quite different than those in 1943; although 20 the principle is the same, the specifications of the products and number of coats that we apply with one passage through the tower, has been changed, so as to produce material more economically and more exacting, because of the length of paper. In addition to the vertical tower which Irvington has, they have one horizontal machine which was built by a machine company who had built two similar machines for two other companies in the electric insulation business, namely, the General Electric and Westinghouse Company. The machine we 30 have differs from both the machines of the General Electric Company and the Westinghouse Company, because we work with the machine designer in order to make improvements on the machine, and even then, when the machine was installed, it took us three or four months before we could start operating the machine. It required adjustments on the machine before we could produce satisfactory material.
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Robert Mezger, for Complainant—Direct.

Q. In very simple words, what is the process? Does the cloth go through a bath? A. Through a bath of varnish and an oven to bake the varnish, and then it gets subsequent coats to go through subsequent baths until we get the proper thickness for the specific material.

Q. Does the speed at which the cloth moves through, have anything to do with the process? A. The speed depends on the varnish to be used, to cool the varnish, the varnish has to be adjusted, depending on the speed and the required time to take the bath. 10

Q. When you say "varnish has to be adjusted", you mean the ingredients? A. Just the physical properties or the gravity.

Q. Do you have to experiment and recalculate the heat? A. Certain varnish requires different heat, and to meet that through experimentation, as you try to get the best product. 20

Q. Let's go to the other products used; how are they manufactured? A. The bottle-cap is manufactured by,—it is a further process on the electric insulation, on some of the electric insulation processes, after the material is varnished, in order to get the proper finish and not have the material too greasy, we put on a finish which Irvington developed, a dry finish by applying mica on the surface of the material. It is applied on the surface of the varnish-coated material by various industries in the business. It was new to apply it on electric insulations and the application of the dust had been controlled, mainly in the rubber sheet industry and after in the sheet varnish industry, where dust was applied to any set finish; in fact, when Irvington was applying other dusting, they were no way as difficult to do as 30 40

Robert Mezger, for Complainant—Direct.

applying mica dust and meeting the requirements of the material. In order to do that, we worked over a period of several years in redesigning and rebuilding machines for that dusting application, and when business increased in 1943, or thereabouts, it was necessary for us to build a second
10 machine which was again a special Irvington design and quite some different than the previous machine.

On the bottle-cap line there, we applied varnish coatings to paper in order to make that resistant to any of the various agents contained in the glass container.

Q. Does that go through the bath? A. It can be turned out on the horizontal machine. It does go through a bath; the varnish, is applied by
20 means of roller coatings. Some paper is coated on both sides and that goes through the bath as electric insulation. After the material is varnished, either on one side or on two sides, it is laminated on backing material. Those backing materials are used to give the finish resiliency so that when the cap is screwed on to the glass jar, there is a vacuum effect and it insures a tight seal, not only initially but after the bottle is re-opened and refilled. For that packing, we use
30 these sheets, varnish and cork. Those are the most common and are fairly heavy in thickness. The thickness ranges anywhere from 20 to 60 thousandths of an inch, and in some we have gone up to 80 and 90 thousandths of an inch. The laminating material to the sheet, requires a laminating machine, and when Irvington went in that business in 1934, they attempted to get standard equipment for laminating and there was no standard equipment. There were several machine
40 manufacturers who naturally would attempt to de-

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sign a machine for us, if we cooperated, and it would be our responsibility to make the machine function. Instead we built our own machines. The first machine we built was a combination laminating and slitting machine. We attempted to laminate the material and slit it, all in one operation. And after several months fooling around and getting rejections up to car loads because of the lamination, we learned that we couldn't slit immediately after laminating, and we had to give it a period of time before the material could be distorted such as it would be in a slitting operation. That requires the machinery to be built to have a separate smoothing and slitting machine. That was a marked change in the machine, and since then we have made a lot of minor changes. In the bonding machines, there have been some made, and there have been some major ones in the slitting machine that we have made for slitting material. Before leaving the bonding machine, since Irvington went in the bottle-cap business, we considered purchasing some laminating machines from some machine company. We knew of one in particular built by one machine company for one of our large customers, who couldn't get it economically to build coated paper from, and they thought it might be more economical to buy the paper from us and do their own laminating. They had done, prior to that time, some of their own slitting. That machine was moved to the second plant on its failure to operate in the original plant in which it was originally housed. The machine was actually a white elephant, as far as we were concerned. Regarding laminating at that time, the cost of laminating and specialization was so great, they realized they couldn't do business economically and they decided they could pur-

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chase from us and tried to interest us in purchasing the machine. They were a good customer and we wanted to cooperate, and we permitted them to send the machine to our plant on a rental basis, with the option to buy. We still have the machine, but have never bought because we found

10 the machine a lot more elaborate than any bonding machine, and costs three or four times as much to build, even though it runs faster, the time required to set the machine up and put your rolls of paper on the machine, it takes so much longer. It was a complicated machine. The actual cost of bonding costs three times as much as our simpler machine. The people designing the machine apparently didn't know the difficulty you

20 run into in laminating varnished paper. There is one thing in laminating paper, the punched parts; another thing, this laminated paper that has a varnish film, there is heat that is circulated after the papers are bonded, when it gets to such a high temperature, that it may have a tendency to soften up, and when in that stage, the fuzz, due to the soft backing material, would imbed itself in the varnished surface of the varnished paper, and naturally makes that material unsatisfactory for use. To overcome that, Irvington learned that

30 through sad experience by having the material that wasn't satisfactory, it was necessary to introduce a medium that is left until it is set up, and then that interlining medium is taken out of the bonding material during the slitting operations, and the rewinding subsequent to the bonding. There is a further way to prevent that fuzzing up and that is to apply a spray medium on to the surface of the varnished paper which acts as a spacer, such as is used by the printing industry on certain printed paper. We have found we can use

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Robert Mezger, for Complainant—Direct.

that medium to prevent adhesion in the cooling methods and it is not enough to injure the fuzz from imbedding itself in the paper in the hot summer months. The reason I am going into detail, if someone buys several thousand dollars worth, like this company did, they will find the machine does not lend itself to putting in interlining paper, although the machine could be rebuilt so you could put interlining paper while bonding. It would not permit the application of this spray because of the details between the points of applying and it is wound up and the speed is so fast, the spray does not have a chance, and therefore it is wound up in a wet form which has a tendency to soften the varnish film and actually the sticking of the fuzz. So the machine would require some extensive revision and development on the part of anyone who didn't know and so they determined that it was necessary to require some rebuilding. On this slitting of bonding material, there are naturally none of the slitting machines in the Irvington. Irvington has several of the various types of slitting for its material. We found the standard slitting machines are not satisfactory for slitting or laminating material, such as we use in varnish paper and heavy boards. There are two major objections to the standard slitting machine; some of our customers buy some of the material from us and they have standard machines for slitting, although they admit by using these machines, they have tremendous waste of time, and in fact when they have had material in stock for several months, the varnished paper has a tendency to get a little stiff due to aging, and the bend due to moisture, their percentage of loss is high. They have sent us material back and paid us for slitting on our machines.

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Robert Mezger, for Complainant—Direct.

10 The principle of our machines and the designing of our machines took quite a period of years for us to perfect to the present stage. The general principle of slitting, using a shear-type knife, is something we employ at the time of slitting bonding material. The reason we did that, we knew the type of coating we could use with the shearing knife, using the knife, having both shearing and slitting machines. We use the shearing knife on laminating insulation on the vulcanized paper and varnished cambric, and we knew that would give us a cleaner cut on laminated materials. We did not, at the time, realize another difficulty if we attempted the slitting necessary. We learned that when we saw material from other people, that the slitting knife has a tendency to push away 20 the material; this pushing away the soft backing material away from the varnished paper, which is married to it, has a tendency to crack, due to movement of the varnished paper along with the soft backing material. Knowing we had the right type of machine,—

The Court: Can't we cut this down a little?

Mr. Coursen: I think we can.

30 Q. That, in general, is a description of how you operate? A. Yes.

Q. Is this industry you are engaged in, highly competitive? A. Yes, it is highly competitive.

Q. Will you tell us the method you have developed your process, as I understand you have chemical products in the bath, in the rolls and baths. A. We have chemical problems in connection with the coating.

40 Q. And you have engineering problems in connection with the machinery? A. That is right.

Robert Mezger, for Complainant—Direct.

Q. Tell us briefly the type of the formula and the chemicals.

Mr. Hays: We concede it is secret.

Mr. Coursen: That will save time. It is conceded that the development of this formula, not mechanically, is secret.

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Q. Tell us how the machinery is developed. A. The engineering and equipment for producing these materials have been developed by the research chemists involving the type of equipment that is needed to produce the products. Naturally it is very vital that the machine produced, calls for trial and error, and it took years. After that, it would produce a satisfactory product. Sometimes it requires close cooperation between research engineers and the building engineers, to produce modification.

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Q. For the development of this machinery, did you maintain a separate engineering department?

A. Yes.

Q. Did you employ engineers to work on the creation and design of the machines? A. Yes, we do.

Q. Is the majority of the machinery in your plant purchased, or has the machinery been developed by your own staff? A. The majority of the machinery has been developed by our own staff.

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Q. Is it possible to buy the machinery on the open market? A. No, it could be built by competent machine builders, but you would have to have some knowledge yourself of the equipment you wanted.

Q. What would that entail in expense, how would you take one of the machines you have in your plant and have some outsider build it, and

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Robert Mezger, for Complainant—Direct.

what would it entail? A. It would entail more expense if an outsider built it.

10 Q. Suppose you just told him the specifications, your engineers didn't work with him, what would be entailed in the building of the machines? A. Certain equipment or competent machine builders would attempt to build for you. After you had the machine, you certainly would have to do some designing in order to have it work satisfactorily. And that would be considerable before you got through. I doubt if any designer would attempt to build without an understanding that you would take the responsibility.

20 Q. Has Irvington spent much money in re-reach of this machinery? A. Yes, they have. We started, for example, by having it built by a standard machinery manufacturer rather than building it ourselves. Some few years back, we licensed a competitor of ours to produce a cable insulation which was quite novel in the cable industry. After licensing this competitor to make this cable cloth, it was necessary for him to equip himself to apply this mica dust finish. It was necessary for him to truck all his materials to us to dust. We showed him the machine we had and the drawings, which weren't too complete because we made changes. But we offered to furnish him with a revised set of the drawings. He thought he would save time if he went to a machinery manufacturer who made dusting machinery, for other industries, such as rubber goods. He contacted one shop in New England and saw one demonstrated in rubber goods, and thereupon, because of the demonstration, purchased the machine from this company. After spending several months to have the machine rebuilt and have our engineers go down there and work on that, they threw up their hands and the machine was

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Robert Mezger, for Complainant—Direct.

taken out and thereupon they built a machine along the lines that Irvington had built and had their supplier explain the component parts of the machine that Irvington had.

Q. You are acquainted with E. C. Homan? A. Yes.

Q. He was at one time in the employ of Irvington? A. Yes. 10

Q. When did he join the company? A. In 1935.

Q. When did he leave? A. I believe he left in 1942 or 1943, I am not positive.

Q. Would it refresh your mind if I said it was August, 1941? A. That is correct. I know it was in the summertime.

Q. For whom did he go to work?

The Court: How about the summer of 1942? 20

The Witness: I recall now, it was 1941.

Q. For whom did he go to work? A. The Electro-Technical.

Q. What capacity was he employed by Irvington? A. He was a research chemist.

Q. In that capacity, what knowledge did he acquire of the processes and formulae of Irvington? A. Well, he worked on the development of varnishes for bottle-cap papers; he worked on the development of varnishes that we use on varnish papers for the rubber industry and other coatings for the trade of garments, that they were purchased prior to the war. 30

Q. Were the secret chemical formulae available to him? A. Yes.

Q. Do you recall D. O. Ferguson? A. Yes.

Q. Was he employed by Irvington? A. Yes. 40

Robert Mezger, for Complainant—Direct.

Q. What work did he do? A. He was production superintendent when he left the company.

Q. When did he enter the employ of the company? A. I believe 1931.

Q. Do you know when he left the employ? A. Yes, he left the employ in 1942, I believe.

10 The Court: 1931 to 1942, what was the first time?

 The Witness: 1931.

Q. By whom is he now employed? A. I have been told he was employed by the Electro-Technical.

Q. When did he go to work there? A. The fall of 1944.

20 Q. What knowledge did he obtain at Irvington or what did he do? A. He was production superintendent in charge of planning.

Q. Was his duty devoted to chemicals or engineering? A. It was devoted to neither. It was devoted to the scheduling of the production of the materials.

Q. Was there available to him the secret? A. The formulae were available to him, yes.

30 Q. Were the various machines of Irvington available to him? A. Yes, and the procedure for producing all those machines.

Q. Did Irvington ever have an employee named Bellingham? A. Yes, he was an electrical engineer in the engineering department when he left the company.

Q. Do you remember when that was? A. That was in 1941.

Q. Do you know when he entered the employ of Irvington? A. I was there when he quit; the records show he came there in 1925 or so.

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Robert Mezger, for Complainant—Direct.

Q. When he left Irvington, where did he go to work? A. The National Varnish Products in Woodbridge.

Q. Does that company compete with Irvington? A. Yes, in some lines.

Q. In what lines? A. Electrical insulation and the Standard Plastics line. 10

Q. Mr. Brinkman, was his duties too in the engineering end of the business? A. Yes.

Q. Machinery in particular? A. Yes.

Q. Were there available to him all the various processes and developments and design of machinery? A. They were available to him.

Q. Did you know Fred Damitz? A. Yes.

Q. Was he employed by Irvington? A. Yes.

Q. Do you know when he came with Irvington? A. He came somewhere around 1925. 20

Q. When did he leave, as near as you can recall? A. 1939, as I recall.

Q. What was his job at Irvington? A. In the research laboratory, supervisor of several research chemists in there. Some chemical development. He was a chemist.

Q. Do you know where he went to work when he left Irvington? A. He formed a new company with some people who were our sales agents, prior to that time, varnish silk fabrics for the clothing industry. They formed a New York headquarters and the corporation was formed prior to that. He went with them so that they could form their own manufacturing company. 30

Q. Did they compete with Irvington in that division? A. They did in the rain wear.

The Court: Rain wear?

The Witness: They furnished coverings for umbrellas and making raincoats, and shower curtains. 40

Robert Mezger, for Complainant—Direct.

Mr. Hays: I object. What is the materiality, what is the point?

Mr. Coursen: It shows the necessity of the contract.

10 Mr. Hays: We will concede that people quit jobs with you and that Irvington took people that were employed with others. How it is material, I don't see; it is obvious if you get an experienced man, he is someone that works in a similar line.

The Court: There are only a few more questions, I gather.

Mr. Coursen: Right.

Q. Damitz, while employed in Irvington, were there available to him all the secret formulae?

20 A. Yes, there were.

Q. Do you know Leo Stage? A. Yes.

Q. He was employed by Irvington at one time?

A. Yes.

Q. Do you know when he joined the company?

A. Around 1940; 1939, or 1940.

Q. Do you know when he left? A. He resigned in 1942.

30 Q. Where did he go to work? A. He went to work, I am not sure, if he went immediately, but shortly after he left us, he went to the National Varnish Products Company in Woodbridge, New Jersey.

Q. And that is a competitor of Irvington?

A. In some developments, probably, for astute tubing.

Q. Were there available to him the secret processes and formulae? A. Yes.

40 Q. I show you a paper and ask if you recognize the signatures on it? A. Yes, I recognize all three signatures.

Robert Mezger, for Complainant—Direct.

Q. These signatures are whose? A. Arthur E. Jones, president of Irvington; Peter Van Norde, and myself, are the signatures.

Q. Peter Van Norde signed that paper in your presence? A. Yes.

Q. On January 30, 1942? A. Yes.

Mr. Coursen: I offer this contract in evidence. 10

(Contract admitted in evidence and marked exhibit C-2).

Q. I show you this exhibit and ask you what the occasion was of having this exhibit C-2 signed by the parties to this lawsuit?

Mr. Hays: I object.

The Court: I will permit it. 20

A. I don't understand.

Q. How did it come about that this contract was signed? A. Well, the company—

Mr. Hays: I object to that.

The Court: I will permit it.

A. Well, the company decided, rather it felt the need of having an employment contract with those employees who had available to them any knowledge of the secret formulae or process of special machines we had designed. Whether they had anything to do with the actual development of those, if they had something to do with the actual supervision or use of those machines, it was decided that everyone in the laboratory, the engineering department, and anyone in a supervisory position in the production department, should have an employee's contract. 30
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Robert Mezger, for Complainant—Direct.

Q. Was the same contract submitted to every-one of the employees in those categories? A. Exactly.

The Court: Have you one?

The Witness: I have one.

10 Q. Were they signed by the various employees about this time? A. Yes, all within a matter of a few weeks, they were signed.

Q. You know Mr. Van Norde, of course? A. Yes, I do.

Q. Do you recall that he entered the employ of the complainant in 1918? A. Yes.

Q. I believe the record shows in 1937 he was plant superintendent, correct? A. 1938 I believe is the year.

20 Q. What were his duties as plant superintendent? A. He was made plant superintendent,—it was a newly created position in 1938. Prior to that, we had a superintendent of the plant in charge of production and maintenance.

The Court: What did the plant superintendent do, what did Mr. Van Norde do?

30 The Witness: He was charged with the responsibility of maintaining supervision of the materials, foreman and given the responsibility of creating a plant engineering department which we did not heretofore have.

40 Q. What was the plant engineering department supposed to do? A. It was a department, the department was created to design and develop the equipment, rebuild existing equipment, and take care of any maintenance difficulty we may have.

Robert Mezger, for Complainant—Direct.

Q. Do you recall in 1943 there was some change in his duties? A. Yes.

Q. What was that change? A. The plant engineering department had grown quite some since its inception in 1938 and the company was a lot busier. It had grown considerably in the past few years and was—

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The Court: Can't you cut it short? What happened?

A. We decided it was necessary to have a separate maintenance department from the engineering department, thinking that would work better.

Q. He was relieved of maintenance at that time? A. Yes.

The Court: Is that the time when he became chief engineer? 20

The Witness: Chief engineer.

Q. There was another change in 1944?

Mr. Hays: Chief engineer of what department?

The Witness: Plant engineering department.

Q. There was another change in 1944? A. I am trying to recall that date. In April, 1944, after having tried for a period of a year or two, the separate operation of the maintenance and the engineering department, we found out they were not working satisfactorily; that the two should be divided, because of the largeness of the business. We thought it advisable to have another man in charge of that, so as to relieve Mr. Van Norde of those duties, so that he could devote all his time to designing machines. 30 40

Robert Mezger, for Complainant—Direct.

Q. What does Irvington do to guard the secrets of its formulae and its engineering processes, and its engineering designs?

10 The Court: May I interrupt? Looking at those two shifts of 1943 and April, 1943, together, I understand the effect was that Van Norde, who had been in charge of maintenance and engineering, was relieved of the job and some other man was given it, and he was made a consultant in engineering.

The Witness: That was in 1944, yes.

The Court: That was the effect of the two shifts.

20 The Witness: In 1944, he was only in charge of engineering.

The Court: From January, 1943, to April, 1944, he had been in charge of both engineering and maintenance?

The Witness: Yes.

The Court: Somebody else was given the job and he was made consultant of engineering?

The Witness: Yes, or mechanic or something.

30 Q. What does Irvington do to guard the secrets of its formulae and its engineering processes, and its engineering designs? A. Well, the formulae are kept in locked files and only supervising employees have access to those files. Wherever possible, we patent some of the machinery; that is not always possible, but we do guard the design on the blueprint of that, to see that the blueprints are kept in the files of the engineering department and only the employees of the engineering
40 department have access to them.

Robert Mezger, for Complainant—Direct.

Q. During the defendant's employment, did he have access to all the engineering records? A. Yes, he did.

The Court: You don't make any effort to keep visiting engineers out of the plant?

The Witness: No one is allowed out in the plant, without proper approval, and they naturally have to go through the guard, our plant is fenced in. 10

The Court: That is a War measure?

The Witness: Even before the War.

Q. Did you take any precautions to keep outsiders out? A. Outsiders were not permitted to go in, without permission coming from the president's office or my office.

Q. Did the defendant design any of the machines? A. Yes, he devoted a lot of time to it. 20

Q. What proportion of his time, a small part of it? A. A large part of it.

Q. Did he have something to do with the designing and creation of all the machinery, that was his job? A. As long as he was with the company, he did.

Q. Do you know what business the Electro does? A. Yes.

Q. Does it compete with Irvington, and if so, how? A. It competes with Irvington in making flexible electric insulation which is sold to the equipment and motor manufacturers. I have never heard of them competing with Irvington on insulation cable; they compete in varnish cambric, that is used as separation material, rubber industry. Those are two lines they compete. 30

Q. Have you sufficient knowledge to tell the percentage as between those two companies, of what the particular division of the business, the 40

Robert Mezger, for Complainant—Direct.

figures,—have you any idea what percentage or particular division of the industry Irvington does, and what Electro does? A. As far as leaders in the insulating industry, I believe there are nine companies competing in that line and Irvington does approximately one-third of the total volume of business of all nine companies.

10 Q. Do you know if Electro does that much business? A. Judging from the competition I hear of, from Electro and electrical insulating business, and know that they do not produce cable insulation, I would say it is lower.

The Court: If you exclude cable insulation, do you still have one-third of the business?

20 The Witness: No, although cable insulation is part of that business, the other nine companies, any of the nine companies can furnish figures; they make cable cloth.

The Court: Electro does not compete with you in that?

The Witness: Not in cable cloth.

The Court: How much is the business that they do? Is it \$500,000 a year?

The Witness: I am not in a position to say.

30 Mr. Hays: Would you tell what other lines they do compete?

The Court: They only compete in two lines.

The Witness: Present business, yes.

Mr. Hays: I don't think the witness stated the various lines they didn't compete.

40 Q. You testified, Mr. Mezger, that varnished cambric requires a mica dust for slitting purposes.
A. Certain varnished cambric.

Robert Mezger, for Complainant—Direct.

Q. Is there any machine on the market that can be purchased to do that job? A. Not that I know of.

Q. How long did it take Irvington to create a satisfactory machine to do that? A. Better than a year, probably two years to develop that machine.

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Q. For slitting varnished cambric, what kind of a machine is used? A. For slitting we use a standard slitting machine.

Q. Did you have to make any improvements on that machine, or did you use it as you bought it? A. Basically, the machine is as purchased. We have put on some essential equipment so as to reduce the amount of trim waste, when we slit the tape from full width cloth. By putting this additional piece of equipment on the machine, that is an attachment made for the machine, we were able to get a additional cut.

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Q. And that was developed in your engineering department? A. Yes.

Q. You used a braid, for varnishing? A. A cotton sleeving or braiding for varnished tubing.

Q. Did you design in your engineering department a machine for that braiding? A. We designed a machine for the rolling of the flat sleeving prior to varnishing. For a period of years, we competed with a foreign varnish sleeving and we were unable to find out how that sleeving was made. It was made from a highly glazed cotton sleeving, but we didn't know how to get it. After spending some time on it, we were able to make contact with the foreign manufacturer who came to this country and agreed to bring three of his machines, of his design, over here. After we had those machines, we found out they were not too good. The wastage of rounding up was consider-

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able and after rebuilding those machines and playing around with them, we were successful in being able to use them sufficiently,—realizing the machine would not be able to glaze material, we developed another machine.

Q. Is there any such machine on the market?

10 A. Not that I know of.

Q. How is the sleeving made? A. It is a cotton sleeve, and prior to glazing, that is made flat and then finished.

The Court: This is the form in which you buy it?

The Witness: Yes.

Mr. Coursen: I offer this sample in evidence.

20 (Sample of flat cotton sleeving admitted in evidence and marked exhibit C-3.)

Q. What is this, is this a form of the tubing before it takes the coating? A. Before it takes the coating.

Mr. Coursen: I offer that in evidence.

30 (Sample of cotton tubing before being coated admitted in evidence and marked exhibit C-4.)

Q. Tell us the advantage in manufacturing this tubing which you derive from the use of this machine that makes the tape round? A. This machine permits you to take cotton tape and round it in long lengths so as to get one continuous length.

40 Q. Is it possible to buy cotton tubing in round form in small sizes by which it is considerably more applicable than being in the flat form, the

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rate of production is slower to produce? A. No, the rate of production is by the braid, also the tendency for the round material to become flat or kinked during transportation results in considerable waste in the finished varnished tubing product. It is necessary to cut out these flat tops.

10

Q. Is there any machine on the market that will do it? A. We haven't been able to get a machine.

The Court: Can you get one today?

The Witness: None that I know of today.

Q. How long did it take Irvington to make improvements on the tower for varnishing tubings?

A. We spent anywhere from one year to two years in designing and completing that tower.

20

Q. You testified with respect to laminating of the bottle-cap material. Do you recall that? A. Yes.

Q. You testified that you had experimented with some standard machine for a period of years? A. Yes.

Q. You testified, I believe, that the standard machine does not permit the use of a paper to prevent the fuzz. A. Yes.

30

Q. Have you a sample of the material to indicate what you are talking about? A. If you look at the surface of the varnished paper, you will see where particles are imbedded (showing sample).

Q. What machines were these samples made on? A. One of our standard machines.

Mr. Coursen: I offer in evidence—

Mr. Hays: I understand the last two are products that we don't compete.

40

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Mr. Coursen: They are products that we say you are competing.

The Court: I will permit it.

(Sample of varnished paper admitted in evidence and marked exhibit C-5.)

10 Q. Have you a sample of this same material after it has gone through the machine with the use of this separator? A. (Witness producing sample) That is the same, except that it has separator paper.

Mr. Coursen: I offer that in evidence.

(Similar sample with separator paper admitted in evidence and marked exhibit C-6.)

20 Q. You testified using the Cameron slitting machines and that you had some difficulty? A. Yes, in cutting materials with that type of machine which has a tendency to break the board, causing a wrinkle in the paper. That is a sample there. (indicating sample)

Q. Does this sample indicate what you were talking about then? A. Yes, as far as breaking the board.

30 Mr. Coursen: I offer that sample in evidence.

Mr. Hays: I object.

The Court: I overrule the objection.

(Sample showing breaking of board, admitted in evidence and marked exhibit C-7.)

40 Q. Have you a sample of the same material after it has been through the machine that Irvington has designed? A. Here is the material and

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the edges of the paper are not cracked such as the one using the Cameron machine.

Mr. Coursen: I offer that in evidence.

Mr. Hays: I object to that.

The Court: Overrule the objection.

(Sample of material, showing edges not cracked, admitted in evidence and marked exhibit C-8.) 10

Q. You testified there was some difficulty with the Cameron machine in connection with the edge of the samples? A. That is brought out in the heavy material and here is a thin sample, and even then the edges break.

Q. Is there any waxing in the manufacture of bottle-caps? A. No, the plain varnish paper is both waxed and the bonded material is waxed either on the facing-wise or the backing or board-wise. 20

Q. What machine does the Irvington use for the waxing machine? A. They have a special machine they built themselves.

Q. Is there any such machine on the market? A. There are standard machines on the market, such as grading machines; if there is enough volume, you design a machine for an industry. I know of no machine except the one we used on rounded material that we make. We have attempted to buy machines but have never been successful. 30

Q. Did you have any part in the execution of this contract, exhibit C-2? A. Yes, I did. It was my responsibility to get the people in the manufacturing department in that class of employees that had to sign employment contracts, to come in and sign the contracts. 40

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Q. What did you do in that respect? A. I passed out the contracts to the various individuals and told them to read the contract over, and discuss it with anyone they desired, or to obtain any legal advice with respect to the contracts, and I would see them a little latter on as to the signing
10 of the contract.

Q. Did you make that request to Mr. Van Norde? A. I made it to everyone.

The Court: Did you make it to Mr. Van Norde?

The Witness: Yes, I did.

Q. After that statement, did you see him a few days later? A. Yes, after I passed out the contracts, and explained them to the various individuals, there was quite a lot of questions asked.
20

Q. Did you have a conference with Mr. Van Norde? A. Yes.

Q. Was anyone else present? A. The employees in the engineering department were present.

Q. Are those employees available now? A. No, they are in the Armed Services.

Q. What did you say to Mr. Van Norde, and what did he say to you? A. I told Mr. Van Norde the reason the company felt they wanted it.
30

Q. What did you tell him? A. I told him the company felt it was necessary to have the contract with its employees in order to protect secret processes, because if they didn't have that, they would be persuaded away to higher salaries, because the companies would be desirous of getting information from them that they could get much quicker than the normal way of trial and error in the development of the new products. I told
40 them the contracts differed somewhat from what

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I understood was the usual contract of employee and employer; that our industries give, in that it protected the employee in case he lost his job through no fault of his own. The company desired to restrain him going and it recognized that it would take him a few years in a new place, and the company would pay one-half of that salary, whatever that salary was when he left the company. The salary was subject to revising upward or downward as to his salary at the time of his leaving. 10

Q. As to the meeting with Mr. Van Norde, did you read aloud any of the provisions of exhibit C-2? A. I read the part where, or explained the part, where they couldn't go to a competitor, and also as to the loss of position; that the company wished to restrain them, but they would get one-half of the pay. 20

Q. Did you refer specifically to paragraph 2(d) (looking at paper)? A. Yes. I do refer to that.

Q. Did you actually read 2(d) at that meeting aloud? A. To the best of my memory, yes. I explained as I read it.

Q. Was there a discussion at the meeting as to the various provisions? A. At the meeting I had with Van Norde and these engineers, I don't recall any discussion at the meeting. I do recall a discussion with Mr. Van Norde prior to signing. 30

Q. Before that, did you tell Mr. Van Norde that he might get independent advice, if necessary, legal advice? A. Yes.

Q. You told that to each one of the employees? A. Yes.

Q. What did Mr. Van Norde say at this meeting? A. I don't recall anything in particular that he said at the meeting. 40

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Q. What happened after the meeting? A. After the meeting, he made some reference about getting more money, and that if he signed the contract, would he get more money.

10 Q. What did you say? A. I said that depended on the work he did; that it had nothing to do with that.

Q. Did Mr. Van Norde sign that contract on January 30, 1942? A. Yes, he did.

Q. Did you have any talk with him at the time he signed? A. None that I can recall.

Q. I show you exhibit D-4 and ask you if you recall that paper? A. Yes, I do.

20 Q. Did you have any discussion with Mr. Van Norde before that bulletin was issued? A. Yes, I did.

Q. What was it? A. The same day that Mr. Gloss talked with Mr. Van Norde, the issuing of this bulletin then followed, when the tentative draft of the bulletin,—later on that afternoon, I saw Mr. Van Norde at the plant on Tremont Place.

The Court: Did you have a conversation?

The Witness: Yes.

The Court: What was it?

30 The Witness: I asked him whether he didn't feel that he would be able to qualify better and if he wouldn't like his work better as a designer of equipment, rather than be bothering with all the detail work of letters and asking for quotations, and the necessity of supervising the draftsmen in the engineering department, and he said "Yes". He again referred to more money. I said that he hadn't helped himself in the
40 position of chief engineer on the work he had. And that was not performed satis-

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factorily as the detailed paper work, and that if he devoted all his time to designing of equipment and developing of new equipment, he would be able to progress further with the company and he would be performing work in which he was better fitted.

Q. Was Mr. Van Norde's pay ever reduced by Irvington? A. No, his pay was never reduced, to my knowledge. 10

Q. Do you know Mr. Van Norde's signature? A. Yes.

Q. Do you recognize that signature (showing letter)? A. Yes.

Mr. Coursen: I offer a copy of letter dated May 1, 1944, from Mr. Van Norde to Irvington. 20

(Copy of letter of May 1, 1944, admitted in evidence and marked exhibit C-9.)

Q. After receipt of this exhibit C-9 by Irvington, did you talk with Mr. Van Norde? A. Yes.

Q. What was the conversation? A. The first conversation I had, I was quite surprised to get that letter and wanted to know why he was resigning and they told me that he had a feeling that he was being forced out of Irvington, and I told him there was no basis for it. I said he had been with Irvington for many years and that Irvington looked on him as a trustworthy employee, and because there was a change that he could perform his duties better, that was no reason for him to become dissatisfied or make him feel that we wanted to get him out. I told him that if there was anything about the bulletin he didn't like, if he felt the reaction in the plant was different than what it might be; if there was anything that I might do, I would do it. 30 40

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Q. The bulletin, did you mean—— A. The one in which he was made master mechanic.

Q. Exhibit D-4? A. Yes. I also told him if he would go to a competitor, we would hold him to his contract. I asked him if he was going to the National Varnish Company and I know that he
10 has friends with the Varnish Company, and he advised that he didn't think so, or didn't state what he was going to do. On subsequent conversations with him over a period of time, and the conditions were left open, we didn't accept his resignation. He was given some time to think it over and I spoke to him on several occasions to see if he made up his mind as to leaving, and he said it was rather difficult for him to make up his mind. He had different people talking to him,
20 trying to influence him, and we were influencing him. He said that he needed some more time. On numerous occasions, I brought out the subject that he was going with a competitor, and I made reference to the National Varnish, and when he made up his mind I asked him actually who he was going with, and he said he had an opportunity to go with Kolb Sheet Metal Works. Kolb had desired to go in business with him,— Kolb's brother having died and he needed some
30 man to go outside and estimate on jobs, and he would have an opportunity to be a partner, and he couldn't throw that opportunity to one side. I remember wishing him luck, and saying that undoubtedly we would see him. We would not change our policy of doing business with Kolb; Kolb had done work for Irvington for a number of years.

Q. Was it on that basis of his statement that he was going to Kolb, that you signed the certificate
40 of availability? A. Yes, it was.

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Mr. Coursen: I offer in evidence the certificate of availability dated August 14, 1944, Irvington to Van Norde.

(Letter dated August 14, 1944, Irvington to Van Norde, admitted in evidence and marked C-10.)

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Mr. Coursen: I offer in evidence letter dated August 14, 1944, written by Irvington to Electro.

(Letter of August 14, 1944, admitted in evidence and marked exhibit C-11.)

Mr. Coursen: I offer in evidence letter dated August 16, 1944, Electro to Irvington.

(Letter of August 16, 1944, Electro to Irvington, admitted in evidence and marked exhibit C-12.)

20

(RECESS UNTIL 2 P. M.)

By Mr. Coursen:

Q. You testified that Irvington bought the rounding machine by which it makes exhibit C-4?

A. Yes.

Q. I think you said you bought three machines?
A. Yes, we bought three machines, paying \$500 for each machine. We went into a contract with the manufacturer for the royalties of renting the machines and we had a contract for five years for that.

30

Q. How much did you pay him a year? A. Somewhere between \$300 and \$350 a month.

The Court: A month?

The Witness: A month, for the five-year period, and then there was some royalty

40

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arrangement where if we could do over a certain footage per annum, he got a royalty.

10 Q. This person from whom you got them, did he work with the engineering department? A. Yes, he did, on the perfection of the machines he brought over.

Cross examination by Mr. Hays:

Q. How many competitors has your company?

A. We have a lot of competitors, competing on only certain lines. I would have to list them all to give you it. We have some who only compete in one line.

Q. Let us take the direct competitor who competes on direct lines. You mentioned nine or ten?

20 A. The electric insulation business, do you want those?

Q. Yes. A. New Jersey Wood Finishing, National Varnish, Standard Insulation.

Q. Standard Insulation Company? A. Yes. Electro-Technical, Mica Insulation, Acme Wire, Westinghouse.

Q. Westinghouse, is that the big company?

A. Westinghouse, in Mica, Pennsylvania; Westinghouse Manufacturing & Electric Company.

30 Q. What else? A. The General Electric Company.

Q. And the General Felt Products Company?

A. They do not compete in the electric line, in the bottle line.

Q. What line does General Felt compete? A. In the bottle-cap industry.

Q. You mentioned the Acme Wire Company?

A. Yes.

40 Q. You mentioned the General Electric Company; that is a large company in Schenectady, New York? A. Correct.

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Q. What companies compete with you partly?

A. There is the Newark Plastics Company that competes with us. I don't know them all, various plastic companies.

Q. Do all the plastic companies compete with you? A. No, there are a lot of pressed tubing; we don't compete with those.

Q. You regard people who compete with you, people who make varnished paper? A. Used for the electric industry or bottle trade.

Q. Tell us along what lines the Electro-Technical Company competes with you? A. It competes with us in the production of flexible varnished insulation, varnished fabric used as a separation medium in the rubber industry.

Q. There are some lines they do not compete, things they make? A. Yes.

10

20

The Court: I want to put in a note, those two lines they do compete.

The Witness: Flexible varnished insulation and varnished cloth used as a separation medium in the rubber industry.

The Court: As a separating medium?

The Witness: In other words, the unturned rubber on this cloth, as they do on the outer cloth.

30

Q. What do they make or manufacture which companies do not manufacture, the lines they do not compete in? A. I do not know what lines those are. The only way I know what they compete in, I hear through our sales department. The non-competition, I don't know.

Q. Do you have contracts with the War Department by which you take duck cloth and make it resistant to water and heat? A. No.

40

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Q. You don't? A. We make varnished duck for insulation.

Q. Do you know what percentage Electro-Technical have in competition with your business? A. No.

10 Q. As far as you know, it might only be 10 percent? A. I don't know.

Q. Let us take your business, tell us things you make that Electro doesn't make. A. We make varnished tubing for the electric trade used as an insulation. We make cable cloth, varnished cable cloth, bottle-cap materials, excluding flexible plastic products and resins, in the brake-lining industry.

20 Q. Those articles you last mentioned are substantially part of your business, aren't they? A. They are.

Q. You claim that if a man works with you and made this contract, he would have no right to go in a concern in competition on any of those products?

Mr. Coursen: I object.

The Court: I sustain the objection.

30 Q. Let us take up the question of employees. How many people have you in your employ that you have made these contracts with the restraint?

A. I don't know the total number. Anyone in a supervisory capacity, either on the weekly or the monthly payroll, and factory employees working in the plant on the yearly basis.

Q. Can you tell the approximate number? A. No, I would only be guessing.

40 Q. You classify them as men in confidential capacity? A. Or who have access to the secret processes, such as formulae, that some of the employees have access to.

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Q. How about men who mix your chemical elements, the ordinary men? A. The varnish makers?

Q. Or the varnish makers? A. Yes.

Q. How many do you have? A. Four.

Q. How about men who are employed as chemists, do they sign? A. Yes.

Q. How many of them do you have? A. 25 or 30, I don't know. 10

Q. Approximately, so that we can get a picture. In addition, the men having to do with the equipment or machinery. A. Having to do with designing it, yes.

Q. How many of them? A. A half dozen.

Q. Engineers of that kind that come in contact with the public, right? A. Process engineers, you mean?

Q. Yes, how many? A. Probably a half. 20

Q. Any other class of employees? A. Production foremen.

Q. How many of them are there? A. 8, or 7.

Q. Can you give me any idea of others that signed contracts of this kind? A. They are all I know of. They are in the manufacturing department. There are others in other departments, who signed contracts, but I don't know who they are.

Q. What departments? A. I imagine the small departments. 30

Q. What other departments are there? A. Outside, accounting and sales departments.

Q. Men in those departments signed like contracts? A. I don't know.

Q. I thought you said they did. A. I think they did.

Q. Who would know? A. The heads of the departments.

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Q. Will you provide the information the next time you come to court? A. (No answer.)

Q. You mentioned Mr. Homan before as a man who went from Irvington to Electro-Technical. Do you know where Mr. Homan was employed before going to Irvington? A. Yes.

10 Q. By whom? A. By the General Felt Products Company.

Q. Where they competitors along any line? A. Yes.

Q. What line? A. The bottle-cap material.

Q. They are both in that business? A. Yes.

Q. Did Homan bring to you knowledge that he had gained at the General Felt Products Company? A. I don't know, not that I know of.

Q. He was a chemist, wasn't he? A. Yes.

20 Q. What has the chemist to do with the bottle-cap industry? A. The formulation of coatings, a coating paper.

Q. Those coatings are ordinarily secret formulas? A. Yes.

Q. He, having been employed by General Felt Products Company, with knowledge of the formulas, came to you, didn't he? A. Yes.

30 Q. Do you know what Mr. Hicks did before going to the General Felt Products Company? A. No.

Q. Don't you know that he was employed by the Standard Insulator Company? A. I heard something to that effect. I don't know if it was definitely so or not.

Q. Along what line are the Standard Insulator Company competitors of yours? A. In the bottle-cap business.

40 Q. You didn't think you were pirating from another industry when you took Homan into your concern? A. I had nothing to do with Homan.

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Q. Who had? A. I don't know.

Q. By the way, have you a Mr. Dale in your organization? A. Yes.

Q. What is his business? A. Manager of the—preparing, in charge of the inspection and control.

Q. Mr. Dale is the head of process and development, isn't he? A. He was, not now.

Q. How long since he ceased to be head of that?

The Court: Head of the production?

Mr. Hays: Process and development.

The Witness: About a year and a half ago, or two years ago. I don't recall.

Q. At any rate, Mr. Dale, in your plant, had to do with coating processes, bottle-caps, joining properties together, varnishing and waxing? A. Inspection and control, functioning of those products.

Q. Some of them are secret formula processes? A. Right.

Q. Do you know where Mr. Dale was employed before going to your company? A. Yes.

Q. By whom? A. Prior to getting back to our company, the third time, he was employed by Electro-Technical.

Q. How long was he with Electro-Technical? A. Not definitely.

Q. Don't you know he was at Electro-Technical from the start of the business in 1933? A. Yes, he was a man who—

Q. And that he developed their business? A. Yes.

Q. When did he come with you? A. In 1941, I believe it was when he came back.

Q. You say he came back. He was with Irvington before he went with Electro? A. Yes.

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Q. And before that he had been with the General Electric? A. Yes.

Q. And after the General Electric, from General Electric he came to you and then went to the Acme Wire? A. Yes.

Q. And then to the Electro-Technical? A. Yes.

10 Q. He came to you after being with the other concerns? A. Yes.

Q. And he had knowledge of processes, formulas and everything in your concern? A. Yes.

Q. You understood he was familiar with all those things when he was in the Electro-Technical? A. Yes.

Q. Tell us some other men who are with you that were taken from competing concerns.

20 Mr. Coursen: I object to taken from competing concerns.

Q. Who had formerly been with concerns in competing lines of business. A. I don't quite understand your question.

Q. What I want to know, what men are with the Irvington Company that came to you after they had been in the employ of your competitors? A. I don't know which ones you have reference to.

30 Q. I have reference to any; chemists, how many of your chemists that were in concerns competing with yourself? A. Concerns that I know of?

Q. Take it along the mechanical lines; machinery department, any? A. None that I know of that were competitors.

Q. How about the sales department? A. I don't know anything about the sales department.

40 Q. You are in an advisory position; before the next hearing, will you make an inquiry and will you bring back the names of men now employed by you that came from any concern with whom

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you are now in competition; will you get that for me?

The Court: I should think that would be rather difficult. I am thinking of 650 employees.

Mr. Hays: In the higher departments.

The Court: Those that might have secret knowledge? 10

Mr. Hays: I would like to make it clear what I am trying to bring out. The public policy,—if you could tie up 50 or 60 people, it would be servitude, and they couldn't get into another job, having gained knowledge. It is a good deal like the yellow dog contracts.

The Court: I think that is different, like people who deal with customers, salesmen of various kinds. 20

Q. I think you said, Mr. Mezger, that when Van Norde signed this contract, he was a plant superintendent? A. Correct.

Q. And had been since 1938? A. Right.

Q. Will you give the duties of a plant superintendent, laying principal stress on these points: What work he did, what was his authority, the number of men he had who assisted, and the standing in the organization. Just give us a general picture who the plant superintendent was and whom he had to report to. A. Mr. Van Norde was plant superintendent; he reported directly to me. I was works manager. 30

Q. Did he have to report to anyone else? A. No.

Q. Did he have anybody to assist him; did he have charge of other men? A. He had charge of the maintenance foreman, foreman of the machine 40

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shop, and the carpenters and maintenance yard men, and electricians and then he had engineers who assisted him with the plant engineering.

10 Q. Anything else? A. He had charge of the power house, the steam tower house, the boiler room; he was charged with the responsibility of the maintenance of the buildings and equipment, and designing and construction of new equipment.

Q. There came a time, instead of being plant superintendent, he came to be known as plant engineer? A. Yes.

Q. What then was his responsibility, to whom was he to report, what was his job, what was he to do, and what was his general standing in the organization? A. He was to report to the general superintendent of the plant.

20 Q. Who was that? A. A man by the name of Petersen.

Q. Do mind telling the distinction between a plant superintendent and a general superintendent? A. The general superintendent was a man over a man called the plant superintendent, charged with the responsibility of maintenance, and he was over the production superintendent.

30 Q. At any rate, in 1943, instead of reporting to you directly, Van Norde would report to Petersen? A. Correct.

Q. When I say report to Petersen and then to you, and if you had instructions for Van Norde, they would be given to Petersen? A. Yes.

Q. As plant engineer, what were his duties? A. He was in charge of the plant engineering department, charged with the responsibility of supervising the men in the plant engineering department, and the designing and development of equipment.

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Q. How many men did he have under him? A. It varied. I would say an average of around six.

Q. That was less than he had under him as plant superintendent? A. Correct.

Q. His job was again shifted in April, 1944, wasn't it? A. Yes.

Q. To master mechanic? A. Yes. 10

Q. Will you tell us to whom the master mechanic would report first? A. The master mechanic reported to the plant engineer.

Q. Who was that? A. A man named Brinkman.

Q. Brinkman was subordinate to whom? A. To Gloss.

Q. Mr. Gloss was subordinate to whom? A. To me.

Q. Wasn't he subordinate to Mr. Dale? A. 20
Not at that time.

Q. When did Gloss become subordinate to Dale? A. Gloss became subordinate to Dale approximately the same time that Van Norde became subordinate to Petersen. I don't recall exactly.

Q. Did you get out any plans what the set-up was in April, 1944? A. Yes.

Q. Have you a copy of it? A. No.

Q. I show you two sheets, I believe there was a third, which represents a so-called set-up. Was that gotten up by your concern? A. Yes, that looks like one of the proposed charts we worked on. 30

Q. When was that gotten up, about? A. I don't recall exactly when that was gotten up. We made several of them. I don't associate any time with any one.

Q. At any rate, with one of the charts, it referred to Van Norde as a master mechanic; who was he responsible to? A. We never made up a 40
chart referring to him as a master mechanic.

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Q. Look at that. A. We made tentative charts.

Q. You made a tentative lay-out of what you proposed Van Norde was to do? A. Yes.

Q. That was the proposition? A. Yes.

Q. From that tentative lay-out you got up, who was Van Norde to report to? A. To the plant engineer as a staff employee.

10 Q. What do you mean, as a staff employee, as distinguished from chief engineer? A. He was relieved from any regular duties. He would have more freedom to devote the entire time to specific jobs.

Q. You were relieving him of the burden? A. And details.

Q. And responsibilities? A. (No answer.)

Q. And of responsibilities, weren't you? A. 20 We were changing his responsibilities.

Q. Did he ask to be relieved of those burdens? A. No.

Q. That was done by you? A. Yes.

Q. As a favor to Van Norde? A. No.

Q. You were his supervisor at that time? And he had another man superior than he had before? A. He had only one superior at that time.

Q. You were his superior? A. Yes.

Q. And then Petersen was his superior? A. 30 Yes.

Q. And Petersen reported to you? A. Yes.

Q. And then Gloss came? A. Yes.

Q. And Gloss reported to you? A. To me.

Q. Was there someone between Gloss and you, refer to the chart (showing witness paper)? A. This chart was made incorrect.

Q. It was? A. Yes.

Q. By whom was it made? A. It was made by someone who was assigned to making the charts 40 for the company and misunderstood the organi-

Robert Mezger, for Complainant—Cross.

zation set-up and that is the reason this chart was never issued.

Q. Who made the chart? A. Actually worked on it? Mechanical draftsman named White.

Q. Where is he? A. I don't know.

Q. He didn't follow instructions? A. He followed instructions, but the person who gave the instructions misunderstood the organization set-up. 10

Q. Who gave him the instructions? A. Mr. Satterweil.

Q. Who did Mr. Satterweil get them from? A. I don't know.

Q. Isn't it a fact, this is the only chart where a master mechanic appears as a title? A. Yes.

Q. And before the chart was distributed, Van Norde resigned? 20

The Court: The chart was never completed? Did you say the chart was never completed?

The Witness: The chart was never completed. The department threw out the chart.

Q. Isn't it a fact that there is no chart of any kind that shows the position of master mechanic except this one that is not completed? A. We never had a position of master mechanic as such in the company. 30

Q. That is what I thought. Then there is no other chart of any kind at any time that shows the designation of master mechanic, except this incomplete chart? A. Yes.

Q. Isn't the reason I can say, the work on the chart ceased because Van Norde resigned and there was no longer any point? A. No. 40

Robert Mezger, for Complainant—Cross.

Q. If you completed the situation of Mr. Van Norde as master mechanic, who was he to report to, who was his immediate superior? A. Immediate superior would be Mr. Brinkman.

Q. Who? A. Mr. Brinkman.

10 Q. Who was Mr. Brinkman's superior? A. Mr. Gloss.

Q. Who was Mr. Gloss' superior? A. I was.

Q. At the time Van Norde signed this contract, you were superior? A. Yes.

Q. And Brinkman was then above him, and he was then subordinate to those two men? A. No.

Q. Won't you agree, in view of those facts, that Van Norde was gradually being demoted? A. No.

20 Q. You think the job of master mechanic was as important as plant superintendent? A. Yes, I think it more important.

Q. Where did you get the designation of master mechanic? A. It is a title which has a wide variety of meaning and significance, as relative—

Q. Does it mean what it says?—master mechanic?

Mr. Coursen: Let him finish.

30 Q. Go ahead. A. In some plants, it might mean a man who is in charge of a machine shop, or a garage, repair shop, foreman repairman, as a master mechanic. There are plants where the master mechanic is one of a managerial position, over the plant superintendent, construction superintendent. I recall very definitely when looking at some advanced* technical equipment of the Feiganspan Brewery Company, where there was a
40 master mechanic.

* Available in defendant's copy of the transcript.

Robert Mezger, for Complainant—Cross.

Q. Don't you know that Mr. Van Norde was called a master mechanic 15 years ago? A. I know that Mr. Van Norde had a self-assumed title of master mechanic some 15 years ago.

Q. And after that, he became plant superintendent? A. Yes.

Q. Did you engage in any discussion that the reason you wanted to transfer Van Norde was that you wanted a graduate engineer? A. Yes. 10

Q. Wasn't that the reason why Van Norde's job was changed, you wanted a graduate engineer? A. We want a graduate engineer for certain work, yes.

Q. To do the work that Van Norde was doing? A. A portion of the work, yes.

Q. By the way, what was the work to have been of the master mechanic. A. As I explained to Mr. Van Norde, my conversation was that he was to devote his entire time to designing of machines, working with the engineering department, having the engineering department to do the actual drafting work on the boards and take care of any of the detail designing as desired on particular parts that were to be used, so that he could devote his time to the equipment, coming in contact with outside machinery men. That is one of the things that Mr. Van Norde said he would lose, his outside contact. 20 30

Q. What work was taken away from him? A. The detail work of writing and estimating on all types of material needed for engineering, the actual supervision of the engineers and draftsmen and the engineers in the engineering department.

Q. You said his paper work was unsatisfactory? A. Yes.

Q. How long had he done that paper work? A. For a few years. 40

Robert Mezger, for Complainant—Cross.

Q. Would you say how many years? A. Yes, he has been doing it since 1938.

Q. He also designed new equipment for you? A. Yes.

Q. That was taken away from him? A. No, that is the thing that he was to devote his time to.

10 Q. On new equipment? A. Yes.

Q. How about maintenance? A. He was not to be burdened with that at all, other than to diagnose any difficulty that we might have on the floor and advise them how to repair.

Q. I am interested to know why you wanted to change because you wanted a graduate engineer? A. Engineers and engineers with degrees, the company was growing; correspondingly we had to make changes in order to get the fullest benefit out of them. We felt we had reached a point where we could afford it.

20 Q. When Van Norde signed this, there was no question of change in his type of work. A. We had no such thought.

Q. I want to now ask the work he had done. He took the bugs out of machines when they wouldn't work? A. Yes.

Q. Didn't that frequently occur with you? A. Yes.

30 Q. Does it not happen that when you buy new machines, it takes a couple of months before you can get them working properly? A. Satisfactorily.

Q. And it was Van Norde who would find out what was wrong and fix it up? A. Yes.

Q. He is an important man on those lines? A. Yes.

Q. He learned his trade and this trade largely because of his employment of 25 years with your firm? A. Yes.

40

Robert Mezger, for Complainant—Cross.

Q. You said that Van Norde got his learning and instructions largely under your experience, you were not accepting that learning with someone until he was out of school? A. Yes.

Q. As I read this complaint, he is not to use what knowledge and information that he gained from you? 10

Mr. Coursen: I object.

The Court: I sustain the objection. It is for me to determine what the complainant says.

Mr. Hays: I am asking this because of his affidavit.

The Court: I think the question, doesn't it appear from the bill of complaint, your chief complaint is as follows; it seems that is not a proper question. 20

Mr. Hays: I think you are right.

Q. Your complaint is, as I understand it, that Mr. Van Norde, having gotten his learning and experience in your plant for many years and knowing the business and having learned from contact in that he should not go in competition within a certain period of time.

Mr. Coursen: I object. 30

The Court: Is it material what the Irvington Company objects so far as it is litigated in this suit?

Mr. Hays: I withdraw it.

Q. The letter of August 14th to Van Norde (showing witness exhibit C-10). A. Yes.

Q. I take it then, that since Mr. Van Norde got his experience through the employment in the company, he has no right under the contract to work for someone else? Is that right? 40

Robert Mezger, for Complainant—Cross.

Mr. Coursen: I object.

The Court: As I see it, the only function of this witness here today is to tell us the facts, what the board of directors decided to do or the complainant's counsel advised, or his theory; I don't think you can go into the motive.

10 Mr. Hays: Unless it appears from his papers.

The Court: I will sustain the objection.

Q. You mentioned before in your direct examination the rounding machine that was made in your plant? A. Yes.

Q. You remember that? A. Yes.

20 Q. I imagine that you stated that as an illustration of how your machines were built? A. Yes.

Q. That was for making these flat pieces round? A. Yes.

Q. Did you buy that machine or build it? A. We bought one type we used and we built and developed the other type.

The Court: What?

The Witness: The one on that piece of material.

30 The Court: I thought you bought three machines at \$500 each?

Q. For this rounding process? A. Yes.

Q. Did you buy it in Germany? A. England, originally it was from Germany.

Q. Did you bring an engineer over here by the name of Mueller? A. Yes.

Q. Who set up the machines? A. Yes.

40 Q. Did he do that in the plant? A. Yes.

Robert Mezger, for Complainant—Cross.

Q. How long did he work on those machines in the plant? A. A couple of years.

Q. These machines were not patented? A. No, I don't believe they were patented.

Q. What did Van Norde have to do with the machines? A. Van Norde worked with Mueller in the re-designing so as to get them to operate. 10

Q. Again pulling out the bugs in machines you bought? A. Yes.

Q. That is not the business Electro-Technical is in competition, is it? A. No.

Q. You referred to a machine called intrusion machine, a machine that came from France, and a man by the name of Kaufman came over? A. I don't know of any machine from France.

Q. Do you know a man named Kaufman? A. Yes. 20

Q. What kind of a machine was it? A. An extruding machine.

The Court: Extruding?

The Witness: An extrusion machine.

Q. Where did those machines come from? A. From machinery manufacturers in this country.

Q. Who was Kaufman? A. Kaufman was a man who worked for us in our extrusion department. 30

Q. Did he have anything to do particularly with setting up those machines? A. The department was in operation when he came with us, and he was employed to see if improvements could be made in that department.

Q. What did Van Norde have to do with that? A. He worked with Kaufman on some of that work.

Q. Who else, Eddie Neilson? A. Yes. Q. He formerly had a machine shop of his own? A. Yes. 40

Robert Mezger, for Complainant—Cross.

Q. Was that shop sub-contractor for the General Felt Company? A. I don't know. When we employed Neilson, he had set up a little manufacturing in his shop and we bought him out.

Q. What kind of machines did he bring in? A. Machines for the bottle-cap business.

10 Q. Do you know if he had been sub-contracting for your competitor, the General Felt Company? A. I think he was making dyes for them.

Q. You bought out his business, and he brought the machines over to you? A. Yes.

Q. And set them up in your place? A. Some of them.

Q. What did Van Norde have to do with that? A. Nothing, except to set the machines up, and in a few days we re-built them slightly.

20 Q. And when re-building, what did Van Norde have to do with re-building them? A. The two machinists worked for Van Norde.

Q. That describes in a general way, Van Norde's job? A. Yes.

Q. To build up the machines? A. Yes.

Q. To get the bugs out of machines and make them operate? A. Yes.

30 Q. It is the kind of a job that every industry needs a man, to make machines work when they break down? A. Yes.

Q. There were a few patents gotten out by Van Norde? A. Yes.

Q. Those patents were turned over to the company? A. Yes.

Q. I presume when you got a pattern, by reason of novelty, you patented it? A. Yes.

Q. So far as the pattern is concerned, it was a big thing? A. No, not necessarily.

40 Q. Tell us why, if the thing was new and contained novelties, you didn't patent it? A. There

Robert Mezger, for Complainant—Cross.

may be reasons for not wanting to disclose the process; if we obtained a patent, any competitor would be able to make a study and they then could design a machine for their business in this way.

Q. Why did you take any patents out if that is so? A. Some of the patents we got would prevent anyone from readily changing their plant in order to get around the patent. That is more or less our patent attorney's idea. He decided it. 10

Q. Have you in mind anything novel and new invented by Van Norde which would be subject to patenting; have you anything in mind now? A. Now?

Q. Have you anything in mind? A. Something that hasn't been patented? 20

Q. Yes.

The Court: While he was with you?

The Witness: What?

The Court: Did he rig up anything that was patentable that you thought patentable, but you desired not to patent it, but thought best to keep?

The Witness: The rounding machine is one. 30

Q. What? A. The rounding machine.

Q. I thought you said it was brought. A. Not the ones we designed and bought ourselves.

Q. Are there any others besides the rounding machines? A. The bonding machines.

Q. The binder? A. The bonding machines. Laminating machines, waxing machines.

Q. Let me see, you say there are some devices connected with those machines, which is novel and subject to a patent where you have not re- 40

Robert Mezger, for Complainant—Cross.

ceived a patent and have not applied for a patent? A. We have not applied for a patent but there is some novel part of the machinery on which we thought we could get a patent. I don't know—we never attempted.

10 Q. Do you know of anything you have not applied for, a feature that is novel? A. Those machines, I listed, are novel. We haven't pursued them down to a point of getting them patented.

Q. You have applied for patents? A. No.

Q. There are novel items on these machines but you have not applied? A. (No answer).

Q. Have you consulted any patent attorney about those machines? A. No.

Q. Are there any others besides those three? A. Not offhand.

20 Q. So far as the rounding machines are concerned, Electro-Technical is not in a competitive business? A. No.

Q. So far as your bonding machines are concerned, they are not in competitive business? A. No.

Q. As I understand, the chief competition between you has to do with varnished cloth, so as to make it resistant to heat and fire and rain, right? A. Yes.

30 Q. And the process consists, as I understand it, of using machines so that the cloth becomes saturated with those chemicals and the machines consist of some kind of bath, rolls that compress the cloth, heat treatment, and things of that sort? A. Yes.

Q. Those machines can be bought on the market, can't they? A. They can't be bought as standard machines; they can be built by machinery manufacturers.

Robert Mezger, for Complainant—Cross.

Q. What is the festooning machine? A. Festooning is a kind of particular machine for festooning. It is used by the wallpaper industry and linoleum industry.

Q. They can be bought in the open market?
A. Yes.

Q. What you do when you buy them in the market is to have your engineers or mechanics or others to get them to work properly? A. Yes. 10

Q. It means you've got to figure out speed and varnish in proper places and amount and things like that to turn out the products you want. A. Yes.

Q. But the machinery to do it, so far as these pressure machines, these rollers are concerned, and the bath to the material that goes into the machines, and the treatment, that has been known by great many people for many years? A. Yes. 20

The Court: I am wondering about the machines that you have bought from time to time, some outside parts like the three that came from England, or that you have designed by machinery builders; counsel referred to Mr. Van Norde's job as "taking the bugs out"; what I don't understand is this: Has this company, after it has gotten one of these machines on the outside, made changes in them, like, we will say, move a piece of this valve from here to there, or putting a large core around, or making other changes, or is it merely a matter of taking out bugs? 30

The Witness: Making changes in the machine, on the festooning machine, to which counsel referred we built an entire different set-up on the finish. Because the set-up on the machine was not proper. 40

Robert Mezger, for Complainant—Cross.

Furthermore, the sticks that carry the material through the festooning carrier, might lag on the chains perhaps because of conducting heat to the paper, and we had to make a change. It is simple, but we had to work it out.

10

Q. Sometimes you have to adjust your chemical formula? A. Yes.

Q. It might be too heavy? A. Yes.

Q. And you might have to adjust the speed? A. Yes.

Q. And you have to learn the amount of heat to accomplish the purposes you want? A. Yes.

20

Q. If your stick leaves a mark, you find some other thing to use instead of a stick? A. You have to find some other way to handle it, yes.

Q. Isn't it a fact that you have to adjust your machine for nearly every new job you put in it? A. To a degree, more or less.

Q. The extent depends largely on going from an old job to a new job? A. Yes.

Q. And it is work like that that you have used Van Norde for many years? A. Yes.

30

Q. Van Norde has been with your concern some 22 years without one of these restraining contracts? A. Yes.

Q. He had, for the last two years before signing the contract, done the same work as after the contract? A. Yes.

Q. There was a restraining contract that you had some time, that Van Norde had signed, besides this one? A. It is a contract I am not familiar with.

40

Q. Perhaps I can refresh your recollection. That contract was Homan's, and it concerned the chemist, a contract not to use Harvel oil. A. I knew of it. I didn't know anything about it.

Robert Mezger, for Complainant—Cross.

Q. You knew your concern asked the chemist to sign a contract not to use Harvel oil?

The Court: What is that?

Mr. Hays: Harvel oil.

Q. What is Harvel oil? A. It is a trade name given to products that are made from a liquid, it is natural phenol oil. 10

Q. Is that one of the secret processes owned by your concern? A. Yes.

Q. Who would know what employees signed contracts not to use Harvel oil?

Mr. Coursen: Mr. Trelease can answer that.

Mr. Trelease: Irvington Varnish Company was a licensee of the Harvel Corporation with regard to patents held by the Harvel Corporation for the products made from that liquid Mr. Mezger has described. This was a licensing agreement, and it was necessary that all employees having anything to do with that phase of the business, to take contracts from its employers to protect the secrecy of certain phases of that and to turn over any new development that might develop. 20

30

Q. You were telling us about coating paper, referred to in Exhibit C-7, which was an illustration of how this paper got cracked in treatment.

A. When in slitting through a machine, they didn't back-flex the material.

Q. I think you said after many months or years of effort, you were able to turn out material like Exhibit C-8? A. I don't think that is it.

Q. How did you overcome the difficulty? A. We overcame this difficulty by using this method 40

Robert Mezger, for Complainant—Cross.

of slitting. We found that the shear knife was better than having used laminating machines. It took a period of several years to perfect the machine, so that it was successful.

Q. Cracking occurred because the roll was smaller in one case, then you made a large roll?

10 A. No, the slitting machine, we didn't back-flex the material.

Q. Did the size of the roller have anything to do with it? A. No.

Q. Was any change made in the size of the roller? A. No, it does not pass over the roller that we use in the back-flex.

Q. What was done in order to get rid of the cracking, in what way was the machine changed?

20 A. The machine was not changed at all; we used the shear knife; the machine was perfected so as to be economical. It took years.

Q. What was done to perfect it? A. Things that were done, the first place was to design a novel press; the original we got material one-half inch up to 20 inch; the first year the design required our taking the slitting head apart in order to make the shift and accommodate strips of one-half inch to 40 inches.

30 Q. Was there anything novel devised about that change, do you know? A. (No answer.)

The Court: Do you think there was anything patentable about this?

The Witness: We patented the slitting machine.

Q. You patented the machine so that others couldn't use it or do the same? A. The novel parts of the machine, yes.

40 Q. In paragraph 2 of this contract, the 20th of January refers to employees who have confiden-

Robert Mezger, for Complainant—Re-direct.

tial information concerning your business. The knowledge is learned in connection with employment, and matters that are technically trade secrets. You notice paragraph b refers to two things, things called trade secrets? A. Yes.

Q. What is meant by technical trade secrets; what are technical trade secrets, as distinguished from the other? A. The operation and design of some of the machines we use for producing our products. 10

Q. Is that all? A. And the chemical technical trade secrets in the formation of the coating of cambric, and other products we have.

Q. Anything else? A. There are technical trade secrets in some of the materials we use.

The Court: I don't suppose I should be influenced by the idea that this witness state of trade secrets. 20

Mr. Hays: I would like to get on the record my position. Mr. Van Norde might be restrained from trade secrets of any kind. We ought to know what secrets.

The Court: It is purely legal. You don't want to show that the contract consisted of something the parties didn't intend?

Re-direct examination by Mr. Coursen: • 30

Q. Returning to the slitting machine for a moment, it is a fact, is it not, that Mr. Van Norde himself developed the slitting machine, and procured a patent? A. Yes.

Q. And that patent was assigned to Irvington? A. Yes.

Q. Do you know whether or not when Mr. Homan entered the employ of Irvington, did he come through some general field of work, somewhere 40

Robert Mezger, for Complainant—Re-direct.

else? A. He had worked for General Felt. He came from Pittsburgh.

Q. Did Mr. Homan apply for a job at Irvington or did Irvington ask him? A. He wrote a letter applying for a job.

10 Q. Did you hear of any contract that Mr. Homan had with his previous employer that restricted him from working with Irvington? A. He had no contract that I know of.

Q. Electro-Technical makes textilien? A. It is a rubber paper fabrication similar to the textile we make. Textilien is a trademark of Irvington Varnish Company.

Q. The two companies compete? A. Yes.

20 Q. The Electro makes that product, or did before Homan came to work for them? A. Yes, they did. And a former concern prior to his going with Electro; it wasn't a very noticeable competitor.

Q. When Mr. Dale came to Irvington, did he apply for the position or did they seek him out? A. The last time he asked employment, he was let out of Electro-Technical.

Q. Did you hear of any contract he had with his previous employer restricting his employment with Irvington? A. No.

30 Q. You testified on cross examination that one of Mr. Van Norde's functions was to take bugs out of machinery; do you recall that? A. Yes.

Q. Did you refer in that connection to machines that were built for Irvington? A. Machines that were built for Irvington and machines that Irvington built themselves, both.

Q. Was the major part of his function with the company always on the creation and designing and planning of new machinery? A. Yes.

40 Q. Machinery they alone used? A. Yes and built in their own shop.

Robert Mezger, for Complainant—Re-cross.

Q. Did I understand you to say you could go to the machinery manufacturer and have them build a coating tower? A. Yes, you could.

Q. Could they do that unless you told them exactly what you wanted? A. No.

Q. Could they do it without complete specifications from you? A. No. 10

Q. When I refer to you specifically, I mean those you have developed over many years. A. Right.

Q. Is there any coating tower on the market similar to the towers used by Irvington? A. Yes, our competitors have similar towers.

Q. As I understand your testimony, Irvington, over many years, has developed refinements to these towers and made additions to them, correct? A. Correct. 20

Q. And designed new parts for them? A. Correct.

Re-cross examination by Mr. Hays:

Q. How do you know about the towers that Electro has today? A. I don't know.

Q. Do you know how these are made? A. I have heard from general description.

Q. Do you know if any have been added, refinements, in the last few years? A. I don't know. 30

Q. When you say in order to have these towers built, you have to have specifications of size, etc.? A. Yes.

Q. You can tell people who make the towers what kind of work? A. Yes.

Q. And they will build the towers? A. Yes.

Q. You were asked if Homan sought employment or you sought him out, and you said he sought you out? A. Yes. 40

Peter Van Norde, Defendant—Direct.

Q. Do you know if Homan sought out employment with Acme? A. No.

Q. Or they sought him? A. No.

Q. There is nothing to indicate they enticed him? A. No.

10 Q. The same is true of Van Norde; do you know if Electro sought to entice him? A. I don't know.

Q. His might be the same situation as when you take men from other concerns?

Mr. Coursen: I object.

Mr. Hays: I withdraw it.

DEFENDANT'S CASE.

20

PETER VAN NORDE, being duly sworn in his own behalf, testified as follows:

Direct examination by Mr. Hays:

Q. Where do you reside? A. What?

Q. Where do you reside? A. Summit, New Jersey.

Q. Where were you born? A. In Holland.

30 Q. When did you come to this country? A. In 1915.

Q. How old were you at the time? A. Nineteen.

Q. What was your first work when you came over here? A. The Paterson Parchment Paper Company, as a maintenance man.

Q. What work did you do before you came to this country? A. I worked in a machine shop and went to school night to take up drafting.

40 Q. How long were you with this company? A. The Paterson Parchment Paper Company?

Peter Van Norde, Defendant—Direct.

Q. How long were you with that company? A. For a period of three or four months.

Q. Did you learn something about paper? A. Not particularly about paper.

Q. What was that work? A. Maintaining equipment.

Q. After that, what work did you do? A. The Cook Locomotive Works in Paterson. 10

Q. What work did you do there? A. A machinist.

Q. How long were you a machinist there? A. About six months, I would say.

Q. Doing manual work as a machinist? A. Manual work.

Q. After that? A. I worked at Hyatt Roller Bearing Company—pardon me, went to the Standard Bleachery in Wallington. 20

Q. Doing what kind of work? A. Maintenance work.

Q. What do you do, when you do maintenance work? A. General maintenance work, fixing break-downs on machines.

Q. How long were you with them? A. Probably six months.

Q. After that? A. I went to the Hyatt Roller Bearing Company.

Q. You were with them how long? A. For two years. 30

Q. What did you do there? A. I was a tool maker.

The Court: A tool maker?

The Witness: Yes.

Q. When did you leave them? A. In 1917.

Q. What did you do after that? A. I went to the Crucible Steel Company. 40

Peter Van Norde, Defendant—Direct.

Q. What did you do there? A. I was also a tool maker. The first job was to lay out work from blueprints of torpedo tubes.

Q. How long were you with that concern? A. A year.

10 Q. Then what did you do? A. Then I went with the Irvington.

Q. You went with that company equipped with all the knowledge and experience of your life? A. Yes.

Q. That was in 1918? A. In 1918.

Q. What work did you do for them in those days? A. Maintenance work.

20 Q. Will you tell us your experience, up to 1938. A. The first three years I was employed with the Irvington Varnish and Insulator Company, I was under supervision of Mr. Schaffe; he was the machine shop foreman. He happened to be a man who drank very heavily, and most of the time I had to take the job over in a supervisory capacity due to his drinking, and he was finally dismissed from the company. And then I was given the job of foreman of the machine shop.

Q. When was that? A. In 1922.

Q. Then your first promotion was to the job of foreman? A. Yes.

30 Q. Did you marry after you came over here? A. Yes.

Q. Are you married today? A. Yes.

Q. What does your family consist of? A. I have a son 22 years old, who is a lieutenant in the Navy, and a daughter who is a private secretary.

40 Q. Coming back to the chart, when you became foreman, how long before you got a further advance on that job? A. Not until 1938. During that period, there was a Mr. Young who was plant

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manager, and as I was introduced to the outside trade, the word "master mechanic" was used. I didn't apply this title myself; I was given it by Mr. Young.

Q. Who was Mr. Young? A. He was the general manager.

Q. What year did he give you that title? A. 10
I would say around 1924 or 1925.

Q. You held that up to 1938? A. Right.

Q. Can you tell us what the title of master mechanic means in your trade? A. It means a man that has better knowledge than the average mechanic, of any piece of machinery. A master mechanic should be a man who can go in any factory and give his judgment on a piece of machinery; see if it is working right, or in need of repair.

Q. It is a badge of the craft, not of the professional man? A. Of the craft. 20

Q. An engineer is a professional man? A. Yes.

Q. The other is a craftsman? A. Yes.

Q. In 1938, your title was changed to what? A. Plant superintendent.

Q. In 1938, as plant superintendent, did you have any superiors in the company, were you subordinate to any official? A. Mr. Mezger.

Q. What was his work? A. He was plant manager. 30

Q. Was he the only man whose orders you were to follow? A. Yes.

Q. What was your work; describe your position as plant superintendent; tell us what your work was. A. I was in charge of all maintenance men, such as mechanics, carpenters, tool makers, and laborers.

Q. How many men would you say that was? A. About 25. Between 25 and 30 men. I also had charge of building maintenance. 40

Peter Van Norde, Defendant—Direct.

Q. What is that? A. Building maintenance. I was consulted in the buying of new equipment and used equipment. It was requested that I set up an engineering department. I used to do the drafting myself and the job got to be too much and it was necessary to get a man to do the drafting, and that ultimately set up an engineering department.

10

Q. Did you have charge of the engineering department at that time? A. Yes, it consisted of only one man at the time, a draftsman. As time passed on, then Mr. Schilling was hired as an assistant to me, and later on he was made plant maintenance engineer.

Q. That was the work you were doing at the time you signed the contract in controversy here?

20

A. Yes.

Q. Did you ever ask to have the character of your work changed? A. No.

Q. It was changed from time to time, wasn't it? A. Yes.

Q. I show you exhibit D-1 and ask you to look at that and tell me if about that time there was a change in your work, about January, 1942? A. That is right.

Q. Was that change indicated by exhibit D-2 (indicating), with the schedule of various employees? A. That is correct.

30

Q. Will you tell us what change was made in the early part of 1943 in your job? A. I was relieved of the responsibility of maintenance work. It was felt that Mr. Schilling, having been with me for a period of almost two years, was capable of taking care of maintenance. I was relieved of that particular job and was put in charge of the engineering department.

40

Peter Van Norde, Defendant—Direct.

Q. You had, prior to 1943, an assistant named Mr. Schilling? A. Right.

Q. And, as appears from this plan, he was, in 1943, taken out of the jurisdiction of you and put in charge of the maintenance department? A. Yes.

Q. And having been taken out of your jurisdiction, and put in the maintenance department, he had in there garage, machine shop, construction craft, electrician, pipe fitters and power? A. Yes.

Q. Did they formerly come under your jurisdiction? A. Right.

Q. What other changes were made? A. My superior was no long Mr. Mezger, it was Mr. Petersen.

Q. Where did Mr. Petersen come from? A. He was also an engineer in the engineering department working directly with me.

Q. Had he been under your supervision prior to this? A. No, we were on equal terms.

Q. He became your superior as factory manager? A. Yes.

Q. You still had two plant engineers, J. P. Wood and A. Nichols? A. J. P. Wood was an electric engineer and Nichols was a mechanical engineer.

Q. They were still under your jurisdiction? A. Yes.

Q. There came a time in 1944, when you received notice of the new change? A. Yes.

The Court: What was Mr. Petersen's title, plant manager?

Mr. Hays: Factory manager.

Q. Did you receive a notice in April, 1944, as per this exhibit D-4 (indicating)? A. Right.

Q. Had you any talk prior to getting that notice, about that notice? A. No.

Peter Van Norde, Defendant—Direct.

Q. I think Mr. Gloss testified that only a few days before this, he had a conversation with you about this notice? A. I was shown the proof of the bulletin.

Q. By whom? A. Mr. Gloss.

Q. What was your conversation with Mr. Gloss?

10 A. After I was given this to read, after reading the bulletin, it was too much; it hit me pretty hard. I made him understand if that was the way the management wanted it to be—

Q. Tell us what was said. A. "If that is the way the management wants it to be, there is nothing I could do." He stated then it was the way it was going to be. There were no changes to be made.

20 Q. Under this proposed plan of April 24, 1944, were you to lose the two engineers who were under your supervision, Mr. Wood and Nichols?

A. Yes, I was to lose Wood and Nichols.

Q. And according to this, you were to be a staff employee? A. Yes, I was supposed to be a staff employee.

Q. Referring to Mr. Brinkman, who was he?

A. A new man brought in as a plant engineer.

30 Q. Did you have any talk as to what your duties would be under this new plan? A. I did talk with Mr. Mezger on that.

Q. What discussion did you have? A. Mr. Mezger explained to me that my duties would be a lot easier now that the maintenance department would be taken away from me, and my job would be strictly as a consultant engineer.

The Court: The maintenance job had been taken away the year previous?

The Witness: Yes, but we were still doing the paper work.

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Q. What did you say? A. I brought up the subject about the raise in salary.

Mr. Coursen: What?

The Witness: I brought up the subject about the raise of salary, and I was told that was out of the question. I also took up the question of what my new job would be and he explained it would be consultant engineer and I still would have to be in the plant to take care of any machinery that would be like you mentioned before, "take the bugs out of the equipment", and assist in buying new equipment.

10

Q. What? A. And assist in buying new equipment.

Q. Were you to have men under your jurisdiction? A. No, I would be alone.

20

Q. You would be alone? A. Yes.

Q. Did you have any further discussion with anybody about it? A. No.

Q. You did have—, did you have any discussion with Mr. Gloss, except that one occasion you spoke of? A. That was all.

Q. Did you then write your letter of resignation? A. Yes.

Q. Referring to exhibit C-9 (indicating)? A. Yes.

30

Q. Tell us what work you did during the period of your employment in connection with machines, that brought you in close contact with secret processes of the Irvington— I withdraw that. Did you have any talks with either Mr. Mezger or Gloss what you were going to do after you left the concern? A. Not at the time I was shown the bulletin. Any discussion we had about the bulletin I didn't discuss what my intentions were.

40

Peter Van Norde, Defendant—Direct.

Q. Did you, at a later time, discuss it? A. At a later time I did.

Q. When was that? A. Two weeks later, about the middle of the month.

Q. With whom? A. Mr. Mezger.

10 Q. What was the substance of it? A. I explained to Mr. Mezger that there was a possibility of my going with Kolb Sheet Metal Works, working on a commission basis, and, as explained before, I learned about his brother's death and I thought at the time it looked good and thought that was where I was going.

Q. Were Kolbs old friends of yours? A. The Irvington did business with Kolb Sheet Metal Works and I met Kolb through Irvington.

20 Q. When you mentioned that to Mr. Mezger, were you talking truthfully and in good faith? A. Yes.

Q. You did have that in mind? A. I did have that in mind.

Q. Did you have any further talk with him? Either him or the other man? A. No.

30 Q. In connection with the Electro-Technical Products, Inc.—what happened to the Kolb proposition? You didn't go into the Kolb company? A. No, I didn't go there. After thinking it over, I felt that I didn't believe the job was secure. What I was looking for was security in position. I felt that the position was on a commission basis, and therefore I would be on my own. I didn't take it to be too good at the time.

Q. Had you, at any time before you left Irvington, approached the Electro-Technical Products? A. No.

Q. You went to them and ask for a job after you quit Irvington, did you not? A. That is right.

40 Q. During the time you were in Irvington, so

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far as the machinery was concerned, what was the character of your work? A. The character of my work—lately or do you want it when I started?

Q. Generally, both times. A. They have been in various positions. At one time, they had a bleachery there, to bleach their own cloth, nothing but a lot of old bleachery machinery. That business was done away with and a coil-winding department was set up. I did a lot of work on coil-winding machines. Some improvements were made, mostly maintenance, and that was done in our own machine shop. 10

Q. What is maintenance? A. When there is a break-down of any piece of equipment, a piece of equipment that goes out of production.

Q. And you had a machine shop that you could replace parts? A. Yes, to take care of emergencies. 20

Q. And you had charge of that? A. Yes. I designed equipment, made additions to the equipment already installed, the coating machines,—of course, the material has varied over the number of years. The coating process is varied and it needed additional brackets or additional rolls to facilitate these changes.

Q. You added rolls? A. Corrected by adding parts. 30

Q. Were there any new devices? A. It probably could be called new device.

Q. Like what? A. New brackets, new drives; that would cover the coating machine.

Q. You don't think they were patentable? A. Not on the cutting machines. I don't think anything was patentable on the coating machines.

Mr. Hays: Can we agree that the coating machine is the real issue between us? 40

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Mr. Coursen: I would hesitate before making that concession.

Q. What kind of machines did you obtain patents on? A. I believe there was a patent on the one machine, but Mr. Mezger said there wasn't.

10 Q. Coming back to the coating machine. Those are the machines where the cloth was varnished? A. Yes.

Q. In order to make it water-proof or rain-proof, or something of that kind, all machines that did that coating, there were no new inventions since you were with the Irvington Company? A. Not that I know of.

The Court: Are the towers part of the coating machines?

20 The Witness: Yes.

Q. What kind of machinery is that, what does it consist of? A. It is a steel tower,—if I may go back in the history. First they were made out of hollow tile, and it was found that they were a fire trap and the hollow tile was eliminated and steel towers were built.

30 Q. How are they built? A. Some as high as 35 feet and some as high as 40 feet, and are 9 by 5 feet, and I know places where they are 60 feet high. They have a series of rolls inside to get the cloth into a bath of varnish.

Q. There are rolls that get the cloth into the bath of varnish? A. Yes, the rolls bring it to the top of the tower about 30 feet, and there is a roll at the top of the tower and it goes over and down and takes another dip. Some cases, it only takes one dip.

40 Q. It is subjected to heat treatment? A. As it goes up and down.

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The Court: That dries it?

The Witness: Yes.

Q. Are there towers in the Electro-Technical establishment? A. Yes.

Q. Are they substantially the same? A. In principle, they are identically the same. 10

Q. Is there anything unique about them there at Irvington? A. Not at all.

Q. They are the same in size? A. They are 35 feet and the same width, and I think a little bit longer.

Q. In addition to that, what other processes are necessary or usable in connection with the putting of this varnish on cloth or paper? A. Of course, after it is coated, it is necessary to slit it into tape and some are set out in rolls and others are slitted into tape. 20

Q. And that requires cutting? A. A slitting machine.

Q. Some discussion was had about exhibits C-7 and C-8 by Mr. Mezger, and the time exhibit C-7 cracked and after a long time a method was prescribed to bring it out as exhibit C-8, perfectly smooth? A. We are going away from varnished cloth.

Q. Do you know what was done in order to stop the cracking? A. Of course, there was the Cameron machine that— 30

The Court: What machine?

The Witness: Cameron machine. It is located in Brooklyn. One machine is for heavy boards; it takes large rolls, and that I think would take care of it.

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Q. What was done to bring about a paper that cracks on one occasion and was smooth on another, a cutting machine? A. The crack was on account of not having a straight edge; the cutter had to be changed. It was changed on account of the edge.

10 Q. What was done to stop the cracking? A. The cracking has a lot to do with the chemical nature of the cloth. There are some cloths that are softer and bend considerably, and others that will make it flexible, and you can take it up and wind it up on a 6 inch mandrel without trouble. Taking the same, you can bend and wind it up on the same mandrel, and you will crack it.

Q. Has the size of the roller anything to do with it? A. Yes, the larger the roll, the less chance of cracking.

20 Q. When you were with the complainant, there were various things tried until it was improved? A. Yes.

Q. Do you know anything about the chemical formula and the varnishing of the material? A. No, I never made it my business to have anything to do with the chemicals. I was too busy with the mechanical end.

30 Q. Are you aware of any trade secret unique belonging to the Irvington? A. No, I didn't see anything unique that I would have knowledge of. I believe that any operation by bringing in an engineer, and explaining the actual machine, the operation to do the job, that he would be able to sit down and design it.

Q. A man of your learning and experience? A. A man with my learning and experience.

Q. What you know today is from your learning and experience? A. Yes.

40 Q. Have you anything of your own knowledge that has to do with any secret process? A. I know of none.

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The Court: His learning and experience, perhaps in his own mind, includes knowledge of what I will assume is secret process, so therefore he can design machines that will produce that process. Would his answer be the same if his experience had been with the General Electric or some other concern other than the complainant? 10

Mr. Hays: I can ask him that as an expert.

Q. I am asking your opinion, if you had experience with some other concern, say with the General Electric, would you today have substantially the same knowledge of the business and of the manner used? A. Not of the same machines, but I would have the same knowledge. 20

The Court: To design the same machines?

The Witness: I believe I could.

Q. Is there any mystery about the Irvington machine, that you took the bugs out of? A. It is a matter of common sense.

Q. Would any man with your knowledge of those machines and your experience, be able to do the same work as you do in Irvington? A. Yes, he would. 30

Q. Have you any knowledge of putting a cover on roofing paper or any other kind of paper used for different purposes other than insulation? A. No, I never did.

Q. Is there a big business along those lines? A. Yes, I think there is.

Q. Is it your opinion, if your experience had been in coating in other lines, that you could serve satisfactorily in this field? A. I believe I could. 40

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Q. As an engineer in this field? A. Yes.

Q. You went to the Electro-Technical for a time before this injunction was issued? A. Yes.

Q. How long were you there? A. From the 15th of June to October 3rd.

10 Q. What work did you do while you were with them? A. I made considerable changes in the steam layout of the plant. It was very inefficient, and the plant is being heated with steam coils along the walls, and I took them out and put in a high-pressure—

Mr. Coursen: Is he now referring now to just ordinary heating of the building?

The Witness: Heating of the building.

20 Q. What have you done there? A. I made a survey of the plant before I started changing the steam system. I was able to save them considerable coal and had charge of construction of the new office building, the addition to the old office building. And I have had charge of some maintenance work.

Q. Doing what? A. On the frictional calendar, it wasn't properly set up and it couldn't run, and the festooning machine that was not in operating condition, and I got that in condition.

30 Q. That frictional calendar machine, that does not do anything in competition with Irvington? A. No.

Q. What does that do?

The Court: Is that a large drum?

The Witness: The mangle, it finishes the cloth, the same as you finish it with a hot iron; it finishes the cloth for rubber packing; it is called electron.

40

Peter Van Norde, Defendant—Direct.

Q. And what else? A. That was my job in that period.

Q. What about the festooning machine? Did they have a festooning machine? A. Yes, for coating wallpaper.

Q. In order to dry coated wallpaper? A. Yes, it is now so that it will take 36 inch paper. 10

Q. The machinery was all there? A. Yes, but just some bugs.

Q. What did you do to make it go? A. I designed several adjustments, it was a matter of changing.

Q. By arranging things, you made the festooning machine work? A. Yes.

Q. That is all that any man with your knowledge in your business would do? A. That is all.

Q. That is not a secret confined to Irvington? A. No. 20

Q. Can you tell anything that is unique or of special knowledge that applies only to the Irvington business that could be used with the Electro? A. It is entirely different.

HEARING ADJOURNED UNTIL MONDAY, FEBRUARY 26, 1945. 30

Peter Van Norde, Recalled—Direct.

IN CHANCERY OF NEW JERSEY.

10	Between IRVINGTON VARNISH & INSULATOR COMPANY, etc., Complainant, <i>and</i> PETER VAN NORDE, Defendant.
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20 TRANSCRIPT OF SHORTHAND NOTES taken in the above entitled cause at Chancery Chambers, 1060 Broad Street, Newark, New Jersey, on February 26, 1945, before His Honor, JOHN O. BIGELOW, Vice Chancellor.

Appearances:

MR. CHARLES C. TRELEASE (MR. A. PRESTON COURSEN, of the New York Bar), for Complainant.

30 MR. GEORGE R. SOMMER (MR. ARTHUR GARFIELD HAYS and MR. SEYMOUR HEILBRON, both of the New York Bar), for Defendant.

PETER VAN NORDE, being recalled in his own behalf, testified as follows:

Direct examination by Mr. Hays:

40 Q. Mr. Van Norde, did you, on occasions, go to the plants of other people to look over their machines? A. Yes, I did.

Peter Van Norde, Recalled—Direct.

Q. Where did you go? I went to the General Electric.

Q. About when was that? A. I would say that was in 1942, probably.

Q. Did you anywhere else? A. To the New Jersey Wood Finishing Company.

Q. Were you permitted freely to inspect their machines? A. I was shown all through their plant. 10

Q. What kind of machines were they? A. The New Jersey Wood Finishing Company, they were practically the same machines as the Irvington, coating towers, slitting machines, and a dusting machine.

Q. Were there any secret processes about these machines as such?

Mr. Coursen: I object to testimony which someone else had. 20

The Court: I will permit it.

A. I assisted the New Jersey Wood Finishing Company to build their dusting machines.

Q. Was that with the consent of Irvington Varnish Company? A. Yes.

Q. When was that? A. In 1941, probably 1939, I am not sure about the date.

Q. As to other people who saw your machines, were there any men in Irvington who saw the machines in operation, who were employed at the plant? A. Only operations? 30

Q. Yes. A. Yes, everybody had a right to go in the department and look at the machines.

Q. Could you observe what the machines were and the type of tower by looking at them? A. There was nothing locked up that you couldn't get to. 40

Peter Van Norde, Recalled—Direct.

Q. Did others work with you in building these machines? A. Yes.

Q. Tell us who they were? A. Very competent men; Mr. Jeske, the machine shop foreman; he worked on my plans and grew up in the engineering department.

10 Q. Did he have to sign a contract with any restraint? A. As far as I have known, he hasn't.

Mr. Hays: Will it be conceded he hasn't any kind of contract?

Mr. Coursen: I haven't the slightest idea.

The Court: This is the machine shop foreman employed by Irvington?

20 Mr. Coursen: I am informed that Mr. Jeske is the working foreman and it is not the practice of the company to ask employees in that category to sign contracts.

The Court: I gather there is no contract with him containing a restraint.

Q. Were there others besides Jeske who saw these machines in operation? A. Of course there is more. There is an electrician.

Q. Who operated these machines, other workmen? A. Other workmen.

30 Q. And about how many would operate each machine? A. It depends of course, on the type of the machine.

Q. What was the range in these tower machines? A. The tower machines, one man to four machines.

Q. Would they see all the equipment on the machine? A. Sure.

40 Q. And could the help who built these tower machines? A. There were outside contracts on the iron work. In other words, assembly draw-

Peter Van Norde, Recalled—Direct.

ings were sent to New Jersey Iron Works in Passaic to build the steel towers and also assembly drawings sent to the pipe foundry, outside contractors could build the coils, and there were drawings to the machine company in Paterson to build the rolls.

Q. When these men built different parts of the machinery, did they have drawings? A. They were furnished with drawings. 10

Q. What were their names? A. The Iron Works put on the machines—

Q. Who was that? A. The New Jersey Iron Works.

Q. And on occasions, were people invited to the plant to look at the factory? A. Yes, and there were sometimes people who came in to look at the equipment. 20

Q. They came in to build new machines and put in new equipment? A. Yes, contractors who looked over the machines.

Q. Do you know the names of the contractors who came? A. Kleister Sheet Metal Company, Kolb Sheet Metal Company. As I say, the New Jersey Iron.

Q. Did Waldron Company come in? A. The Waldron Company of New Brunswick.

Q. The Ross Machine Company? A. Yes. 30

Q. The Jones Mansfield Company? A. Yes.

Q. On occasions, were competitors shown these machines? A. I have known General Electric have been in the plant.

Q. General Electric went through the plant? A. Yes, on visits.

Q. Was anyone else? A. I believe the New Jersey Wood has been through the plant.

Q. They are both competitors of Irvington? A. Yes. 40

Peter Van Norde, Recalled—Direct.

Q. There was a time, was there not, when Irvington bought a new horizontal machine there?

A. Yes.

10 Q. Did you install that? A. I was in charge, not in charge of the installation; the men were furnished by the Waldron Machine Company, and I was put in charge over the men that were to help Waldron assemble the machine.

Q. That machine was bought from whom? A. From Waldron Company.

Q. How did it compare with the other tower? A. Much more exacting and ten times as safe.

Q. What do you have to say as to the size of the tower? A. As the old tower.

Q. You put it in the new building? A. Put it in the new building.

20 Q. When was this? A. Started building in 1941 and worked until the end of 1942 on the machine, the end of 1943.

30 Q. What did you do in connection with the installation of this machine? A. I was put in full charge representing the company, and any problems that would come up, such as labor troubles, iron workers, electricians, pipe fitters,—it was my job to see that services went into the building so that these various trades could work. Then we made the piping layout, power and light, heat, and tanks for storage, and that is about all.

Q. Your general job was that of plant superintendent at that time? A. No, I was the chief engineer.

Q. Did you deal with the contractors? A. Yes.

Q. How long did that particular job take? A. It took until—

Q. How many months? A. It took almost a good part of a year.

Peter Van Norde, Recalled—Direct.

Q. You had to do with the water pipes and laying out of electrical lines, didn't you? A. Right.

Q. Was there another period when you helped, or had supervision of the building of towers in Passaic? A. Yes.

Q. When was that? A. That was in the beginning of 1942. 10

Q. That was when you were plant superintendent, wasn't it? A. I am kind of confused about dates.

Q. Perhaps I can refresh your recollection: It was in January, 1943, that the first reorganization took place. Before that, you were plant superintendent. Was it before or after January, 1943, you did this work in Passaic? A. It was after.

Q. You were still chief engineer? A. Chief engineer. 20

Q. What work did you do in Passaic? A. I was representing the company as chief engineer in charge of the construction of the building.

The Court: Was this a factory of the complainant, of the Irvington Varnish Company?

The Witness: Yes.

Q. You established a branch in Passaic? A. Yes, it was in addition to the old branch. 30

Q. How long did that job take in Passaic? A. It took, I would say, all of 1943.

Q. What was your work there? A. I had charge of construction of the building.

Q. The construction of the building; you mean dealing with the contractors who put up the building? A. Dealing with the contractors who put up the building.

Q. Did you place the machinery? A. I furnished the drawings to the various contractors 40

Peter Van Norde, Recalled—Direct.

for building the machinery. I was in very close contact with them to see that the drawings were followed.

Q. Did you have anything to do with the laying out of the water pipes? A. The water lines, the power lines, and the steam.

10 Q. What kind of machines were built over there? A. Coating towers.

Q. Was there anything unique or secret about it? A. No, we followed the old machine. I don't know of anything special about the machine. I knew the drive has been changed. It has been changed, but it is of no importance.

The Court: The what?

The Witness: The drive.

20 Q. What is the drive? A. The general drive, which drives the individual machine as a coating tower.

Q. What was the change? A. It was made variable.

Q. Was that something new? and unique? A. It was nothing unique, just that it would eliminate sprockets on the machine to change the speed.

30 Q. Would that be after the building of the horizontal machine you spoke about? A. After the horizontal machine was installed.

Q. Explain what you mean by the horizontal machine. A. The horizontal machine, that collects a piece of cambric edgewise. This is the width of the cloth (indicating with hands) and this is the length. It is carried on grips in the machine in this manner (indicating) and is pulled through the machine, and comes in and goes out the same end, and wound up.

40 Q. This is the machine that is bought from the Waldron Company? A. Yes.

Peter Van Norde, Recalled—Direct.

Q. And the tower was horizontal? A. The tower is vertical.

Q. And this machine is horizontal. A. Yes.

Q. How long was this machine? A. About 115 feet.

Q. How long are the tower machines? A. 35 or 40 feet, varying in sizes. 10

Q. In drying the cloth in the tower, it is vertically and in this machine they go horizontally? A. Yes.

Q. That is the chief difference except this machine is not Irvington's? A. Yes.

Q. After that went in, did you have to work on it and take the bugs out, so that it would work?

A. In making changes, when any machine is put up, after every piece is assembled, it is required to go over the entire machine to level and plumb it; you line it up again and there are parts that will go out of line in assembling a machine. In this machine, we had to go over to see that everything was in line. 20

Q. All the time you were at Irvington, in connection with these machines for recoating fabrics, did you know of any secret or unique process that was used that was not patented? A. I don't know, I know of—not secret process; there is such a thing as a secret process but it is not the mechanical end. 30

Q. I am talking about machines. A. I don't know of any secret on machinery that I know of.

Q. Or a unique process? A. No, I don't know anything about any unique process.

Q. You never worked in the chemical end? A. No.

Q. Do you know about anything unique in the mechanical end? A. No. 40

Peter Van Norde, Recalled—Cross.

Q. As to the things patented, were they connected with these recoating machines? A. No.

Cross examination by Mr. Coursen:

Q. Has the horizontal machine been used for the same purpose as the coating tower is used for?
10 A. Yes.

Q. You mean the very same operations are performed? A. The same purpose, to insulate the cloth, varnish the cloth.

Q. Sometimes you use a vertical machine and sometimes a horizontal? A. Yes.

Q. For the same method? A. I believe so, on cable cloth.

Q. The horizontal machine is used for a particular result and not connected with the vertical machine? A. I don't know, it is the same to me.
20

Q. You gave a list of 7 or 8 machine manufacturers and you said that your plans and drawings had been referred to them? A. Yes.

Q. That was for the purpose to perform a job for Irvington? A. Yes, to build machines.

Q. You didn't hand these plans and specifications for the machinery around to the public? A. No, no need for that.

Q. You testified on direct examination that on an occasion a representative of the General Electrical saw the machines? A. I remember they were there, but I don't know the dates.
30

Q. About when was it? A. I couldn't say any definite date about that.

Q. Do you remember the man's names from the General Electric Company? A. No, I don't.

Q. Did you take him around the plant? A. No, I didn't.

Q. Did you go around with him in a party?
40 A. No, I didn't go around with him.

Peter Van Norde, Recalled—Cross.

Q. How do you know the machinery and plant were shown him? A. It was told me.

Q. You haven't any personal knowledge of that fact? A. Did not know the people.

Q. Did you see them? A. I saw them in the plant.

Q. Did you see them on this occasion making an inspection? A. I didn't say general inspection, I didn't know for what particular reason. I know there have been General Electric people in the plant. 10

Q. That is what you meant on direct examination? A. Yes.

Q. Does the same thing apply to the visit of the New Jersey Wood Finishing Company? A. I know the Wood Finishing people personally.

Q. When was that tour of the plant made? A. Not only once; it has been done several times. 20

Q. When? A. I think I know it was in connection with the dusting machine. It might have been in 1942 or 1943, I am not sure.

Q. What was the reason for this visit? A. Well, both companies do cable coating; the first machine designed by Mr. Homan, built by Kolb Sheet Metal Works, and we used to dust a lot of cloth for the New Jersey Wood Finishing Company, and we couldn't handle their business any more and New Jersey Wood Finishing Company had to build their own. 30

Q. To do their own dusting for their own products? A. Yes.

Q. And as they couldn't get Irvington to do it, they asked Irvington to help them show them? A. Yes.

Q. And that concern had been an important customer of Irvington? A. Customer and competitor, both. 40

Peter Van Norde, Recalled—Cross.

Q. And Irvington could no longer do the work for them and that was the purpose of the visit?

A. Yes.

Q. You left the employ of Irvington the latter part of May, 1944? A. I left the first of June.

10 Q. You knew Mr. Homan, of course? A. I knew him for years.

Q. Didn't you work with him in Irvington for years? A. Yes.

Q. Finally, he went over to Electro and took a job? A. I think he did.

Q. Did you have a talk with Mr. Homan before the first of June, 1944? A. No.

Q. What did happen; you considered first the job with Kolb Sheet Metal Works? A. Yes.

20 Q. Was that still in your mind when you left Irvington the first of June? A. It was. I really didn't know what I was going to do at the time.

Q. Mr. Hansel, who designed the dusting machine, is an employee of Irvington and was, at the time he worked on the machine, is that true? A. Yes.

Q. How did you get in touch with the Electro, did you go there and seek the job? A. I went there.

30 Q. When did you go there first? A. I would say, about probably the first week in June.

Q. Who did you see over there? A. Mr. Homan.

Q. That was the first time you went with Electro? A. For a job.

Q. Did you have any other visit? A. I had contact with Mr. Homan, we were friends.

Q. You were talking about friendship with Homan? A. Yes.

40 Q. That was the first time you had any contact with Electro when you went there on the first of June? A. At 1132 Center Street, Nutley.

Peter Van Norde, Recalled—Cross.

Q. You went to Nutley to talk with Mr. Homan?

A. Yes.

Q. Did he suggest to you that you come to see him or did you go voluntarily on your own? A. I went there voluntarily.

Q. Had you been at that plant before? A. I had been in the plant before.

10

Q. When was that? A. Oh, I don't know. In the plant, I have been there——

Q. Do you remember when? A. I would say probably a year ago, or something like that.

Q. Before you left Irvington? A. Way before I left Irvington.

Q. What was the occasion when you went there? A. Personally to talk with Homan. Nothing pertaining to business.

Q. The only time you went there, you went there to have a personal chat with Homan? A. Right.

20

Q. And this occurred in the laboratory? A. Right.

Q. Was there more than one occasion when you went there? A. Just the one occasion when I went there.

Q. This time, that was about a year before you left Irvington? A. I would say about that.

Q. At that time you just talked over personal matters? A. Yes.

30

Q. Did you enter into a written agreement with Electro? A. No.

Q. What is your contract, how much are you being paid? A. I have no contract with Electro.

Q. When you left Irvington, you went to work for Electro? A. Yes.

Q. Did you make a contract at that time? A. I made no contract.

40

Peter Van Norde, Recalled—Cross.

Q. What was your understanding? A. My understanding was I was to be plant engineer.

Q. Who told you that? A. Mr. Rowe.

Q. Did he tell you that? A. Yes.

Q. Did he tell you how much you were to be paid? A. \$400 a month.

10 Q. Did he tell you how long you were to be employed? A. No, there was no mention of it.

Q. You went to work there at the rate of \$400 a month, and no written contract? A. Yes.

Q. Mr. Van Norde, it was an important part of your job at Irvington to design and create new machinery? A. Yes, it was.

20 Q. And you did this type of work consistently over the last several years before you left? A. I wouldn't say consistently, I did it from time to time, whenever it was required.

Q. And that was part of your job? A. It was part of my job.

Q. Irvington has been in business for a great many years, you know that? A. Yes.

Q. You don't want to create the impression that the Irvington coating towers are the same as they were 15 years ago? A. In principle, they are exactly the same.

30 Q. I am not talking about principle; I realize they are in principle, and have been over a good period of years, and there have been improvements and additions made, and developments made to these towers. A. I would say, naturally there are things that have come out, controllers that have been an improvement.

Q. There have been improvements by experimentation? A. Yes.

Q. And that same is true for all machinery in this plant? A. Yes, to keep up with the times.

Peter Van Norde, Recalled—Cross.

Q. I believe you said that the Cameron machine can be used for slitting heavy material. A. Cameron themselves built a machine.

Q. ? A. That depends on the type of cut.

Q. You found at Irvington that the Cameron machine as such was not doing a satisfactory job? 10

A. Yes.

Q. And you made improvements on it? A. Not on the cutting, the cutting is no improvement. The cutting is very old, shearing cutting is an old method of cutting paper. There is nothing new or unique about that.

Q. I show you exhibit C-7 which you will notice has cracks. A. Yes.

Q. That is apt to happen with the use of the Cameron machine, as such? A. Yes. 20

Q. And you worked, did you not, to develop something that would eliminate that difficulty?

A. No, the cracking is back-flexing and it depends on the operator, how the material is handled. A good operator will not crack the board.

Q. Did Irvington have any difficulty when operating the Cameron machine? A. Yes, with the type that was at Irvington.

Q. That was a standard Cameron machine before you improved it? A. The standard machine, but not for boards. The machine at Irvington is not suited for boards. They do make a machine that is suitable for boards. 30

Q. How long have they been making that machine? A. I have no knowledge of that. They also make a shear cutting machine.

Q. Didn't I understand you to say the other day that the difficulty of flexing and slitting would be eliminated by the use of larger rolls? A. That would eliminate; that is one way of doing it. 40

Peter Van Norde, Recalled—Cross.

Q. How large a roll would you have to use on the Cameron machine to solve that difficulty? A. That board shouldn't crack over an 8 inch roll, over an 8 inch roll.

Q. At Irvington, if it shouldn't, it does? A. If it does, then there is something wrong.

10 Q. Were you at Irvington when they adopted, or attempted to use, this machine they did have this difficulty of flexing? A. On the Irvington Cameron machine, you would have it.

Q. You had to do work on it to correct that difficulty? A. Not that difficulty. I built the spreaders.

The Court: Let him answer.

20 Q. I want to know what you did to solve the difficulty of this flexing? A. (No answer.)

Q. You know that Irvington has no difficulty of that sort now? A. I don't think so.

Q. You know they have no difficulty with their machine now? A. I didn't think there was.

Q. You know at one time there was, correct? A. Yes, for a very short time.

30 Q. What was done to overcome the difficulty, that is what I want to know. A. The machine was built so that there was no back-flexing on the board.

Q. You designed a machine to eliminate the difficulty? A. Not that difficulty. Naturally, I would design it that way.

Q. If you designed the machine that way, your answer is "Yes"?

Mr. Hays: You mean designed the old machine?

The Court: Let him answer.

40 A. If I designed the machine?

Peter Van Norde, Recalled—Cross.

The Court: May I interrupt? The machine caused cracking, or cracks resulting when the machine was used, and then there came a time when the cracking did not occur. Is that on the same machine as formerly had been cracking?

The Witness: On the same machine. 10

The Court: Had any changes been made in the machine?

The Witness: I will have to go back quite a way now. There might have been some changes made; I don't know if the cracking was the main cause of it. It might be that there was some changes made. We did use a larger mandrel to wind the material up.

The Court: Is that a drum? 20

The Witness: A wooden drum; we were using 6 inches and then we went over to 10 inches, then 14 inches. We found we could save considerable amount of paper, because the first on the 6 inch mandrel were cracking and then the larger mandrel resulted. I don't think there were any changes on the machine for that reason. The machine was built with the idea in mind. We weren't going to back-flex. 30

The Court: Where does this occur?

The Witness: This bar at the opposite point here (indicating with hands) and also winds up the same curve.

The Court: You said no changes were made in the machine but larger mandrels were used?

The Witness: Yes.

The Court: They were not part of the machine? 40

Peter Van Norde, Recalled—Cross.

The Witness: The mandrels could be used in any machine in the plant.

Q. The size of the mandrel is not related to the back-flexing? A. No.

10 Q. You testified the other day that after you had entered the employ of Electro, you did work on the festooning machine; do you recall that?
A. Yes.

20 Q. Just what was that work? What did you do, Mr. Van Norde? A. The Irvington festooning machine has a series of sticks which carry the paper through the machine, and a machine, if I may mention it, built by Mr. Dale; and after the building of this type of machine in Electro, the only time it hadn't run was when Mr. Dale was an employee of Electro. Something had gone wrong, in case the temperature, there were no provisions made for expansion of seams. As a rule these chains would come off the sprockets and cause considerable damage to the material. It was very simple, installing idlers to take up the slack in the machine.

Q. And that is the job that you did to the festooning machine? A. Yes.

30 The Court: You use the name electro, is this machine the electro?

The Witness: There is a machine there at the electro.

The Court: In the complainant's plant?

The Witness: No.

By Mr. Coursen:

40 Q. The festooning machine is nothing more than a drying oven? A. A drying oven.

Peter Van Norde, Recalled—Cross.

Q. Do you know how it got the name of festooning? A. Yes, because the paper was carried in loops.

Q. The paper goes up over rolls and hangs and that is called festooning? A. Yes.

Q. And heat is applied and that is called festooning? A. Yes. 10

Q. You have testified as to the work you did on the festooning machine after you went to the electro? A. Yes.

Q. Had the Irvington Company the same difficulty in perfecting it for drying tubing? A. No.

Q. A festooning machine is used, is it not, for paper or material that is coated on one side? A. Right.

Q. In the electrical insulating division of this business, no material is used which is coated only on one side, is that correct? A. I am not a judge of that. 20

Q. You never heard of cable cloth coated on one side, it is always coated on both sides? A. You couldn't coat cable cloth on one side.

Q. The festooning machine is never used for the electrical insulating product? A. I am not sure about that, maybe the paper is used for electrical purposes, I am not too sure about that.

Q. It is a fact that bottle top material is all coated on one side? A. Yes. 30

Q. And you can't tell us of any type of electrical insulation that is coated on only one side? A. There is a smooth insulation on one side a slot insulation.

Q. What? A. A slot insulation.

Q. What is that? A. Cable which is laminated to a piece of cloth, separated by a cut on one side, to lay in the nature of a gluing machine, to marry the paper to the insulation, that is one operation 40

Peter Van Norde, Recalled—Cross.

where the paper is coated on one side and used as electrical insulation.

Q. Was that a substantial part of the Irvington business there? A. I believe, I don't know how much, it was considerable.

10 Q. Did they produce much of this paper coated on one side used for insulation? A. It kept the machines running full time.

Q. Do you know how much paper of that type they produced? A. No.

Q. Do you know as a matter of fact if they produced any? A. Yes, they produced some.

Q. You have known Mr. Mezger for a long time? A. Yes.

Q. You always found him to be a pretty truthful fellow? A. Yes.

20 Q. You were served with the complaint in this action and also an affidavit when a motion was made for a temporary injunction? A. Yes.

Q. You read the complaint and Mezger's affidavit? A. Yes.

30 Q. Now in the affidavit Mezger said this: "Irvington has through years of endeavor, research, experimentation and practical operation, developed and constructed considerable new and improved machinery and equipment for the carrying out of its particular manufacturing processes, custom built items, not generally known or available to the industry," do you believe that is a fair statement of fact?

Mr. Hays: I object.

The Court: I don't think you should examine him on someone else's affidavit.

Mr. Coursen: I want to know if he agrees with it.

40 The Court: It is too general.

Peter Van Norde, Recalled—Cross.

Mr. Hays: These sheets can be marked for identification.

(Two sheets about which Mr. Hays questioned Mr. Mezger marked Exhibit D-5 for identification.)

By Mr. Coursen: 10

Q. Have you seen this paper D-5 for identification? A. I saw part of the sheet, I saw it all.

Q. As a matter of fact you gave it to your lawyer? A. No, it was given to me.

Q. By whom? A. By Mr. Nichols.

Q. Who is Mr. Nichols? A. He is a former engineer at the Irvington Varnish Company, he worked for me at the time.

Q. When did he give it to you? A. That has been some time ago, I don't know. 20

The Court: After you went with Electro?

The Witness: No, it was before that, something that was in his file, I don't know just what he wanted to use it for. It was returned to me.

By Mr. Coursen:

Q. You gave it to Mr. Nichols to start with? A. Yes. 30

Q. Where did you get it? A. I got it from Nichols.

Q. When? A. Let me see (hesitating).

The Court: While you were with complainant?

The Witness: Yes.

By Mr. Coursen:

Q. Did you ask Nichols for it? A. No, I didn't ask Nichols for it. 40

Peter Van Norde, Recalled—Cross.

Q. How did he happen to give it to you? A. We had a conversation about this chart, because—

Q. When was that? A. I don't know.

The Court: Was Nichols still with the complainant at that time?

10

The Witness: No.

By Mr. Coursen:

Q. What was the occasion of you discussing the employees with Nichols if he was no longer in Irvington? A. Nichols had worked for me for a period of a year and a half and when you get together you naturally talk about your present troubles and present situation.

20 Q. It is your testimony that he had this paper in his file? A. In his possession.

Q. Did you ask him for this paper? A. It was given to me, I didn't asked for it.

Q. He volunteered out of the dark blue skies and gave you it? A. Yes.

Q. You didn't ask for it? A. Right.

Q. You don't know when you got it? A. No.

Q. Have you ever tried to return it to Nichols? A. There was no need.

30 Q. Didn't you turn it over to your lawyer after this suit was started? A. Yes.

Q. Do you know where Nichols got this paper? A. It was a chart that was being made up in our engineering department.

Q. It was a record of the Irvington Company? A. I suppose that was the purpose of it, it was going to be a record but it wasn't done.

Q. Nichols was then an employee of Irvington at the time he gave it? A. It was after.

40 Q. He had left the employ? A. Yes.

Peter Van Norde, Recalled—Cross.

Q. But you were still working there? A. I had left Irvington also.

Q. So you both had left when he gave you the paper? A. Yes.

Q. You are sure you didn't ask for it? A. That is right.

Q. You entered the employment of Irvington back in 1918? A. 1919, to be correct. 10

Q. You had a happy life there up until shortly before you left? A. Yes, I liked it very much at one time, was very satisfied.

Q. You were well satisfied until the time this bulletin was issued on April 24, 1944 which has been marked in evidence as Exhibit D-4? A. Yes.

Q. Up to that time you were happy and enjoyed your life, correct? A. That is correct.

Q. You were in Court the other day when Mr. Gloss testified, were you not? A. Yes. 20

Q. You heard him testify? A. Yes.

Q. Did you hear him say he had a conversation with you before that Exhibit D-4 was issued? A. Yes.

Q. At that time it was in draft form? A. Yes.

Q. Didn't he talk this thing over with you, that is the formation of this bulletin, did he not take it up with you? Did he not ask you your advice on it? A. He asked if I had any comments after I read it and I said "yes, I have comments, this is the way the company wants it, there is nothing I can do about it." I was told definitely that was the way it was to be and there was to be no changes. 30

Q. Why did he show it to you if there were to be no changes in it? A. I can think of no reason why it was shown to me, only one.

Q. What was that? A. Mr. Brinkman who was to be plant engineer was coming in the first of the 40

Peter Van Norde, Recalled—Cross.

month, three days from the date I read the bulletin, I knew then there was to be a change.

Q. If nothing could be done about it what was the purpose of showing you the bulletin?

Mr. Hays: I object, it calls for a conclusion.

10 The Court: Did the gentleman tell you why he showed it to you?

The Witness: He told me there was to be a change. There was to be a change in the company organization and that was the reason I was shown this bulletin.

The Court: I suppose, unless you can bring it out to the contrary, this witness doesn't know any more than I do why it was shown. I can guess.

20 Mr. Coursen: I am interrogating him with this in mind. He said they showed in the draft of this bulletin and he said in final form and that no changes could be made, and it occurred to me why was there any reason showing it to him.

The Court: I think it is perfectly natural. You wouldn't want him to learn it first with the other workmen who read it from the bulletin board, with the other employees.

30 By Mr. Coursen:

Q. I forgot to ask you this: You testified you had gone over to see Mr. Homan at the Electro?

A. Yes.

Q. Was that over a week-end or in the daytime?

A. Over a week-end.

Q. When he happened to be working? A. Yes.

40 Q. On a Sunday? A. I believe on a Saturday afternoon.

Peter Van Norde, Recalled—Cross.

Q. Was the plant closed at that time? A. The plant was closed.

Q. That is the only time you ever went there?
A. Yes.

Q. Altogether Irvington only had about say 25 or 30 competitors in this vicinity? A. I don't know. 10

Q. You know most of them? A. As far as I know, nine.

Q. Irvington has nine or about ten competitors?
A. I believe so.

Q. That is your best information? A. Yes.

Q. You are a highly skilled mechanical engineer? A. I am not a graduate engineer.

Q. I understand you haven't a college degree, you are a highly skilled mechanical engineer. 20

Mr. Hays: I object.

The Court: I will permit it.

The Witness: I would like to believe it.

By Mr. Coursen:

Q. You not only would like to believe it, you do believe it but you proclaim it. A. I proclaim it?

Q. Aren't you a highly skilled mechanical engineer? A. I wouldn't go out as a mechanical engineer. 30

Q. You mean by that you haven't a college degree? A. I haven't.

Q. As far as knowledge is concerned? A. I would say I am a good mechanic.

Q. You claim you are more than a mechanic?
A. Just as I say, I'd like to believe I am. I have no proof I am a mechanical engineer.

Q. You believe you are? A. I believe I can do the job. 40

Peter Van Norde, Recalled—Cross.

Q. You can do a job as good as any high class mechanical engineer? A. I believe I could.

Q. There are hundreds of kinds of plants in this Country today where your talent as a mechanical engineer would be at a premium, isn't that so?

10 Mr. Hays: I object.

The Court: Isn't this material to show someone might get the benefit of his ability? It seems to me important that he can get a good living in other plants and the public can get the benefit.

Mr. Hays: The only objection, the best ability is in the fear in which he is accustomed. It might be that he could get a job, but he has an individual right to use his best talent.

20 The Court: I will permit it.

By Mr. Coursen:

Q. Do you understand the question? A. I don't believe I can go out in any plant and claim to be a mechanical engineer. I don't believe they would believe me.

30 Q. I understand you are not a college degree man, you have had many years of mechanical experience and you believe yourself that you are equal of any good mechanical engineer and you have so testified. I ask you if talent of that sort is not in great demand in this particular time? A. They are.

Q. With all this war industry at this time, there are hundreds of plants that are seeking mechanical men like you.

40 Mr. Hays: I object, it calls for a conclusion.

Peter Van Norde, Recalled—Cross.

The Court: I will permit it.

The Witness: Yes.

By Mr. Coursen:

Q. Did you attempt to get a job after leaving Irvington with anyone but Electro? A. The Kolb Sheet Metal Works. 10

By Mr. Coursen:

Q. That wasn't to your liking because you were to be on a commission basis? A. Yes.

Q. Other than that did you attempt to locate a job with anyone except Electro? A. I went through the Employment Service Bureau and asked if there was any opening. I was told that there was a sales job that they would put me on record on some mechanical contrivance and I could also start as a mechanic. They had no proof of my ability. 20

Q. You just listed your name with the United States Employment Service? A. Yes.

Q. You had to go through that to get a job? A. It wasn't necessary.

Q. You never pursued that at all, did you? A. No.

Q. When it came down early to get a job you went to the Electro? A. That was my next start. 30

The Court: I am wondering if machinery work is so specialized that if you had gone to a machine shop, say the Federal Ship Building Plant or a machine shop where they build printing presses, whether you would feel at home and able to use your knowledge to the fullest extent after a couple of months experience. 40

Peter Van Norde, Recalled—Cross.

The Witness: Getting back into the machine line it would take me anywhere from one or two years, I was out of it twenty-six years and it would take me some time to get it back.

10 The Court: You don't consider your work with complainant as a machine shop in that sense?

The Witness: No.

By Mr. Coursen:

20 Q. In my question I wasn't confining myself to your getting a job as a machinist, I have said you have testified that you believed you were the equivalent of a highly skilled mechanical engineer and there are certainly jobs available and good jobs available to men of advanced rating.

Mr. Hays: I object to that.

The Court: I would like to know the situation.

Mr. Hayes: Without a degree it would be hard for him to sell himself.

The Court: I thought a man, particularly one in the machine shop, I imagine mechanical engineering is specialized.

30 Mr. Coursen: This man says there is nothing mysterious on the machinery that he has worked on.

Mr. Hays: May I give an illustration? I have a client who is an accountant, he is not a C. P. A. If he went out trying to sell himself he would give up a good job.

40 Mr. Coursen: I also know, I represent some of the largest aircraft companies and a man of this type with his experience might get a job with the aircraft industry

Peter Van Norde, Recalled—Cross.

in a mechanical capacity. He believes he is a mechanical engineer. He does not have to lower himself.

The Court: That is what I want to know. If you can bring it out I will overrule Mr. Hays' objection.

Mr. Hays: Apparently Mr. Van Norde 10
does know about that. There are lots of jobs he does know of.

The Court: I will let you go on.

By Mr. Coursen:

Q. You have testified, Mr. Van Norde, that nothing unusual or mysterious appears in the Irvington Machinery, is that your testimony?

A. Yes.

Q. Then you haven't confined yourself to any 20
one specialty in your business experience, have you? A. No, not anything special.

Q. It is your testimony that you have been devoting all these years to machinery in general?

A. Of the type used in Irvington.

Q. You have worked on this type because that is the type they have? A. Yes.

Q. You say that machinery is not mysterious?
A. Yes, it is quite simple to do.

Q. You weren't directing your attention to any 30
narrowing specialty all these years? A. I would say it would be a specialty if it was narrowed down to the machinery of Irvington.

Q. You know about machinery, you can go in any plant where they use machinery and you wouldn't be mystified by it? A. Let me get that. If I went to work in a plant where they make machinery, where they actually produce machinery, I would say yes, I would have knowledge of any- 40
thing that goes on there. We are not building

Peter Van Norde, Recalled—Cross.

machinery at Irvington, it is a specialized machinery, although there is no trick to it it is specialized, it is hard to come in and commence to build this type of equipment, you are not an up to date tool maker, I couldn't go out today and be a tool maker, I don't know what they use.

10 The Court: I don't think we are getting very far.

By Mr. Coursen:

Q. Although you haven't been doing tool making you could make a machine and not be mystified? A. Not the last machine.

Q. In a short time? A. To considerable time.

20 Q. What do you mean by considerable time, what do you mean by that? A. What do you have in mind, to be a machine operator?

Q. No, to take a job to apply the talent you have piled up. A. If I went back and applied for a job as tool maker it would take me 2½ or 3 years time to get it back.

Q. You know men of your caliber don't work as tool makers. A. I would have to prove that, I have no means, otherwise.

30 Q. In all these years that you devoted to Irvington it meant nothing as far as your ability? A. Unless I can get something to show for it, I have nothing to show for it.

Q. You remember having some talk with Mr. Mezger about going to work for Kolb? A. Yes.

Q. Isn't it a fact that you told him at that conference that you weren't worrying about a job that you could get a job in a consulting capacity? A. No, I didn't mention that. I did not.

40 Q. In connection with the festooning machine you worked on it at Electro, what temperature

Peter Van Norde, Recalled—Re-direct.

could be generated in that machine when you went to work on it? A. Maybe 300.

Q. After you had done your job what temperature could be generated? A. I didn't change the temperature.

Q. Your work had nothing to do with heat? A. Nothing to do with heat. 10

Re-direct examination by Mr. Hays:

Q. Do you know of any job you could get as an engineer with anybody? A. No, I don't know.

Q. Is your ability best qualified for you to act as an engineer along this particular line of business? A. Yes, it would.

Q. There are jobs open to you, are there not, in this line of business? A. In this line of business and they believe in me, they know me. 20

Q. You say that you registered with the United States Employment Service? A. Yes.

Q. Did you ever talk with them about a job? A. Yes.

Q. Will you tell what the circumstances were, did you tell what you were doing?

Mr. Coursen: I object to it.

The Court: I will permit it. Who did you discuss it with? 30

The Witness: I don't know the lady's name.

The Court: A woman at the office here in Newark?

The Witness: In this same building.

By Mr. Hays:

Q. What did you say? A. That I had worked with Irvington Varnish and was restrained, and had been there—I am trying to get the date. 40

Peter Van Norde, Recalled—Re-direct.

Q. I think I can refresh your memory, does this show what the date was (showing witness)? A. Yes.

Q. Who filled that out? A. This was made out by Irvington, this is Irvington Varnish.

Q. That is a statement? A. Yes.

10 Q. What does that call for? A. Master mechanic.

Mr. Hays: I offer that in evidence.

Mr. Coursen: I have no objection if what's attached with it goes in.

Mr. Hays: All right.

(Statement and slip attached submitted in evidence and marked Exhibit D-6.)

20 By Mr. Hays:

Q. Now, will you tell us what the conversation was with the United States Bureau? A. I was told there were several mechanics jobs open and asked if there was anything in a supervisory capacity and I was told by the office that I would be registered as a mechanic, that I had nothing to show, except that I worked at Irvington.

Q. Did they ask if you were a graduate engineer? A. Yes.

30 Q. Did you tell what experience you had? A. I told that.

Q. As a result of what you told they wanted you to register as a mechanic? A. Yes, that is right.

Q. You said you regarded yourself as a good engineer, or hoped to be a good engineer? A. Yes.

40 Q. Are you particularly a good engineer along the lines fixing up machinery of coating cloth?
A. I would be.

Peter Van Norde, Recalled—Re-direct.

Q. Do you know if you are a good engineer along other lines or not? A. I would have to adopt myself.

Q. At least the same as you were for the last fifteen years? A. Right.

Q. You were asked about this paper that was cracked and you told what you did to get out the cracks, is that material made by Electro? A. No. 10

Q. They are not in competition on that with Irvington? A. No.

Q. You were also asked by counsel about the bottle cap, is that a business that Irvington is in competition with Electro? A. No.

Q. As far as you know Electro makes neither of those products? A. Right.

Q. You have seen the Powers recoating at Irvington and Electro? A. Yes. 20

Q. Will you tell us the difference? A. I believe there is little difference in size.

Q. They are the same except in size? A. In size and there is some difference in the bearing.

Q. What is the difference in the bearings? A. It is the design of the bearings, it does the same work, I think the same gears are used, shifting the gears the same diameter and the same distance between rows, it is slightly different from the Irvington. 30

Q. There is no difference, the bearings are a different design?

The Court: These bearings you speak of what I think of as ball bearings?

The Witness: Irvington used round and Electro used bronze cushionings.

By Mr. Hays:

Q. Irvington used what? A. Round. 40

Peter Van Norde, Recalled—Re-cross.

Q. What did Electro? A. Used Bronze cushions.

Q. Which would be better? A. The round.

Q. Could you distinguish between the machine at Irvington and the one at Electro prior to your coming there? A. The only difference the drive
10 is a little different.

Q. Explain the difference. A. The drive is individual, in Irvington all the machines are driven from one shaft.

Q. Is there any other difference? A. That is all, there might be a difference in height.

Q. Difference in size? A. Yes.

Q. Are there any other differences that you know of? A. That is the only difference I know
of.

20 Q. Isn't the most modern development using this Waldron cutter rather than the tower? A. Yes.

Q. That is the most recent? A. Yes.

Q. And that is the most recent one bought by Irvington? A. Yes.

Q. Who makes it? A. John Waldron Company.

Re-cross examination by Mr. Coursen:

30 Q. What are the brackets in the cutting tower?
A. They are for any speed, to hold up the bearings, and called brackets.

Q. Are the towers at Irvington the same in that respect as Electro? A. Yes.

Q. Did you make any change in the brackets since you went to Electro? A. No.

Q. Who was the person you spoke to in the United States Agency? A. I don't know the name.

Peter Van Norde, Recalled—Re-direct—Re-cross.

The Court: This sheet attached to Exhibit P-6 seems to be dated August 4, 1944 has the name of Miss Gluck.

The Witness: It doesn't sound familiar.

By Mr. Coursen:

Q. Did you just go to speak with a clerk who is back of the desk? A. Yes. 10

Q. A young lady? A. Yes.

Q. How old would you say she was? A. I should judge about 27 or 28.

(A short recess of five minutes.)

Re-direct examination by Mr. Hays:

Q. A few questions were asked of you in connection with Exhibit D-5 for Identification, did you see that sheet at the time you were asked the questions? A. It was folded. 20

Q. Is this the sheet Exhibit D-5 for Identification that you were talking about? A. There was another sheet.

Q. Were you talking about Exhibit D-2? A. The organization sheet.

Q. When did you first see Exhibit D-5? A. The first day that we were in Court, Wednesday.

Q. You never seen it before that time? A. No. 30

Re-cross examination by Mr. Coursen:

Q. Did you ask Mr. Nichols for this exhibit? A. No.

Q. How did he happen to get it? A. Brought it in.

Q. Who brought it in? A. Mr. Nichols.

Q. It came to you voluntarily?

Mr. Heilbron: It was handed to me. 40

Robert Mezger, Recalled—Re-cross.

By Mr. Coursen:

Q. When did you first see it? A. I saw the draftman working on it. I never saw that photostat copy.

10 Q. Was this photostat copy handed to you by your lawyer? A. I saw it in Mr. Heilbron's possession.

The Court: That is the first time you saw it?

The Witness: Yes.

By Mr. Coursen:

Q. You are now referring to the lawyer associated with Mr. Hays? A. Yes.

20 Q. Did he tell you where he got it? A. I am not quite sure, but I think it came through a conversation that it was brought in by Nichols.

Q. Did Nichols say where he got it? A. Not to me.

ROBERT MEZGER, recalled as a witness on behalf of the complainant, having been previously duly sworn, testified as follows:

30 *Re-cross examination by Mr. Hays:*

Q. At the last hearing I asked you if you would bring to us the names of the employees of your company that were formerly employed by competitors of yours? A. I remember the question and I remember the Court qualified the question, names of employees, former employees of competitors who were working on any of the processes of chemists in the plant and the answer to that is
40 Oswald Dale.

Robert Mezger, Recalled—Re-cross.

Q. You knew the same Mr. Dale is the only man whom you employed today? A. He is the only employee with us who worked with a competitor who has anything to do with any of the plant process development or anything else, that doesn't omit salesmen.

Q. Salesmen you have that work for your competitors at times, and except for Dale is the only one? A. Yes. 10

Q. And that applies to the last five years? A. I would say five years, I don't recall any within the last five years.

Q. Did your company hire Dale in order to get any secret processes used by Electro, was that your purpose in hiring Dale? A. No.

Q. Did you get any secret information in hiring Dale? A. No. 20

Q. When you employed salesmen formerly employed by competitors, is it your purpose in order to get sales lists? A. Yes.

Q. Your purpose is to get capable men, isn't that the purpose? A. I don't know the purpose in hiring salesmen, I had nothing to do with hiring them.

Q. There were others besides Van Norde who were familiar with the machinery used in your plant? A. Yes. 30

Q. And are not under any restraining contract? A. Yes.

Q. There are any number of them familiar? A. Everyone who works down at the plant is familiar with some part of some piece of equipment, or several parts of several pieces of equipment. I know of none who have full and complete knowledge of the equipment so that they could be. 40

Robert Mezger, Recalled—Re-cross.

Q. Who helped build the machine? A. He is only machinist and same as any other machinist except that he happens to be the working foreman and he is charged with the responsibility of supervising the work of the other machinists.

10 Q. Has a machinist any access to this machinery that was kept secret? A. Any part he might be working on.

Q. Did he have access to examine all parts of the machinery if he chooses so to do? A. All parts of the mechanical part.

Q. Isn't that true of a great many other men? A. The part that they might be working on.

Q. Would they be in a position to observe all parts of the machine? A. They might be.

20 Q. The distinction you make is that Mr. Van Norde knows more about machinery because of the experience with you than the other men? A. The point is that Mr. Van Norde is a master mechanic, or believed to be a mechanical engineer, who appreciates the important points or principles of the machinery, whereas a mechanic is only concerned about the particular mechanical job he is on. It is the same as an automobile mechanic and an automobile engineer. As far as mentioning important jobs of engineering.

30 Q. You told us the other day about Van Norde's work, you were dissatisfied with the paper work, were you referring to correspondence or plans? A. Correspondence and requests for bids and the final estimate of the completed job, filing the bids in order to get complete estimates.

Q. That is the work you were referring to? A. Yes.

Anthony Nichols, for Defendant—Direct.

ANTHONY NICHOLS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Hays:

Q. What is your work today? A. I am assistant to the plant engineer at the Universal Plastics Corporation. 10

Q. Are you an engineer by profession? A. Yes.

Q. What college are you a graduate of? A. Stevens Institute of Technology, Mechanical Engineer in 1939 and I got my masters degree in 1943.

Q. What was your first work after graduating from Stevens? A. I worked for the Collins-Neary, then I did work as technical assistant chief. 20

Q. What next? A. Watson-France Engineering Company of Paterson.

Q. After that? A. The Colonade Pulverizing Company, as project engineer.

Q. When did you come to Irvington? A. On February 1, 1943.

Q. How long were you there? A. I left there May 15, 1944.

Q. February 1, 1943 to May 15, 1944? A. February, 1943 to May, 1944. 30

Q. What work did you do? A. Mechanical engineering, reporting to Mr. Van Norde.

Q. How long did that situation continue? A. I reported to Mr. Van Norde until the time the bulletin came out and then to Mr. Brinkman, that was about April, 1944.

Q. What were your duties there? A. Handling projects, just general plant projects, engineering 40

Anthony Nichols, for Defendant—Direct.

wise, strictly maintenance, right through until I was what could be called designing problems.

Q. During the period you were there what was Van Norde's title before May, 1944? A. Chief engineer.

10 Q. You had to assist him yourself and one other engineer? A. Yes, in the beginning we had two engineers, Mr. Wood, an electric engineer and he had at that time two draftsmen, Rosser and Whitehead.

Q. And also yourself? A. Yes.

Q. That was his department in 1943? A. Yes.

20 Q. 1944 what change was made? A. Mr. Wood was replaced by Mr. Stanka. We had a labor turnover of draftsmen and up to April, 1944 it was Mr. Stanka and Mr. Whitehead, a draftsman and a junior draftsman.

Mr. Coursen: Just a moment, it seems to me this is entirely cumulative, the chart is in evidence.

The Court: Perhaps you were right, I will let counsel go ahead, until I get impatient.

By Mr. Hays:

30 Q. Then after April, 1944, what change was made? A. At that time Mr. Van Norde was relegated to the job of master mechanic and Mr. Brinkman came in as plant engineer.

Q. What change was there in your duties? A. There was no change in my duties except my superior.

Q. And your superior was Brinkman? A. Yes.

40 Q. Did you, while you were under Mr. Van Norde's jurisdiction have a talk with Mr. Gloss?
A. Yes.

Anthony Nichols, for Defendant—Direct.

Q. Concerning Van Norde? A. Yes.

Q. Who was Mr. Gloss? A. At the time he had a title called industrial engineer and Mr. Van Norde reported to him. This preceded the bulletin about a month, about in March, I was in his office discussing his problems and Mr. Van Norde came up and he said "We will have to get a graduate engineer in his place". 10

Q. During the time you were there, was Mr. Van Norde busy in rebuilding the Passaic Plant?

A. I would say that was the major idea predominating.

Q. What was he doing there? A. The big part of his job was to act as company representative with all the contractors, the machine builders, the builders, the masons and type fitters, etc.

Q. He dealt with the contractors putting those building up? A. Yes. 20

Q. You are familiar with the machines used by Irvington? A. Yes, I have been there something over a year.

Q. Can you tell us anything unique or secret about their machinery? A. I can only say something about the machine patented, the rounding machine.

Mr. Hays: May I say that the rounding machine is not in competition? 30

The Witness: The rest of the machinery is just run of the mill stuff, and the rest is obsolete, that is my opinion as an engineer.

By Mr. Hays:

Q. Do you know anything unique or is there anything to regard as secret? A. Not as far as the machines are, no. 40

Anthony Nichols, for Defendant—Cross.

Cross examination by Mr. Coursen:

Q. You recognize Mr. Nichols at Irvington occupies a dominant position in this industry?

A. I appreciate that.

Q. Yet you say that all the machinery is obsolete? A. You got me wrong, a good number are
10 obsolete.

Q. Which machines? A. The one referred to as a white elephant, used for coating, it is badly used. The same with two of the Harvel machinery, to put it all or several machines is purely arbitrary.

Q. The part used for electric insulation and bottle cap, is it your testimony that most of the machines are obsolete? A. Let me qualify. May
20 I use it plant wise, bring up specific items—

Q. One minute, you are here to answer questions and I will ask you again if in your opinion as an engineer a large part of the machinery that Irvington has is obsolete? A. A part of them, what part?

Q. Or a majority? A. It is not a major part, meaning fifty-one percent.

Q. You get it down to fifty-one percent? A. When you come to talk of the major part you think of a definite thing.

30 Q. I am speaking of a substantial part, I understood you testified that there are certain machines there that you think are obsolete, correct? A. Correct.

Q. Isn't it a fact that most of the machinery is quite up to date? A. They have up to date machinery.

Anthony Nichols, for Defendant—Re-direct.

Re-direct examination by Mr. Hays:

Q. A good many of the coating machines are of the Tower type? A. In Irvington, yes.

Q. There is also a machine built more recently that is of a horizontal type? A. Yes.

Q. Which runs ten times as fast as the Tower? A. I think that is about correct ratio. 10

Q. Would you think the diagonal machine obsolete? A. Production wise, perhaps on some of their varnish they require slower run.

Q. When you said machine was obsolete, what machine did you refer to? A. To a good part of the machinery in the Harvel Department is no—

Mr. Coursen: I object, Harvel has nothing to do with this case.

The Court: The witness can explain what he means. 20

The Witness: The other item is when they do some of their coating, I forget the product, in the cap. seal division, they die work on a machine that is the machine called the white elephant and used a great expense and was not in best use.

By Mr. Hays:

Q. What is the machine? A. To refer to as a sticky coat. 30

The Court: You went with them in February 1943?

The Witness: That is correct, no, 1943, you were right.

The Court: At that period was there any difficulty with any of the machinery?

The Witness: At that time we had the restricted policy of the government— 40

Anthony Nichols, for Defendant—Re-direct.

The Court: I am asking you if there was any difficulty in getting new machinery?

The Witness: I would say there was.

By Mr. Hays:

10 Q. There has been considerable discussion about dusting machines, do you remember the building of the dusting machine around there? A. Yes.

Q. Were dusting machines available on the market? A. The dusting machine was available with adoption.

Q. Who designed the dusting machine at Irvington? A. Mr. Gloss did the designing work on that.

20 Q. Do you know what principle he used for designing it? A. The principle he used was to vibrate, using a vibrator and vibrating the mica dust on the cloth passing through.

Q. Was that a method suggested by Mr. Van Norde some fifteen years ago? A. I talked with Mr. Van Norde and he had tried it some years ago and had a medium made up—

The Court: I don't think this witness can tell what Van Norde told him.

By Mr. Hays:

30 Q. What was done with the dusting machine? A. The dusting machine was built in line with Mr. Gloss' specification.

Q. Did it work well? A. They had considerable difficulty with the machine.

Q. Was there anything unique or secret about it? A. For that purpose, I would say no.

Anthony Nichols, for Defendant—Re-cross.

Henry W. Schilling, for Defendant—Direct.

Re-cross examination by Mr. Coursen:

Q. It is a fact, isn't it, Mr. Nichols, all the operating carried on in the coating towers cannot be carried on in the horizontal machine? A. I am not too familiar with that.

Q. You are not familiar? A. My work covered plant-wise, I did work in various departments.

10

Q. You are not prepared to say yes or no if the horizontal machines can do all the work that the vertical machine does? A. I can say it can do all the majority of the work.

Q. You won't say it can do all the work? A. No, I won't say it can do all the work.

20

HENRY W. SCHILLING, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Hays:

Q. Are you an engineer by profession? A. I am a graduate engineer.

Q. From what engineering school? A. Michigan College of iron and technology.

30

Q. You were once employed by Irvington? A. Yes.

Q. For what period? A. From June 1942 to the middle of April, 1944.

Q. When you were first employed by Irvington Company, what was your work? A. Engineering work under Mr. Van Norde, he was plant superintendent.

Q. Was that a change in your work, in January 1943? A. At that time I was superintendent of maintenance.

40

Richard O. A. Petersen, for Defendant—Direct.

Q. Did you continue then to report to Mr. Van Norde? A. I reported to Mr. Garrison.

Q. Was there a change in Mr. Van Norde's job? A. He was made chief engineer.

Q. What department did you take over in January 1943? A. Maintenance.

10 Q. Did some one else become factory manager?
A. Mr. Peterson became factory manager.

Q. Did Peterson become Van Norde's superior?
A. Yes.

Q. Had Peterson been formerly Van Norde's subordinate? A. Yes, I understand he was.

Q. Prior to leaving the company, did you have a talk with Mr. Mezger? A. Yes.

20 Q. What did you have to say? A. I was called to the office on a Friday afternoon and told that they were discontinuing the office of maintenance, I was to seek employment somewhere else and was paid off.

RICHARD O. A. PETERSEN, being duly sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Hays:

30 Q. What is your profession? A. I am a mechanical engineer.

Q. Where did you get your training? A. I have a degree of Bachelor of Science and Master of Science granted by Columbia University in the class of 1934.

Q. Were you at one time employed by Irvington? A. Yes.

40 Q. When did you go with Irvington? A. I was employed by Irvington the fifteenth day of February, 1942.

Richard O. A. Petersen, for Defendant—Direct.

Q. How long did you stay there? A. I stayed there until August 15, 1943.

Q. Prior to your going with Irvington you were employed by whom? A. By Johns Manville Corporation.

Q. What was your work when you first came with Irvington? A. I was employed by Irvington as an engineer in the engineering department, replacing an individual who had left and my job was mechanical work reporting to Mr. Van Norde. 10

Q. Was there a time when your job was changed? A. Yes, about three months after my, maybe four months after I had been with Irvington Varnish I was brought to the main office to serve as an assistant to Mr. Mezger to do special assignments as he saw fit to give.

Q. Later in January 1943 your job was changed? A. In January 1943 I was promoted to the position of assistant to the boss or factory manager, my responsibility were the Engineering Department with Mr. Van Norde as chief engineer, the Production Department with Mr. Garrison as production superintendent, production planning and scheduling with Mr. Petersen operating that group and lastly a division which was at that point hypothetical or existing on paper, namely the time study department. 20 30

The Court: Mr. Schilling was not there?

The Witness: He was under me but reported to Mr. Garrison who was my production superintendent.

By Mr. Hays:

Q. Mr. Van Norde, instead of you being the subordinate to him you were put above him? A. Yes. 40

Richard O. A. Petersen, for Defendant—Direct.

Q. And you became factory manager? A. Yes.

Q. Do you remember a time when work was started in the new horizontal coating machine?

A. Yes, that was about October, 1942, erection was started on that machine.

10 Q. What was Mr. Van Norde's job in connection with that machine? A. Mr. Van Norde's job as engineer or chief engineer of the company was to keep eyes on the contractors who were putting up buildings or equipment for the company. At the time of the construction of the Edgewise cutter he had direct responsibility for the installation of the services, such as cellar lines, water lines, power lines in the building and see then that they worked, went ahead and did that work ourselves, since we were in a position to do it. That
20 was his specific responsibility however the Ross Engineering Company and the Waldron who was putting up the Edgewise cutting machine and the contractors and Mr. Van Norde spent a lot of time there watching that as an officer of the United States Navy is sent to see how the business is so as to be acquainted with it.

Q. From whom was that purchased? A. John Waldron of New Brunswick, New Jersey, it is a subsidiary of Ross Engineering Company.

30 Q. Was it more efficient than the old Power machine? A. Yes, it ran considerably higher speed, a foot per minute. It was put in primarily to get increased consumption to meet war demands which ultimately did not completely materialize and at the same time put the company in the best position when the war was over, inasmuch as this machine would coat papers at rate of speed
We did run some other material, varnish cambric, at the time I was with the company.

Richard O. A. Petersen, for Defendant—Direct.

Q. Could you tell how long it took to build the horizontal machine approximately? A. Building was started about in May or June and we had it functioning about the middle of September or thereabouts when the first deal was brought in. The construction started almost simultaneously with the building except the machine company building the machine built these parts down in their building, finally they had so many parts we had to store them, and then the latter part of September or early October they started erecting. 10

Q. When was it completed, about? A. The machine made its first trial run in the middle of the latter part of September.

Q. In the early part of 1943, did Mr. Van Norde have something to do with building a plant in Passaic? A. We had got the Edgewise tower running with some desirability. 20

Q. Van Norde had something to do with running it with some degree of desirability? A. Yes, that was his job, to look at the machine and study it and see if it is operating as efficiently as it should, to determine the operation, I remember we had trouble with the filling, I remember there was some realignment to take care of. We had cloth that stuck on the post and all the cloth pulled down in the oven, and the only thing was to cut it out that post and put another one. That is what his job was to inspect the machine. 30

Q. When Waldron put those machines in he makes them with that change? A. Yes.

Q. Was there anything unique or any novelty about the method that Van Norde devised to prevent this difficulty? A. No, I would say it was an application of common sense. That was his position and job and was perhaps so today. 40

Richard O. A. Petersen, for Defendant—Direct.

Q. You found Van Norde to be a man with practical engineering knowledge? A. Yes. It is something you were born with. He looks at the machines and can tell if they are knocking and he has a great sense of natural ability which enables him to find out along the machine what is not properly geared, or properly oriented so that he can make those adjustments so that the machine can run properly. He is a very good mechanic.

Q. We come to 1943, you mentioned the plant at Passaic, what is the work of Van Norde there? A. There his job was to go over previous coating towers we had built, there was a company at Springfield, Massachusetts, they wouldn't bother putting in another, and there was experiences by other large companies, some that I don't know. In any case, the company decided to put up six towers in addition to those. Additional buildings were rented then from the Passaic Paroil Company and Mr. Van Norde's position was to supervise the rebuilding of that building. This rebuilding consisted of putting in another story and putting in the floor and various storage tanks and the service of lines, heat and power, etc. Subsequently the obtaining of estimates. First of all he had to get the estimates from the carpenters, the contractor wanted to instal and he wanted them to get on with the work and Mr. Van Norde went up there every day to make adjustment. Subsequently when acutal erection of the towers was started it was his responsibility again to be up there to tell them and to watch the erection.

Q. In connection with the machine at Irvington, is there anything unique, novel or secret about the machinery? A. I thought a good deal about that. I can say that I definitely recall the impres-

Richard O. A. Petersen, for Defendant—Direct

sion that I got in that company while I was in the plant—

Mr. Coursen: I object to the impression.

By Mr. Hays:

Q. Tell us what you know. A. I know in January 1942 I went to the Irvington Varnish and Insulator Company for an interview with Mr. Mezger and he took me through the plant and I was amazed at the similarity of equipment in Irvington with Johns Manville.

10

Q. Did Johns Manville do the same kind of work? A. Generally, it is similar.

Q. Recoating? A. They recoat fabric, it is a very enormous business.

20

Q. You had been with other companies in related lines of business? A. No, I was with Johns Manville five-and-a-half years, and prior to that Procter & Gamble.

Q. You were telling about machinery. A. The difference between Johns Manville machinery is that it is very heavy because of the tremendous width and weight of the finished goods. It is heavier and sturdier type of construction. At Irvington Varnish where you use paper, light weight papers, with the exception of cable belt. The rolls of the fabric used at Irvington run 200 pounds whereas we put in rolls 900 pounds, obviously you get a heavier frame. The same in using tape cutting, knife cutting, every conceivable type of cutting. When I got to Irvington I found they employed all the well known methods of coating.

30

Q. Is there anything unique or novel or secret about the machinery at Irvington? A. Not the

40

Richard O. A. Petersen, for Defendant—Direct.

machines I saw there. Subsequently when I was employed by the company, the rounding machine was very unique, I thought they were very clever.

Q. They were patented? A. Yes. I understand Mr. Mueller in their employ at the time and it was his responsibility to prepare them.

10 Q. I am interested in the recoating machines.
A. On those recoating, it is my opinion as an engineer there is nothing about them that is unique and secret. As a matter of fact I have in my bag—

Q. Is there anything unique or secret about the tower machine? A. No.

Q. As a matter of fact the tower machine has been written up? A. Yes.

20 Q. Have you the magazine article? A. I have four, the textile for March, May, June and July where various methods of coating and the towers.

Mr. Coursen: I object to this. The article would be objectionable and I don't think he can tell what they say.

The Court: Why isn't that a good method to prove there is no secrecy?

30 Mr. Coursen: We don't deny there are coating towers that other people use, that we freely admit. We also claim that we have spent years and large sums of money in developing a particular kind of tower that we have. They may be similar. We concede that other people in this industry use coating tower similar in principle. We claim we have made provisions and put them in use, spending money to develop them. To permit this witness to testify about the contents of a magazine article seems improper.

40

Richard O. A. Petersen, for Defendant—Direct.

The Court: I will let the witness go a little farther. You were saying that they were articles dealing with what?

The Witness: Various methods of applying coatings to fabric, paper, sheet metal as a whole.

By Mr. Hays:

10

Q. Among those methods is there a method describing the one used by Irvington? A. There's an old method used by Irvington, this particular—

Q. Is there any method used by Irvington that is not described? A. There is no method used by Irvington that is not described.

Q. What is there in the methods of Irvington that is not described, in principle of fact? A. 20
None as far as coating of cambric, papers and sheet material.

Mr. Hays: I offer them in evidence.

Mr. Coursen: I object to them.

The Court: I sustain the objection.

Mr. Hays: I ask that they be marked for identification.

(Four magazines marked Exhibit D-7 for identification.) 30

The Court: I am wondering, as a lawyer I am not much of an engineer, whether for every different kind of material going through these machines, there wouldn't have to be certain differences. I am thinking if the machine ran too fast it might tear one material, if it is too hot it might burn it, there would have to be an adjustment for each kind of material and each kind of coating put on. 40

Richard O. A. Petersen, for Defendant—Direct.

10 The Witness: There are those adjustments that must be made. However, the general practice in manufacturing, in coating sheet material considerable adjustment of the chemical formular are needed in order to run, depending on the finished product, on a machine without too many machine changes. For example, the addition of a thinner, let us assume we have a varnish of a given consistency and it does not run well on the machine, it is too thick you reduce it to a given specific gravity of flow, that is a change; because you don't want to go to the expense of making too considerable a change in the machine. It is easier to put
20 in more thinner to operate it. If the machine has limitations as to the amount of temperature that it can develop, you might have to use a lighter material or in revarnish formular, as the case may be, so that you can get the desired finished product. You would judge the formular accordingly.

 The Court: The adjusting of the formular can be done without bringing about bad after effects?

30 The Witness: You mean a distortion of the performance, characterization of the finish, the electric insulation or in the case of cap seal as a sealing medium. That is where the engineering department has to cry for help to the research department. We don't want to do all this work. What you can do you can change the formular. That practice is just as general as the other. Here is something we have to use and you
40 have to make the changes and the engineer has to proceed accordingly.

Richard O. A. Petersen, for Defendant—Direct.

By Mr. Hays:

Q. Was there a secret part of the job about the formular? A. There is no question.

Q. So far as the machinery there is nothing unique or novel except this thing that was patented? A. The rounding machine is particular.

Q. You are familiar with the given terms? A. Yes. 10

Q. Is there a dictionary stating what terms, like plant superintendent, master mechanic, and terms of that sort? A. As a factory manager, I have used the dictionary of proposed titles prepared by the Department of Labor.

The Court: Weren't titles being invented all the time so as to make employees feel better? 20

The Witness: I would say there aren't so many new ones as the old ones are extended.

The Court: The same as in the legal department of corporations.

Mr. Hays: I don't know if your Honor will take judicial notice, or shall I put them in evidence?

The Court: Yes.

By Mr. Hays: 30

Q. Will you tell us what is a plant superintendent? A. At Irvington the Plant Superintendent was in charge of maintenance and engineering when I was employed there. Subsequent that type of title and position was discontinued.

The Court: May I interrupt, perhaps foolishly, I wonder if we would be impressed if we read in the dictionary the 40

Richard O. A. Petersen, for Defendant—Direct.

definition about the vice-president in charge of law, general counsel, the general solicitor and so on. I can think of a dozen titles given in the law department. I don't think what Mr. Webster said is important.

10 Mr. Hays: Don't you say there is a difference of a lawyer in a patent office and a lawyer who does magistrate court work, the difference his title might mean?

The Court: But I don't think what Webster said would help.

Mr. Hays: If you have a general meaning of what plant engineer, or master mechanic, it is perfectly obvious that a man is demoted. For the title he received I can show he was going down hill. I think
20 I ought to prove what the term means.

By Mr. Hays:

Q. What is the term chief engineer in this trade?

Mr. Coursen: I object, it is entirely immaterial.

The Court: I think you are right but I will let it in.

30 The Witness: What?

By Mr. Hays:

Q. I want to know what a chief engineer is?

A. A chief engineer in industry generally is an individual who is responsible for the design and erection of new equipment, the redesigning of equipment already erected with a view to making it efficient and desirable in operation.

40 Q. What is a master mechanic? A. In my experience the master mechanic was a man who

Richard O. A. Petersen, for Defendant—Direct.

is a general foreman in charge of the actual management of the maintenance, with machinists working for him.

Q. I would like you to read in the record what the title of the occupation.

Mr. Coursen: I make the same objection. 10

Mr. Hays: It is issued by the United States, it is a dictionary of occupational titles.

The Court: You can read it in.

Mr. Hays: Master mechanic maintains supervision and assists carpenters, maintenance, machine maintenance, master mechanic, mill wright and other workers, initiating the installation and repair of equipment and maintenance of plant construction of a large or commercial or industrial establishment, may advise or assist plant engineer, advising and proving maintenance matters. 20

By Mr. Hays:

Q. While you were at Irvington did you have any discussion with Mr. Mezger about Van Norde?

A. Yes, time without number.

Q. Tell us in substance what Mr. Mezger said about Mr. Van Norde? A. Mr. Mezger on many occasions stated he was not satisfied with Mr. Van Norde's paper work as he put it. He said that Mr. Van Norde did not answer his correspondence promptly or well when he did answer. 30

Q. In discussing paper work was correspondence and work of that kind referred to or do you think he referred to designs? A. It was primarily having to do with correspondence. 40

Richard O. A. Petersen, for Defendant—Direct.

Q. Did you have a discussion with Mr. Mezger on another occasion in connection with a machine built by Mr. Gloss where Mr. Mezger had Mr. Van Norde repair because it didn't work well?

10 A. Yes. At the time the second dusting machine was to be built I went in to Mr. Mezger who was vice-president and my superior to make sure it was clearly understood that the engineering department was not in favor of the dusting machine as it was drawn up. This second dusting machine was the conception of Mr. Gloss and embodied certain principles that had been tried in the past and found wanting. The engineering department inasmuch as it was to do details of the drawings under Mr. Gloss's direct supervision as a project separate and distinct from the normal relationship of the engineering department to Mr. Gloss as industrial engineer, I wanted to be sure that there would be no chance of any blame for the imperfect functioning of the dusting machine being thrown back in my engineering department and at that time Mr. Mezger said, "Oh no, nothing like that, this is Mr. Gloss's project." With that we went ahead and as it happened the construction and detail designing of the machine went on almost simultaneously. There was a great deal of pressure to get it built in a hurry, as a consequence there was nothing to do it just went on. Mr. Van Norde after the machine was built had to spend a good deal of time with Mr. Gloss getting the bugs out of the dusting machine and there was some criticism of the bearings put in that machine.

20 Q. What discussion did you have with Mr. Mezger concerning Mr. Van Norde in that connection? A. Well, the discussion I specifically had with Mr. Mezger was to the effect that the engineering department was not responsible for

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Richard O. A. Petersen, for Defendant—Cross.

that machine, the engineering department had recommended a different speed.

Q. What did Mr. Mezger say about Mr. Van Norde? A. In this case he thought that Gloss's machine would presumably function better. We had the authority to go ahead and spend approximately \$6,000 for a new dusting machine.

10

Q. Considering all of the machines used at Irvington in connection with recoating material, are there any of them in any way new or unique? A. Well, the coating machine may be new.

Q. Is it novel or unique? A. Yes, I would say the edgewise cutter was the most novel and unique but that is a machine that the company bought from Waldron Company.

Q. Any others? A. Not in my opinion.

Q. There are some machines that are patented machines, are there not? A. Yes.

20

Q. The slitting machine used in the cable field? A. That is a detail of the machine, not the machine as a whole.

Q. It is a detail of the machine? A. Yes.

Q. There is a rounding machine? A. Yes, well the Irvington got all the bugs out of that, the machine was brought over from Europe as a whole.

Q. Outside of the patents is there anything new, novel or unique about the machine when you were with the company? A. No.

30

Cross examination by Mr. Coursen:

Q. Did I understand that the horizontal machine was a very expensive machine? A. Yes.

Q. You left the employ of Irvington in August, 1943? A. I did not leave.

Q. Your employment was terminated? A. Yes.

Q. When that horizontal machine was installed

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Richard O. A. Petersen, for Defendant—Cross.

a great deal of work had to be done on it? A. There was a great deal on that machine that prevented it functioning properly.

Q. There were a great many things then done on many machines while you were there? A. Yes.

10 Q. Did I understand you to say you were employed by Johns-Manville? A. Yes.

Q. When was that? A. I was employed by Johns-Manville July 1, 1936 to February 14, 1942.

Q. Johns-Manville is a competitor of Irvington? A. No.

Q. They make an entirely different product although coating? A. Yes.

Q. Do they have a large engineering department in Johns-Manville? A. Yes.

20 Q. They employ many expensive engineers? A. Yes, they have about twenty of them, six of which are really stars.

Q. They design and develop their own machinery? A. Yes.

Q. They have arrived at a point that they now occupy by a process of years of experience and redesigning and development, through building up ideas? A. Similar to the process in any company.

Q. The same process that goes on in Irvington? A. Yes.

30 Q. In your opinion, Irvington has arrived at its present position with all this machine development by this process of trial and error and expense? A. I want to point out that all the equipment was not developed.

Q. A large part of it was developed right there, was it not? A. I would say a large part, if you speak of the volume in equipment covers, if you speak of dollars in value it is different.

40 Q. You have in mind the extrusion machine? A. No, the various types of tools and working

*Richard O. A. Petersen, for Defendant—
Re-direct.*

plans available, do not measure up to the other varnish houses.

Q. Returning to Johns-Manville, you know that they spend a fortune in developing their machines?

A. Such machinery as they do develop and erect they have patented.

Q. They maintain an expensive engineering department? A. Yes. 10

Q. They have been working constantly on designing and redesigning and that all represents a very substantial expenditure? A. Yes.

Q. And the same thing applies at Irvington? A. Yes, or in any other company.

Q. You observed Van Norde when you were in the employ of Irvington? A. Yes.

Q. Don't you think that Mezger was justified in criticizing his paper work? A. I think I will answer that with a frank no. There are extenuating circumstances. 20

Q. You answer the question. A. Yes.

Q. What is your opinion of Van Norde as a mechanical man? A. Well, Mr. Van Norde has great inherent ability to get the bugs out of equipment.

Q. That is a valuable talent? A. It is inherent.

Q. You don't get that out of the books? A. Yes, of course experience goes a long way. 30

Q. He has had a great deal of experience? A. Yes.

Q. Johns Manville utilizes the services of that type? A. Oh, yes.

Q. Isn't it your judgment his talents are quite valuable? A. Yes, they are.

Re-direct examination by Mr. Hays:

Q. Can you tell if it is a deterrent in getting employment if one is not a graduate engineer? A. 40

*Richard O. A. Petersen, for Defendant—
Re-cross—Re-direct.*

Yes, very much now, particularly in engineering departments. I personally employ no men in my department who are not graduate men.

Q. It would be possible for a man like Van Norde to get a job as a mechanic? A. That is true.

Mr. Coursen: I object.

The Court: I will permit it.

By Mr. Hays:

Q. Can you tell me if in your opinion it is essential to get a job where people know you and in the field where you have been working, is it easier? A. Yes.

20 *Re-cross examination by Mr. Coursen:*

Q. Where do you work now? A. I am vice-president in charge of production at the Universal Plastics Corporation. We are partly customers of Irvington Varnish Company.

The Court: When you went from Irvington to the Plastics Corporation did you jump from one branch of engineering to another?

30 The Witness: Yes, and no. In the fibron department of the Irvington Varnish Company thermoplastics material are formed, they are formed with one process. I now do thermoplastic called process and I use the knowledge I picked up at Irvington.

The Court: It is helpful?

The Witness: Yes.

Re-direct examination by Mr. Coursen:

40 Q. Were you one of those restrained? A. Yes.

Q. And it was simply in that line they are com-

David H. Garrison, for Defendant—Direct.

peting? A. They are not directly competing in the sense of the word.

DAVID H. GARRISON, being duly sworn on behalf of the defendant, testified as follows:

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Direct examination by Mr. Hays:

Q. What is your profession? A. I am a mechanical engineer.

Q. You graduated from where? A. From Stevens Institute of Technology in 1936.

Q. Were you at one time employed by Irvington? A. Yes, from March 15, 1941 to December 15, 1944 as general superintendent when I left.

20

The Court: What were you when you left?

The Witness: General superintendent.

By Mr. Hays:

Q. When you came with Irvington what was the work that you first done in relation to Mr. Van Norde? A. When I first went with Irvington in charge of the Fibron, the tubing division, I had occasion to call on the engineering department and the maintenance division for work in my department.

30

Q. Later on what work did you come to do? A. In August, 1941 Mr. Albert Kaufman was made my superior in the fibron division and I worked under him until February 1942 when I was again put in charge of production in the fibron division. In that position I had little occasion to call on Mr. Van Norde, except in maintenance, as I did my own designing.

40

David H. Garrison, for Defendant—Direct.

Q. Then later? A. January 1943 I was removed from fibron and made general superintendent in charge of production and maintenance and worked regularly close to Mr. Van Norde, he at that time was made chief engineer.

10 Q. Was he your subordinate or was there any relationship? A. No relationship between Mr. Van Norde.

Q. At the time you left what was your title? A. Superintendent, as no longer in charge of maintenance.

Q. Did you at one time have a conversation with Mr. Jones relating to these restraining contracts? A. Yes, several with both Mr. Jones and Mr. Mezger.

20 Q. Tell us about when these were? A. I made up my mind to leave Irvington and I advised Mezger October 1944, and he requested that I do not resign until I talked with Mr. Jones.

30 Q. I want conversation as to these restraining contracts. A. It was several weeks before I had a talk and I had a talk with Mr. Jones and Mr. William Hoffman and Mr. Mezger conveyed my reasons for leaving and Mr. Jones asked me what the reasons were and I told him I had the dubious attitude of servitude and I felt I could not remain there under contract and wanted them to relieve me of the contract if they wanted me to remain. Mr. Jones said it was impossible, that if they did it for me he would have to do it for all the others. He said it was necessary for him to have his employees under contract. He mentioned that most of his competition had been set up by former employees. I asked him a question which had neither an answer nor an attempted reply. I told him there were two reasons to leave, one is when your
40 services are no longer necessary and not satis-

Charles F. Brinkman, for Defendant—Direct.

factory and the other condition and circumstances are such that it is intolerable to remain. I told him as president he had means to correct that circumstance which might cause any employment to be unbearable and I got no reply.

Q. In these conversations about the contract was there any word about secret processes or anything like that? A. My resignation came November the 15th through no fault of mine and went through and came to the end on Mr. Kaufman's desk and he offered me a position and I advised him—— 10

Mr. Coursen: I object to conversation.

By Mr. Hays:

Q. Don't tell the conversation between you and Mr. Kaufman, was there anything further as to Mr. Jones? A. I went to Mr. Jones and said I had a job with the Industrial synthetic and would like to take it. He said if it became known that I worked there Irvington would proceed to get a restrained order. He said it would be very difficult. I said there was a foreman in the fibron division that Mr. Kaufman was there and he said he was not prepared to argue about company matters and he said he couldn't afford to have a general superintendent working for the General Synthetic as it would cost him money. 20 30

CHARLES F. BRINKMAN, being duly sworn on behalf of the defendant testified as follows:

Direct examination by Mr. Hays:

Q. What is your profession? A. Mechanical engineer. 40

Charles F. Brinkman, for Defendant—Cross.

Q. You are employed by whom? A. At the present time I am not employed.

Q. From what engineering school did you graduate? A. Stevens Institute of Technology.

Q. You have a degree from Stevens? A. Yes, I do.

10 Q. Were you at one time an employee of the Irvington Company? A. I was.

Q. When was that? A. The last week of April, 1944.

Q. How long did you continue at that? A. About a week short of six months.

Q. You were employed by them in what capacity? A. As plant engineer.

Q. Where did you come from? A. The west coast, the Voltaire Aircraft Corporation.

20 Q. Do you know who had been your predecessor in that job at the Irvington Company? A. Yes.

Q. Who? A. Mr. Peter Van Norde.

Q. Did Van Norde continue in the Irvington while you were in the employ of the Irvington? A. Yes.

Q. For how long? A. About a month.

Q. Was he under your orders at that time? A. Yes, he was.

30 *Cross examination by Mr. Coursen:*

Q. You came from the Consolidated Vultee to Irvington? A. Yes.

Q. Were you in the western division? A. Western, Dayton and Miami divisions.

Q. How long were you with Irvington? A. May, 1941 until April 1, 1944.

Q. During the time you served Consolidated you were working as an engineer? A. Yes.

August Brauer, for Defendant—Direct.

Q. Consolidated Vultee manufactures aircraft frames? A. They manufacture aircraft frames, yes.

Q. You were able to use the talent you had with aircraft with Irvington? A. Yes.

10

AUGUST BRAUER, being duly sworn on behalf of defendant, testified as follows:

Direct examination by Mr. Hays:

Q. What is your business? A. I work for the Electro-Technical Company.

Q. Are you an officer of the corporation? A. No.

Q. What are your duties with the Electro Com- 20
pany? A. I am assistant to the president and I handle pretty much all the buying except for mechanical items, machinery or anything like that. I do quite a lot of work in sales.

Q. Do you know Mr. Homan? A. Yes.

Q. What business does he have with the Electro? A. He acts as our chemist.

Q. Do you know the circumstances under which he came with the Electro? A. Quite a few of 30
them.

Q. Will you state what they are? A. Around the early part of 1941 Mr. Roh was approached by a friend of his in Philadelphia.

Mr. Coursen: I object to this.

The Court: What is the purpose?

Mr. Hays: The suggestion is that Electro was pirating, I think you said, I want to show that Van Norde came to Electro.

40

August Brauer, for Defendant—Direct.

The Court: Let us make it short. Did the first man come to you after he left the complainant?

10 The Witness: He approached us while still in the employ of Irvington but Mr. Roh refused to hire him. He interviewed Mr. Homan and at that time he was leaving Irvington and it was Mr. Roh which was there at that time and he said yes.

The Court: How about Van Norde?

The Witness: Mr. Van Norde came over and through his friendship with Mr. Homan.

The Court: You didn't hunt him out?

The Witness: No.

20 By Mr. Hays:

Q. For a time Van Norde worked for the Electro-Technical? A. Yes.

Q. What did he do? A. Most of his time trying to bring the machinery in good operating condition and also working in the new office building.

30 Q. How long was he with the new Electro-Technical? A. Three or four months, somewhere around the middle of June until the early part of October.

Q. In connection with machinery, he was working on the physical machinery, wasn't he? A. I believe so.

Q. What were the buildings, what character? A. We were fixing up our office building.

Q. What was Van Norde hired to do by Irvington? A. As I understand he was plant engineer.

40 Q. There are some lines of work in which your business is not in competition with Irvington, isn't that true? A. Well, at one time, or rather almost everything we did was done by Irvington.

August Brauer, for Defendant—Cross—Re-direct.

Q. I am referring to the duck, the cloth, that is a large part of your business? A. Yes, that is a large part of our business.

Q. And the binding? A. I don't believe Irvington has done that.

Q. On the other hand there is a great line of business at Irvington is engaged in that you are not? A. Yes. 10

Q. For instance, cable cloth? A. We had one order but not in their business.

Q. Bottle caps? A. No.

Q. Tubing? A. No.

Cross examination by Mr. Coursen:

Q. There is a man in your employ by the name of Whitehead? A. No.

Q. Did you ever have him in your employ? A. No. 20

Q. Did you ever have a man named Ferguson? A. Yes.

Q. In what capacity? A. Plant manager.

Q. Where did he work before he worked for Electro? A. I don't know the name of the company, it was making tubing.

Q. It was Irvington, wasn't it? A. No.

Q. Didn't he work for Irvington? A. Yes, but he worked for a couple of companies between that. 30

Q. Do you know how long a period? A. I was told a year-and-a-half or two years.

Re-direct examination by Mr. Hays:

Q. Did you hire Van Norde in order to get any trade secrets of Irvington?

Mr. Coursen: I object, it is a matter of law.

The Court: Electro is not a defendant. 40

Peter Van Norde, Recalled—Direct.

Mr. Hays: No, the charge is they were pirating.

The Court: Does it make any difference? Did you hire Van Norde in order to get trade secrets?

The Witness: Not that I know of.

10

By Mr. Hays:

Q. Have you had any trade secrets from him?

A. No.

(Recess until 2 P. M.)

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PETER VAN NORDE, recalled in his own behalf, testified as follows:

Direct examination by Mr. Hays:

Q. You were asked, Mr. Van Norde on cross examination about an occasion when you saw Mr. Homan prior to the time you left Irvington, do you want to add to your statement or to the occasion, the one you mentioned on Saturday afternoon? A. I would like to.

30

Q. Will you please state the facts? A. Two occasions after the first time I met Mr. Homan, it might be in December 1943 and one occasion in January 1944.

Q. What happened on those occasions? A. On the first occasion we were talking this purely friendly conversation we discussed our troubles and at one point rather it came to the festooning machine. We was wondering what was wrong and that they were having trouble with running it.

40

Q. At Electro? A. At Electro. Not having seen the machine I didn't know what it was. I said

Peter Van Norde, Recalled—Cross.

let me see the machine, it got me inquisitive. I couldn't see why it shouldn't work. I offered to make some suggestion and I made some suggestion that some changes that should be made in the machine to improve the running of it.

Q. That was while you were at Irvington? A. Yes. 10

Q. Did you receive any compensation for that? A. No.

Cross examination by Mr. Coursen:

Q. Do you know Mr. Strothkamp? A. Yes.

Q. He is sitting in the courtroom? A. Yes.

Q. He wasn't in Court this morning when you testified? A. I don't remember.

Q. Isn't it a fact that you recall the second visit to Homan over the noon recess because you saw Mr. Strothkamp come in after you testified? A. No, I talked it over Mr. Hays at the lunch table. 20

Q. What reminded you of this other talk with Mr. Homan? A. I wasn't sure how the question was phrased, did I see him on employment. I didn't see him on employment.

Q. Didn't I ask you three or four times if you had been in the Electro plant until you talked personally with Homan, didn't I ask that three or four times? A. I think you did. I thought it had reference to employment. 30

Q. Did I mention employment? A. I think it was.

Q. Is it your testimony that you corrected was inspired because you now see Mr. Strothkamp in Court? A. It has nothing to do with it.

Q. Out of the blue you tell Mr. Hays about another conversation with Mr. Homan? A. That is so. 40

Peter Van Norde, Recalled—Cross.

Q. When did you tell him that, at lunch? A. At lunch.

Q. Not before? A. We didn't have an opportunity.

Q. Did you talk to Mr. Hays until you went out to lunch? A. That is so.

10 Q. Mr. Strothkamp was employed several years by Electro? A. I think he was. I don't know how many years.

Q. He was over there the time you made these trips to see Homan? A. I presume he was.

Q. You know very well he was? A. I didn't know at the time.

Q. Didn't you work on the festooning machine with Strothkamp? A. Yes.

Q. He helped? A. Yes.

20 Q. This was in the Electro plant? A. Yes.

Q. This was while you were under contract with Irvington? A. Yes.

Q. And you went over there to see if you could repair their festooning machine? A. Yes.

Q. The width of that machine was changed, was it not? A. It had been changed, yes.

Q. Material of what width would be accommodated in that machine? A. Thirty-six inch.

30 Q. Forty-two inch, wasn't it? A. I don't know, I never tried it.

Q. Didn't you have something to do with changing the width on that machine? A. No.

Q. Do you know what width it would accommodate when you first saw it? A. I am not sure.

Q. You saw that machine after you went to Electro? A. Yes.

Q. What width will it take now? A. I suppose the same width.

40 Q. You know it will take forty-two inches now? A. I never have tried it.

Peter Van Norde, Recalled—Cross.

Q. You have seen it? A. I never saw forty-two inch on it.

Q. You have forty-two inch rule on the Irvington Festooning Machine? A. That is true.

Q. Are you prepared to say that the festooning machines are not taking forty-two inches at Electro? A. I don't know, I never seen it. 10

Q. What did you do with the festooning machine on the visit with Homan? A. As I said, I made changes to the idlers on the machine.

Q. What was the trouble with the machine? A. As far as I could find out at the time they had been having considerable trouble with the chain coming off the sprockets.

Q. They were still having that trouble when you went to work for them? A. They still had that trouble. 20

Q. Didn't you design a heating and ventilating apparatus for the festooning machine? A. No, I did not.

Q. Do you know an employee of the Electro, a man named Whitehead, a draftsman? A. Not with Electro.

Q. Who is he employed by? A. He is a free lance, he calls himself a designing service.

Q. He worked for Irvington for a long time? A. A long time. 30

Q. What is his connection with Electro? A. He has no connection.

Q. Does he work for them? A. I have asked him to do some work for me on a free lance base.

Q. He was employed to do work for Electro? A. Yes, he is a draftsman.

August Brauer, Recalled—Direct.

Anthony Nichols, Recalled—Direct.

AUGUST BRAUER, being recalled on behalf of the defendant testified as follows:

Direct examination by Mr. Hays:

10 Q. What percentage of the business of the Electro Company is devoted to essential war work? A. Running about ninety percent, somewhere in that neighborhood.

Q. You determine that by the priority? A. Yes.

Q. What is the priority rating? A. Double A, three C or B, most of them double A or 2.

20 ANTHONY NICHOLS, being recalled on behalf of the defendant, testified as follows:

Direct examination by Mr. Hays:

Q. I refer you to exhibit D-5 for identification, photostat of certain chart and ask you up to a week or so ago were they in your possession? A. Yes.

Q. What did you do with them recently? A. I brought them in Court the first day the Court was in session.

30 Q. Where did you get them? A. I photostated them from the chart at the Irvington Varnish Company.

Q. About when? A. About three weeks before I left.

Q. When was that? A. The last week in April.

Q. In whose possession was it shown you? A. It was on the drawing board in the engineering department.

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Robert Mezger, Recalled—Cross.

Q. Were you connected with the engineering department? A. Yes.

Mr. Hays: I offer that in evidence.

(Photostat formerly marked Exhibit D-5 for identification submitted in evidence and marked D-5.)

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ROBERT MEZGER, being recalled on behalf of the complainant, testified as follows:

Cross examination by Mr. Hays:

Q. At the last hearing you told me I think, that Mr. Dale was one man working in the manufacturing department who was employed by a competitor? A. Yes.

20

Q. I asked you about other departments and you said you didn't know? A. Yes.

Q. I asked you to bring with you the names of other employees now with Irvington who had come to you from competitors? A. Yes.

Q. And the only names you gave was Mr. Dale? A. Yes.

Q. You have a research department, haven't you? A. Yes.

30

Q. You have a research department, haven't you? A. Yes.

Q. How many in the research department came from your competitors? A. None that I know of.

Q. Do you know that none of them did? A. I don't know any of them that have come from competitors.

Q. Did you look that up since the last hearing? A. No, I do not know any of them that had come.

40

Robert Mezger, Recalled—Cross.

Q. Wasn't that one of the items that you were to check up and give us at this hearing? A. Well, I didn't include the research department because they were not ones covered as far as contract.

Q. How about the sales engineers, how many came from competitors? A. There was one salesman.
10

Q. From where? A. The General Felt.

Q. That is a competitor? A. Yes.

Q. There is only one? A. Only one salesman.

Q. Are sales engineers different from salesmen? A. Yes.

Q. You have sales engineers? How many salesmen came from competitors? A. None that I knew of.

Q. Have you looked that up? A. Yes.

20 Q. How many chemical engineers came from your competitors? A. None.

Q. How many from competitors, did you check it? A. I didn't find they have.

Q. And have you made a check since the last hearing? A. Whether Mr. Dale was the only one in the varnish department as the Court directed me to find out if they were.

Q. In the other department? A. Yes.

Q. Have you looked it up? A. No.

30 Q. Do you know if any chemists came from competitors, you looked it up? A. Yes.

Q. None of them come from competitors? A. Presently employed, none.

Q. I also asked you how many different departments had restraining contracts, do you remember that? A. Yes.

Q. And you gave me information and said that there were certain departments that were not shown to have them? A. Yes.

40 Q. Have you looked that up? A. Yes.

Robert Mezger, Recalled—Cross.

Q. Will you tell us how many men in all these departments had these contracts with restraint in them and what their position was? A. We have nine chemists in the research and development department, eight chemists in the inspection and control, two laboratory technicians, four varnish makers, there are nine foremen, production foremen, there are six in a supervisory capacity, five in the engineering department, there are seven in management, four in accounting, thirteen in sales engineering and six in administration. 10

Q. Now you mention six in a supervising capacity. A. Yes.

Q. What are the jobs they hold? A. Production foremen, you mean a supervisory capacity?

A. Yes. A. They are plant superintendent, supervisor of plant departments. 20

Q. Have you stated to anybody within the last six months that the purpose of this contract is to act as a determine of men leaving your employ? A. I don't recall saying anything like that.

Q. Or along that line? A. That the purpose of this contract is to keep secret and confidential information from being handed over to our competitors and by doing that it was not only protecting the company but it was protecting the employees in the company so that this confidential information could not be given to our competitors and have an adverse effect on the business. 30

Q. Did Mr. Jones say to you at any time, or you to him that the purpose was to determine from leaving your employ? A. No, sir.

Q. Isn't it a fact that these contracts were drawn because the company was having a turnover of employees? A. No.

Q. That had nothing to do with it? A. No. 40

Albert Strothkamp, for Complainant—Direct.

Q. You mentioned secrets and that sort of thing, these contracts were intended to restrain people from learning, isn't that true of the accountant who signed these contracts? A. Yes.

Q. They are accounting secrets? A. No, but the accountant's work on cost estimate that include
10 formulars.

REBUTTAL.

ALBERT STROTHKAMP, being called in behalf of the complainant, testified as follows:

Direct examination by Mr. Coursen:

20 Q. Have you ever been employed by Irvington?
A. No.

Q. Have you ever been employed by Electro?
A. Yes.

Q. When were you employed by Electro? A. December 1937, up to November 11, 1944.

Q. What was your job with the Electro? A. I was head of maintenance.

Q. Did you meet me this morning about 8.30 in Mr. Trelease's office? A. No.

30 Q. Did you ever see me before in your life? A. No.

Q. What time did you come to Court this morning? A. About half past eleven.

Q. You stayed in Mr. Trelease's office from the time he left a little before ten until after eleven?
A. Yes.

Q. Were you told to come to Court at 11:30?
A. Yes.

Q. Were you told to stay in his office until
40 called? A. Right.

Albert Strothkamp, for Complainant—Direct.

Q. You didn't see Mr. Van Norde this morning until you got in Court? A. No.

Q. Do you recall an occasion in the early part of February when Mr. Van Norde came over to the Electro plant? A. I do.

Q. Did you receive any instructions from the president of Electro? A. I did. 10

Q. What did he tell you? A. He told me to wait until Mr. Van Norde came up that he was going to set up some gears in the gear box.

Q. What machine was that? A. The festooning machine.

Q. Did Mr. Van Norde get there? A. Yes.

Q. Was that in the evening or afternoon? A. It was seven o'clock at night.

Q. Was Mr. Homan there? A. No.

Q. Mr. Van Norde was introduced to you? 20
A. Yes.

Q. What did he do with the festooning machine on that occasion? A. He changed the gears in one of the gear boxes.

Q. How long was he there? A. About an hour and a half.

Q. Are you sure Mr. Homan was not there? A. No.

Q. Did Mr. Van Norde come back again? A. Yes. 30

Q. How long a period elapsed? A. A week or ten days.

Q. Did he come again in the evening? A. In the afternoon.

Q. Did you meet him? A. No.

Q. Where were you? Were you there? A. I wasn't there, I went in to do a job and gave him a helper.

Q. Did you observe what he did on that occasion? A. Yes. 40

Albert Strothkamp, for Complainant—Direct.

Q. What did he do? A. He changed the gears.

Q. Again? A. Yes.

Q. What do you mean by changing the gears?

A. On the gear box, he had to slow up the chain, so that the stick wouldn't pile up so they wouldn't travel so fast.

10 Q. You had some difficulty? A. Not with the previous stuff.

Q. What did they intend to use it for that time?

A. They wanted to use wider material.

Q. What was the purpose? A. They were going to be wider paper run in there and later on I heard a fellow say—

Mr. Hays: I object.

The Court: I sustain the objection.

20 By Mr. Coursen:

Q. What were the adjustments designed for, what were they going to use the machine for?

Mr. Hays: I object.

The Court: Do you know?

The Witness: They were going to cut some wider paper.

By Mr. Coursen:

30 Q. For what? A. Afterwards I heard it was for bottle caps.

Mr. Hays: I object.

The Court: Strike it out.

By Mr. Coursen:

Q. Did you have any conversation with anyone at the Electro with respect to the purpose they were to use this machine for? A. Yes.

40 Q. Who? A. Mr. Roh.

Albert Strothkamp, for Complainant—Direct.

Q. He is president of the company? A. Yes.

Q. What did he say? A. He said go ahead and get the track widened out so we can use wider paper.

Q. Had Electro up to that time been cutting paper? A. No.

Q. Paper is coated for bottle caps? A. Yes, as I heard it was to be used for bottle caps. 10

The Court: Strike that out.

By Mr. Coursen:

Q. Coated paper is used for bottle caps, Irvington used it for that purpose? A. I don't know, that was one thing that is out of my line.

Q. You recall when Mr. Van Norde came to work for Electro? A. Yes.

Q. Do you know if he did any work on the coating towers? A. He just handled the ends winding up, adjustments. 20

Q. Do you know if he did any work on the sprockets? A. He had added gears, they had pulled before.

Q. Do you know if he did work on the heating, on the festooning machines? A. I know he had something to do with the heating features on that.

Q. With the festooning machine? A. Yes.

Q. Do you know Mr. Laske? A. Yes. 30

Q. Is he connected with the Electro? A. Yes.

Q. What job? A. Manager.

Q. Did you have a conversation with him as to what they intended using the festooning machine for? A. They told me to hurry up and as soon as they got the time they would be ready to operate.

Q. Did he say what the operation was? A. It was to run this wide paper through for bottle caps.

The Court: He mentioned bottle caps. 40

The Witness: Yes.

Albert Strothkamp, for Complainant—Cross.

Cross examination by Mr. Hays:

Q. What brought you to Mr. Trelease's office this morning? A. Mr. Dale brought me down.

Q. Who is Mr. Dale? A. He was an old original business friend of mine.

10 Q. In Electro? A. Yes.

Q. And he is now at Irvington? A. Yes.

Q. How did he come to hear any information that you had that would be helpful? A. I was up to see him about a job.

Q. When? A. In November 1944.

Q. At that time you had a conversation about this case? A. Yes.

Q. Did you get the job? A. No.

20 Q. Tell us exactly what Van Norde did in connection with the festooning machine? A. As I explained before he came there and worked on the gear box.

Q. What for? A. For the machine gears.

Q. Did he have to correct them? A. Yes.

Q. Are you an engineer or mechanic? A. No, I was in charge of maintenance.

Q. Was it a job that you could do? A. No.

30 Q. What was there unusual or unique about changing the gears? A. You have to check up the gears and have them mesh all the teeth for space.

Q. It takes a man with knowledge of feeding the teeth? A. Yes.

Q. Is that all he did with the festooning machine? A. At that time.

Q. Were the festooning machines running after that? A. No.

Q. Have they run up to this time? A. No.

40 Q. Even after Mr. Van Norde was there the short time he was employed, during that period the festooning machine was never run? A. No.

Albert Strothkamp, for Complainant—Cross.

Q. What did he do, if anything, in connection with the festooning machine while with Electro, did he work with it? A. He is taking care of the new office building.

Q. Will you tell all the work Mr. Van Norde done for the Electro? A. As I stated before he overtook my part of the job. I was to be his assistant. He took over then all the work in the new building. 10

Q. New buildings, did he have to do with the designing of the new building? A. No.

Q. He contacted the contractor and made estimates? A. Yes.

Q. Laying out jobs? A. No.

Q. He did what? A. He watched the building going up right.

Q. One thing, he was supervising the building so that it was going up right? A. Yes. 20

Q. And saw that pipes were received, right? A. Yes.

Q. What else? A. Tightening up the ends of the tower on the brackets.

Q. All he did at the tower was tightening up the ends? A. That is all I know.

Q. What is that? A. They were all bounded together and he had them all made up new and winding. 30

Q. Anything else? A. Not on the towers.

Q. Didn't make any changes that you saw on the towers? A. No.

Q. What other work did he do there? A. Outside of taking charge of the fellows there, putting up the ventilation in the festooning machine.

Q. He had changed those to take care of the ventilating apparatus and the festooning machine? A. Yes.

Q. Anything else? A. That is all, at that time. 40

Albert Strothkamp, for Complainant—Re-direct.

Robert Mezger, Recalled—Direct.

Q. You mentioned Mr. Laske who told you something about bottle caps? A. Yes.

Q. Was he an employee of Electro? A. The factory manager.

Q. Of what? A. Of Electro.

10 Q. Did you ever hear of Albert Cornish Company? A. Yes.

Q. Wasn't Mr. Laske an employee of his? A. Yes.

Q. How long a time was he employed by Electro? A. Before my time.

Q. What was his job? A. At the time when I came there when he was forman in the varnish department.

20 Q. What date in 1944, what was he? A. Factory manager.

Re-direct examination by Mr. Coursen:

Q. You testified that you arrived in the courtroom at 11:30 A. M. A. Yes.

Q. Did Mr. Van Norde take the stand again until just a few minutes ago after the noon recess? A. No.

The Court: He wasn't on the stand when you came in?

30

The Witness: No.

ROBERT MEZGER, being recalled on behalf of the complainant, testified as follows:

Direct examination by Mr. Coursen:

40 Q. You recall giving some testimony about agreement that Irvington made with Mueller? A. Yes.

Robert Mezger, Recalled—Direct.

Q. I show you a paper and ask you what it is?

A. This is the agreement we made with Mr. Mueller in 1938.

Q. Is that the agreement you referred to in the testimony? A. Yes.

Mr. Coursen: I offer that in evidence.

Mr. Hays: I object, it is incompetent and irrelevant and immaterial. It has to do with the machine that was patented and is a machine that does not have a contract and is a contract between the third party and the Irvington and could not affect the rights of Van Norde. 10

The Court: I don't know what it is offered for. I will hear Mr. Coursen.

Mr. Coursen: His testimony is that we entered into an agreement with Mueller and we purchased these three tubing machines and also provided salary that he was to receive for five years. 20

The Court: I will receive it.

(Agreement with Mueller admitted in evidence and marked Exhibit P-13.)

By Mr. Coursen:

Q. Mr. Hays stated that this was on machines that was patented. 30

Mr. Hays: Aren't they the rounding machines?

Mr. Coursen: Yes.

Mr. Hays: I thought they were patented. These are the German machines?

Mr. Coursen: Yes.

Mr. Hays: They were not patented?

Robert Mezger, Recalled—Direct.

By Mr. Coursen:

Q. Is that so? A. They were not patented, Irvington developed a different type which is also used by them and those rounding machines were patented but not the ones we bought.

10 Q. There was testimony this morning about representatives of the New Jersey Wood Finishing Company? A. Yes.

Q. What was that occasion? A. We license the New Jersey Wood Finishing Company to make the cable cloth from the casin oil product which we had patented rights and in order for the New Jersey Wood Finishing Company to produce this cloth we did considerable getting them in a position necessary to apply that dust finish.

20 Q. Is that the mica dust? A. Mica dust. When first mentioned they sent it to us to be mica dusted as the temporary arrangement, and then they came to our plant to look over our dusting machine that we had and at that time there the machine described in detail and they thought that they could purchase a standard machine for coating to do the job which they could get and it would be less expensive. They purchased a machine and after trying to operate, which we also tried to get to work, Mr. Van Norde was sent down there to work with
30 them and they finally gave up and built a machine along the lines of our dusting machine.

Q. It's design was furnished by Irvington? A. Yes, and we contacted the various parts and manufacturers so that they could build a machine for the New Jersey Wood Finishing Company.

Q. Do I understand that the New Jersey Wood Finishing Company was a customer of Irvington? A. Yes, they bought different ingredients to do this.
40

Robert Mezger, Recalled—Direct.

Q. Was it in the relationship of a customer that you permitted them to come over and see these machines? A. Yes.

Q. Do you use a festooning machine in Irvington for bottle cap paper? A. We do.

Q. Does the festooning machine coat on one side or both? A. One side only. 10

Q. How must a festooning machine be constructed in order to accommodate the wood paper that you used for bottle cap? A. The coating has to be wide enough, and the conveyor stick must be wide enough to convey for the one inch paper.

Q. There was considerable testimony as you no doubt recall about the horizontal cutting machine? A. The edgewise machine?

Q. Yes. A. Yes.

Q. Can that machine be used for all the purposes you use a coating tower? A. No, it could not be used for textile cloth for all the trade, part of the purchasers wants the material with the selvege edge left on the cloth, when they cut with the edgewise machine they do not bring the cut all the way out, there is no selvege that is 1½ inch to 1 inch in, anything you cut from the edgewise machine must have the selvege edge trimmed. 20

Q. Is the testaline material an important part of your business? A. Yes. 30

Q. The horizontal machine cannot be used for that purpose? A. No, nor the two sides coated paper. Additions have been tried for the edgewise machine and the wider machine set up in new brackets, we attempted to try to and our engineer says it is not practical to expect paper to take rough treatment in the machines because paper is not as flexible as cloth.

Q. Is Irvington using that horizontal machine today? A. Not for coating cloth. 40

Robert Mezger, Recalled—Direct.

Q. When did they stop using that machine? A. We stopped using that machine in September 1944 because the volume of business in linoleum commenced to drop and unless you have a long run the machine is not as economical to use and as practical as the vertical tower.

10 Q. Do you recall having a conversation with Mr. Van Norde at the time he left Irvington with respect to his plans? A. I had numerous conversations with him as I stated before. On one occasion——

Mr. Hays: May I interrupt? I thought you went all over that on your direct examination.

By Mr. Coursen:

20 Q. One additional fact I would like to bring out. Can you add anything to the testimony you have already given? A. Yes, I recall in one conversation before Mr. Van Norde spoke to me he was going to the Kolb Sheet Metal Works. When I asked him who he was going with he said he didn't know. That there was a lot of things he could do and he wasn't worrying about a job, that he could get a job as a consultant, he felt he could get employment of any kind. I agreed with him and I
30 told him though he should think of his security after the war with Irvington that he may not have with another job.

Q. Do you recall Mr. Mezger's testimony as to the difficulty Irvington had with the chains in the proving oven? A. What?

Q. Perhaps it was Mr. Van Norde, but there was some testimony. A. I recall Mr. Van Norde's testimony that there was trouble in the festooning machine due to chains dropping off.
40

Robert Mezger, Recalled—Direct.

The Court: Is this something that was testified to in this case?

Mr. Coursen: I want to call his attention to certain testimony that was given.

The Court: Ask the question.

By Mr. Coursen:

10

Q. Was there any testimony either by you or Mr. Van Norde as to the difficulty Irvington were having with the change in the tubing oven, am I wrong about that? A. You are wrong about that.

Q. Do you recall Mr. Van Norde testifying that he had difficulty of that same nature with respect to the festooning machine at Electro? A. Yes, I recall.

Q. What was that?

20

Mr. Hays: I object to that.

The Court: Are you asking what the other man testified about?

Mr. Coursen: I don't.

The Court: I don't want you to open up too many subjects, I hoped to have this case finished today.

By Mr. Coursen:

Q. You heard him testify that he did work on that festooning machine to overcome that difficulty? A. Yes. 30

Q. Was there a similar difficulty in Irvington? A. Yes, with the tubing conveyor, originally built in 1936.

Q. Did Mr. Van Norde work on that? A. Yes.

Q. For how long? A. Several years, it was 1941 when the drive was finally redesigned.

Q. This was the same difficulty that he was working on at Electro. 40

Robert Mezger, Recalled—Cross.

Mr. Hays: I object.

The Court: I sustain the objection.

By Mr. Coursen:

10 Q. Is there any material used in electric insulation that is only coated on one side? A. Yes, occasionally we varnish various papers and after bound with cambric.

Q. How much of that do you do a year? A. The most we have done in a year would be five thousand yards.

Q. A year's supply? A. Five thousand yards is the most we ran in any year.

Q. How long have you run that? A. About eight years?

20 Q. Can that be done on a festooning machine? A. No, because of the stiffness of the paper.

Q. What type of material is made on the festooning machine?

Mr. Hays: I object to that.

The Court: I sustain the objection.

Cross examination by Mr. Hays:

30 Q. You said something about Mr. Van Norde saying that he could get a job as a consultant? A. Yes.

Q. You advise that he should not? A. I said he should consider his work with Irvington and that he had some seniority.

Q. Did you object that if he was a consultant that he couldn't be one for your competitors? A. Yes.

40 Q. Did you advise him that he couldn't be a consultant? A. I said he couldn't work for our competitors.

Robert Mezger, Recalled—Cross.

Q. Even as a consultant? A. Yes.

Q. There were times when you sent Mr. Van Norde to go over to other plants to companies that were in competition with you? A. He was sent to the New Jersey Wood Finishing Company to work on some machines down there for us.

Q. Wasn't he also sent to the General Electric, didn't he go up there and go over their machines? 10

Mr. Coursen: I object.

The Court: I sustain the objection.

Mr. Hays: I want to show that they were not kept secret.

The Court: I don't think you ought to reopen your defense.

Mr. Hays: I think he was asked in this examination whether this New Jersey concern didn't come there and it was intimated because they were customers. Here is the General Electric where Mr. Van Norde went up there. 20

The Court: I don't see that it has anything to do with rebuttal.

Mr. Hays: This witness said that they were allowed because they were customers. I want to show that the General Electric—

The Court: The question you asked if Van Norde was not sent? 30

Mr. Hays: I was coming to the other.

The Court: I sustain the objection.

By Mr. Coursen:

Q. Did the people of the General Electric Company ever go through your plant? A. They were only permitted to see the edgewise cutting machine. 40

Arthur E. Jones, for Complainant—Direct.

Q. The new edgewise cutting machine? A. Right.

10 ARTHUR E. JONES, called as a witness and being duly sworn on behalf of the complainant, testified as follows:

Direct examination by Mr. Coursen:

Q. You are president of the Irvington Varnish Company? A. Yes.

Q. How long have you been president? A. Twenty-two years.

20 Q. Do you recall Mr. Garrison, a former employee? A. Yes.

Q. Did you have a conversation with Mr. Garrison at the time he left Irvington employment? A. Several.

30 Q. Will you tell what you said and what he said? A. When I was first told that Dave was going to leave I was quite concerned and called him up and talked about the matter and he told that he didn't want to work under a contract. I asked him why he felt that way and he said he felt because of the suit against Van Norde and he wanted
40 to go on record now before that case was tried that he wasn't going to continue to work under a contract. I asked him what changed his mind from the time he signed it and it is my recollection that he said he had taken advice in respect to the contract and said he was not particularly happy about doing so. We discussed the merits of the contract, why it was necessary for me to have a contract and I explained to him why I felt a contract of this kind was necessary.

Arthur E. Jones, for Complainant—Direct.

Q. You are referring to the contract you had with Van Norde? A. The one that he had signed and didn't want to work under it.

Q. It is similar to the one you had with Van Norde? A. Yes.

Q. Go ahead.

The Court: You said you explained why you needed a contract. 10

The Witness: Yes. I went over the history of the Irvington business and that we had lost men that had been enticed away from us by competitors by one pretext and another and we felt we had been seriously handicapped by these people going away. We were the father of this industry. Practically all the major principle developments, varnishing of equipment had been developed in the Irvington plant. I went on to explain to him in my own language, it didn't mean a tremendous amount to me, my personal business, I did feel that many people who worked for me had invested their whole life in my plant and I didn't feel it was fair to men who didn't know our processes to take what we had developed by trial and error and were simply people who wanted to get in my business and to take men who worked with me. It wasn't right to the other men who built it up with me. I felt that way. 20
30

By Mr. Coursen:

Q. What did he say? He told me it might be good to get hold of the people who signed these contracts and explain my fix. As a matter of fact I talked with Mr. Mezger the next morning and 40

Arthur E. Jones, for Complainant—Direct.

Mezger told me that it had all been explained at the time the contracts were signed, that they all subscribed to that a hundred percent.

Q. Did you tell him the purpose of getting the contract was to deter them from leaving Irvington? A. Definitely not. I told him exactly what I am telling now.

10 Q. Did you tell him you couldn't afford to have an important employee go with a competitor that will cost you money? A. No. I went to great length so far as it cost me money, on me individually, it was beside the point, it was to protect the shop and the people in it. We have several instances where after they had seen our development someone would pick up my employers and go in the same business.

20 Q. Do you own stock in the Irvington Varnish Company? A. Yes.

Q. You own a large portion of it? A. A very substantial portion of it.

Mr. Hays: No questions.

The Court: Mr. Hays asked me to reconsider the matter of the admission of those magazines. I will ask you to put in your memorandum a free statement of why they should be admitted.

30

40

Exhibit C-1.

ELECTRO-TECHNICAL PRODUCTS, INC.
Nutley, New Jersey, U. S. A.

September 24, 1943

Mr. A. E. Jones
Irvington Varnish & Insulator Co. 10
Irvington, N. J.

Dear Mr. Jones:

Inasmuch as it is our intention to manufacture bottle cap paper, we will appreciate your furnishing us with a complete, up-to-date price list with the exception of that of cut liners.

Yours respectfully,

EDWARD C. HOMAN 20

Exhibit C-2.

THIS AGREEMENT, made this 30th day of January, 1942 by and between IRVINGTON VARNISH & INSULATOR Co., a corporation, hereinafter called "Employer", and PETER VAN NORDE presently residing at 147 Mountain Avenue, Summit, New Jersey, hereinafter called "Employee", WITNESSETH: 30

1. Employer hereby employs (or agrees to continue to employ) Employee in its business, in a confidential capacity, but subject to Employer's direction and control, for a period from the date hereof to the end of the next ensuing calendar month; and for further periods of one calendar month each, thereafter (subject to termination of 40

Exhibit C-2.

said further employment by either party upon one month's notice) at a salary at the rate of \$300.00 per month (subject to revision thereof, from time to time, as agreed).

10 2. In consideration thereof, Employee hereby accepts said employment and agrees with Employer, as follows:

(a) That he will perform his services hereunder faithfully and to the best of his ability, devoting his entire working time, services and ability exclusively to his work for Employer in furtherance of Employer's interests

20 (b) That he will, both during his employment by Employer and after cessation thereof (howsoever the same shall occur), keep secret (neither disclosing to others nor himself making use of, except as to disclosure and use in the line of duty, as authorized by Employer) confidential information concerning Employer's business, a knowledge whereof may be acquired by Employee in connection with his said employment; provided, however, that, except as to matters which are technically trade secrets of Employer (and
30 except, then, for so long, beyond the period hereinafter designated, as they continue to be such) the operative effect of this paragraph shall be confined to the United States and to a period of two years from the date of cessation of employment aforesaid

40 (c) That, included in his duties hereunder, he will endeavor to bring about new inventions and discoveries relating to Employer's business, which new inventions and discoveries shall, without additional compensation

Exhibit C-2.

to Employee, beneficially belong to Employer, exclusively, and Employee will, both during his employment by Employer and after cessation thereof (howsoever the same shall occur) (and subject to payment by Employer of reasonable compensation for the latter services) cooperate with Employer, in conformance with Employer's reasonable instructions in that regard, in familiarizing Employer therewith; in securing patent coverage thereon; and in assigning to or otherwise vesting in Employer the record title to such patents 10

(d) That he will, for a period of two years following the cessation of his employment by Employer, howsoever the same shall occur, refrain from engaging in, being employed by, or otherwise connected with, directly or indirectly (whether as proprietor, partner, associate, consultant, officer, director, agent, employee, or in any other capacity) any competing business enterprise located in the United States. Provided, however, if Employee's employment hereunder at time of cessation thereof shall have continued for a period less than six months, in the aggregate, then this paragraph shall be inoperative; and, provided, further, if Employee's employment hereunder, at the time of cessation thereof, shall have continued for a period less than two years, but more than six months, in the aggregate, then the operative effect of this paragraph shall be limited to a period, following cessation of employment as aforesaid, corresponding to the period of aggregate employment. Provided, further, if the cessation 20
30
40

Exhibit C-2.

10 of said employment be involuntary with Employee, he may, at any time while this restriction remains in effect, by written notice, require Employer's election either (a) to thereafter pay him at the rate of one-half his regular salary, as at the date of such cessation, for the then balance of the restrictive period (such payments to be made at the offices of Employer in regular periodic installments, at least once monthly, but to be conditioned upon Employee's continued existence and continued adherence to the undertakings on his part under this Agreement), or (b) to thereafter waive the benefit of the restriction of this paragraph—failure to make payments available as herein provided to be and be deemed such a waiver

20

(e) He acknowledges and undertakes never to dispute the validity and scope of all patents owned, and of all patent rights exercised by Employer and also acknowledges and undertakes never to dispute the exclusive ownership by Employer, subject to no outstanding right or claim by or through Employee, or any other person whatsoever, of all inventions, discoveries, patents, patent rights, processes, formulae, designs, specifications and other working data whatsoever used or practised by Employer, this provision being applicable to the subject matter aforesaid as existing at any time during the entire term of the Employee's employment with Employer, past, present and future

30

3. In amplification of the foregoing, the parties hereto mutually agree:

40

Exhibit C-2.

(a) NOTICE: Notice hereunder may be given personally or by registered mail addressed to the addressee's last-known post-office address. If by registered mail, notice shall be conclusively deemed to have been given and received on the day following the mailing thereof 10

(b) COVERAGE:

i. The term "confidential information concerning Employer's business" herein shall extend to and include confidential information concerning Employer's processes, methods, formulae, apparatus, specifications, materials and sources of supply thereof, customers, their identities and requirements, discoveries, inventions, patents (including applications and rights in either), contracts, finances, personnel, their duties and capabilities, research, plans, policies and intentions—including as to matters which, though not technically trade secrets, the dissemination of a knowledge whereof might prove prejudicial to Employer 20

ii. The term "competing business enterprise" herein shall extend to and include any business involving, or business establishment engaged in, the development, production or sale of any products (including services) which are the same as or similar to, or which in the use or application thereof compete with, any products then being developed, produced or sold by Employer and which have been developed, produced, or sold by Employer at any time during Em- 30 40

Exhibit C-2.

10 ployee's employment by Employer; i.e.,
prior to cessation of such employment (or
in case Employee's activities and contacts
hereunder shall have been confined to one
or more product-divisions of Employer's
business, then any products being de-
veloped, produced or sold by or within such
divisions), and including any business or
business establishment the activities of
which are incidental or tributary to any
such first-mentioned business or business
establishment

20 iii. The term "new inventions and dis-
coveries relating to Employer's business"
herein shall extend to and include new or
improved processes, methods, formulae,
apparatus, specifications and materials re-
lating to Employer's research, develop-
ment, producing or marketing activities;
also improvements and developments of
Employer's products; also new and im-
proved uses and applications for and of
Employer's products

30 iv. The masculine form herein, when ap-
propriate, shall extent to and include the
feminine

40 (c) MODIFICATIONS AND RE-EMPLOYMENT:
In the event of any changes in the Employee's
rate of compensation hereunder, or other
changes herein, this agreement shall be, and
be deemed, modified to the extent thereof and,
as so modified, continued in force and effect,
and in case of temporary interruptions of the
employment, shall be considered as continu-
ing notwithstanding such interruptions. The
agreements hereof shall be in force and effect

Exhibit C-2.

as often as Employee shall be re-employed by Employer, whether such employment shall be continuous or not and, unless otherwise agreed in writing, re-employment, from time to time, is hereby mutually recognized and accepted as in renewal of and ancillary to this original contract, with the same force and effect as if mutually re-executed 10

(d) GENERAL: Specific references in connection with general statements herein are to be deemed merely illustrative of the latter, and not in limitation thereof and mention of certain instances shall not exclude others not so mentioned. The provisions of this contract for the benefit of Employer are and are to be deemed separate and severable, and invalidity or unenforcibility as to any word, phrase or provision, or in any instance, shall not affect the remainder of the contract or the validity and enforceability thereof in other instances. In addition to all rights accorded hereunder, Employer shall have all rights otherwise accorded by law. Any waiver of these provisions shall operate neither as a waiver of any other provision, nor of the same provision in any other instance. This agreement shall be construed in accordance with its expressed purposes, without a construction more favorable to one of the parties than to the other. All rights and obligations shall be governed by New Jersey law. The agreements of Employee herein shall be and be deemed to run with and in favor of Employer's business and hence to inure to the benefit of the successors to or assignees of such business. 20 30 40

Exhibit C-3.

IN WITNESS WHEREOF, Employer has caused these presents to be signed in its name and behalf and Employee has hereunto set his hand and seal, both in duplicate, the day and year above written.

IRVINGTON VARNISH & INSULATOR Co.

10

By ARTHUR E. JONES
(Title) President.

PETER VAN NORDE (L. S.)
(Employee)

Witness:

ROBERT MEZGER

20

Exhibit C-3.

Piece of white braided material (Flat).

Exhibit C-4.

Piece of white braided material (Round).

30

Exhibit C-5.

Strip of cardboard laminated with yellow varnished paper.

Exhibit C-6.

Strip of cardboard laminated with yellow varnished paper.

40

Exhibit C-7.

Strip of cardboard laminated with yellow
varnished paper (wrinkled surface).

Exhibit C-8.

Strip of cardboard laminated with yellow 10
varnished paper.

Exhibit C-9.

May 1, 1944

Irvington Varnish & Insulator Company
Irvington, New Jersey
Attention: Mr. C. F. Brinkman

20

Dear Mr. Brinkman:

After careful consideration, I find it impossible
to accept the position assigned to me in Executive
Bulletin #68.

It is with regret that I submit my resignation
as Chief Engineer of the Irvington Varnish &
Insulator Company.

It is also, with sincere regret that after 25 years
of service, I have to take this step which I would
like to become effective one month from the above 30
date.

However, if you feel that immediate action is in
order, I would cooperate as usual.

Yours very truly,

PETER VAN NORDE,

PVN :br

40

Exhibit C-10.

August 14, 1944

Mr. Peter Van Norde
147 Mountain Avenue
Summit, New Jersey

Dear Mr. Van Norde:

10 Since your resignation, it has come to our attention that, contrary to your representation to us, you are not now employed by Kolb Sheet Metal Works but that you have become employed by Electro-Technical Products, Inc., one of our competitors.

We call your attention to the following from your employment agreement with us:

20 “(d) That he will, for a period of two years following the cessation of his employment by Employer, however the same shall occur, refrain from engaging in, being employed by, or otherwise connected with, directly or indirectly (whether as proprietor, partner, associate, consultant, officer, director, agent, employee, or in any other capacity) any competing business enterprise located in the United States.”

30 Inasmuch as your experience and knowledge were gained entirely through your employment by us, and the situation which has arisen is one which your employment contract with us was designed to meet, we intend to enforce our rights thereunder to the fullest required to protect this company.

You are therefore notified that your employment with a competitor is contrary to your contract and that unless you quit this employment forthwith, we shall take such steps as are necessary to obtain proper protection.

40

Yours very truly,

IRVINGTON VARNISH & INSULATOR Co.

W. F. HOFFMANN, JR., Vice President

WFH JR/n

Exhibit C-11.

August 14, 1944

Electro Technical Products, Inc.
 Nutley
 New Jersey

Gentlemen:

10

It has come to our attention that a former employee of ours, one Peter Van Norde, has been employed by you.

We wish to specifically call your attention to the following clause from his employment contract with us:

“(d) That he will, for a period of two years following the cessation of his employment by Employer, howsoever the same shall occur, refrain from engaging in, being employed by, or otherwise connected with, directly or indirectly (whether as proprietor, partner, associate, consultant, officer, director, agent, employee, or in any other capacity) any competing business enterprise located in the United States”.

20

We believe from our contacts with you that you would not willfully be a party to a violation of our contract rights; but would appreciate having your written assurance to that effect—specifically, that Mr. Van Norde is to be no longer connected with you for the remaining duration of his contract with us.

30

Yours very truly,

IRVINGTON VARNISH & INSULATOR CO.

W. F. HOFFMANN, JR., Vice President

WFH JR./n

40

Registered Mail

Exhibit C-12.

ELECTRO-TECHNICAL PRODUCTS, INC.
Nutley 10, New Jersey, U. S. A.

August 16, 1944

10 Irvington Varnish & Insulator Co.
Irvington 11, N. J.

Attn: W. F. Hoffman, Jr.

Gentlemen:

This will acknowledge your letter of August 14, in reference to our employment of Mr. Peter Van Norde.

20 As you indicate in your letter, we are most anxious that nothing shall arise to interfere with the good relations between our respective companies, but we are at a loss to see anything that we can do in this present situation.

We engaged Mr. Van Norde for a definite period of time because your company certified that he was available for employment. Under these circumstances, there probably will be some complicated legal questions if we endeavor to cancel our arrangements with him.

30 The above is, of course, apart from the practical side of the situation, which is that as far as we can judge from our experience, Mr. Van Norde is satisfactorily performing his work with us.

Needless to say, we regret exceedingly that it happens to be our two companies with which this question arises.

Very truly yours,

ELECTRO TECHNICAL PRODUCTS, INC.

ROBERT S. ROBE

40 RSR:MP

Exhibit C-13.

THIS AGREEMENT, made this 30th day of April, Nineteen Hundred and Thirty-Eight, by and between ERNST MUELLER, temporarily at Newark, N. J. (hereinafter called "Mueller"), and IRVINGTON VARNISH & INSULATOR Co., a corporation organized and existing under the laws of the State of New Jersey, with principal office in Irvington, N. J. (hereinafter called "Irvington"), WITNESSETH:

WHEREAS, Mueller owns and controls certain secret processes for the protection of varnish- or lacquer-coated tubing; of varnish- or lacquer-coated wires and cables; and of varnishes and lacquers (hereinafter, collectively, called the "Mueller processes"); and

WHEREAS, the parties hereto mutually desire to enter into an arrangement, on the terms and conditions hereinafter stated, for the acquisition and use by Irvington of the Mueller processes; for the employment of Mueller by Irvington; and for the sale by Mueller to Irvington of certain machinery.

NOW, THEREFORE, the parties hereto, in consideration of the respective covenants, agreements and promises herein set forth, do hereby covenant, agree and promise, each with or to the other, as the case may be, as follows:

1. Mueller represents and warrants to Irvington that he controls and is the rightful and exclusive owner of the Mueller processes, free and clear; that the same have been closely maintained as trade secrets; that he (Mueller) has the right and power to convey the same to Irvington and to enter into this agreement.

Exhibit C-13.

2. The Mueller processes, with all right, title and interest, legal and beneficial, of Mueller therein and thereto, shall be, and are hereby, conveyed to Irvington. Mueller shall inform and instruct, and shall keep fully informed and instructed, the designated agents of Irvington concerning the Mueller processes, furnishing, if and whenever requested by Irvington so to do, a manuscript description thereof accompanied by all memoranda and data relative thereto, thereby to impart a working knowledge thereof. Mueller shall obtain and furnish Irvington cooperation to the fullest possible extent in securing and assuring to Irvington the fullest possible use and enjoyment of the Mueller processes, including, without limitation, in the applying for and obtaining of patents thereon (if and whenever desired by Irvington); in the vesting of record title to such patents in Irvington; in completely familiarizing the designated agents of Irvington with the Mueller processes, including the practical application thereof; in preventing of disclosure thereof to unauthorized persons—Mueller performing all such acts and taking all such steps as may be reasonably required of him by Irvington for the accomplishment of the objectives herein expressed.
3. Irvington will, and does hereby, employ Mueller to perform such services as are reasonably consonant with an employee of Mueller's rank, subject to the direction and control of Irvington, in and about its business, for the term of five (5) years from the date hereof, at a salary of Three Hundred Dollars (\$300) per month, payable monthly, at or about the termination of each month's services or at shorter intervals, at Irvington's election, or when required by law.

Exhibit C-13.

4. Mueller hereby accepts said employment and will perform his services hereunder, faithfully, to the best of his skill and ability, and in a reasonably satisfactory manner, devoting his entire time, services, skill and ability exclusively to the aforesaid work. He shall not, during the period of his employment, directly or indirectly, represent, work for or be connected with any other business venture whatsoever. He shall perform such services as may from time to time be assigned to him, and as may reasonably be expected of an employee of his rank and standing, and shall in all respects do his utmost to further, enhance and develop the best interests and welfare of Irvington, especially in the manufacture and sale of Mueller-processed material. 10

5. The obligation of Mueller to perform services is conditioned upon his continued ability to do so, and shall be suspended during any temporary disability resulting from illness or operation of the immigration laws of the United States, and shall be terminated in the event of permanent disability from either of such causes, or by reason of death. Irvington, however, shall be obligated to pay a salary as aforesaid only for such periods of time as Mueller shall be actively engaged in the service of Irvington during Irvington's usual business hours, or shall be ready, willing and able to be so actively engaged, payments to be pro rata for fractional months' service. In each calendar year following the year 1938 in which Mueller shall continue to be employed by Irvington on July 1st of such year, Mueller shall receive two full weeks' vacation with pay, such vacation period to be designated at Irvington's discretion. Such employment may be terminated at any time for just cause. The suspension or ter- 20
30
40

Exhibit C-13.

mination of the employment features of this agreement shall not, however, affect the remaining provisions hereof.

10 6. Any increase of Mueller's salary shall operate merely as an amendment of this agreement, all of the other terms and provisions being retained as herein provided. At the expiration of said term of five years, if the employment of Mueller shall thereafter be continued, such employment shall, unless a new employment Agreement is entered into between the parties in writing, be at the rate of salary then prevailing or otherwise fixed by agreement of the parties, and shall be terminable by either party at any time upon one month's written notice (or, in the case of termination by Irvington, upon payment of salary in lieu of notice). Except as aforesaid, all of the terms and provisions of Paragraphs 3 to 7, inclusive, of this Agreement shall apply to such extended employment.

20 7. All new discoveries developed by Mueller during the period of his employment hereunder, whether developed by him alone, or in collaboration with others; whether developed during the employer's usual hours of business or otherwise; whether developed on or off the employer's premises; whether developed with the aid of plant, machinery, tools, equipment and/or materials of employer or employee, or otherwise (provided only that the development thereof shall have been undertaken by him with the consent of his superiors; or provided the same shall relate to any subject-matter assigned to him by his superiors for study or development; or provided, though not so undertaken or related, the same shall relate, directly or indirectly, to the subject-matter

30

40

Exhibit C-13.

of this Agreement, or directly or indirectly, to any of the other products or activities of employer—as at present or as may from time to time be added—or directly or indirectly, to any product or activity which is reasonably related to, or a logical outgrowth of, any such prior mentioned product or activity), shall beneficially belong to, and forthwith be and become the property of Irvington. Irvington shall have, with respect to such new discoveries, the same rights and benefits as are accorded to it with respect to Mueller processes under the provisions of Paragraph 2 hereof, with like effect as by the substitution of such “New discoveries” for “Mueller processes” in said paragraph, the rights and benefits of Irvington under this paragraph being partial consideration for the salary to be paid by Irvington to Mueller under Paragraph 3 hereof.

8. On all Mueller-processed materials manufactured and sold by Irvington during a period of five years from the date hereof, Irvington shall pay to Mueller royalties computed at the following rates:

- | | | |
|--|---------|----|
| A. On Mueller-processed varnish- or lacquer-coated tubing: | | 30 |
| i. On the first \$100,000. of such sales in each of said five contract years | Nothing | |
| ii. On the amount of such sales exceeding \$100,000., but not exceeding \$150,000 | 3% | |
| iii. On the amount of such sales exceeding \$150,000., but not exceeding \$200,000 | 2% | 40 |

Exhibit C-13.

- iv. On the amount of such sales
exceeding \$200,000 1½%
- B. On Mueller-processed varnish- or
lacquer-coated wires and cables 1½% of
total sales
- 10 C. On Mueller-processed varnishes
and lacquers 2½% of
total sales

Irvington represents and warrants to Mueller that its sales of tubing for the calendar year 1937 exceeded the sum of \$100,000.

9. Irvington will account to Mueller for royalties hereunder, on the first days of February,
20 May, August and November of each year as to sales for the quarterly period ending the first day of the preceding month, and, upon reasonable request therefor, Mueller, or his thereunto duly authorized representatives, shall, under reasonable supervision, have access to Irvington's records of sales of Mueller-processed materials. Statements of account shall disclose, in summary, the computation of the royalties then due and such statements, together with checks to cover,
30 shall be made available to Mueller at Irvington's principal business office. Royalty payment shall be subject to charge-back for proportionate share of credit losses in connection with the sales represented thereby. At the expiration of said five-year period, all royalties hereunder shall cease and Irvington shall thereafter have and enjoy the ownership and use of the Mueller processes without further payment therefor.

- 40 10. Irvington assumes no obligation to Mueller not herein specifically undertaken, and Irvington

Exhibit C-13.

shall not, by reason of this Agreement, be constrained or restrained in any of its activities apart from this Agreement. Specifically, Irvington assumes no obligation to manufacture or sell any particular quantity of Mueller-processed materials, or to sell such materials at a price higher or lower than that which it shall have itself, from time to time, determined upon, or to refrain from engaging in the manufacture or marketing of any product which may be similar thereto and/or which may come into competition therewith, and any similar or competing product shall not be subject to the payment of royalties hereunder. Provided, however, the privilege and latitude of Irvington under this Paragraph shall not extend to the manufacture and marketing of such a competing product where, in the opinion of Irvington, such product has no advantage of quality, economy of production (apart from the escaping of royalties), marketability or otherwise whatsoever over the particular Mueller-processed material with which the same competes and where the sole purpose of Irvington, in the manufacturing and marketing thereof, is to escape the Mueller royalties under Paragraph 8 hereof, in which case royalties shall be payable thereon as in said Paragraph 8 provided in connection with the sale of the Mueller-processed material.

11. Mueller hereby guarantees and warrants to Irvington the enjoyment of the rights and benefits hereby purported to be accorded to it, and undertakes that he will not do, or knowingly suffer to be done, any act or thing over which he may have control whereby the business of Irvington, in any of its aspects; the income therefrom; or the rights and benefits of Irvington in connection

Exhibit C-13.

- with the Mueller processes or in connection with any new discoveries hereunder, may be impaired, diminished or prejudiced in any manner whatsoever. In particular, Mueller undertakes to respect and endeavor to preserve the secrecy of the Mueller processes; of such new discoveries; and of any and all information, relating to Irvington's activities or operations, which may come to him as a result of his employment by or connection with Irvington under this agreement, including trade secrets, customers' lists, processes and formulae and including as to matters (although not technically secret) a knowledge whereof on the part of third parties might prove disadvantageous to Irvington. Mueller also undertakes to refrain from himself employing, in any manner whatsoever, both the Mueller processes and any new discoveries hereunder, and to refrain from giving, and from attempting to give, to anyone other than Irvington any right, benefit or license with respect to either of the same. Mueller further undertakes to indemnify and save Irvington harmless from any loss, liability, damage and/or detriment which Irvington may sustain or suffer by reason of any breach of his representations or warranties under this Agreement.
12. Mueller will sell to Irvington, and Irvington will buy from Mueller, three Rounding Machines for the process of rounding braids, at a total price of £435 sterling (or its equivalent in American dollars at the then current rate of exchange), plus the equivalent of the charges for the transportation thereof from London, England, to Irvington, New Jersey, for the marine and other insurance thereon, for the United States duty thereon, and for the installation thereof, title thereto to be transferred and payment therefor

Exhibit C-13.

to be made if and when said machines have been installed at Irvington's plant in Irvington, N. J. and demonstrated to operate to Irvington's complete satisfaction; provided, however, Irvington shall advance all such additional charges, as and when the same become payable. Mueller hereby warrants the title to said machines, free and clear. 10

13. a. The term "sales" herein refers to the amounts paid or to be paid to Irvington for Mueller-processed materials sold by it, after deduction of all discounts; and of all direct taxes, duties, imposts, levies, transportation expenses, and similar items when included in the gross purchase price of such materials.

b. The term "patents" herein includes all patents, patent rights and governmental monopolies in the nature of patents; all rights accorded as a result of applications for such first-mentioned patents and monopolies; also all renewals, improvements, extensions of, and additions to, any of the same. 20

c. The term "Mueller-processed" material of any kind, shall be taken to refer to material of the kind so specified produced under the Mueller processes. 30

d. The term "Irvington" in relationship to sales of Mueller-processed materials shall extend to all subsidiary and affiliated corporations, whether in the United States, Canada, or elsewhere, which may, with the consent of Irvington, use the Mueller processes and sell Mueller-processed materials, and also to all other corporations, firms and individuals which may do so by written permission of Irvington, Irvington, itself, being primarily responsible to Mueller for 40

Exhibit C-13.

the payment of royalties hereunder in connection with such sales. In case of the grant of any such written permission, Irvington shall promptly furnish copy thereof to Mueller.

10 e. The term "discovery" herein refers to and includes any process, method, apparatus, invention, development or other discovery.

f. The term "developed" herein includes "invented", "discovered", "made", "obtained", "worked upon" and "perfected", and all combinations thereof.

20 g. A "contract year" hereunder shall commence on the day and month of the signing of this Agreement in any calendar year, and shall end on the day preceding such date in the following calendar year.

h. Except where otherwise indicated by the context, the plural form shall include the singular, and vice versa, and the term "each" extends to "every".

30 14. A waiver by either of the parties hereto of any right, privilege or advantage hereunder shall not operate as a waiver of any other right, privilege or advantage, or of the same right, privilege or advantage in any other instance, and
waivers, to be effective, shall be in writing. This Agreement shall be construed in accordance with its expressed purposes, without a construction more favorable to one of the parties than to the other. Specific language herein referring to, or used in connection with, any general language, is employed for the purpose only of explaining or illustrating the general language and not for the purpose of limiting or confining it. This
40 Agreement shall be construed in accordance with

Exhibit C-13.

the laws of the State of New Jersey, United States of America, and is intended to operate as a contract of that state. All prior negotiations of the parties are merged herein and this Agreement shall speak and operate without reference thereto. Except as to the duty and obligation of Mueller with reference to services hereunder, and other personal duties and obligations on his part, and rights, benefits and advantages conditioned on the due performance thereof, this Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their respective successors, personal representatives and assigns. 10

IN WITNESS WHEREOF, Mueller has hereunto set his hand and seal, and Irvington has caused these presents to be duly executed by its corporate officers thereunto duly authorized, with its corporate seal hereunto affixed, in duplicate, the day and year first above mentioned. 20

Signed, Sealed and Delivered }
in the Presence of: }

ERNST MUELLER

IRVINGTON VARNISH &
INSULATOR Co.

30

By ARTHUR E. JONES
President

Attest:

FRED M. MILLER
Secretary

[SEAL]

40

Exhibit C-13.

STATE OF NEW YORK, }
 COUNTY OF NEW YORK, } ss.:

10 BE IT REMEMBERED, that on this 30th day of April, in the year of our Lord One Thousand Nine Hundred and Thirty-eight, before me, the subscriber, a Notary Public personally appeared Ernst Mueller, who, I am satisfied, is one of the parties mentioned in the within instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

20 THERESA A. SCHICKLING
 Notary Public
 Queens Co. Clk. No. 2329, Reg. No. 6516
 Certificate filed in
 N. Y. Co. Clk. No. 1057, Reg. No. 98728
 Term expires March 30, 1939

[SEAL]

30

40

Exhibit C-13.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this 5th day of May,
 in the year of our Lord One Thousand Nine Hun-
 dred and Thirty-eight, before me, the subscriber, 10
 a Notary Public personally appeared Fred M.
 Miller, who, being by me duly sworn, doth depose
 and make proof to my satisfaction, that he is
 the Secretary of Irvington Varnish & Insulator
 Co., one of the parties mentioned in the within
 instrument; that he well knows the corporate seal
 of said corporation; that the seal thereto affixed
 is the proper corporate seal of the said company;
 that the same was so affixed thereto and the said
 instrument signed and delivered by Arthur E. 20
 Jones, who was at the date and execution thereof,
 the President of said company, in the presence of
 the said deponent, as the voluntary act and deed
 of the said company, and that the said deponent
 thereupon signed the same as subscribing witness.

FRED M. MILLER

Subscribed and Sworn to }
 before me on the day }
 and year aforesaid: } 30

JOSEPHINE O. GROPP
 Notary Public of New Jersey

[SEAL]

Exhibit D-1.
Executive Bulletin

To Be Made Effective: Bulletin No. 30
IMMEDIATELY

January 19, 1943

- 10 TO FACTORY DEPARTMENT HEADS, SUPERVISORS
AND FOREMEN :

ORGANIZATION

The increased pressure on our production facilities, because of war requirements, has necessitated a rearrangement of duties and responsibilities in the Manufacturing Department. The revised assignments are as follows:

- 20 Mr. R. O. A. Petersen is appointed Factory Manager responsible to the Works Manager for production, maintenance, planning and factory engineering.

- 30 Mr. D. H. Garrison, Jr., as General Superintendent, reports to Mr. Petersen. Mr. E. A. Reid, appointed Production Superintendent, is responsible to Mr. Garrison as is also Mr. H. W. Schilling, Maintenance Superintendent. All production foremen now report to Mr. Reid. All maintenance foremen and the garage foreman are responsible to Mr. Schilling.

The factory Engineering Department is now organized as a separate group under Mr. Peter Van Norde, Chief Engineer, reporting to Mr. Petersen. The Manager of the Production Planning Department, Mr. D. M. Ferguson, also reports to Mr. Petersen.

- 40 When anyone in the company finds occasion to communicate with the factory, it is requested that contact be made with the appropriate factory department head or supervisor.

Exhibit D-2.

I am counting on everyone to help in carrying out our program. A diagram of this part of our organization together with a simplified organization manual will be available in the near future.

ROBERT MEZGER

cc: All Responsibility Heads 10
Please Post.

Exhibit D-2.**Executive Bulletin**

To Be Made Effective: Bulletin No. 41
IMMEDIATELY
March 29, 1943 20

TO FACTORY DEPARTMENT HEADS, SUPERVISORS
AND FOREMEN:

Factory Manual and Organization Chart

Attached are a simplified Factory Division manual and the corresponding chart of organization, prepared in accordance with Executive Bulletin No. 30.

This information will facilitate a better understanding of the recent rearrangement of duties and responsibilities in this part of the organization. 30

ROBERT MEZGER

cc: All Responsibility Heads

Exhibit D-2.

March 29, 1943

FACTORY DIVISION FUNCTIONS

Functions:

- 10 1. *Factory Manager*
 - (a) Supervise all production, planning, plant engineering and maintenance activities.
 - (b) Cooperate in the performance of that portion of staff work related to factory functions.
- 20 2. *General Superintendent*
 - (a) Supervise production departments and the Maintenance Department.
 - (b) Correspondence and reports.
- 20 3. *Planning Department*
 - (a) Schedule the flow of production for all orders and for stock.
 - (b) Furnish shipping dates to the Order Department.
 - (c) Maintain a stock control of raw and finished materials.
 - (d) Maintain necessary files and records.
 - (e) Correspondence and reports.
- 30 4. *Production Superintendent*
 - (a) Supervise all production departments.
 - (1) Distribute and maintain production schedules.
 - (2) Maintain coordinated operations and continuance of work between production departments.
 - (b) Maintain quality standards, production rates, and production efficiency.
- 40

*Exhibit D-2.*5. *Maintenance Superintendent*

- (a) Supervise all maintenance departments.
 - (1) Schedule and coordinate work of the various mechanical departments.
 - (2) Maintain inventories of parts and supplies.
 - (3) Keep log of maintenance work on buildings and equipment. 10

6. *Chief Engineer*

- (a) Supervise the plant Engineering Department.
- (b) Design and layout all major items of repair.
- (c) Design and layout new equipment to meet specifications prepared by the Industrial Engineer in the Process & Development Division. 20
- (d) Collect information on new equipment and designs, investigate new industrial practices, and serve in a staff capacity by conveying such information to the Process & Development Division.

7. *Production Departments*

- (a) Produce finished goods according to schedules. 30
- (b) Keep employee time records.
- (c) Maintain necessary production records.

8. *Maintenance Department*

- (a) Perform maintenance and repair work.
- (b) Construct plant and equipment.
- (c) Furnish estimates for major repairs.

Exhibit D-3.
Executive Bulletin

To Be Made Effective: Bulletin No. 54
IMMEDIATELY

August 16, 1943

- 10 To FACTORY DEPARTMENT HEADS, SUPERVISORS,
AND FOREMEN:

ORGANIZATION

I regret to advise that Mr. R. O. Petersen is no longer in the employ of our company. The many friends he made while with us join in wishing him every success in his future undertakings.

- 20 Careful study of the recent operations of the Factory Organizations indicate that simplification and speed-up in handling matters not only of internal nature, but also matters of the Factory Organization relating to other Departments of the company can best be accomplished if the duties performed by Mr. Petersen as Factory Manager are assigned to present department heads of the Factory Organization, rather than appoint a new Factory Manager. To accomplish this, following changes in the Factory Organization are made.

- 30 Mr. D. H. Garrison as General Superintendent, reports direct to the Works Manager and will continue to be in charge of Maintenance and Production and, in addition, Production Planning and Shipping. Mr. E. A. Reid, Production Superintendent, and Mr. H. W. Schilling, Maintenance Superintendent, continue to be responsible to Mr. Garrison and, in addition, Mr. J. Farrell, acting Manager of the Planning Department, reports to Mr. Garrison.

- 40 Mr. E. A. Gloss, Industrial Engineer of the Process and Development Division, has been

Exhibit D-4.

assigned the responsibility of the Factory Engineering and Methods Departments. Mr. Peter Van Norde, Chief Engineer of the Factory Engineering Department, will report to Mr. Gloss.

When anyone in the company finds occasion to communicate with the factory, it is requested that contact be made with the appropriate factory department head or supervisor. 10

I am counting on everyone to cooperate in carrying out this simplified organization program.

ROBERT MEZGER

cc: All responsibility heads
Please post

Exhibit D-4.**Executive Bulletin**

20

To Be Made Effective: Bulletin No. 68
IMMEDIATELY

P. Van Norde April 24, 1944

TO ALL FACTORY DEPARTMENT HEADS, SUPERVISORS
AND FOREMEN:

ORGANIZATION

30

It has been observed that the separation of the Factory Engineering and Factory Maintenance Departments has not resulted in the most efficient operation. The result of a careful study is that these two departments, as of this date, are combined. In order to make this consolidation possible, Mr. D. H. Garrison, General Plant Superintendent, cooperates by relinquishing the supervision of the Maintenance Departments, which will enable him to devote his time in other directions where it is much needed. 40

Exhibit D-5.

Mr. Charles F. Brinkman has joined our organization as Plant Engineer and will supervise the Factory Engineering and Maintenance Department, reporting to Mr. Eric Gloss, Industrial Engineer. Mr. Brinkman is a mechanical engineer of wide experience, and I feel that our Company is fortunate in securing his services.

I regret to advise that Mr. H. A. Schilling, whose position as Maintenance Superintendent is eliminated due to this consolidation, is no longer in the employ of the Company. The many friends he made while with us join in wishing him every success in his future undertakings.

The other position eliminated due to this consolidation is that of Chief Engineer of the Factory Engineering Department. This relieves Mr. Peter Van Norde of the detail work of supervising this department, enabling the Company to derive the utmost benefit of Mr. Van Norde's valuable reservoir of knowledge of machine design and mechanical skill, particularly pertaining to the process equipment related to our industry. The Company should profit tremendously because Mr. Van Norde is again available for this work. In his new post as Master Mechanic, Mr. Van Norde will be a staff employee, reporting to Mr. Brinkman and will take on special assignments where most needed.

I am counting on everyone to cooperate in carrying out this consolidated organization program and am sure Mr. Brinkman will have your help and support.

ROBERT MEZGER

CC: All Responsibility Heads
Please Post

Exhibit D-5.

Organization Plan.

Exhibit D-6.

Form USES 528
(9-43)

UNITED STATES EMPLOYMENT SERVICE
Of the
WAR MANPOWER COMMISSION

W	LAST NAME	FIRST	MIDDLE	10
O				
R	Van Norde	Peter		
K	Social Security Acct. No. 137-01-0106			
E				
R	147 Mountain Ave., Summit, New Jersey			

STATEMENT OF AVAILABILITY

Under the War Manpower Commission Stabilization program, this Statement of Availability is issued to the worker whose name appears above. He is or most recently was employed as Master Mechanic in electrical insulation, synthetic resins, etc. Occupation

20

By Irvington Varnish & Insulator Co.
Address 6 Argyle Terrace, Irvington, N. J.
Tel. No. ES 3-4200

Signed LYNWOOD HARVEY
Title Assistant Personnel Manager
Date May 27, 1944

30

8/4/44

Miss Kluch—
Peter Van Norde
no release
see Mr. Bergen
release to start his own business.

8/5—saw Bergen—release OK—reemployment
contract take legal steps

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Petition.

(Filed June 5, 1945.)

IN CHANCERY OF NEW JERSEY.

To the Honorable Luther A. Campbell, Chancellor
of the State of New Jersey:

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Irvington Varnish and Insulator Company, a corporation of the State of New Jersey, with its principal office in the town of Irvington, County of Essex, and State of New Jersey respectfully shows that:

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1. Petitioner is the complainant in a certain cause pending in this court entitled "Between Irvington Varnish and Insulator Company, a corporation of the State of New Jersey, complainant, and Peter Van Norde, defendant," Docket No. 148/216 in which said cause an Order was entered on October 3, 1944 enjoining and commanding said defendant to refrain from certain acts all as more fully set forth in said Order, a copy of which is annexed hereto, made a part hereof, and designated Schedule A.

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2. A copy of said Order, duly certified under the seal of this court, was served personally on said defendant Peter Van Norde on the 4th day of October 1944 as per affidavit on file in said cause, a copy of which is annexed hereto, made a part hereof, and designated Schedule B.

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3. The said Peter Van Norde has, notwithstanding the aforesaid Order of this court, wilfully violated and disobeyed the direction of said Order by engaging in, being employed by, or otherwise being connected with directly or indirectly (as proprietor, partner, associate, consultant, officer, di-

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New Jersey Court of Errors and Appeals

Between

IRVINGTON VARNISH & INSULATOR COMPANY,
a corporation of the State of New Jersey,

Complainant-Appellant,

—and—

PETER VAN NORDE,

Defendant-Respondent.

BRIEF OF DEFENDANT-RESPONDENT

Introduction.

Complainant-appellant seeks to reverse a final decree whereby its bill of complaint was dismissed after a trial on the merits before Vice-Chancellor Bigelow.

The Nature of the Case.

Complainant-appellant sought to enjoin defendant from working for a competitor. Its action was predicated upon a contract containing restrictive covenants. Claiming that defendant was possessed of "confidential information" concerning its business, complainant also sought an injunction to restrain the defendant from disclosing this alleged "confidential information".

Defendant denied that he was possessed of any secrets or confidential information belonging to the complainant and contended that the restriction against working for a

competitor was therefore unenforceable. In this he was sustained by the Vice-Chancellor who found, among other things (S.C. 32) :

“There is no proof whatever that defendant had recourse to any confidential information, or that he was guilty of any disloyalty to complainant, in what he did to solve Electro’s problems.”

The Issue.

Although the appellant pays lip service to the doctrine that a Trial Judge’s determination of issues of fact will not be lightly disregarded, its brief is essentially directed to an attack upon the factual determinations made by the Vice-Chancellor.

Appellant’s voluminous brief merely repeats over and over again, with variations only of language, its disagreement with the Vice-Chancellor’s holding that the defendant was not possessed of any confidential information which he might take to a competitor and that therefore the restrictive covenant was unenforceable. Yet, despite the mass of appellant’s brief and its juggling of words, the appellant is unable to show that the Vice-Chancellor was in error either on the issues of fact or on the questions of law.

The Facts.

Van Norde entered the employ of Irvington in 1918, commencing to work as a mechanic under a machine shop foreman (S.C. 134). For some three years before that, he had worked for a number of concerns as machinist, repair man and tool maker (S.C. 132-134). In 1922, he became foreman of the complainant’s machine shop (S.C. 134). Later on, he received the title master mechanic (S.C. 135) and by 1938 had worked himself up to the position of plant superintendent (S.C. 135).

Until 1942, Van Norde was not required to, nor was he asked to bind himself by any agreement not to work for a competitor if he left the complainant's employ. However, in January 1942, while Van Norde was the plant superintendent, he was required to sign the agreement in suit constituting a month to month employment, and containing the restrictive covenant upon which this action is predicated. Very shortly thereafter, in 1943, Van Norde was relieved of a part of his duties, and one Petersen, an engineer who had formerly worked with him in the Engineering Department, became Van Norde's superior (S.C. 136-137). Then in 1944, Van Norde was reduced to the status of master mechanic, the position which he had held some twenty years before (S.C. 137; Exh. D-4).

Van Norde, dissatisfied with his reduced status, left Irvington's employ in 1944 and took a position with Electro-Technical Products Corporation (hereinafter referred to as Electro). The Electro Company was not a general competitor of complainant but the companies competed only in two activities. According to the testimony of complainant's works manager and vice-president in charge of manufacturing, Robert Mezger (S.C. 91) :

"Q. Do you know what business the Electro does?

A. Yes.

"Q. Does it compete with Irvington, and if so, how?

A. It competes with Irvington in making flexible electric insulation which is sold to the equipment and motor manufacturers. I have never heard of them competing with Irvington on insulation cable; they compete in varnish cambric, that is used as separation material, rubber industry. Those are two lines they compete."

The Vice-Chancellor found that (S.C. 31) :

"There is no proof that he (Van Norde) has divulged or intended to divulge confidential information."

He also found that (S.C. 31) :

“Electro did not entice the defendant away from his employer in order to gain complainant's secrets.”

The question is what could Van Norde bring to Electro other than his own mechanical skill and ability and his aptitude as a skilled machinist? Admittedly Van Norde was a highly skilled mechanic possessing an unusual innate ability to detect and correct mechanical defects of machinery. The witness Petersen summed up Van Norde's capabilities in the following terse statement (S.C. 196) :

“ * * * He looks at the machines and can tell if they are knocking and he has a great sense of natural ability which enables him to find out along the machine what is not properly geared, or properly oriented so that he can make those adjustments so that the machine can run properly. He is a very good mechanic.”

Could Van Norde give to Electro any secret or confidential information which would require the protection of a restrictive covenant? The answer, as the Vice-Chancellor found, was in the negative.

Although complainant's witness Mezger testified vaguely about “developments” by Irvington, he was unable to point to any secret machinery other than a machine which had been patented, and therefore was protected under the Patent Laws. The testimony of the various witnesses is clearly to the effect that the machines to which Van Norde had access when in complainant's employ, were not secret devices and did not involve secret processes. The real secret processes which Irvington owned consisted of various chemical formulae for making coated materials and there is no suggestion that Van Norde knew these formulae or even had access to them.

Mezger testified in vague terms that in order to produce its products, complainant was obliged to modify, redesign or rebuild equipment and that the confidential information consisted of "The operation and design of some of the machines we used for producing our products" (S.C. 129).

However, when the complainant's claim was subjected to analysis on cross examination, it appeared that the secrets claimed were matters of common knowledge in the industry. They consisted of such things as the use of round bearings in the place of bronze bushings, and the substitution of a shearing knife for a splitting knife on a particular machine. There is nothing to show that there was anything unusual about these substitutions. As the Vice-Chancellor said in connection with the bearings and bushings:

"Both are standard devices employed for the usual purpose. Whether the one or the other be adopted depends on such factors as load and speed. Van Norde's knowledge that complainant's machines had bearings is not confidential." (Opinion, S.C. 30.)

Van Norde testified that he knew of no trade secrets belonging to Irvington (S.C. 144); that he had no knowledge of any secret processes belonging to his former employer (S.C. 144); that experience with any other concern would have given him the same knowledge of the business and would have enabled him to work on the same machine (S.C. 145); that there was no mystery about the Irvington machine out of which he took "bugs" and that the adjustments he made were a matter of common sense (S.C. 145).

Obviously, Mezger and Van Norde were interested witnesses and their testimony was properly weighed in the light of their interest. The Court had, however, the benefit of the physical facts and of the testimony of disinterested witnesses, which clearly revealed the lack of any confidential information or secret processes in respect of complainant's machinery.

Richard O. A. Petersen, a graduate engineer, is presently a vice-president in charge of production of the Universal Plastics Corporation, who are customers of Irvington (S.C. 208). He had been employed by the Johns Manville Corporation and came with Irvington as an engineer in 1942. Originally he reported to Van Norde, but after three or four months was promoted to the position of assistant to Mr. Mezger, and in January 1943 became Irvington's factory manager (S.C. 193). It was Mr. Petersen's testimony that there was nothing unique, novel or secret about Irvington's machinery with the exception of the rounding machine, which was patented (S.C. 197-198). Concerning the tower machinery, Mr. Petersen said that this had been the subject of articles written in magazines and that the edgewise coater, although novel, could readily be purchased from its maker, the Waldron Company (S.C. 194, 205). According to him, Johns Manville Company had used the same processes which were used by Irvington (S.C. 206). Van Norde supervised the installation of machinery and realigned it and saw to it that it was put into operation efficiently, but according to Mr. Petersen, this was merely the application of "common sense" (S.C. 195). In this work Van Norde had had a great deal of experience, and according to Petersen, "experience goes a long way" (S.C. 207).

Anthony Nichols, also a graduate engineer and a former Irvington employee, is now an assistant to the plant manager of Universal Plastics Corporation. He testified that a large part of Van Norde's job was to act as the company representative in dealing with contractors, the machine builders and the like (S.C. 187). He said that aside from Irvington's patented machinery, "the rest of the machinery is just run-of-the-mill stuff" (S.C. 187). Nichols added that the dusting machine was neither unique nor secret (S.C. 190).

But it was not necessary for the Vice-Chancellor to rely merely on the statements of witnesses that there was no secrecy or confidential information concerning complainant's machinery or its operation. The facts spoke for themselves.

A number of Irvington's employees had come from Irvington's competitors. A number of Irvington's employees had left and had gone with competitive concerns. It is obvious, therefore, that information was freely exchanged in the industry. Employees who came to Irvington brought with them knowledge and experience they had acquired from other employers (including Electro) (S.C. 62, 108, 109, 183), and those who left Irvington took with them whatever knowledge and experience they had acquired in the course of their employment with Irvington (S.C. 83, 85, 86).

For example, an individual by the name of Dale had been employed by Irvington, had gone to General Electric, a competitor, then took employment with Electro and then came back to Irvington (S.C. 109-110). Petersen had been employed by the Johns Manville Corporation, also a competitor of the complainant, before he took a position with Irvington as an engineer in 1942. Later he left and became an employee of the Universal Plastics Corporation, who were customers of Irvington (S.C. 208). Manifestly, any claim that there was secrecy or confidential information concerning Irvington's machinery is rebutted by this parade of employees to and from Irvington's plant.

Moreover, it appears that whatever information Van Norde could have obtained was likewise available to individuals working in the Irvington plant who were not required to enter into agreements restraining them from working for competitors. For example, Jeske, the machine shop foreman, was not required to execute any restrictive agreement nor was the electrician required to agree not to work for a competitor (S.C. 150). The workmen who actually operated the machines which Mezger said were

secret, were likewise free to take jobs with competitors (S.C. 150).

Moreover, the record shows affirmatively that Irvington made knowledge of its machines available to outsiders. Irvington not only disclosed the details of the mica dusting machine to the New Jersey Wood Varnish Company, but also assisted that company to build such a machine, sending Van Norde to it for that purpose (S.C. 149). New Jersey Wood Varnish Company used machinery practically the same as Irvington's. It is no excuse for Irvington to say that the New Jersey Wood Varnish Company was a customer. The fact is that Irvington did not require any contract of secrecy from this competitive concern (S.C. 157).

As Van Norde testified without contradiction, drawings of the machines were sent to various contracting concerns and various outside concerns sent representatives who looked over Irvington's machinery. There were, for example, the New Jersey Iron Works, the Kleister Sheet Metal Company, Kolb Sheet Metal Company, the Waldron Company, the Ross Machine Company and the Jones Mansfield Company (S.C. 151, 156). There is more than ample support for the Vice-Chancellor's findings that

"Complainant has not taken proper measures to protect the secrecy of its so-called refinements and improvements of the machinery. * * * We may say that what complainant has a right to protect, that what comprises confidential information about its machines, is knowledge of a mechanical device or principle, or application thereof, which is not known generally to its competitors' engineering staffs, and which they cannot readily learn by consulting an expert. Complainant *has failed to prove* that defendant has such information" (S.C. 30). (Italics supplied.)

Having failed to prove that there was any confidential information in respect of the machines themselves, com-

plainant in its brief now speaks vaguely of "methods" and argues that an inference should have been drawn that Van Norde knew of secret methods employed in the operation of the machines. This argument is of course refuted by the finding of the Vice-Chancellor (S.C. 29) that:

"Complainant confined its proofs to machines as distinguished from processes. It did not attempt to show that defendant has confidential information concerning the speed at which a machine should run, or the degree of heat to be applied, *or anything of that sort.*" (Italics supplied.)

Had there been any such secret methods, it was incumbent upon the complainant at the trial to prove their existence and the fact that Van Norde had knowledge of them. Whatever secrets existed related to the formulae. As the Vice-Chancellor pointed out, however, in speaking of the complainant (S.C. 27):

"It has secret *formulas* for making the varnish *but these are unknown to defendant* and do not figure in the suit." (Italics supplied.)

Finally, the record amply supports the Vice-Chancellor's finding that Van Norde was not enticed by Electro for the purpose of obtaining confidential information and that he did not divulge any confidences. It is obvious that the work which Van Norde did for Electro was only that which involved skill and experience, as distinguished from any secrets obtained from the complainant. He was put to work on changes in the steam layout of Electro's plant, supervising the construction of a new office building, contacting contractors and making estimates (S.C. 229). He supervised some of the maintenance work, correcting the operation of the frictional calendar for finishing cloth (S.C. 146). Van Norde made several adjustments on the festooning

machine, including the installation of idlers to take up the slack so that chains would not come off sprockets (S.C. 164). He made adjustments on the ends of the coating towers and worked on the sprockets and gears (S.C. 227), tightened up the ends of the tower on the brackets (S.C. 229).

Manifestly, these were all jobs involving merely the exercise of mechanical skill. As the Vice-Chancellor said (S.C. 34, 35, 36) :

“ * * * I have already stated the absence of proof that Electro employed Van Norde in order to get confidential information about complainant's business, or that Van Norde intends to use for the benefit of Electro, or to divulge such information,—if he has any. * * * If a contract of this sort were to be enforced by injunction against Van Norde, similar contracts could be exacted from, and enforced against, all classes of skilled employees. * * * The contract alone is not a sufficient ground for the injunction. * * * ”

ARGUMENT

I

The Vice-Chancellor correctly applied the law to the facts in the case.

II

There is nothing in the rule of the *Ideal Laundry* case which is inconsistent with the law as applied in the instant case.

III

There is ample evidence to sustain the determinations of fact made by the Vice-Chancellor and his determinations of fact should be accepted.

POINT I.

The Vice-Chancellor correctly applied the law to the facts in the case.

The law relating to the enforcement of restrictive covenants was succinctly stated by this Court in *Haut v. Rossbach*, 128 N. J. Eq. 77, at 79, in the following language:

“Sound public policy encourages employes to seek better jobs from other employers or to go into business for themselves. Contracts which hinder their so doing are strictly construed and rigidly scanned and are declared void unless necessary for the reasonable protection of the employer.”

In *Sternberg v. O'Brien*, 48 N. J. Eq. 370, the rule is expressed at 372 as follows:

“ * * * The law is settled, that a contract in restraint of labor, which seeks to prevent one of the contracting parties from exercising his skill or labor generally, without limitation as to place or time, *or which attempts to put a restraint upon his right to labor or to exercise his skill greater than is necessary for the fair protection of the other party to the contract, is void.*”
(Italics supplied.)

The rationale of all of the cases is the same. In order to enforce a restrictive covenant, the complainant must show that the defendant is in a position to make use of property which the complainant owns. The interest to be protected is that property owned by the complainant, and not mere freedom from competition. This rule has been applied to protect secret processes, trade secrets, customers' lists, and the patronage of customers.

Ideal Laundry Co. v. Gugliemone, 107 N. J. Eq. 108;

- Maas & Waldstein Co. v. Walker*, 100 N. J. Eq. 224;
Salomon v. Hertz, 40 N. J. Eq. 400;
Club Razor & Blade Mfg. Corp. v. Bindzsus, 131
 N. J. Eq. 283;
Davey Tree Expert Co. v. Ahlers, 124 N. J. Eq. 175;
Sternberg v. O'Brien, 48 N. J. Eq. 370;
Capital Laundry Co. v. Vannozzi, 115 N. J. Eq. 26;
Abalene Exterminating Co. v. Oser, 125 N. J. Eq.
 329;
Vander-May v. Schoone-Jongen, 128 N. J. Eq. 336;
Lewitter v. Adler, 101 N. J. Eq. 74;
Golden, Kruller & Doughnut Co. v. Manasher, 95
 N. J. Eq. 537;
A. Fink & Sons v. Goldberg, 101 N. J. Eq. 644.

Where, as in the instant case, the nature of the property right asserted is machinery or a process, it is incumbent upon the employer to prove that the methods or processes were in fact secret and revealed only in confidence. As this Court said in *Cameron Mach. Co. v. Samuel M. Langston*, 115 Atl. 212, at 214:

“ * * * a ‘trade secret’ has been defined to be:

‘A plan, or process, tool, mechanism or compound, known only to its owner and those of his employees to whom it is necessary to confide it.’ 22 Cyc. 842, par. 6.”

Mere knowledge which an employee obtains in his employment does not constitute the property of his employer or a trade secret or secret process.

- Salomon v. Hertz*, 40 N. J. Eq. 400, 403;
Lewitter v. Adler, 101 N. J. Eq. 74.

In the field of machinery, the courts have been careful to refer to the distinction between mere skill and manipulation as opposed to secret processes:

- Stone v. Grasselli Chemical Co.*, 65 N. J. Eq. 756,
 760;

and the courts have stated with respect to machinery a restrictive covenant, if no secrets are involved, is invalid.

In the case of *Pen Garbon Manifold Co. v. Tomney*, 90 N. J. Eq. 233, the Court said at page 234:

“ * * * If the contract was meant to be broader and to restrain the use or manufacture of machines which rested upon or *embodied no secrets*, it would go farther than the contract intended, *and farther than the law permits.*” (Italics supplied.)

Complainant's difficulty in the present case lies in the fact that it imparted no confidential information to Van Norde. It was using machines common to the industry with changes or substitutions likewise well known because they were the obvious changes which any person with mechanical skill would make to adapt machinery to a particular use. For example, if chains are loose and fall off the sprockets, it is common to use idlers to take up the slack. It is very often a matter of mechanical choice whether to use bushings or roller bearings on moving parts of machinery. As the Vice-Chancellor pointed out, both practices are common. Merely because the complainant chose to build machinery which others might purchase or have built in the open market, does not make the machinery secret or knowledge of it confidential.

The very fact that prior to 1942 employees worked successively for various people in the industry, is in itself proof that no one considered the structure of the machinery or the mechanical changes made therein to be confidential information. When Petersen came from Johns-Manville to work for Irvington, Irvington had access to whatever Petersen had learned at Johns-Manville. So with the other employees who the record shows went to and from different competitors in the trade.

Another element of proof properly considered by the Vice-Chancellor was the fact that foremen in the plant, contractors who built machinery, and workmen in the plant, all had access to the machinery and whatever changes had been made. For instance, Jeske, the foreman, would obviously know whether a shearing knife had been substituted for a splitting knife on a machine. Yet, Jeske and people in his position, who could see the machines from day to day and who repaired the machines from day to day, were not subjected to the restrictions sought to be imposed upon Van Norde.

Complainant says, however, that because it has a dominant place in the industry, the Vice-Chancellor should have reached the conclusion that this dominance was due to the so-called secrets in the structure of the machinery. That does not follow. Complainant's dominance may be due to the fact that it may have been first in the field; it may be due to the fact that it has a greater capital than other concerns, a more aggressive sales force, a more lavish advertising budget. The mere fact that the complainant may or may not have a dominant position in the industry is no proof that it has or does not have secret machinery.

We respectfully submit that the issue before the Vice-Chancellor was one of fact. The question was whether the complainant had proven that its attempt to impose a restrictive covenant was necessary for the protection of its property as distinguished from preventing Van Norde from exercising his skill and experience. On this issue, the Vice-Chancellor held in the defendant's favor and it must follow that the covenant is unenforceable.

POINT II.

There is nothing in the rule of the *Ideal Laundry* case which is inconsistent with the law as applied in the instant case.

Throughout its brief, complainant labors *Ideal Laundry Co. v. Gugliemone*, 107 N. J. Eq. 108. It seems to be the complainant's contention that the Court in the *Ideal Laundry* case laid down the rule that an employer may, by restrictive covenant, bind *any* employee not to work for a competitor. Complainant in effect contends that under the law of this State an employer may prevent an employee from taking employment with a competitor and engage in fair competition through the use of his skill and experience.

The process by which the complainant arrives at this novel theory is extremely interesting. It seizes upon the single phrase used by this Court that Equity will protect the employer's "business methods and secrets". It argues (see brief, pp. 23, 24) that these words were used disjunctively as applying to two different things: (a) business methods which need not be unique or secret; or (b) secrets themselves. Complainant then arrives at the principle that a restrictive covenant is enforceable if the employer is possessed of any business methods in an "all-embracing scope" (see complainant's brief, p. 23).

The fallacy in this argument is, of course, patent, and is a common one where counsel seek to rely on words isolated from their context.

In the *Ideal Laundry* case, this Court, when it used the term "business methods and secrets", was manifestly discussing those methods which, being unique and secret, constituted property requiring protection against the risk of disclosure.

This is clear from the Court's statement that a preliminary injunction was justified

“ * * * where it further appears that the purpose of the subsequent employment, resulting in the breach, was *to obtain the benefit of those secrets*, and that there is imminent danger that through such subsequent employment such *secrets* would be disclosed” (p. 111). (Italics supplied.)

The limitation on the kind of business methods which will be protected is also apparent from the Court's statement at page 112, where it spoke of “*the unique and secret methods* in use in the establishment.” (Italics supplied.)

Again at pages 114 and 115, the Court said :

“The reasonable inference is that complainant saw its *secret methods* used against it * * *.” (Italics supplied.)

There would have been no occasion for the Court in the *Ideal Laundry* case to emphasize over and over again the secrecy of the business methods and their unique character if it was broadening the doctrine so that it would apply to any business methods in an “all-embracing scope”.

Moreover, the *Ideal Laundry* case was before this Court not on the merits after trial, but solely on the question of the propriety of a preliminary injunction granted by the Vice-Chancellor pending trial. The Court, in its opinion sustaining the preliminary injunction, expressly pointed out that it was

“without regard to what may possibly appear upon final hearing. * * *” (p. 111).

In the *Ideal Laundry* case, Ideal's employees, one a former plant superintendent, had organized a new business specifically for the purpose of competing with their former em-

ployer and obviously with the intent of using confidential information.

There are no such elements in the instant case. Not only did Electro have an established and thriving business before Van Norde entered its employ, but Vice-Chancellor Bigelow specifically found as a matter of fact that there was no proof that Electro employed Van Norde in order to get confidential information. His finding is supported, for example, by Mezger's admission that Electro did not compete with Irvington in the manufacture of cable cloth (S.C. 92) nor the products made on the so-called rounding machine (S.C. 121) nor those made on the bonding machines (S.C. 124).

Complainant, in attempting to bring itself within the doctrine of the *Ideal Laundry* case, falls into a number of inconsistencies. On page 45 of their brief, counsel for the complainant stated:

"Mr. Mezger's testimony * * * as to their having been no disclosure, stands wholly uncontradicted."

Yet at page 44 of their brief, counsel are forced to argue that

"* * * all disclosures referred to by the Court * * * were limited to specific items and were strictly for the purpose of business."

Again, at page 44 of their brief, counsel are put to the necessity of further limiting their statement that there was "no disclosure", by saying:

"In the case of complainant's disclosure to a customer no pledge of secrecy at all was necessary * * *."

Later on page 44, complainant argues that there was an "implied covenant of secrecy" imposed upon the customer.

Then complainant argues that even the outside contractors were subject to an "implied covenant". This notwithstanding the statement of the Court in *Carver v. Harr*, 132 N. J. Eq. 207, 209, that "There is authority for denying that the relation between the owner of a machine design and the contractor who builds the machine, is confidential."

In other words, the complainant, after arguing that the Vice-Chancellor was wrong in finding that the machines were known to the trade, must retract its statement and must resort to the specious argument that the various disclosures made really didn't mean anything at all; that customers would want to keep the machinery secret and outside machine builders were subject to some sort of an obligation not to talk about that which had been freely disclosed to them.

Of course, complainant does not explain why the edgewise coater should be secret when it was bought from the Waldron Company (S.C. 205) and why the horizontal machine should be considered a secret when the builder had constructed similar machines for two of Irvington's competitors, namely, General Electric and Westinghouse (S.C. 74).

In the *Ideal Laundry* case, the Court, in considering the affidavits on a preliminary injunction, found that there was sufficient evidence before it to sustain the contention that confidential information received from Ideal was about to be used against it by former employees. In the *present case*, the complainant has failed to prove that essential feature. No amount of circumlocution on the part of complainant's counsel can minimize the fact that all of these matters were gone into fully before the Vice-Chancellor, who found as a fact that the information alleged to be secret was common knowledge.

It is respectfully submitted that unless the decision of the *Ideal Laundry* case is tortured out of its meaning, it furnishes no support for complainant's contention in the present case.

POINT III.

There is ample evidence to sustain the determinations of fact made by the Vice-Chancellor and his determinations of fact should be accepted.

Complainant's brief, although framed in terms of a discussion of the law, actually is an attempt to argue that the Vice-Chancellor was wrong in his decision on the facts.

The burden of the complainant's argument appears at page 62 of its brief where counsel say:

"Indeed, it appears from a reading of the decision as a whole that the court, influenced by the wholly proper but equally specious arguments of defendant's counsel that such covenants are akin to a 'patrone' system, involving 'involuntary servitude' amounting to 'serfdom', became psychologically opposed to the use of such covenants in employment relationships and that that antagonism unconsciously influenced its decision of the matter, leading the court to construe and apply the legal requirements for the sustaining of such covenants in a more rigorous manner than is justified—i.e. as to what are sufficient 'methods'; as to what is sufficient 'secrecy' of those methods; as to what is sufficient proof of intent to violate secrecy."

To say of the Vice-Chancellor that he was hoodwinked by "specious" arguments presented by defendant's counsel and that his aroused sympathies blinded his judgment on the issues is, to say the least, presumptuous. The Vice-Chancellor found against the complainant on the facts, not because of any sympathies created by defendant's arguments, but because the complainant had failed to prove the very essentials of its case.

Complainant speaks of undisputed facts. There was hardly a single fact in the case which was not the subject of controversy. To quote a portion of the testimony out of its context and out of its relationship to other questions and

answers, certainly does not make that single answer an uncontroverted fact. The Vice-Chancellor had before him complainant's representatives and other witnesses. Mr. Mezger, the complainant's vice-president, gave a long, vague harangue about developments and secrets. His testimony did not stand up on cross-examination. The Vice-Chancellor had before him Van Norde from whose testimony it clearly appears that he is possessed of no confidential information. The Vice-Chancellor had before him former employees of Irvington, some of whom are now working for one or more of complainant's customers. Their testimony makes it clear that there was no secret machinery.

The Vice-Chancellor had the benefit of seeing the witnesses on the stand, of appraising their demeanor and weighing their statements. He took an active part in the trial by making his own inquiries of the witnesses. Based upon this record, the Vice-Chancellor found:

"Van Norde's knowledge that complainant's machines had bearings is not confidential. * * *"

"We may say that what complainant has a right to protect, that what comprises confidential information about its machines, is knowledge of a mechanical device or principle, or application thereof, which is not known generally to its competitors' engineering staffs, and which they cannot readily learn by consulting an expert. Complainant has failed to prove that defendant had such information."

"There is no proof whatever that defendant had recourse to any confidential information, or that he was guilty of any disloyalty to complainant, in what he did to solve Electro's problems" (S.C. 30, 32).

Arguing that the Vice-Chancellor was misled by "specious" contentions is hardly a substitute for the rule that great weight is attached to the findings of fact made by a trial

court, and that an appellate court will not interfere if there is a reasonable basis for the trial court's findings.

In *In re Bryan*, 125 N. J. Eq. 471, 473, this Court held:

"There is reluctance in a court of review to interfere with findings as to disputed questions of fact by a trial court."

In *Bowen v. Pursel*, 109 N. J. Eq. 67, 72, the Court said:

"There is ample evidence to sustain that conclusion of fact, and giving the vice-chancellor's finding its appropriate weight * * * we accept it as sound."

See also *Gilliam v. Gilliam*, 130 N. J. Eq. 528, 530; *Morris County Building and Loan Association v. Walters*, 123 N. J. Eq. 548; *Guardian Life Ins. Co. v. Mareczko*, 114 N. J. Eq. 369, 373; *Riddle v. Clabby*, 59 N. J. Eq. 573, 583.

The fact that the complainant must resort to this argument of prejudice and antagonism is in itself proof of the slender thread upon which its appeal hangs.

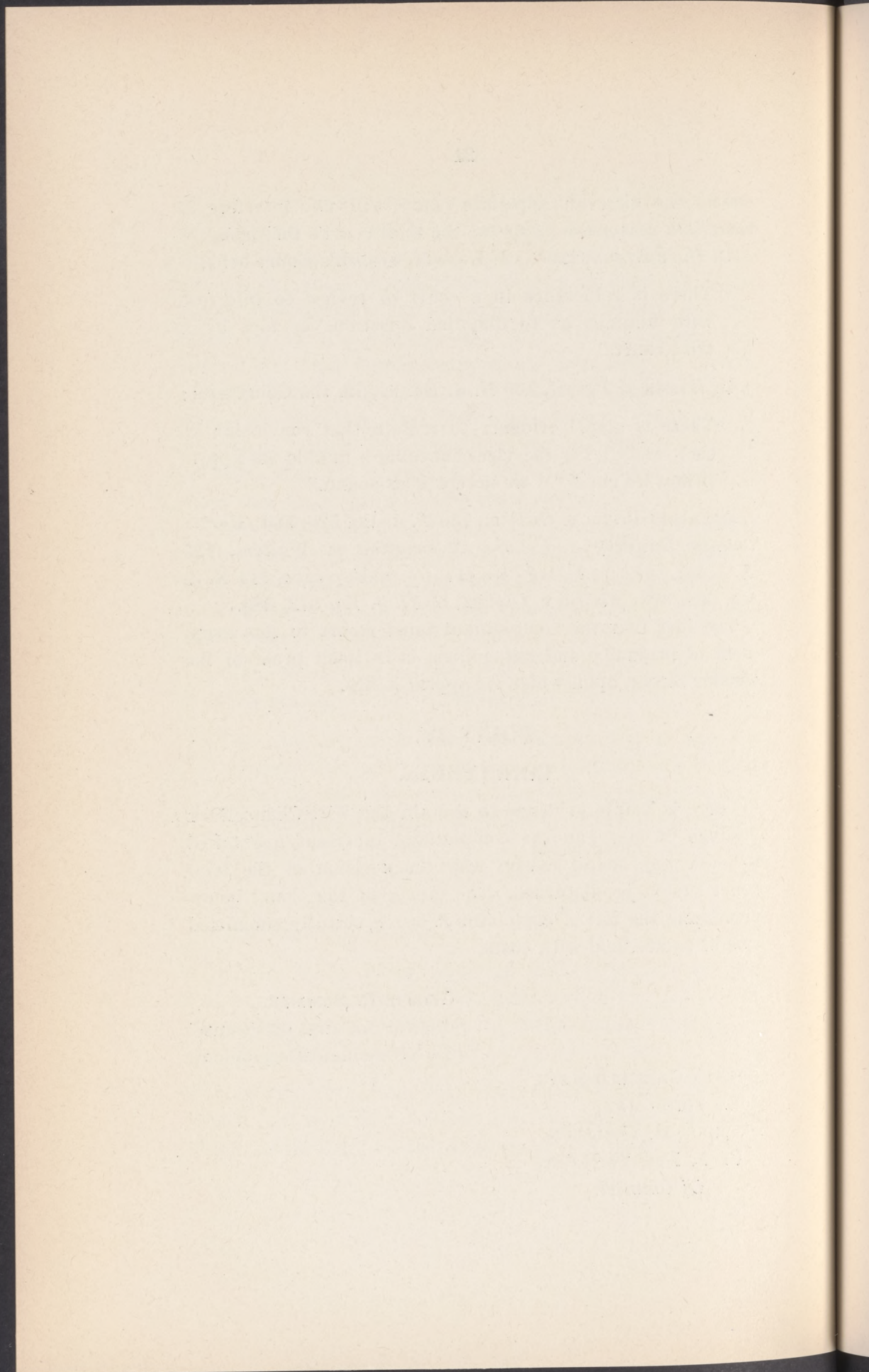
POINT IV.

CONCLUSION.

There is ample evidence to sustain the Vice-Chancellor's findings of fact and the complainant-appellant has failed to show any sound reason why the decision of the trial court should be disturbed. The decree of the Court below dismissing the bill of complaint it is respectfully submitted should be affirmed with costs.

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Statement of Facts.

Following is a summary of the *undisputed** facts:

Complainant makes and sells several lines of products, principally products made of cloth or paper coated on both sides, those products consisting principally of varnished flexible insulation used for electrical insulation purposes, including cable cloth, and rubber-separator cloth sold under the trade name "Textolin", used for the interleaving of layers of rubber in the rubber industry; other product lines being bottle-cap liners (varnished paper laminated to cardboard) and flexible varnished tubing also used for electrical insulation (S. C. 72-73).

Complainant was organized in 1906 (S. C. 45—"1926" in the transcript being an error). Its main plant is at Irvington, New Jersey, occupying about two and one-half square blocks and employing 650 people. Through wholly-owned subsidiaries, it also owns and operates smaller plants at Passaic, New Jersey and Hamilton, Ontario (S. C. 48).

In the electrical insulation field, complainant, with one-third the total volume of business of nine companies engaging therein, including Irvington and its hereinafter-mentioned competitor, Electro, has a dominant position,** Electro a relatively subordinate one (S. C. 92).

* To dispel any idea that complainant is asking this court, on close questions of fact, to substitute its judgment as to veracity of witnesses and weight of evidence for that of the trial judge whose opportunity of gauging the truth is obviously superior to that of an appellate court, the statement will be confined strictly to the undisputed evidence. This although an appeal from an equity decree is not limited as is an appeal from a judgment at law.

** Van Norde, S. C. 171.

Compare the following from *Credit Rating Service, Inc. v. Charlesworth*, 126 N. J. Eq. 360, wherein a restrictive

In the bottle-cap material field, complainant has but two or three present competitors, 40% of the aggregate business in those materials in the United States being handled by complainant, that being an important part of its business (S. C. 58).

Its business through the sale of its products extends throughout the United States and in foreign countries (S. C. 46).

The industry is a highly competitive one (S. C. 80).

“The (coated) products (made by Irvington) are very technical products, having to be made to a very exacting specification, both as to physical and electrical properties.” (S. C. 73).

Because of the exactness of these specifications, special equipment developed to insure production of material conforming to the specifications, is required. Over a period of years, these specifications have become more and more refined, necessitating constant changes in the equipment. Accordingly, complainant has built practically all its own equipment and what equipment it has bought has had to be modified, by redesigning or even rebuilding it, in order to assure satisfactory products (S. C. 73-74).

The development of the type of equipment needed for producing complainant's products involved trial-and-error effort over a period of years, sometimes requiring the close cooperation of the company's research and engineering staffs. To that end, complainant maintained a separate engineering department, employing engineers to work on the creation and design of its machines,

covenant against competitive employment was entered (p. 361):

“Complainant's business has been continuously and successfully conducted for many years and it has unquestionably built up and owns a valuable and favorably known credit reporting and collection business which has been progressive throughout the years.”

the majority of its machinery being developed by its own staff and not purchased as standard articles (S. C. 81-82).

The history of complainant is one of continuous progress in the improvement of its equipment, much time, effort and money (S. C. 81-82) being expended by complainant in the accomplishment of the changes necessary to attain the desired results—numerous instances of complainant's mechanical developments being given by the complainant's vice-president in charge of manufacturing at S. C. 73-82, and 92-97.

As was observed by the Vice-Chancellor below (S. C. 29):

“Much of complainant's machinery has been designed by its own staff and most of it has been altered to meet its special and changing needs.

* * * *

The process of experimentation, of trial and error, and adjustment, is going on continually and has been a large factor in establishing and maintaining the competitive position of complainant.”

Although it would seem that the results “of the process of experimentation of trial and error, and adjustment”, which has been “going on continually” in complainant's organization could not have been “a large factor in establishing and maintaining the competitive position of complainant” unless those results were treated as secret by complainant so far, at least, as its competitors are concerned, the court below has said that “complainant has not taken proper measures to protect the secrecy of its so-called refinements and improvements of the machinery” (Opinion, S. C. 30) and hence discussion of that phase of the case will be reserved for the argument portions hereof

(Point I (b). "As to secrecy") it being observed here merely that complainant does not claim, or have to claim, absolute secrecy*, but only that disclosure, having been limited to the purposes of complainant's business in the manufacture and sale of its products, has not extended so as to make complainant's developments a matter of public knowledge, available to its competitors.

"Defendant, in 1918, when he was 22 years old, entered the employ of complainant and remained with it until June 1, 1944, when he resigned. He started in as a mechanic in the department charged with the maintenance of machinery; in 1922, he became machine shop foreman and thereafter, at different times, had sundry titles—plant superintendent, chief engineer, master mechanic." (Opinion below, S. C. 27).

Defendant's answer (Par. 4, S. C. 14-15) admits his employment with complainant "as an engineer" "and that in the course of his employment he designed certain machinery and equipment for complainant".

Everything he knows concerning complainant's business, he learned from complainant, his experience prior to commencement of his employment with complainant having been in entirely different lines of manufacture and in minor capacities of a general mechanical nature, and he having at that time been in this country only two years, after having come here from abroad (Van Norde, S. C. 132-134).**

* *Vulcan Detinning Co. v. American Can Co.*, 72 N. J. Eq. 387 and *Maas & Waldstein Co. v. Walker*, 100 N. J. Eq. 224 quoted at page 38 hereof.

** Compare *The Davey Tree Expert Co. v. Ahlers*, 124 N. J. Eq. 175 and *Sarco Co. of New Jersey v. Gulliver*, 3 N. J. Misc. 641, aff'd. on opinion below 99 N. J. Eq. 432, in both of which restrictive covenants against competitive employment were enforced.

By reason of his position, defendant had access to all of complainant's engineering records and a large part of his time was devoted to the designing of complainant's machinery, that having been his job (S. C. 91).

While the defense sought to belittle complainant's accomplishments of a mechanical nature, the dispute here resolves itself into one as to degree. Thus, defendant, himself, testified (S. C. 160) :

*“Q. Mr. Van Norde, it was an important part of your job at Irvington to design and create new machinery? A. Yes, it was. * * * I did it from time to time, whenever it was required.*

Q. And that was part of your job? A. It was part of my job.”

On January 30, 1942, defendant, then an employee of complainant in the capacity of plant superintendent, entered into a written contract (S. C. 87, 100; Exhibit C2, S. C. 241-248) with complainant whereby, in consideration of his continued employment by complainant, defendant expressly undertook and agreed (among other things therein) :

*“That he will, both during his employment by Employer and after cessation thereof (howsoever the same shall occur), keep secret (neither disclosing to others nor himself making use of, except as to disclosure and use in the line of duty, as authorized by Employer) confidential information concerning Employer's business, a knowledge whereof may be acquired by Employee in connection with his said employment * * * .*

That he will, for a period of two years following the cessation of his employment by Employer, howsoever the same shall occur, refrain from engaging in, being employed by, or otherwise connected with, directly or indirectly (whether as proprietor, partner, asso-

ciate, consultant, officer, director, agent, employee, or in any other capacity) any competing business enterprise located in the United States.”

Defendant resigned from complainant's employ on June 1, 1944 (S. C. 101, 158; defendant's letter of May 1, 1944, Ex. C9, S. C. 249) and two weeks later entered the employ of Electro-Technical Products, Inc., a corporation of the State of New Jersey at its plant in Nutley in said state (S. C. 146). Electro-Technical Products, Inc., like complainant, is engaged in the coating business. As was found by the court below (S. C. 28), and as was undisputed, “two of Electro's products are in competition with complainant's”; namely, flexible varnished electrical insulation and varnished fabrics used as a rubber separatory medium in the rubber industry (S. C. 91, 105, 130), these being complainant's two chief products (the court further observing (S. C. 31) that Electro “perhaps intended” to compete as to a third product, bottle-cap liners—the evidence of such intention embracing a letter of Electro, Exhibit C1, S. C. 241, expressly stating such intention, and no one, including a representative of Electro's management called by defendant as a witness (S. C. 213-216), having disputed that such was their intent).

Inclusive of defendant, the following persons, all one-time key employees of complainant are shown to have left complainant and gone with its competitor, Electro:

Name	Position with Complainant	First Employed by Complainant	Left Complainant
E. C. Homan	Research Chemist	1935	August, 1941
E. O. Ferguson	Production Superintendent	1931	1942
Van Norde	Mechanical	1918	June, 1944

Mr. Homan worked on the development of varnish for bottle-cap paper, rubber-separator cloth, and other purposes and had access to complainant's secret chemical formulae. Mr. Ferguson had to do with the scheduling of production of the materials and likewise had access to the secret chemical formulae (S. C. 83-84).

Besides these, a former draftsman of complainant named Whitehead is employed at Electro (S. C. 219).*

This migration of other of complainant's key employees is claimed by complainant to constitute aggravation of the risk to complainant in Electro's employment of defendant. These employees** not being subject to restrictive covenants in favor of complainant (either because the employee's employment with complainant antedated the adoption of the covenants and they had no such covenants with complainant or because their covenants have expired), complainant's competitor is thereby enabled to combine defendant's knowledge of complainant's mechanical developments with a knowledge of its chemical formulae, etc. (admittedly secret—opinion, S. C. 27) and production methods so as to obtain a knowledge of complainant's entire operations. Additionally, it is viewed by complainant as supporting the legitimate inference to be drawn from Electro's employment of defendant of Electro's purpose to secure confidential information as to complainant's developments and of the likelihood that, unless prevented by injunction, that purpose will be fulfilled.

Promptly upon learning of the defendant's violation of his covenant with complainant, com-

* Although the fact was finally admitted by him, the defendant's testimony on this point bears on his credibility.
** Excluding the draftsman Whitehead.

plainant filed its bill in the Court of Chancery (S. C. 1, *et seq.*) to enjoin such violation, and applied for and obtained preliminary restraint (S. C. 21, *et seq.*) in the language of defendant's covenants, with specific reference to Electro-Technical Products, Inc. On final hearing, however, the court below dismissed the bill—for the reasons given in the court's opinion at S. C. 25, *et seq.*

Statement of the Question.

The basic question presented by this appeal may be simply stated, as follows:

Does complainant have such business methods and secrets, known to defendant as its trusted employee, as to entitle it to secure and enforce the negative covenants in suit?

Although a considerable part of the opinion below is given over to a discussion of the difficulties claimed to exist in the way of enforcement of the first of these two covenants (against disclosure and use of confidential information), the primary objective of this suit is the enforcement of the second (against competitive employment)—the first being incapable of effective enforcement except by means of the second. (The court below alluded to the problem inherent in the protection of business methods and secrets by the first covenant but not to the solution thereof through the second, preferring to treat each such covenant as independent of the other, which they are not, the one being in aid of the other.)

On the basic question thus presented, it is respectfully contended:

(a) That the court below, influenced by an erroneous concept of the policy involved, applied

to complainant's case erroneous standards as to what constitutes

1. Sufficient business methods and secrets
2. Sufficient proof of intention to divulge

to entitle an employer to enforcement of a former employee's covenant not to take employment with a competitor of his original employer.

(b) That as a result of the application of such erroneous standards, the court below was led to conclude that the factors enumerated above are not present in the case.

(c) That, applying the correct standards, there is no proof whatever to support such conclusions, the opposite conclusions being required both by the undisputed evidence in the case, as well as by the court's own findings.

It is complainant's purpose to show that there is no area of dispute as to the existence of the elements comprising complainant's case. Thus, complainant intends to show (a) on the admissions made by both defendant and his witnesses, and on the findings of the court below, as well as on the *undisputed* proof, complainant does have substantial developments of a mechanical nature (b) that by necessary inference from the admissions and findings so made, as well as on the *undisputed* proof, those developments have been maintained by complainant as its business secrets (c) that by further necessary inference therefrom, and from other *undisputed* facts in the case, there is a strong probability of defendant's disclosing such developments to complainant's competitor in connection with his employment by the latter.

The degree to which those elements must be present in order to justify injunctive relief, is, of course, a legal question and as to this complainant intends to show that, on the law, the court below took a too rigorous view of the requirements in a case such as this where the court is asked merely to enforce defendant's own covenant, made for an adequate and valuable consideration and reasonable in its terms, in order to protect complainant, as employer, with regard to the subject-matter of the contract of which that covenant was a part (i. e., the employment relationship).

In short, complainant contends that the court below mistakenly applied the law, and that, under a correct application thereof, there is no evidence to support the court's conclusions.

ARGUMENT.

Points.

The four elements of complainant's case as derived from *Ideal Laundry Co. v. Gugliemone*, 107 N. J. Eq. 108, a case in this court, quoted below* will conveniently serve as four of the Points for this argument. (This notwithstanding there has never been any question as to the reasonableness of the covenant—Point III—or as to defendant's familiarity with complainant's ma-

* "Courts of equity will protect an employer against a breach of a written agreement, founded upon a good consideration, and reasonable in its terms, made by an employe, not to engage with a rival after the termination of the employment, where the services of the employe have been of such a character that he gained knowledge of his employer's business methods and secrets, the disclosure of which to a rival would result in irreparable injury to the employer, and where it further appears that the purpose of the subsequent employment, resulting in the breach, was to obtain the benefit of those secrets, and that there is imminent danger that through such subsequent employment such secrets would be disclosed."

chinery—Point II). To these will be added a discussion of the public policy involved and of the form of the remedy and a reference to certain affirmative defenses raised below but evidently not considered by the court as of sufficient merit to require comment. Accordingly, the following are the points or topic headings for complainant's argument:

I. Complainant has business methods and secrets* concerning the design and construction of its machinery reasonably necessitating a covenant, reasonable in its terms, against competitive activity following termination of employment with complainant on the part of an employee becoming familiar with such methods and secrets by reason of his employment with complainant. (Grounds of Appeal Nos. 1, 2, 4, 5, 11, 14, 15—S. C., 39, *et seq.*).

a. The methods.

b. The secrecy.

II. Defendant, as the long-time head of complainant's engineering staff and the designer or co-designer of much of its machinery, was familiar with complainant's business methods and secrets concerning the design and construction thereof. (Grounds of Appeal Nos. 1, 3, 4, 14, 15—S. C., 39, *et seq.*).

III. Defendant's covenant is reasonable in its terms.

IV. There is imminent danger that defendant's employment with a competitor of complainant will lead to a disclosure to such competitor of complainant's business methods and secrets. (Grounds of Appeal Nos. 1, 4, 8, 9, 10, 14—S. C., 39, *et seq.*).

V. As to the public policy involved. (Grounds of Appeal Nos. 1, 4, 6, 7, 12, 13, 14—S. C., 39, *et seq.*).

* Quoting from *Ideal Laundry Co. v. Gugliemone*, *supra*.

VI. As to the remedy. (Grounds of Appeal Nos. 1, 4, 14—S. C., 39, *et seq.*).

VII. As to affirmative defenses.

Appendix. Complainant's machinery.

POINT I.

Complainant has "business methods and secrets" concerning the design and construction of its machinery reasonably necessitating a covenant, reasonable in its terms, against competitive activity following termination of employment with complainant on the part of an employee becoming familiar with such methods and secrets by reason of his employment with complainant.

a. The methods.

Complainant has undertaken to show that on the admissions made both by defendant and his witnesses, and on the findings of the court below, as well as on the undisputed proof, complainant has business methods consisting of its specially designed and constructed machinery and equipment.

Said the court below (S. C. 29):

"Much of complainant's machinery has been designed by its own staff and most of it has been altered to meet its special and changing needs.

* * * * *

The process of experimentation, of trial and error, and adjustment, is going on continually and has been a large factor in establishing and maintaining the competitive position of complainant."

(In the omitted portion, the court observed "Its (complainant's) machines, however, are all of well known types. The differences between its apparatus and that in other plants performing like services, do not seem to be important." It is difficult to understand how this conclusion is to be reconciled with that last above quoted.)

Said the defendant, in his answer (Par. 4, S. C. 14-15):

"Defendant admits * * * that he went to work for complainant in 1918 and continued to work for them as an engineer until some time in 1943,* and that in the course of his employment he designed certain machinery and equipment for complainant."

Said the defendant under cross examination (S. C. 160):

*"Q. Mr. Van Norde, it was an important part of your job at Irvington to design and create new machinery? A. Yes, it was. * * * I did it from time to time, whenever it was required.*

Q. And that was part of your job? A. It was part of my job."

Said the defendant's witness, Petersen, a graduate mechanical engineer who had been in complainant's employ until August, 1943, having previously worked for Johns Manville Corporation (S. C. 193) (whose equipment he had previously said was "amazingly similar" to that of complainant) (S. C. 197) (S. C. 206):

"Q. Do they have a large engineering department in Johns Manville? A. Yes.

Q. They employ many expensive engineers? A. Yes, they have about twenty of them, six of which are really stars.

* Actually, June 1, 1944—Opinion, S. C. 27.

Q. They design and develop their own machinery? A. Yes.

Q. They have arrived at a point that they now occupy by a process of years of experience and redesigning and development, through building up ideas? A. Similar to the process in any company.

Q. The same process that goes on in Irvington? A. Yes.

Said defendant's only other witness as to the nature of complainant's machinery and equipment, the witness Nichols, also a graduate engineer and a former employee of complainant (S. C. 188):

"Q. You recognize Mr. Nichols that Irvington occupies a dominant position in this industry? A. I appreciate that."

Said the documentary proof consisting of Executive Bulletin put out by complainant's management for the information of complainant's personnel under date of March 29, 1943, shortly after defendant was made engineer of complainant's factory engineering department as a department separate and apart from factory maintenance, describing defendant's duties in his new position (from Exhibit D-2, S. C. 269):

- "(a) Supervise the plant Engineering Department.
- (b) Design and layout all major items of repair.
- (c) Design and layout new equipment to meet specifications prepared by the Industrial Engineer in the Process & Development Division.
- (d) Collect information on new equipment and designs, investigate new industrial practices, and serve in a staff capacity by conveying such information to the Process & Development Division."

As to exactly what complainant's developments consisted of, the court below has said (S. C. 29-30): "The evidence embraces only the design of machines, and even here the proofs are most general. A few details did come out, however, which assist the court in reaching a decision" (the court then alluding to a point of difference between a certain machine of complainant and a machine used for the same purpose by its competitor, Electro, which had been referred to by *defendant*, no mention being made of the *undisputed* testimony on complainant's case concerning the many other points of difference between complainant's machines and those available on the open market, as shown in the appendix hereof). In view of the court's own findings above quoted as to the fact that "much of complainant's machinery has been designed by its own staff and most of it has been altered to meet its special and changing needs," and the fact that the "process of experimentation, of trial and error, and adjustment, is going on continually and has been a large factor in establishing and maintaining the competitive position of complainant," any detailed description of complainant's machines, their respective origins, functions and points of superiority over machines available for a similar purpose would seem to be of very limited value to the reviewing court on this appeal. Nevertheless, by way of meeting the suggestion that complainant relied on mere generalities in the proof of its case, there is being submitted, as an appendix, a description taken from the testimony, covering the more important items of complainant's machinery—it being obvious that it would be virtually impossible for complainant, under the circumstances that these developments are going on all the time, to extend the evidence to include every single such development.

Similarly, in view of the concessions on the record and the trial court's findings, it may be that a discussion of the evidence on defendant's case will be found of limited usefulness. Nevertheless, so that this, too, may be covered, the following summary will be submitted: Defendant and his two witnesses mentioned above merely denied in general terms that there was anything "patentable" (S. C. 141) or "novel" or "unique" (S. C. 144, 147, 154, 155, 187, 190, 195, * 197, 198, 201, 205) or amounting to a "trade-secret" (S. C. 144) about complainant's machines (legal conclusions** which complainant contends are at odds with the undisputed factual evidence concerning the respective machines as recited in the appendix hereto).

Thus, the following from the direct examination of defendant, himself (speaking of the coating machines) (S. C. 141):

"I designed equipment, made additions to the equipment already installed, the coating machines,—of course, the material has varied over the number of years. The coating process is varied and it needed additional brackets or additional rolls to facilitate these changes.

Q. You added rolls? A. Corrected by adding parts.

* "It was an application of common sense," says the witness, in denying novelty. But complainant had paid for the perspiration, as well as any inspiration, that was involved. The results of "common sense" have value and are entitled to protection, no less than of inspiration.

** Complainant's witness, Mezger, interrogated on cross examination at S. C. 129 as to complainant's "technical trade secrets" as distinguished from confidential information, referred to "the operation and design of some of the machines we use for producing our products" as well as chemical formulae and material specifications, the court, however, properly observing that this called for a legal conclusion on the part of the witness—"I don't suppose I should be influenced by the idea that this witness states of trade secrets * * * It is purely legal."

Q. Were there any new devices? A. It probably could be called new device.

Q. Like what? A. New brackets, new drives; that would cover the coating machine.

Q. You don't think they were patentable?*

A. Not on the coating machines. I don't think anything was patentable on the coating machines."

However, complainant, in invoking a voluntary covenant of the kind in suit, is not required to show patentability of its developments, or novelty as an element of patentability. Indeed, in a situation where an employer's developments are all patentable, there is even less reason than otherwise for an employee's covenant against competitive activity (in aid of a covenant, express or implied, against disclosure and use), for the employer in such a case *can* protect himself by securing patents. Moreover, complainant is not required even to show trade-secrecy, in the technical sense in which that term has come to be used. All that need be shown in this connection is confidentiality of business methods.

Patentability is, of course, the strictest test that that could be applied. It is defined or discussed at 48 C. J. 19 under the heading, "Patentability," as follows:

"Since the grant of a patent is purely a statutory creation, a patent may be obtained and enjoyed only in respect of subject matter specified by congress. Congress has provided that a patent may be obtained, under and subject to certain exceptions and conditions, by

* So, too, the following from the cross examination of complainant's vice-president at S. C. 128:

"Q. Was there anything novel devised about that change, do you know? A. (No answer.)

"The Court: Do you think there was anything patentable about this?

The Witness: We patented the slitting machine."

any person who has discovered or invented any new and useful art, machine, manufacture, composition of matter, or any new and useful improvement thereof, not known or used by others in this country before his invention or discovery thereof, and not patented or described in any printed publication in this or any foreign country before his invention or discovery thereof. A patent can be obtained, therefore, only for an art or instrument falling within the enumerated classes or divisions and possessing the attributes of invention, novelty, and utility.”

it being observed at page 69, Par. 73:

“The lowest order of invention is something more than mechanical skill, and the highest degree of mechanical skill is something less than invention. It has been asserted that no entirely satisfactory test has ever been found by which a line can be drawn between the product of inventive skill and the results of mechanical skill.”

Trade secrets, on the other hand, are defined in *Cameron Machine Co. v. Langston*, 115 Atl. 212 (not officially reported) as follows:

“A trade secret is a plan or process, tool, mechanism or compound, known only to its owner and those of his employees to whom it is necessary to confide it (in order to apply it to the uses intended).”

the same definition being given in Black’s Law Dictionary, Third Ed. (on the authority of the Cameron Machine Company case in New Jersey and of other cases in other jurisdictions); also in *Corpus Juris*.

That a trade secret need not involve the element of patentability is evident from the following from *Club Razor & Blade Mfg. Corp. v. Bindzsus*, 131 N. J. Eq. 283 at 287, aff’d on opinion below 133 N. J. Eq. 138 (italics supplied):

* Citing Cyc. Bracketed material, not from case, added in *Corpus Juris* definition (32 C. J. 156, Sec. 210)

“One who invents or discovers and keeps secret a process of manufacture, *whether patentable or not*, has a property therein which the court will protect * * *.” (Quoting from *Salomon v. Hertz*, 40 N. J. Eq. 400).

That others “might have reached the same result independently by their own experiments or efforts” is similarly immaterial. *Ibid.* p. 288, quoting *Stone v. Goss* (Errors and Appeals), 65 N. J. Eq. 756.

Coming to the doctrine of confidentiality, one finds that this extends to virtually everything an employer develops connected with his business* (to the extent, of course, that a knowledge thereof may be restricted to those required to have such knowledge for the purposes of the business), these being described by the all-embracing terms of business “methods”—including, but not restricted to, “technical trade secrets”.

Thus, in *The Davey Tree Expert Co. v. Ahlers*, 124 N. J. Eq. 175, the confidential information which the restrictive covenant was designed to protect—the covenant being upheld and enforced—was described in the following paragraph of the opinion:

“During the course of his employment, the complainant supplied the defendant with pamphlets, booklets and other written material, which showed the result of its researches and experimentations, and furnished information of the latest improved methods and processes for the better care of trees. Such information, the complainant contends, was disclosed only to its employes, and was not intended to be revealed to its competitors.”

Clearly, nothing patentable there!

* Callman “Unfair Competition and Trade Marks”, quoted *infra*, pp. 67-68.

Reference has been made by the court below (Opinion, S. C., p. 33) to the long list of reported decisions in New Jersey on restrictive covenants of employment contracts wherein "the defendant had been employed as a route salesman for the complainant", the covenant having been upheld and enforced by injunction, the court below declaring (Opinion, S. C., p. 36) that "Injunctions preventing a former employee from working for a competitor are, as I have pointed out, at present issued almost exclusively in cases where the defendant is in a position to influence the customers of his former employer".

But an examination of the reasoning in those cases discloses no basis for protecting one employer's customer lists while withholding protection of another employer's specially designed and constructed machinery; for enforcing the covenant against a \$30.00 a week routeman while withholding enforcement against a \$4,200.00 a year engineering department head.

A recent and representative case is *Vander May v. Schoone-Jongen*, 128 N. J. Eq. 336, aff'd. on opinion below, 130 N. J. Eq. 227 wherein the court, at p. 338 said (attention being invited to the emphasis on the employer's "confidential information", as distinguished from "trade secrets" (italics supplied):

"Defendants argue that the list of customers of the complainants is not a trade secret or confidential information. I see nothing in this argument. See *Owl Laundry Co. v. Banks*, 83 N. J. Eq. 230; *Capital Laundry Co. v. Vannozzi*, 115 N. J. Eq. 26; *Newark Cleaning and Dye Works v. Gross*, 97 N. J. Eq. 406; *Abalene Exterminating Co. v. Oser*, 125 N. J. Eq. 329."

So, in *Abalene Exterminating Co. v. Oser*, 125 N. J. Eq. 329, cited in the previous case:

“The knowledge which Jacob* possessed as to the names and addresses of complainant’s customers and their contracts with complainant, was confidential information obtained by him in and by reason of the course of his employment with complainant, including of course those customers whom he may himself have solicited and obtained for complainant during that employment. That information was a property right of complainant; it was not information that was available to or could readily be obtained by the public or any other individual as in the case of Newark Cleaning and Dye Works v. Gross, 97 N. J. Eq. 406.

These customers had been obtained by complainant at the cost of time, trouble and expense in soliciting and obtaining them as customers; their business and contracts with complainant obviously were of value to complainant. Also this information concerning them was of value to any competitor of complainant * * *.”

So, too, in *Credit Rating Service, Inc. v. Charlesworth*, 126 N. J. Eq. 360, a case citing and following the *Ideal Laundry Company* case**, and one

* As to the former employee, himself, the restraint had issued virtually without discussion, the question at issue having been the right of complainant to enjoin a secondary defendant, the recipient from the primary defendant of confidential information as to complainant’s business, from using such information:

“Complainant is entitled to final decree for the restraint prayed against Jacob” (complainant’s ex-employee, the primary defendant) “both for the enforcement of the covenant against competition and against further disclosure of any confidential information obtained in the course of his employment by complainant.” (Italics supplied.)

** “The first inescapable conclusion of fact must be that if defendant is permitted to violate his negative covenant as contained in the agreement of May, 1936, aforesaid he will take advantage of his knowledge of complainant’s business methods and solicit its subscribers, both actual and potential, in the restricted territory, and that this knowledge was gained by, from and through his employment by complainant, and it follows that if he is permitted so to do ‘irreparable injury will ensue.’ *Ideal Laundry Co. v. Gugliemone*, 107 N. J. Eq. 108 (at p. 114); 151 Atl. Rep. 617.” (from *Credit Rating Service, Inc., v. Charlesworth*, italics being supplied).

wherein a restrictive covenant against competitive employment was upheld and enforced, the argument that "there is no particular method or secret of making collections or credit reporting" (the businesses there involved) was rejected, the court ruling that "the evidence warrants the conclusion that complainant did have methods of its own in conducting its various branches of this business * * *"—there being no suggestion of patentability or even of trade-secrecy. And the court's citation in this connection of the *Ideal Laundry Company* case, "the solitary case in which an injunction has gone although the defendant was not in touch with complainant's customers" (Opinion below, S. C. 34), demonstrates the parity of reasoning throughout all these cases and rebuts the suggestion of the court below that there is something peculiar to the "rule of the *Ideal Laundry* case" which is to be "extended to other cases only with great caution" (Opinion, S. C. 34, 36). So, too, this court's citation in the *Ideal Laundry* case of the customer-list or good-will cases (including *Sarco Co. v. Gulliver*, 3 N. J. Misc. R. 641, aff'd. 99 N. J. Eq. 432, a case in which an injunction issued to enforce a former employee's covenant against competitive activity although no customer lists or trade secrets were involved).

Coming back to the *Ideal Laundry* case, one finds there the expression of the rule quoted in the footnote at page 11 hereof.

Attention is respectfully directed to the conjunctiveness of the phrase "business methods and secrets"—signifying an all-embracing scope for the usefulness of restrictive covenants of this type in protecting business achievements, not limited to patentable inventions or even to trade secrets.

And, in that same case, it was said (p. 113):

“He (defendant) says that the book of technique is not secret and is simply ‘a compilation of written orders to the floor supervisors * * *.’

Now, we remark that it is clear that this book of technique is not any standard book, but has been developed by complainant.”

Not a word about patentability or even trade secrecy there!

The court below, without expressly ruling on the point, apparently adopted defendant’s view as to the legal necessity for the things sought to be protected by the covenant being patentable in order to permit of enforcement of the covenant, when it said (S. C. 29):

“Complainant’s engineers are continually trying to develop new products within its field, to improve quality and to reduce costs. * * * Occasionally, something novel is developed and in such case complainant may procure a patent, but usually there is nothing patentable, merely the ingenious application of well known devices or methods to the particular problems presented.”*

Defendant, who had been paid by complainant for this exercise of his ingenuity, ought not be permitted in violation of his covenant, to take the results to complainant’s competitor:

“Where one is employed to devise or perfect an instrument, or a means for accomplishing a prescribed result, he cannot, after successfully accomplishing the work for which he was employed, plead title thereto as against his employer. That which he has

* Adding “The process of experimentation, of trial and error, and adjustment, is going on continually and has been a large factor in establishing and maintaining the competitive position of complainant.”

been employed and paid to accomplish becomes, when accomplished, the property of his employer. Whatever rights as an individual he may have had in and to his inventive powers, and that which they are able to accomplish, he has sold in advance to his employer." Citing *Solomons v. United States*, 137 U. S. 342, 346, 34 L. Ed. 667, 669 (from *Club Razor & Blade Mfg. Corp. v. Bindzsus*, 131 N. J. Eq. 283 at p. 289, aff'd on opinion below 133 N. J. Eq. 138).

In similar vein, the court below further said (S. C. 30), "Lastly, complainant has procured patents on everything patentable, except where its patent counsel considered it inadvisable to apply for a patent." That, of course, is only to say that things which were patentable and which could better be protected by patent (with resultant public disclosure) than by secrecy were patented. So some specially designed machines were patented and some were not, depending on the anticipated scope of the patent and the opinion of the company's patent attorney (S. C. 122-123). An example of a patentable machine, one invented by or with the help of defendant, which was not patented but maintained as a secret is the second of the two types of rounding machines; i. e., the type not acquired by purchase from Mueller, but originated by complainant.* Other examples given are the bonding or laminating machines and the waxing machines used in the bottle-cap materials business. So, too, the Mueller-type rounding machine which defendant helped to perfect, and which was conceded by at least one mechanical engineer called as a witness by defendant to be "unique" and "clever"*** was like-

* The testimony is conflicting as to this. Compare S. C. 232 with S. C. 123.

** S. C. 198.

wise not patented, but maintained as secret. (Purchase Agreement, Exhibit C-13, S. C. 253, *et seq.*, especially, Pars. 1 and 11.) There were no patents on the coating towers. (Van Norde, S. C. 156; Mezger, S. C. 122-124, 128, 129, 231-232.)

As to the importance of complainant's mechanical developments, it is true that the court below commented (S. C. 29) "Its (complainant's) machines, however, are all of well known types. The differences between its apparatus and that in other plants performing like service, do not seem to be important." But, as has been noted, this is to be considered in connection with the further comment of the court that "The process of experimentation, of trial and error, and adjustment, is going on continually and has been a large factor in establishing and maintaining the competitive position of complainant."

In the light of that comment, it would seem that what the court meant was that such differences "do not seem to be important" *in scope* (as distinguished *from result*). But that very situation was dealt with by this court in the Ideal Laundry Company case (except that there the proofs were in affidavits) wherein it was said (pp. 112-114) (*italics by the court; underscoring supplied*):

"It is true that defendant in his affidavits denies generally that complainant's methods differed from other laundries and complainant's methods are secret methods, but we think his affidavits themselves negative such statement.

Thus in his affidavit defendant says:

"The means and methods of doing business used in various laundries are *substantially identical* and the differences are in *but minor details* * * *."

He (defendant) says that the book of technique is not secret and is simply 'a compilation of written orders to the floor supervisors * * *.'

Now, we remark that it is clear that this book of technique is not any standard book, but has been developed by complainant. And we think that the affidavits considered as a whole fairly show that the complainant's methods of doing business in the float-ironed department were secret. While such different methods adopted by the complainant from time to time are what defendant calls 'minor changes' or 'minor details' (without saying what they were), we cannot say that they were unimportant. It may well be that a slight change in method may be of great importance, as complainant contends. Moreover, the conclusion of the defendant that they were 'minor' is negated by the complainant's affidavits. The admitted fact that some 'well-tried' methods were 'discarded' indicates that the complainant was profiting by experience."

So, here, defendant Van Norde has said:

"Q. Are they (the coating towers) *substantially* the same? A. *In principle*, they are identically the same" (S. C. 143).

"Q. You don't want to create the impression that the Irvington coating towers are the same as they were 15 years ago? A. *In principle*, they are exactly the same" (S. C. 160)

this testimony being followed by an admission that:

"Q. There have been improvements by experimentation? A. Yes.

Q. And that same is true for all machinery in this plant? A. Yes, to keep up with the times."

(See, also defendant's testimony at S. C. 179-180 as to differences between the more or less standardized coating towers of complainant and

Electro, these differences including the difference in bearings alluded to by the court below (it being admitted by defendant that the round bearings of complainant's machines are superior to the bronze bushings of Electro's) and a difference in drive— "The drive is individual (at Electro), in Irvington all the machines are driven from one shaft."

Also, the witness Petersen (in connection with the defense effort to introduce certain trade-paper articles purporting to describe allegedly well-known coating methods) (S. C. 199):

"Q. Is there any method used by Irvington that is not described? A. There is no method used by Irvington that is not described.

Q. What is there in the methods of Irvington that is not described, *in principle* of fact? A. None as far as coating of cambric, papers and sheet material."

Also, the witness Nichols (S. C. 190):

"Q. (Mr. Hays) * * * do you remember the building of the dusting machine? A. Yes.

Q. Were dusting machines available on the market? A. The dusting machine was available with *adoptation* (*adaptation*).

Q. Who designed the dusting machine at Irvington? A. Mr. Gloss did the designing work on that.

* * * * *

A. The dusting machine was built in line with Mr. Gloss' specification.

Q. Did it work well? A. They had considerable difficulty with the machine.

Q. Was there anything unique or secret about it? A. *For that purpose*, I would say no."

Peterson, who had worked for Johns Manville before coming to complainant (S. C. 193) "was amazed at the similarity of equipment in Irving-

ton with Johns Manville" (S. C. 197), notwithstanding the two companies make entirely different lines of coated products (S. C. 206). However, although "they employed all the well known *methods* of coating" and there is nothing "unique or novel or secret" about the machinery (S. C. 197-198), both companies have "large engineering departments" employing "many expensive engineers" to "design and develop their machinery", thereby "building up ideas" which have given both companies preeminence in their respective fields (S. C. 206).

As has been previously shown herein, both of defendant's witnesses, Petersen and Nichols, conceded the importance of the *results* of complainant's machine development, acknowledging that its dominant position in the industry is attributable to its efforts along those lines—while, at the same time, saying, as the court seems to have said, that differences between complainant's machines and those available for accomplishing a similar purpose are relatively minor in scope.

It will be observed that, as in the *Ideal Laundry Company* case, no witness has said that differences admittedly existing between the machinery of complainant and that of its competitors, however minor, are unimportant *in result* and as this court has said, "It may well be that a slight change in method may be of great importance", particularly in a highly competitive industry, such as complainant's (S. C. 80)—may, in fact, make the difference between a dominant position such as complainant enjoys and a subordinate position such as their competitors have. (Obviously, as in the *Ideal Laundry Company* case, the competitor involved must, and does, have methods and machinery to do the job that they do, the difference, therefore, being in refinements and improve-

ments). As a matter of fact, however, the importance thereof is demonstrated by the testimony of defendant's witness, Petersen, as to the amount of money and effort expended by complainant in effecting these "differences" and that they have thereby; *i.e.*, through the process, over a period of years, of redesigning and development of their machinery, *through building up ideas* arrived at the place they now occupy (S. C. 206)—"a dominant position" in the industry (Nichols, S. C. 188).

It certainly is not reasonable to suppose that complainant would employ a costly engineering department, with four engineers on their staff, besides draftsmen and others, to achieve *unimportant* results—or that they would long maintain them if only that type of results were produced.

The court below in instancing some of the things that complainant's organization does to maintain its preeminent position in the industry ("economy will be advanced if a machine operates more rapidly. Gears are changed; a different kind of cutting edge is substituted"—Opinion, S. C. 29), fails to adequately convey the amount of time, effort and money expended in producing just such accomplishments as these, as per the undisputed evidence, an illustration being the drive of complainant's tubing conveyor, the effective redesigning of which took several years to accomplish (S. C. 235).*

Actually, the testimony, even that on defendant's own case, demonstrates that differences in complainant's machinery from machinery of competitors or machinery that may be generally available are not minor, as witness the following ex-

* Referred to *infra* (topic IV) in connection with the discussion of defendant's work for Electro.

planation by defendant's own witness, Mr. Petersen, of the origin of the "second dusting machine":

"At the time the second dusting machine was to be built I went in to Mr. Mezger who was vice-president and my superior to make sure it was clearly understood that the engineering department was not in favor of the dusting machine as it was drawn up. This second dusting machine was the conception of Mr. Gloss and embodied certain principles that had been tried in the past and found wanting. The engineering department inasmuch as it was to do details of the drawings under Mr. Gloss' direct supervision as a project separate and distinct from the normal relationship of the engineering department to Mr. Gloss as industrial engineer, I wanted to be sure that there would be no chance of any blame for the imperfect functioning of the dusting machine being thrown back in my engineering department and at that time Mr. Mezger said, 'Oh, no, nothing like that, this is Mr. Gloss's project.' With that we went ahead and as it happened the construction and detail designing of the machine went on almost simultaneously. There was a great deal of pressure to get it built in a hurry, as a consequence there was nothing to do it just went on. Mr. Van Norde after the machine was built had to spend a good deal of time with Mr. Gloss getting the bugs out of the dusting machine and there was some criticism of the bearings put in that machine" (S. C. 204).

* * * * *

"Q. What did Mr. Mezger say about Mr. Van Norde? A. In this case he thought that Gloss's machine would presumably function better. We had the authority to go ahead and spend approximately \$6,000 for a new dusting machine" (S. C. 205).

The foregoing represents a classic example from defendant's own witness of how a workable

machine was arrived at. Yet the court below, agreeing with the defendant, says that there is nothing confidential about the results of all this labor, paid for by complainant, and that defendant should be free to go to complainant's competitor and, for a monetary consideration moving solely to himself, sell them these results without any corresponding developmental effort on their part—attention being invited to the fact that this particular machine is of a kind used in coating electrical insulation, a type of product as to which Electro admittedly competes with complainant at this very time.

The distinction between uniqueness from the standpoint of patentability and uniqueness from the standpoint of creativeness is apparent from the following answer by defendant to a question by his counsel as to whether he was aware of any trade secrets relative to unique machinery belonging to complainant (S. C. 144):

“A. No, I didn't see anything unique that I would have knowledge of. I believe that any operation by bringing in an engineer, and explaining the actual machine, the operation to do the job, that he would be able to sit down and *design it.*” (Italics supplied.)

That, of course, is not inconsistent with complainant's claims herein. An engineer with experience in their line could “sit down and design” a machine or piece of equipment to accomplish a given operation; but unless he took over the *results of complainant's* efforts, that “sitting down and designing” of *independent results* would presumably take the same expenditure of time, effort and money that the undisputed evidence shows complainant expended to that end—in some instances, years of effort.

Defendant's testimony as to the ability of some other engineer "to sit down and design" a machine to accomplish a given operation continued (S. C. 144):

"Q. A man of your learning *and experience*? A. A man with my learning *and experience*.

Q. What you know today is from your learning *and experience*? A. Yes." (Italics supplied).

As the court at the hearing promptly suggested (S. C. 145), defendant's knowledge and experience inevitably includes his knowledge of complainant's machines, acquired in trust for complainant—of the things evolved during the course of his employment with complainant, by him or by others with his assistance, or by others alone, a knowledge of which he acquired solely because of such employment—"so therefore he can design machines that will produce that process".

Moreover, defendant's contention that other competent engineers could do the same job as he performed for complainant is not incompatible with complainant's case. Complainant does not and need not contend here that defendant's *talents* are unique*. It is probable that a competent engineer, or, as more usually happens, a group of competent engineers working together, could

* *Sarco Co. of New Jersey v. Gulliver*, 3 N. J. Mis. 641 at 647 (aff'd. on opinion below 99 N. J. Eq. 432):

"The next point made by defendant is that defendant's services are not of a kind requiring unique skill and ability. It would seem that counsel is confusing this case with the class of cases where injunction is sought against the violation of a covenant to perform services. There is nothing in the law as to the enforcement of these negative covenants, so far as I am aware, which makes unique skill or ability a factor in the case. It is simply a question of reasonable protection to the employer (or vendee of a business) against competition by the covenantor who has received consideration for the covenant."

eventually arrive at machines to accomplish the same *results* as complainant's machines accomplish; but to do so would presumably require the same expenditure of time, effort and capital as complainant necessarily expended in achieving those results—through defendant and other competent engineers. But this, it is submitted, does not argue for defendant's being permitted to go with a competitor of complainant in breach of his covenant in that regard under circumstances where he will be in a position to hand over such results to that competitor.

Although not essential to complainant's case—since there is no requirement that one or more horses be stolen before the barn may be locked to protect the remainder—there nevertheless is abundant support for complainant's position that the restrictive covenant in suit was necessary to the protection of its business methods and secrets in the history of defection to competitors (including, but not limited to, Electro) of its key employees previous to the adoption of the contract system in January of 1942, testified to (without contradiction) by complainant's vice-president at S. C. 58, 83-86, and complainant's secretary at S. C. 56-57.

Defendant himself makes a highly significant reference to this in his affidavit on the preliminary application (Par. 6):

“He (Mr. Mezger) asked me if I intended to go to work for National Coated Products of Rahway, New Jersey, a company which is operated by a group of former employees of Irvington.”

Does not this tendency of former employees of the company to “gang up”, manifested likewise in the case of Electro's organization as has been

shown in the foregoing Statement of Facts (pp. 7-8 *supra*), suggest that complainant, as the leader in the industry, does have "business methods and secrets" which may be put to a competitive use with profit to competitors and consequent disadvantage to complainant, especially where a combination of the knowledge thereof on the part of several employees participating in diverse phases of the business may be effected?

Defendant and his witnesses do *not* say that any machine of complainant (other than the few said by Mezger to have been purchased outside their organization, notably the Waldron edgewise coater) was *not* specially designed for complainant (many having been developed by defendant, himself, in whole or in part, after prolonged developmental effort—a fact wholly undisputed), or that it would *not* be disadvantageous to complainant for a knowledge of such specially designed machines to be made available to a competitor, free of the delay and expense to which complainant had been subjected and to which that competitor would be subject in developing an equally satisfactory machine on its own account. They merely say, variously, there is nothing "unique" or "novel" or "secret" about complainant's machines, these terms being connected by the defense with the question of patentability, thus indicating how such terms were being applied.

It is thus submitted that, consistent with the allegations of the bill, complainant through research, experimentation and practical operation, has developed and constructed much special or improved machinery and equipment for the conduct of its manufacturing processes, which are not generally known or available to the industry. These developments and improvements in machinery and equipment have enabled complainant to

obtain a competitive advantage either by the creation of a new product, the improvement of an existing product, or the lowering of production costs. These developments and improvements represent a very large investment on the part of complainant. Two methods are open to those who are, or would become, complainant's competitors for duplicating the *results* which complainant, through this expenditure of time, effort and money, has now achieved: (1) to go to substantially the same effort and expense in research, experimentation and trial-and-error operation to arrive at manufacturing techniques of equal excellence and economy; or (2) to pirate complainant's.* To forestall the latter, complainant protects its methods, including the machinery and equipment used to carry on the same, as its own business secrets and does not permit the disclosure thereof to anyone other than those who must necessarily know them in carrying on the manufacture and sale of its products. These methods and secrets complainant was and is entitled to further protect by exaction and enforcement of the restrictive covenant in suit on the part of a former trusted employee to whom the same were confided for the purpose only of having the same utilized by the employee in the employer's business.

As was said by this court forty years ago in *Vulcan Detinning Co. v. American Can Co.*, 72 N. J. Eq. 387 at 395 (emphasis being supplied): *The equity of the bill rested upon principles generally applicable to trusts and not upon rights peculiar to the discoverer of a secret process!*

* " * * * he will be enjoined from continuing to make any gain resulting from such illegal act, notwithstanding he might have been able to obtain the same result by other fair and honest means entirely aside from such illegal act." (*Abalene Exterminating Co., Inc., v. Oser*, 125 N. J. Eq. 329.)

b. The secrecy.

Said the court below in its opinion (S. C. 30):

“There are other difficulties. Complainant has not taken proper measures to protect the secrecy of its so-called refinements and improvements of the machinery. Some of the work was done by outside machine shops, without any request to regard the designs as confidential. In one instance, complainant lent its blueprints to another company so that it might duplicate the machine for its own use,—without a pledge of secrecy.”

(thereby further supporting complainant's claim to having specially designed machines—machines whose importance is attested by another concern's having, in one instance, duplicated them from complainant's blueprints).

However, on the question of the asserted lack of secrecy of complainant's machine development, what did the court mean by “secrecy”? Secrecy, of course, is a relative term, ranging from a single person's having exclusive knowledge of the subject-matter all the way down. In fact, during the war, our Government classified secrecy as applied to war information.

Here, again, it is submitted that the court below applied to complainant's case a more rigorous rule than was legally called for; that, from the standpoint of the rule that should have been applied (*i.e.*, from the standpoint of the relative secrecy required in such cases), there was *no* evidence to support the court's conclusion.

Absolute secrecy—if there is such a thing in any case—is not possible in the case of a business dependent for its operation, as most if not all businesses are, on the cooperative effort of a

group of persons—employees, contractors, government inspectors, and others. It is only required that there be no disclosure beyond the needs of the business so that these secrets do not become public knowledge and by reason of that fact cease to be secrets so as to become available to the originator's competitors through legitimate channels.

This difference of meaning or emphasis as to the term "secrecy" when applied to cases such as the one at bar is, perhaps, best brought out by the comment of Mr. Justice Garrison, speaking for this court in *Vulcan Detinning Co. v. American Can Co.*, 72 N. J. Eq. 387, his remarks being repeated by Vice-Chancellor Berry in *Maas & Waldstein v. Walker*, 100 N. J. Eq. 224:

"Too much emphasis has perhaps been placed upon the elements of absolute secrecy in the process and not enough stress has been laid upon the inequitable character of the defendant's conduct in making a use of such process that was inimical to the complainant's interest * * * the main ground for relief disclosed by the complainant's case is the existence of inequitable competition arising from a breach of trust, and hence, referable to general principles of equity and not to those special doctrines by which unpatented secrets are protected. In the application of these general principles the secrecy with which a court of equity deals is not necessarily that absolute secrecy that inheres in discovery, but that qualified secrecy that arises from mutual understanding, and that is required alike by good faith and by good morals * * * entirely aside from the technical secrecy of the process or the abstract question of property therein, the complainant is entitled to have its trustee, his associates and their servants restrained from using against the interest of the complainant the very process with which its trustee was en-

trusted for its benefit * * * the secrecy of a process may be viewed in two aspects—first, as having for its object the keeping of the public in ignorance of the nature, source or composition of a commercial product that is put upon the market, and second, as having for its object the prevention of competition by rivals in production * * *.”

Thus, contrary to the defendant's argument, complainant's right to the restrictive covenants is not so much a matter of protecting its property rights as it is protecting complainant from the kind of unfair competition to which Electro's employment of defendant in violation of the covenant inevitably subjects complainant—the exposing to a competitor of developments of complainant which defendant's own witness Petersen has said “represent a very substantial expenditure” on the part of complainant (S. C. 207).

According to the evidence on complainant's case, complainant makes every effort consistent with the requirements of its business to keep secret its formulae, processes and machine designs, only employees the discharge of whose duties require that they have access to the files of formulae, processes and machinery blueprints being permitted access thereto and no outsiders being allowed in the plant without special official permission (these being not simply war measures, having antedated the war) (Mezger, S. C. 90-91).

Mechanics and others having occasion to work on complainant's machines would have opportunity to observe the parts on which they worked. “Everyone who works down at the plant is familiar with some part of some piece of equipment. I know of none who have full and complete knowledge of the equipment so that they could” reproduce it. However, defendant, as a

mechanical engineer, would have an understanding of the machinery, appreciating the important points or principles involved, and thus be able to duplicate what he saw "whereas a mechanic is only concerned about the particular mechanical job he is on. It is the same as an automobile mechanic and an automobile engineer" (S. C. 183-184).

It is interesting to note that, consistent with Mr. Mezger's viewpoint as to the relative unimportance of mere sight of the machines, especially by persons, unlike defendant, who are incapable of appreciating the significance of what they saw, and answering the criticism of the court below that mechanics in outside machine shops were permitted to work on the construction of *some* of complainant's specially designed machines, this court, in the *Ideal Laundry Company* case, page 115, remarked:

"But *he* (defendant) signed the contract, and it may well be that the other employes did not have the knowledge or the ability to injure complainant. Defendant says that inspections of the plant of complainant were permitted. But that may mean nothing. It may well be that to discover the methods of operation one must actually operate, not merely look."

On cross examination, it was conceded by defendant that the plans and specifications on complainant's coating towers were not made public and were given out only to the extent necessary to enable others to perform a job for complainant (S. C. 156).

Thus, the *undisputed* evidence is that, save possibly in two instances, the only instances to which defendant was able to refer despite his twenty-five or twenty-six years of service with complain-

ant, there was no disclosure by complainant of *any* information as to its specially designed and constructed machinery beyond the requirements of its business. (There was some trade literature as to coating equipment referred to by defendant's counsel; but this was not represented as describing any of complainant's special equipment—the refinements and improvements to which reference has been made, nor was it attributable to complainant—S. C. 198-199).

As to the two instances of inspections of complainant's machinery by competitors referred to by defendant—by General Electric Company and New Jersey Wood Finishing Company representatives (S. C. 151):

1. As to the former, defendant knew only that these people had been in the plant. He did not know for what purpose they were there or what they were shown (S. C. 157). The fact is the General Electric Company's representatives were only permitted to see the new edgewise coating machine (Mezger, S. C. 237), this having been bought from a machinery company as standard equipment. The court below, apparently viewing this as of no consequence, ignored it in its opinion.
2. In the case of New Jersey Wood Finishing Company, the instance referred to by the court below in which complainant lent its blueprints to another company so that it might duplicate the machine for its own use, it was admitted by defendant on cross examination that they were a customer as well as a competitor of complainant and that it was to help them perform the dusting operation as an incident to the use of complainant's material that they were brought into complainant's plant and shown complain-

ant's specially designed and constructed* dusting machine so that they could build a machine like it for their own purposes. "We used to dust a lot of cloth for the New Jersey Wood Finishing Company, and we couldn't handle their business any more and New Jersey Wood Finishing Company had to build their own" (Van Norde, S. C. 157-158). Mr. Mezger testified to the same effect, adding that New Jersey Wood Finishing Company had tried a standard dusting machine, but it would not work even with defendant's assistance "and they finally gave up and built a machine along the lines of our dusting machine, the design being furnished by Irvington" (Mezger, S. C. 232-233). As explained in the appendix, this is a group 1 machine used in the manufacture of flexible electrical insulation, that being one of the two types of products presently manufactured and sold by both complainant and Electro.

The court below, in mentioning this disclosure by complainant to a customer of the design of a single machine in order to promote the sale of complainant's products to that customer, and also that "*some of the work* (on complainant's machines) was done by outside machine shops," cited the fact that complainant had not exacted a pledge of secrecy from the persons concerned—as constituting a lack of "proper measures to protect the secrecy of its so-called refinements and improvements of the machinery" (Opinion, S. C. 30). The court below has cited no authority for

* "Q. Mr. Hansen, who designed the dusting machine, is an employee of Irvington and was at the time, he worked on the machine, is that true? A. Yes" (Van Norde, S. C. 158).

that proposition and research by counsel has produced none. On the contrary, the *Vulcan Detinning* and *Maas & Waldstein* cases lay down an entirely different philosophy. So, too, the rationale of the *Ideal Laundry Company* case is to the contrary. There the argument that the Ideal Laundry Company had failed to exact appropriate contracts from defendant, Gugliemone's, fellow-employees was met with the observation quoted above that "he signed the contract, and it may well be that the other employes did not have the knowledge or the ability to injure complainant."

So, here, there is nothing to suggest that the outside machine shop mechanics could have seriously impaired complainant's exclusive enjoyment of the things they worked on in the course of a day's work, and Mezger's uncontradicted testimony quoted *supra* is that, unlike the case of an experienced engineer like defendant, they would not ordinarily be capable of this. To ask them for a pledge of secrecy (never self-executing) might well be to merely implant an unfortunate idea in their minds. Moreover, in addition to the factor of economic control (exercised through complainant's ability to withhold future business), it appears that there was an implied covenant of secrecy* on the part of these independent contractors with respect to information acquired by them in the course of and as a result of their work on complainant's developments—to which an express undertaking in that regard would have added little or nothing.

In the case of the complainant's disclosure to a customer, no pledge of secrecy was at all neces-

* Callman "Unfair Competition and Trade Marks", Vol. 1, pp. 674-675 "Unlawful Use of Trade Secrets" (Callaghan and Company, 1945).

sary—the customer as the user of the duplicate machine has the same self-interest in maintaining secrecy as has complainant. This aside from any implied covenant of secrecy that may be afforded under the circumstances.

So, too, it may be noted of all disclosures referred to by the court that they were limited to specific items and were strictly for the purposes of the business.

Moving from the opinion below to the testimony on defendant's case, defendant and his two witnesses, Petersen and Nichols, testified, in general terms that there was nothing "secret" about complainant's machines (S. C. 187, 190, 197-198) (as shown in the preceding section of this topic, the term being consistently used by defendant, his witnesses and counsel in conjunction with the idea of patentability, as involving both novelty and absence of prior disclosure—an application of the term which is clearly at odds with the *Vulcan Detinning* and *Maas & Waldstein* cases). It is submitted that whether or not a thing is "secret" is a conclusion which must be drawn from the facts with reference to disclosure thereof—at that, a variable conclusion, according to the interpretation of "secret," a thing being secret for one purpose while not for another, and there was no proof whatever of any disclosure of the design or construction of complainant's machines (admittedly of special design and construction) other than as required by the needs of the business, and then only in limited instances and under circumstances not calculated to make the same a matter of public knowledge (i. e., the instances referred to by the court in its opinion, discussed above). *Consequently Mr. Mezger's testimony as to the measures employed to maintain such secrecy, and*

as to there having been no such disclosure, stands wholly uncontradicted, whether by defendant or any other witness.

As was observed by the Court of Errors and Appeals in the *Ideal Laundry Company* case, the very purpose of such a contract as that in suit was to further such secrecy. (The contract in suit contains express provisions against disclosure).

Moreover, as has previously been noted, Mr. Petersen conceded that complainant, like his previous employer Johns Manville, who had had the same *type* of machinery, had a large engineering department, employing high-salaried engineers to design and develop their machinery and it has not been suggested, and clearly is unthinkable, that either concern would wittingly share the results of all this effort with rivals who had not contributed thereto—the idea being completely negated, in fact, by the admission that they have arrived at the place they now occupy* by the process, over a period of years, of redesigning and development of their machinery, “*through building up ideas*” (S. C. 206).

(Showing complainant’s endeavors to protect its exclusive rights in its creations, the evidence agrees that complainant, in several instances through defendant himself, obtained patents wherever that form of protection was available and seemed best suited to the end in view.)

As noted in the Statement of Facts, the court below confirms this view when it says (Opinion, S. C. 29) “The process of experimentation, of trial and error, and adjustment, is going on continually and has been a large factor in establishing and

* “Q. You recognize Mr. Nichols that Irvington occupies a dominant position in this industry? A. I appreciate that” (Nichols, S. C. 188).

maintaining the competitive position of complainant." It would seem to follow that the results achieved by such efforts could not have been "a large factor in establishing and maintaining the competitive position of complainant" unless those results were treated as secret by complainant so far, at least, as its competitors are concerned. In other words, if, as the court has agreed, complainant by costly and time-consuming research, experimentation and trial-and-error operation has attained certain results, which results are responsible for complainant's favorable competitive position, it would seem to follow (a) that it does have certain things, attributable to such efforts, which its competitors lack (b) that it would inevitably strive to avoid disclosure thereof to its competitors (*i.e.*, to maintain their secrecy).

Defendant has argued that complainant seeks to prevent him from using his own property, his own skill and competence as a mechanic.

No, complainant does not seek to prevent defendant from using anything that is *his*—it seeks only to prevent its competitor from unfairly competing by utilizing the things that are complainant's. As was noted by the court in the *Ideal Laundry* case*, nothing but that could make this whole effort on complainant's part worthwhile.

That is the same argument which the defendant Walker unsuccessfully used in *Maas & Waldstein v. Walker, supra*, the primary defense there having been "(1) the complainant has no secret formulae or processes, such formulae or processes as it has, consisting of well-known combinations or mixing directions known to the trade generally, and which are easily obtainable from trade publications."

* "If complainant would not be injured by defendant going to a competitor, why were these employment contracts inaugurated?"

The court there said:

“He claims, however, to be entitled to the free and unrestrained use of whatever knowledge of the manufacture of lacquers and enamels he has, whether gained while in the employ of the complainant company or otherwise. In this connection it is pertinent that prior to Dr. Walker’s employment by the complainant he was in the employ of the city of New York in its health department, and that aside from the information which he had gained in the study of his profession he had no knowledge or experience in the manufacture of lacquers or enamels, and almost all of his practical knowledge and experience in this line was gained while in the employ of the complainant.”

In the case of Van Norde, he had had no academic training whatever, and everything he knows about complainant’s business he learned at complainant’s, his experience prior to commencement of his twenty-six years of employment with complainant having been in entirely different lines of manufacture and in minor capacities of a general mechanical nature, and he having at that time been in this country only two years, after having come here from abroad (Van Norde, S. C. 132-134).

Indeed, Walker, had entered Maas & Waldstein’s employ as manager; Van Norde Irvington’s as an obscure mechanic.

Incidentally, there are several other features of the *Maas & Waldstein* case that are somewhat analogous to complainant’s—notably the letter, much emphasized by the court there, demonstrating the new employer’s intention to compete with the complainant—except, of course, that here we have immediate competition (in flexible electrical insulation and rubber separator cloth) as well as

prospective competition (in bottle-cap material, etc.).

Finally, it is to be noted that the court below, although denying the secrecy of complainant's developments under the narrower view of the meaning or legal application of that term, conceded the secrecy thereof in the broader aspect, in the following from the opinion at S. C. 34-35:

"We can say broadly that all important manufacturing enterprises have their own engineering staffs, who are continually trying to improve their employer's manufacturing processes. They all have secrets in the same sense that complainant has, not confined to manufacturing, but extending to credit relations and financial matters, to the purchase of raw materials, to almost every branch of business. Most business men seem to consider everything connected with their own business to be highly confidential."

POINT II.

Defendant, as the long-time head of complainant's engineering staff and the designer or co-designer of much of its machinery, was familiar with complainant's business methods and secrets concerning the design and construction thereof.

As there has been (and could be) no denial of the fact that defendant, as long-time head of complainant's plant engineering department, was completely familiar with the design and construction of complainant's machines, extended development of this point would seem unnecessary.

Nevertheless, it may not be inappropriate to review briefly at this point the history of defendant's connection with complainant, noting the

character and responsibility of his work for complainant.

Throughout defendant's twenty-six years' employment with complainant, he had worked at the mechanical end of their business (S. C. 49-50; Van Norde, S. C. 134-137, 140-142), in 1938 becoming plant superintendent in charge of plant engineering, the latter being then a department to both design and develop equipment and redesign existing equipment and also take care of maintenance (S. C. 46, 88), which position he held until January 19, 1943 when, due to the growth of the company, the factory Engineering Department was organized as a group under defendant as chief engineer, separate and apart from factory maintenance (S. C. 46, 50, 89; Executive Bulletin of January 19, 1943, Ex. D-1, S. C. 266 *et seq.*). As chief engineer, his duties were as described at page 15 hereof.

In April of 1944, defendant was relieved of supervisory responsibilities to the end of enabling him to devote all of his time to designing machines as a consulting engineer with the title of master mechanic (S. C. 89), his position of chief engineer of the Factory Engineering Department being eliminated (S. C. 53; Executive Bulletin, Exhibit D-4, S. C. 272).

He had received successive salary increases from complainant, culminating on March 1, 1943, just after he became chief engineer, in a salary of \$350.00 monthly which continued to be his salary until he resigned (S. C. 46, 101).

Despite the undisputed evidence of defendant's familiarity with everything about complainant's machines, the court below took occasion to observe (Opinion, S. C. 29):

“Complainant confined its proofs to machines as distinguished from processes. It did not attempt to show that defendant has confidential information concerning the speed at which a machine should run, or the degree of heat to be applied, or anything of that sort. The evidence embraces only the design of machines * * *.”

Although complainant has attached particular importance to the design and construction of its machines, it must be obvious that one charged with the designing and proper function of complainant's machinery must incidentally be familiar with the operation thereof—with the processes accomplished thereby. Indeed, it appeared from the testimony of defendant (S. C. 141); of his witness, Petersen (S. C. 199-200); as well as complainant's vice-president, Mezger (S. C. 125-126) that adjustments of the machines had to be worked out in the engineering department to accommodate the different kinds of materials processed thereon; *i. e.*, to accomplish the different processes for which the machines were designed. Indeed, the court below, in another part of its opinion, itself, declared (Opinion, S. C. 29):

“Complainant's *engineers* are continually trying to develop new products within its field, to improve quality and to reduce costs. A new raw material may be introduced, or some other change made in a varnish formula; more heat must be applied; economy will be advanced if a machine operates more rapidly. Gears are changed; a different kind of cutting edge is substituted.”

POINT III.

Defendant's covenant is reasonable in its terms.

As was said in the *Ideal Laundry Company* case (p. 111):

“Where, as here, an employment is of such a character as to inform the employe of business methods and secrets, a contract of employment at a stated salary is a sufficient consideration for the condition that the employe will not engage in a similar employment within a reasonable time and territory after the termination of such employment.”

In the case at bar, the reasonableness of the covenant as to time and space covered has not been disputed, and need not here be labored.

As to time, a restriction of two years has repeatedly been upheld as reasonable, many of the restrictions upheld extending for even longer periods*, the court in the *Ideal Laundry Company* case (involving a two-year restraint) having concluded (p. 112):

“The restraint was only a partial one, and was no greater than is reasonably required for the reasonable protection of the interest of the complainant. It is quite reasonable as to time, and also as to space, * * *.”

As to space, the undisputed evidence is that complainant sells the products it manufactures all over the United States and throughout the world.

* “Five years is the period of limitation fixed in the most of these negative covenants. So many covenants with a five-year limitation have been upheld and enforced in this court, that the question of the reasonableness of that period needs no further argument, * * *.” (*Sarco v. Gulliver*, 3 N. J. Misc. 641 at 645, aff'd. on opinion below 99 N. J. Eq. 432).

It has agents throughout the United States and in foreign countries (S. C. 46). A restriction no more extensive than the business of the covenantee is not unreasonable as to space and, under the proofs, a restriction limited to the United States is not unreasonable.

On application for the injunction *pendente lite*, the court below reviewed the covenant and found it to be reasonable:

“The restriction in paragraph (d) of the agreement between the parties, seems reasonable with respect to time and space. In a manufacturing business of this kind, the competition of a rival in St. Louis may be just as serious as if he were located in Newark.” (From letter-opinion of the court dated September 26, 1944)

this viewpoint being supported by *Voices, Inc. v. Metal Tone Mfg. Co., Inc.*, 119 N. J. Eq. 324, affirmed on opinion below, 120 N. J. Eq. 618, cert. den. 300 U. S. 656, 81 L. Ed. 866, which also declared (p. 328):

“‘In these cases it is held that the court will presume that the parties intended to make a valid contract and that they designed to provide a restraint which will be reasonable.’” (Quoting from *Artistic Porcelain Co. v. Boch*, 76 N. J. Eq. 533).

In concluding this comment as to the reasonableness of the covenant from the standpoint of the scope thereof, both as to time and space, it may be appropriate to notice that defendant's covenant contains a protective feature not found in any of the covenants in the reported cases in New Jersey; namely, a proviso which allows the employee to demand one-half his regular salary while restricted thereunder in case the termination of the employment be involuntary on his part. (Contract, Exhibit C-2, S. C. 243-244).

POINT IV.

There is imminent danger that defendant's employment with a competitor of complainant will lead to a disclosure to such competitor of complainant's business methods and secrets.

The court below has said (Opinion, S. C. 31): "There is no proof that he (defendant) divulged or intends to divulge confidential information."

Proving that a covenantor of such a covenant against competing activity, who has gone with a competing employer in violation of his covenant, has actually availed himself of his opportunity to disclose or utilize the covenantee's methods and secrets for the benefit of the competing employer will, in almost every case, be a difficult undertaking for the covenantee suing to enforce the covenant—since knowledge of the nature and extent of the covenantor's activities for the competing employer is ordinarily the exclusive possession of parties whose interests are opposed to those of the complaining covenantee.

But complainant, as the covenantee of such a covenant, was not obliged to wait until the horse is stolen before locking the door. Indeed, one of the primary purposes served by such a covenant is to forestall that possibility. Of what avail would it be to enjoin him from working for a competitor after he has disclosed the secrets which the covenant was designed to protect? This court cannot exercise its function of preventing irreparable injury after the injury has been inflicted. (There was no suggestion in the *Ideal Laundry Company* case that the competitor had actually copied the complainant's improvements). Complainant

hopes that the court is right and that defendant has not disclosed much of his knowledge of complainant's machine design and construction to complainant's competitor. But it is not waiting for defendant to do so.

To adopt the court's approach would be to impale the complaining employer on the horns of a dilemma in every such case. If he moves promptly upon learning of the violation of the covenant, he has failed to prove the disclosure of confidential information to the competitor. If he waits until the competitor has utilized the information in order to obtain that proof (in the form of a change or improvement in the competitor's product, or otherwise) he is in laches.

Accordingly, this branch of the case is not infrequently largely a matter of inference; *i.e.*, proving the intention of the former employee to disclose the original employer's methods and secrets in going with a competitor in substantially the same position he occupied with the original employer and the probability that the competitor will obtain and utilize the former's methods and secrets to his injury.

This court recognized this in the *Ideal Laundry Company* case when it said (at p. 115):

"The defendant denies that he intends to disclose any secrets; but he also denied that there were any secrets. * * * From what has been said it is reasonable to infer that the purpose of the defendant's employment with the complainant's competitor was to obtain the benefit of his knowledge of complainant's business methods and secrets and that there was imminent danger that through such employment such secrets would be disclosed."

The propriety of the application to the case at bar of the rule of the *Ideal Laundry* case as to the

proof of the covenantor's intent to disclose the covenantee's secrets and the likelihood of disclosure thereof, as indicated in the following language of the court below, must be considered in the light of this court's further comment, quoted above, as to the inference to be drawn from the other circumstances—(Opinion below, S. C. 34):

“Justice Trenchard stated the rule that courts of equity will protect an employer against a breach of an agreement not to accept employment with a competitor where, among other things, ‘the purpose of the subsequent employment resulting in the breach was to obtain the benefit of those secrets and that there is imminent danger that, through such subsequent employment, such secrets would be disclosed.’ I have already stated the absence of proof that Electro employed Van Norde in order to get confidential information about complainant's business, or that Van Norde intends to use for the benefit of Electro, or to divulge such information—if he has any. The present suit, therefore, does not come within the rule of the *Ideal Laundry* case * * *.”

Thus, it appears that the result of the opinion below would be to emasculate the rule enunciated and followed in the *Ideal Laundry* case, by deleting a very vital component of that rule—the establishment of the mental processes of covenantor and competitor via inference from the proven facts and circumstances. Or else to make the result of any such case to depend upon the particular judge's predilections towards such covenants, by leaving him free to draw such an inference or not, as he may see fit.

Previous to adoption by *Ideal Laundry Company* of the contract system there in question their plant superintendent, a man named Schreiman, had left and organized the competitor, *Holland Laundry Company*, to whose employ defend-

ant, Gugliemone, had gone in violation of his covenant with Ideal Laundry Company, the covenant having been signed some time after this defendant had obtained employment with Ideal (*i. e.*, after the trouble concerning Schreiman) "as a condition to his *continued* employment". This court there said:

"In the present case the facts and circumstances require that inference" ("that irreparable injury will ensue").

If complainant would not be injured by defendant going to a competitor, why were these employment contracts inaugurated?

* * * * *

Defendant says that it was because Schreiman left that these employment contracts were inaugurated in September 1928. That may be true, but why? The reasonable inference is that complainant saw its secret methods used against it by its former employe, and it intended, as was its right, to prevent that thing happening again."

To which may be added the following from *Capital Laundry Co. v. Vannozzi*, 115 N. J. Eq. 26, at 27:

"It is not necessary to show actual damage by instances of successful competition; it is sufficient if such competition, in violation of the covenant, may result in injury. The inability to prove actual damage is one of the grounds upon which equity intervenes. The covenant is lawful as to area and time, and the defendant should be held to a compliance."

So, too, in complainant's case, the inference as to defendant's intention to disclose complainant's methods and secrets to complainant's competitor, Electro, from the fact of such employment, and of the likelihood that its methods and secrets will be disclosed and used, is supported by the history of the defection of complainant's key em-

ployees to Electro (among other competitors) previous to the adoption of the contract system in January of 1942, as partially tabulated in the foregoing Statement of Facts (pp. 7-8 hereof).

As previously noted (topic I), that history also provides support for complainant's position that the contract was necessary to the protection of its business methods and secrets (see Ideal Laundry quotation, above).

Finally, it seriously increases the hazard to complainant in Electro's employment of defendant. For although defendant knows little or nothing about complainant's chemical formulae (conceded to be secret—S. C. 81; also Opinion, S. C. 27), Electro already has all of these (except such as were developed subsequent to Homan's separation from complainant) available to it through complainant's former research chemist, Homan. Thus, by adding defendant's knowledge of complainant's machines to Homan's knowledge of complainant's formulae, Electro would be in a position to piece together the pattern of complainant's operations. In fact, taking into account Electro's employment of complainant's former production superintendent, Ferguson, the result would be to secure to that company access to virtually all complainant's methods and secrets—mechanical, chemical and productive. In the light of Electro's announced intention to enter into the bottle-cap liner business, as a new line, in competition with complainant (Electro's letter of September 23, 1943,* Ex. C-1, S. C. 241), this is particularly serious to complainant.

* Reading:

"Inasmuch as it is our intention to manufacture bottle cap paper, we will appreciate your furnishing us with a complete, up-to-date price list with the exception of that of cut liners."

As in the case of the proof as to Electro's reconversion, with the aid of defendant, of a festooning machine to accomplish that intention, the letter was not repudiated nor was the intention expressed therein denied. See footnote, p. 61.

And this is true whether this defection of complainant's key employees was inspired, as the circumstances would suggest (considering not only their number but also the diversity of their knowledge of complainant's operation), or was purely coincidental, as defendant seeks to convey. (The dodge* by which the services of a fourth employee, or former employee of complainant, a draftsman named Whitehead, who *was* under a contract to complainant similar to defendant's, suggests systematic raiding of complainant's employees by Electro—with the active participation of defendant).

As previously noted, the court below absolved defendant of having disclosed confidential information as to complainant's business during his brief stay with Electro previous to imposition of the temporary restraint. In partial answer, it was said that proof of such disclosure is not essential to complainant's case. A man in the position of defendant, knowing, as defendant knew, of his former employer's intention to enforce his contract, would naturally be cautious about providing proof of violation while under threat of suit. Which, of course, is not to say that he will refrain from disclosure when judicially relieved of the obligation.

* From defendant's cross examination (S. C. 219):

"Q. Do you know an employee of the Electro, a man named Whitehead, a draftsman? A. Not with Electro.

Q. Who is he employed by? A. He is a free lance, he calls himself a designing service.

Q. He worked for Irvington for a long time? A. A long time.

Q. What is his connection with Electro? A. He has no connection.

Q. Does he work for them? A. I have asked him to do some work for me on a free lance basis.

Q. He was employed to do work for Electro? A. Yes, he is a draftsman."

However, the court below, during the course of the hearings, properly observed (S. C. 145):

“His (defendant’s) learning and experience, perhaps in his own mind, includes knowledge of what I will assume is secret process, so therefore he can design machines that will produce that process.”

As was conceded by defendant’s counsel in one of the briefs in the court below:

“The nature of the information” (acquired by the covenantor while in the employ of the covenantee) “may be such that it is impossible for the employee to work for a competitor and not use or divulge the confidential information.”

In view of defendant’s complete knowledge of complainant’s special machinery (much of it developed by him or with his assistance), machinery which was designed and developed by “expensive engineers” over the years and which, with its development in other directions, has given complainant the preeminence in the industry it now enjoys, it would seem hard to imagine a situation to which that comment is more fitting.

In short, even if defendant wanted to play fair to complainant while working for Electro by respecting the secrecy of complainant’s developments, a knowledge of which he obtained as an employee of complainant, he could not do so. He cannot forget what he knows. Nor is it probable that, being assigned by Electro to accomplish a given mechanical result and knowing the method by which complainant, after much experimenting, finally achieved that result, he will go through the same preliminaries in search of some different method. Indeed, he might be violating his duty to his new employer by such an effort.

It just is not possible for him to wipe the slate clean—one of the reasons why a restrictive covenant against competitive activity, as distinguished from an express or implied covenant against disclosure and use of confidential information, is so important to an employer in such a situation.

Thus, the comment of the court below (Opinion, S. C. 32) that “There is no proof whatever that defendant had recourse to any confidential information, or that he was guilty of any disloyalty to complainant, in what he did to solve Electro’s problems” is without force.

As a matter of fact, however, there was proof of it, both direct and by inference from other facts:

Direct proof:

“He (defendant) also did some work on the machinery, * * * a drying oven or festooning machine which is used for coating wall paper, but which could be used, and which Electro perhaps intended to use, in making bottle cap liners in competition with complainant. He made some changes in the gearing so that the machine would take wider paper than it had theretofore, and he installed ‘idlers to take up the slack’ ” (Opinion, S. C. 31-32).

Complainant’s vice-president, Mezger, testified that the mechanical difficulties in Electro’s festooning machine which defendant remedied, as testified to by the latter (S. C. 164), were similar to the difficulty encountered by complainant with their tubing conveyor, defendant having worked on remedying that difficulty for several years before “the drive was finally redesigned” (Mezger, S. C. 234-235).

By inference (among other facts supporting such an inference):

(1) Defendant admittedly violated his covenant in going with Electro two weeks after leaving complainant's employ.

(2) Previous thereto, and while still employed by complainant as a department head, he had, without the knowledge or consent of his employer, gone to Electro, in the night-time and worked on the latter's machinery—specifically, on the very machine on which he later worked as an employee of Electro after leaving complainant's employ—the festooning machine, which the *uncontradicted* evidence (S. C. 225-228, 229)* shows was being converted by Electro to the manufacture of bottle-cap liners (complainant's witness, Strothkamp, a former employee of Electro, who by direction of Electro's president, had assisted defendant on that occasion, S. C. 225-228; denied by defendant, S. C. 158-159, 170-171; subsequently admitted by defendant, S. C. 218).

~~(3) Finally, there is the defendant's criminal contempt (S. C. 19-20) of the restraining order of the Court of Chancery in working for Electro even while such restraint was in effect—an offense which the defendant seeks to pass off as a purely technical violation, but which Vice-Chancellor Stein declared was a willful violation in fining him \$300.00, plus the costs.~~

* Strothkamp, quoting the factory manager of Electro. Not denied either as to the making of the statement or the truth thereof either (a) by the factory manager, (b) by August Brauer, assistant to the president of Electro, called by defendant as a witness, or (c) by defendant himself as the man in charge of the work on the machine.

POINT V.

As to the public policy involved.

That the court below was greatly concerned as to the public policy involved in the enforcement of restrictive covenants against competitive employment of the kind in suit is apparent from the opinion. Indeed, it appears from a reading of the decision as a whole that the court, influenced by the wholly proper but equally specious arguments of defendant's counsel that such covenants are akin to a "patrone" system, involving "involuntary servitude" amounting to "serfdom", became psychologically opposed to the use of such covenants in employment relationships and that that antagonism unconsciously influenced its decision of the matter, leading the court to construe and apply the legal requirements for the sustaining of such covenants in a more rigorous manner than is justified—*i.e.*, as to what are sufficient "methods"; as to what is sufficient "secrecy" of those methods; as to what is sufficient proof of intent to violate secrecy.

But the policy of the law, both of New Jersey and elsewhere, in such cases is well settled. The following, in conjunction with the authorities cited and quoted elsewhere in this brief, will serve to demonstrate how well settled this is:

From *A. Fink & Sons v. Goldberg*, 101 N. J. Eq. 644 at 646:

"Modern judicial decisions have supported contracts in restraint of trade between employer and employe where the restraint is reasonably necessary for the protection of the employer's business and not unreasonably restrictive upon the rights of the employe, providing the public welfare is not involved.

American Ice Company *v.* Lynch, 74 N. J. Eq. 298; Owl Laundry Co. *v.* Banks, 83 N. J. Eq. 230; Sternberg *v.* O'Brien, 48 N. J. Eq. 370; Mandeville *v.* Harman, 42 N. J. Eq. 185; Sarco *v.* Gulliver, 3 N. J. Mis. R. 641."

From *Sarco v. Gulliver*, 3 N. J. Mis. 641 at 644-645, aff'd. on opinion below 99 N. J. Eq. 432:

"It is entirely settled that negative covenants of the kind in question, ancillary to contracts of sale or of employment, are valid and enforceable, if reasonable in their terms. Flickenstein Brothers Co. *v.* Fleckenstein, 76 N. J. Law 613; Owl Laundry Co. *v.* Banks, 83 N. J. Eq. 230, and numerous other cases in this state. The most recent pronouncement is in *Nachamkis v. Goldsmith*, 3 N. J. Adv. R. 698 (at p. 701), where the court of errors and appeals reiterates 'that an agreement not to engage in or pursue a particular business or profession, when made on a good consideration, with one whose business interests it is to prevent competition, is valid, if restrained within reasonable limits, is too well settled to be regarded as an open question.'"

(It will be noted that neither quotation makes specific reference to "secrets", whether "trade secrets" or otherwise).

And, clearly, the principle is not as restricted as would be implied from a reference to the *Ideal Laundry Company* case as "the solitary case in which an injunction has gone although the defendant was not in touch with complainant's customers" (Opinion, S. C. 34), or from the further statement that "Injunctions preventing a former employee from working for a competitor are, as I have pointed out, at present issued almost exclusively in cases where the defendant is in a position to influence the customers of his former employer" (Opinion, S. C. 36).

There is nothing more sacred in the employer's right to his good-will which he has built up over the years than there is to the results of his "process of experimentation, of trial and error, and adjustment" which is "going on continually" and which constitutes "a large factor in establishing and maintaining (his) competitive position" (to again quote the court's findings at S. C. 29).

Proof of that, if proof be needed, is in the citation of the "good will" cases as this court's authority for the principle stated and applied in the *Ideal Laundry Company* case and, conversely, the citation of that case in the later "good will" cases. There is nothing "solitary" about that case—the principle involved is of universal application for the protection of the results of one man's efforts from appropriation to another man's use.

The result of the court's denying to complainant protection of the things defendant admittedly created for complainant is that, although paid by complainant for such effort, the results belong to him. And this is true whether or not someone else, with defendant's ability, working independently, could create the same thing. For it is obvious that *defendant* cannot work independently in creating things for a competitor whose needs parallel those of complainant. For as the court below observed (S. C. 145), "His learning and experience * * * includes knowledge of" complainant's mechanical means of accomplishing a desired result.

Those results belong in equity to complainant. They have come to the knowledge of defendant in the line of his duty as complainant's trusted employee. He may not, in violation of his express covenant in that regard, go with a competitor and thereby subject complainant to the risk of disclosure thereof to such competitor normally inci-

dent to the prohibited relationship—the very risk which that covenant was designed to obviate.

Cases cited by the court below as to the policy involved are as follows (Opinion, S. C. 32-34):

Haut v. Rossback, 128 N. J. Eq. 77, 478;

Mandeville v. Harman, 42 N. J. Eq. 185;

Sternberg v. O'Brien, 48 N. J. Eq. 370:

In the *Haut* case, an employer had sought to restrain one of his former routemen from soliciting his customers, the defendant being under no contractual restriction in that regard, the court, in dismissing the bill, ruling that “*In the absence of agreement*, as the decisions above cited demonstrate, there must be a very strong case before the court will restrain the former employee from competing with his former employer”. (Italics supplied). (Since there was no contract, the reference by the court there to restrictive covenants of employment contracts, quoted by the same Vice-Chancellor in the opinion below, although not questioned as to its soundness, was purely *dicta*).

In the *Mandeville* case, a covenant of a physician in an employment contract made with another physician was without limit as to time. The court said, “The fault imputed to the covenant is that the restriction which it imposes is to endure for an unreasonable period of time”, and denied injunction.

In *Sternberg v. O'Brien*, a covenant of an employment contract made by an installment collector with a clothing house was denied enforcement, defendant having served the complainant under the contract for a period of but four or five weeks, the court observing, “It is neither averred nor proved that the defendant, while in the complainant’s employ under the contract in question, occu-

pied a position of special confidence towards the complainant, and thus acquired a knowledge of his business secrets and methods which he may now use so as to benefit a rival and seriously injure the complainant.”

The court below observed (Opinion, S. C. 34-35):

“We can say broadly that all important manufacturing enterprises have their own engineering staffs, who are continually trying to improve their employer’s manufacturing processes. They all have secrets in the same sense that complainant has, not confined to manufacturing, but extending to credit relations and financial matters, to the purchase of raw materials, to almost every branch of business. Most business men seem to consider everything connected with their own business to be highly confidential.”

adding

“If a contract of this sort were to be enforced by injunction against Van Norde, similar contracts could be exacted from, and enforced against, all classes of skilled employees.”

Although the court on this appeal is faced with the single problem of an employer’s right to enforcement of the contract of a former engineering department head in a highly competitive and technical industry (the name of the competitor with whom complainant went is *Electro-Technical Products, Inc.*), it is doubted that this court will view the remarks as *reductio ad absurdum*, as the court below intended. For there is nothing absurd in holding skilled employees to the performance of their reasonable engagements, made for a valuable consideration for the protection of the employer’s business as the subject-matter of the

employment relationship—whether the particular thing thus protected is the employer's methods of operating a department of a laundry business as in *Ideal Laundry Company*; his customer-lists, as in a number of the adjudicated cases; or his equally confidential sources of supply of raw materials, credit relations or financial matters. If there is nothing shocking about enforcing such a contract (forbidding engaging in a single line of business during a reasonable interval following termination of the original employment) against an assistant floor supervisor of a laundry department—or against a laundry-route driver—there is nothing shocking about enforcing it against a \$4,200-a-year professional employee.

The principle underlying the enforcement of the obligations of the employee to his employer—a principle entirely consistent with the New Jersey cases quoted *supra* (topic I), notably *Ideal Laundry, Maas & Waldstein, Vulcan Detinning**—is set forth broadly in Callman "Unfair Competition and Trade Marks" (Callaghan & Co., 1945), Vol. 1 pp. 676-677, as follows:

"Anyone connected with a business as agent, or in any other fiduciary capacity is 'legally bound not to act in antagonism to the interests' of the business; he is 'under a legal obligation not to act adversely to its interests in connection with any of its business and especially any business with which he had become connected by means of information and relations growing out of said agency.' Whatever he learns in the business must be kept confidential, unless used in the interests of the business. 'In the employment of an agent the principal bargains for the disinter-

* " * * * the equity of the bill rested upon principles generally applicable to trusts and not upon rights peculiar to the discoverer of a secret process." Justice Garrison, speaking for this court, in *Vulcan Detinning Co. v. American Can Co.*, 72 N. J. Eq. 387 at 395.

ested skill, diligence and zeal of the agent for his own exclusive benefit.' It is unnecessary to distinguish between those trade secrets which are independent ideas, such as inventions, and those which are internal facts of the business, such as sources of raw material, the intention of the business owner to acquire a property or the value of the business premises. They are all entitled to equal protection against disclosure by an employee who seeks to capitalize on his knowledge. In all the last mentioned cases, employees have been characterized constructive trustees for the benefit of the business owner."

All that the covenant against competitive activity does is to disenable the trustee, within reasonable limits of time and space, from employing the subject-matter of the trust to the injury of his *cestui*, following termination of the trust relationship.

The court below declared (Opinion, S. C. 35) that "In the making of such contracts, there is no bargaining, no give and take." But that criticism if true, would apply to any of the dozens, if not hundreds, of contracts that have been enforced by our courts. One wonders why this reference to an assumed factor, as a reason for the result in this case, when the same factor, if the court is right about it, must have been present in all the other cases in which the opposite result was reached. Indeed, these strictures of the court as to the policy involved, coupled with the reference to the exclusiveness of the rule of the *Ideal Laundry* case, seem to suggest that the court is seeking to change, or at least severely limit, the law of that case.*

* "Where, as here, an employment is of such a character as to inform the employe of business methods and secrets, a contract of employment at a stated salary is a sufficient consideration for the condition that the employe will not engage in a similar employment within a reasonable time and territory after the termination of such employment" (at p. 111 of *Ideal Laundry Company v. Gugliemone, supra*).

(Incidentally, the appropriateness of the court's observation as to inequality of bargaining power, as applied to the case at bar, should be considered in connection with the fact that on January 30, 1942 the contract in question was entered into; on February 1, 1942 (S. C. 46) defendant received from complainant an increase of salary from \$300.00 to \$325.00 monthly.)

So, too, the further comments of the court (Opinion, S. C. 35) as to the effect of such covenants on the covenantor and on society, to whatever extent they are true, are equally applicable to the many cases in which such covenants were enforced. To deprive defendant and society of "a great part of the benefits of his intimate knowledge of this (complainant's) kind of machinery" is no more than to deprive Gugliemone and society of a great part of the benefit of the former's intimate knowledge of certain aspects of the laundry business.

It is scarcely appropriate for counsel, at this late date, to argue in justification of such results in any case in which the broad underlying principle for the protection of effort and initiative may apply—the policy of a rule being important only where one is to determine what the rule should be, not what it is, and the rule here being thoroughly settled.

However, it may be mentioned that where, as here, a covenant against competitive activity of the kind in suit is attached to a contract having a lawful purpose, such as an employment contract; is reasonably necessary to the protection of the subject-matter of that contract; and is reasonable in its terms, there applies an over-riding public policy in favor of allowing parties the maximum freedom of contract, thereby encouraging the ex-

ercise of initiative toward the creation of wider employment and a fuller life. To deprive defendant of "a great part of the benefits of his intimate knowledge of this (complainant's) kind of machinery" is only to deprive him of something he had acquired as an employee of complainant, in trust for complainant. To *not* deprive him of it (in accordance with his own contract in that regard) is to put a premium on unfair competition; to discourage creative effort—directly for the benefit of the creator but indirectly for the benefit of society at large—by making it impossible for the creator to prevent his creations from being utilized by a less energetic or talented rival who seeks to obtain access thereto by the unfair means of hiring away an employee to whom those creations were necessarily confided in connection with the work for which he was paid a salary.

For it must be obvious that, in an organization like complainant's where a knowledge of their developments must be shared by a group of employees, it will not be possible to continue to pay each sufficiently to prevent his being bought up by a competitor in order to secure that knowledge—bought up, perhaps, for just long enough to enable the competitor to take over the fruits of another's efforts.

It may also be suggested that the observations in the opinion below manifest more concern for the employee whose transitory loyalty bears a price-tag than for the large mass of employees whose economic progress is tied up with that of their employer—particularly those employed in a creative capacity. For of what use will it be to achieve a creative result for one's employer, if one's fellow-employee can, despite his contract in that regard, promptly carry off that result to the employer's competitor.

Both Mr. Jones, complainant's president (at S. C. 239) and Mr. Mezger, complainant's vice-president in charge of manufacturing (S. C. 223) testified as to the purpose of the employment contracts—a purpose entirely consistent with the foregoing reflections.

At the hearing, defendant's counsel urged that it would be against public policy "to tie up fifty or sixty people", this being coupled with a reference to "servitude" and "yellow-dog" contracts (S. C. 60, 111).

All this, however, has no application to preventing defendant from working for a competitor of complainant—the court is not being asked to compel defendant to work for anyone—and in any event this involves a basic question of public policy common to all such contracts, now long since settled. As was said in *A. Fink & Sons v. Goldberg*, 101 N. J. Eq. 644 at 648:

"The complainant is not seeking to compel the defendant to work for it. Quite the contrary. It seeks only the benefit of the restrictive covenant contained in the contract of employment. The situation here is much the same as that before this court in *Sarco v. Gulliver*, *supra*. In *Cropper v. Davis*, *supra*, the court said:

'It should be borne in mind that a distinction must exist between compelling one to keep his contract of employment and forbidding him to work for his rival in the same line. The first would require involuntary servitude in violation of the thirteenth amendment to the constitution, while the second would not be subject to that criticism.'

This distinction is also forcefully emphasized by Vice-Chancellor Buchanan in *Sarco v. Gulliver*, *supra*. See, also, *Eureka Laundry Co. v. Long*, 35 L. R. A. (N. S.) 119, and cases cited in note at page 120."

Indeed, in the particular case, not only does the covenant *not* compel defendant to work for complainant—it only restricts him from taking employment with something like nine companies throughout the United States who are engaged in complainant's line of work.* This in the case of a man who, by his own admission, "would like to believe" he is a highly skilled mechanical engineer (although without college degree) (S. C. 171) and who has mechanical talents that, at least at the time he originally went with Electro in violation of his covenant, were in demand by hundreds of plants (S. C. 172-173).

As to the number of employees who signed these contracts, the defense oscillated between contending that there were too many and contending there were too few—especial emphasis being placed by the defendant on the fact a working foreman had not been required to sign, contracts not having been required of employees in that category (Mezger, S. C. 184; Van Norde, S. C. 150).

This is a suit to enforce a contract made with defendant, and it is submitted that the enforceability of other contracts of complainant are not material in that suit, whether with employees or any other third party. Otherwise, the justification for every one of seventy-three contracts (S. C. 223) must be tried out in this suit, notwithstanding the contracting parties have made no complaint about them.

However, although it doubtless is true that the urgency of the contract restriction is not as great in the case of some of the employees covered by restrictive contracts as in the case of defendant,

* Van Norde, S. C. 171.

the evidence as to the categories covered* (S. C. 223) is thoroughly consistent with complainant's contention that the purpose of the contracts was to protect complainant's methods and secrets—as defendant's counsel brought out, these contracts even covering accountants whose work on costs require that they have access to complainant's formulae (S. C. 224).

Although quite properly ignored by the court below in its opinion, the argument was advanced there that the fact that defendant had worked without the covenant for twenty-three of his twenty-five years of service with complainant is proof that the covenant was not required during the remaining two and a half years.

Were such logic to prevail, it would result in this, that covenants obtained *before* the necessity therefor had been demonstrated would be unreasonable and void; covenants obtained *afterward* would likewise be void because they had not been obtained before.

Obviously, there has to be a beginning point for everything. Complainant had learned the hard way—through experience—of the need for this protection, by repeatedly having had its developments handed to its competitors by former trusted employees. In that respect, the situation is

* Research and development department (chemists) . . .	9
Inspection and control (chemists)	8
Laboratory technicians	2
Varnish makers	4
Production foremen	9
Supervisory capacity—plant superintendent; super- visors of plant departments (S. C. 223)	6
Engineering department	5
Management	7
Accounting	4
Sales engineering	13
Administration	6

identical with the *Ideal Laundry Company* case, quoted *supra* (p. 11).

In view of this court's clear-cut approval in that case of complainant's reason for having adopted these contracts when it did, it may be anti-climatic to observe, as is the fact, that complainant's store of methods, including as to its special machinery, was accumulating, its business was growing, and the number of employees required to share in a knowledge of those methods was increasing, throughout this whole period, and that the increasing value of its developments, on the one hand, and increasing need for adequate protection thereof, on the other, undoubtedly furnished a contributing reason for the adoption of the contracts at the time they were adopted.

As allied to this question of the policy involved, the court below declared (Opinion, S. C. 31):

"There is still another reason why complainant cannot succeed on this branch of the case. The case is devoid of proof of inequitable conduct of a character frequently found in litigation of this general type. Electro did not entice the defendant away from his employer in order to gain complainant's secrets. Defendant became dissatisfied with his position with complainant, voluntarily resigned and then applied to Electro for work."

That would seem to mean this: That if the employee, while under contract as herein, decides to capitalize on his knowledge of his employer's developments by offering his services, with his knowledge, to his employer's rival, in breach of his contract, that is all right; if the rival takes the initiative and seduces the employee, that is all wrong. Quite obviously, Vice-Chancellor Bigelow did not intend to thus make one rule of con-

duct for the employee, another for the employer's business rival; to make the protection of the employer's creations to depend upon the happenstance of which of two magnets first approached the other. Yet that would seem to be the result of such a holding.

Complainant, it is submitted, need not rely on proof of enticement by complainant's competitor, Electro, who, as the court below properly observed (S. C. 215), is not a party to this suit. In the *Ideal Laundry Company* case, which also was directed solely against the former employee, Gugliemone, as the covenantor of the covenant sought to be enforced and not against the Holland Laundry Company which had employed Gugliemone, there was no mention of "enticement." Nevertheless, if proof thereof were needed, the facts in the case at bar will go as far in that direction as in almost any that have come before the courts—again bearing in mind that the proof lies with the defendant employee and the employing competitor and hence that proof must usually be a matter of inference from other facts. For not only is there present here the admitted employment of defendant by Electro in breach of the former's contract with complainant within two weeks (corresponding to the usual summer vacation) after defendant left complainant, but there is also (a) the prior history of migration of complainant's key employees to Electro (pp. 7-8, 34-35 hereof); (b) defendant's violation of his obligation to complainant, while still one of its employees, namely its engineering head, in going to Electro, without complainant's knowledge or consent, but with the connivance of Electro's president, and there working on Electro's machinery (p. 61 hereof); (c) defendant's artifice in leaving complainant's employ, complainant's vice-presi-

dent, Mezger, testifying (S. C. 102) it was represented by defendant that he was going with a non-competitor of complainant as a partner and a slip attached to his Statement of Availability (under Federal War Manpower Commission regulations then in force), introduced by defendant as Ex. D-6 (S. C. 273), indicating that on August 4, 1944 he had represented to that authority that he desired a "release to start his own business," notwithstanding he had already entered Electro's employ; ~~(d) the defendant's violation of the restraining order (p. 61 hereof).~~

Apropos of the concluding comment of the court below (Opinion, S. C. 36):

"Injunctions preventing a former employee from working for a competitor are, as I have pointed out, at present issued almost exclusively in cases where the defendant is in a position to influence the customers of his former employer. The use of such injunctions should be extended to other cases only with great caution. They should not issue in the absence of special equities."

as was said by Chancellor Walker in *W. D. Cashin & Co. v. Alamac Hotel Co., Inc.*, 98 N. J. Eq. 432 at 437:

"An 'equity' is not a chancellor's sense of moral right, or any vague or indefinite opinion as altruism, but is a right cognizable in a court of chancery, governed by established rule and fixed precedents."

Unfair competition, in this instance the pirating of a competitor's secrets, has never been in the public interest. As has been noted, such activity tends to discourage initiative in the development of new and better things, also of more efficient and economical ways of making them; and to disrupt industry.

This discussion of the public policy involved in the enforcement of defendant's contract with complainant may well be closed with three excerpts from *Voices, Inc. v. Metal Tone Mfg. Co., Inc.* (a restrictive covenant case), 119 N. J. Eq. 324, aff'd, on opinion below 120 N. J. Eq. 618:

“ ‘That a man may not contract as he will with respect to himself or to his property rights demands the intervening of some authoritative reason founded in considerations of public policy. The denial of the right can only be reasonable, when to permit its exercise is seen to be fraught with consequences injurious to the interests of society. * * * The doctrine, which avoids a contract for being one in restraint of trade, is founded upon a public policy. * * * In the present practically unlimited field of human enterprise, there is no good reason for restricting the freedom to contract, or for fearing injury to the public from contracts which prevent a person from carrying on a particular business.’ ” (At pp. 333-334, quoting from a New York case).

“ * * * it seems almost absurd to talk of public policy in connection with such a case. It is a public scandal when the law is forced to uphold a dishonest act, and the public suffers no injury in being deprived of the privilege of dealing with a man who is carrying on his business in violation of his solemn engagement not to do so.” (At p. 328, quoting from *Fleckenstein Brothers Co. v. Fleckenstein, E. & A.*, 76 N. J. Law 613, in turn quoting from an English case)*

“*In this case the only question involved is whether or not men should be held to fair dealing and a compliance with the valid contracts that they make*”. (At p. 337, quoting from *J. I. Kislak, Inc. v. Artof*, 13 N. J. Misc. 129, italics being supplied).

* This quotation repeated in *Credit Rating Service, Inc. v. Charlesworth*, 126 N. J. Eq. 360.

Accordingly, it is submitted that the court below erred in declaring that "Injunctions preventing a former employee from working for a competitor are at present issued almost exclusively in cases where the defendant is in a position to influence the customers of his former employer", as well as in the holding, implicit from the decision, that the policy of the law is opposed to negative covenants of the kind in suit when included in an employment contract, notwithstanding the employee is a trusted key employee whose duties are such as to afford a knowledge of confidential matters relative to the employer's business, unless such matters relate to the goodwill of the business.

POINT VI.

As to the remedy.

The court below experienced great difficulty in respect to the enforcement of defendant's covenant against disclosure and use of confidential information as to complainant's business (Opinion, S. C. 30-31).

Complainant will say at the outset of this topic-discussion that, for the very reason alluded to by the court—the difficulty of policing an injunction founded on such a covenant—such an injunction would have but limited value to complainant.

As the court below noted (Opinion, S. C. 29), "The process of experimentation, of trial and error, and adjustment, is going on continually" in complainant's organization, and it would not be possible to catalog all of the confidential information coming to the knowledge of complainant's key employee, defendant, during the course of his twenty-five years of service with complain-

ant for the purpose of an injunction decree, neither would it ordinarily be convenient to prove specific violations by defendant, as one to whom this mass of knowledge was trusted in confidence, of his obligation to complainant in respect to the disclosure and use thereof, under circumstances where proof lies with the very ones most interested in effecting concealment.

Consequently, complainant's primary objective in this suit is the enforcement of the covenant against competitive employment, as an effective means of over-all protection of complainant's methods and secrets, and an injunction in the language of the covenant, as was issued and sustained in the *Ideal Laundry Company* case, possibly with an added reference to *Electro-Technical Products, Inc.*, as one adjudged to be a competitor of complainant within the meaning of the covenant, will go far toward satisfying complainant's need for relief.

The covenant in an employment contract against disclosure and use of confidential information relative to the employer's business acquired by the employee in trust for the employer is, of course, perfectly valid at law, whether it be enforceable in that broad form in equity or not. In fact, such a covenant has frequently been found to be implied, in absence of an expression thereof, as in the *Maas & Waldstein* case, *supra*. Indeed, it may be said that the covenant against competitive activity in an employment contract is invariably ancillary to a covenant, express or implied, against disclosure and use of the employer's business methods and secrets which such first mentioned covenants are designed to protect. Certainly, it does not *hurt* complainant's right to the enforcement of the covenant against competitive activity for complainant to have an express understanding with the employee as to secrecy.

Despite the objection of the court below to the generality of an injunction in the language of the secrecy covenant and despite complainant's relative contentment with an injunction to enforce the non-competitive covenant, the practice seems to be for the court to provide *both* measures of relief in a proper case.

Thus, in *Abalene Exterminating Co., Inc. v. Oser*, 125 N. J. Eq. 329, the decree against complainant's former employee who had gone with a competitor embraced *both* elements of relief.*

Another case in which the decree embraced *both* elements of relief is *Kellems Products, Inc. v. Coley*, 10 N. J. Mis. 695.

And in the *Maas & Waldstein Company* case, *supra*, an injunction apparently issued in general terms against the use of the secret formulae, processes and other trade secrets of the complainant, the court adding "In order to determine in the future whether or not the terms of the restraining (*sic*) to be imposed have been violated, I would suggest that the three hundred or more formulae of importance to the complainant be sealed and filed in this court subject to inspection by the court for the purpose of enforcing the decree if necessity should require."

Conversely to the foregoing, defendant argued below** that complainant, if allowed any relief,

* "Complainant is entitled to final decree for the restraint prayed against Jacob, both for the enforcement of the covenant against competition, and against further disclosure of any confidential information obtained in the course of his employment by complainant" (at p. 330).

** Such argument being supported by cases involving implied agreements against disclosure and use of a former employer's trade secrets, rather than cases where the employee has voluntarily assumed an obligation to the employer against competitive activity—for example, *Maas & Waldstein v. Walker, supra*.

should be limited to an injunction against violation of secrecy and the court there apparently entertained the same idea when it said (Opinion, S. C. 32), "Defendant's attention was not directed to anything specific—such and such a device on a certain machine. He might readily have conceded that it ought not be divulged."

As is indicated by the results in the *Ideal Laundry Company* case (the court there did not call upon the employer to specify particular business methods and secrets and limit the protection to the things thus specified), there is no authority in law for such a middle course—if there is anything substantial to require such protection, the covenant against competition is good and should be enforced. Thus, enjoining disclosure of confidential information while denying enforcement of the covenant would represent a self-contradiction. To the numerous decisions cited herein in which such a covenant was enforced, there may be added, as specific authority for that position, the following:

Capital Laundry Co. v. Vannozzi, 115 N. J. Eq. 26, in which it was said:

"It was mooted at the hearing, that the covenant was broader than necessary for the protection of the complainant's business and that if an injunction should go, it should be limited to restraining the defendant from canvassing the customers he served while in complainant's employ. The answer is: The employer is not only to be protected against pirating his customers, but he is entitled, as well, to a restraint against the employe from engaging in the field of the employer's activities in competition with the employer; from soliciting trade that otherwise might deal with the employer."

Likewise, *Credit Rating Service, Inc. v. Charlesworth*, 126 N. J. Eq. 360, at 366:

“ * * * complainant should not be expected to accept a hazard against defendant's contract, in view of the fact that the interests of the public will in nowise be harmed by preventing defendant from ignoring a contract voluntarily entered into.”

In view of these decisions, no good purpose would be served by extended comments on the inadequacy of an injunction limited, solely, against disclosure, in such a case. However, the following will serve as a summary of these inadequacies:

- (1) Difficulty of securing proof of violation;
- (2) Fact that oftentimes the harm is done by the time proof is available;
- (3) Difficulty of determining exactly what is protected;
- (4) Impossibility of “wiping the slate clean”, even where intentions are good.

Indeed, it would seem that the use and judicial enforcement of the covenant against competitive activity must have grown up out of a recognition of the limitations of the alternative so suggested.

POINT VII.

As to affirmative defenses.

Although defendant raised certain issues in the court below, these apparently were considered as being without merit, no notice having been taken thereof in the court's opinion.

Accordingly, to avoid further extending this brief, and on the assumption they will not be

pressed on this appeal, no more than passing reference will be made thereto:

Defendant in his amended answer (S. C. 16-17) made a general charge of fraud in the procurement of the contract. This was unsupported by any evidence and was refuted by complainant's explanation (S. C. 97-100) of the circumstances under which the contract was obtained.* (Defendant was twice given a raise in salary following the signing of the contract—on February 1, 1942, two days thereafter, and again on March 1, 1943—S. C. 46).

Defendant contended he had been subjected to two "demotions" by complainant previous to his resignation and that that made it inequitable to enforce his covenant against him. Granting the premise, the conclusion is unsound, for defendant could have discharged complainant without jeopardy to the covenant (*A. Fink & Sons v. Goldberg*, 101 N. J. Eq. 64; *Wark v. Ervin Press Corp.* (U. S. C. C. A., 7th), 48 F. 2d 152, citing Federal and New York cases). However, the changes

* In *Artistic Porcelain Co. v. Boch*, 76 N. J. Eq. 533, at 537, the court swept aside several such defenses, with the following comment:

"Several defenses on the facts were urged at the hearing. One was that the defendant had been dragooned into making the contract. This contention is without force. He certainly was not subjected to any duress, and even if he dealt at some disadvantage with the complainant, being sui juris, he could have refused to deal at all. On this head no ground is presented justifying a refusal to enforce the contract."

The following from *Sarco Co. v. Gulliver*, 3 N. J. Mis. 641, 649, aff'd. on opinion below 99 N. J. Eq. 432, at p. 650, is likewise apposite to defenses of that nature:

"It is set up in the brief that defendant's necessity for employment compelled her to accept the contract regardless of danger of imposition and oppression. There is no evidence whatever of this, even if it were a valid defense, and it has already been shown that the enforcement of the contract is not an imposition or oppression upon her.

It is also set up that the effect of an injunction would be equivalent to ordering defendant to work for complainant. This, of course, obviously is not so."

made in his position* with complainant could scarcely be called "demotions." Shortly prior to March 1, 1943 his position was changed from plant superintendent to chief engineer with a raise in salary (S. C. 46). In April of 1944 he was relieved of certain of his duties and responsibilities, * * his title being changed to master mechanic but no change being made in his salary*** (S. C. 46, 101). He then asked complainant for more money (Mezger, S. C. 100; Van Norde, S. C. 139). Not getting it, he resigned—despite efforts of complainant to induce him to stay (Mezger, S. C. 101-102, 234, 236; Van Norde, S. C. 139).

Conclusion.

Accordingly, it appears:

(a) That the court below, influenced by an erroneous concept of the policy involved, applied to complainant's case erroneous standards as to what constitutes

1. Sufficient business methods and secrets
2. Sufficient proof of intention to divulge

to entitle an employer to enforcement of a former employee's covenant not to take employment with a competitor of his original employer.

(b) That as a result of the application of such erroneous standards, the court below was led to

* The capacity in which complainant was to be employed was expressly agreed to be "subject to Employer's direction and control" (Art. 1 of Contract, S. C. 241).

** Defendant himself confirmed that Mezger, complainant's vice-president, had explained to him that "my duties would be a lot easier now that the maintenance department would be taken away from me, and my job would be strictly as a consulting engineer" (S. C. 138).

*** Even a reduction of the employee's compensation on the part of the employer would be no defense to an action to enforce the former's restrictive covenant with the latter. *The Davey Tree Export Co. v. Ahlers*, 124 N. J. Eq. 175.

conclude that the factors enumerated above are not present in the case.

(c) That, applying the correct standards, there is no proof whatever to support such conclusions, the opposite conclusions being required both by the undisputed evidence in the case, as well as by the court's own findings.

In short, it appears that this case comes squarely within the rule of the *Ideal Laundry Company* case—the case here being even stronger in that the covenantor of the covenant sought to be enforced is the former head of the plant engineering department of a highly technical and successful business.

It is, therefore, respectfully submitted that the decree below dismissing complainant's bill should be reversed, with directions to enter a decree enjoining the violation by defendant of his covenant against competitive activity during the remaining duration of such covenant, and also, if the court deems proper, enjoining the violation by defendant of his further covenant against divulgence and use of confidential information.

Respectfully submitted,

CHARLES C. TRELEASE,
Solicitor for and of Counsel
with Complainant-Appellant.

H. PRESTON COURSEN,
of the New York Bar,
of Counsel.

MR. TRELEASE will request that MR. COURSEN be privileged to argue orally for the appellant.

APPENDIX.

Complainant's Machinery.

(Analysis of the testimony as to complainant's machines, their respective origins, functions and points of superiority over machines available for a similar purpose.)

Complainant's (Irvington's) machinery may be divided into three groups, according to the products manufactured thereby, the *principal* machines used in processing each type of product appearing to be as follows:

1. For products made solely from textiles and papers coated on both sides:
 - a. Coating machines, consisting of two types, the older vertical type called "coating towers"* and a new horizontal machine called an "edgewise coater"
 - b. Dusting machines**
 - c. Slitting machines**
2. For bottle-cap material
 - a. Festooning machines (used for coating on one side, only)
 - b. Bonding (laminating) machines
 - c. Slitting machines
 - d. Waxing machines
3. For varnished tubing

* The towers are sometimes regarded as a part of the entire assembly constituting the machine (Van Norde, S. C., 142).

** Manufacture of the company's rubber-separator cloth "Textolin" does not involve the dusting or slitting operations.

Appendix.

- a. Rounding machines, consisting of two types—machines based on a design acquired abroad and machines designed by Irvington
- b. Coating machines consisting of two types, conveyor ovens and a special type of vertical tower

As to origin and nature of the various machines, the proofs show:

Group 1 machines:

The vertical coating towers in use at Irvington are "in principle" (Van Norde, S. C. 143) very much like those of other manufacturers both within (S. C. 131) and without the industry of which Irvington and Electro are members; an example of an outside manufacturer's machines being Johns Manville Company (Petersen, S. C. 197). Although they cannot be bought as standard machines, they can be built by machinery manufacturers, when furnished complete specifications (Mezger, S. C. 124, 131). However, Irvington, over many years, has developed refinements and improvements to its coating towers not shared by competitors (S. C. 131), Van Norde conceding that in at least one respect—the employment of round bearings instead of bronze bushings—Irvington's machines are superior to Electro's—though he minimizes the other differences (S. C. 179-180).

However, the most detailed description of the distinctive improvements in Irvington's coating machines—and of Van Norde's familiarity therewith by having contributed thereto—was furnished by Mr. Van Norde, himself (S. C. 141):

"I designed equipment, made additions to the equipment already installed, the coating machines,—of course, the material has varied

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over the number of years. The coating process is varied and it needed additional brackets or additional rolls to facilitate these changes.

Q. You added rolls? A. Corrected by adding parts.

Q. Were there any new devices? A. It probably could be called new device.

Q. Like what? A. New brackets, new drives; that would cover the coating machine.”*

Also, S. C. 160: The Irvington coating towers “*in principle* are exactly the same” as they were fifteen years ago. “Naturally, there are things that have come out that have been an improvement.” Q. “There have been improvements by experimentation?” A. “Yes.” Q. “And the same is true for all machinery in this plant? A. “Yes, to keep up with the times.”

The horizontal “edgewise coater” recently installed by Irvington was purchased from a machinery supplier and, so far as the evidence shows, involves nothing special in design or construction. The advent of the horizontal machine did not make the vertical towers obsolete—(Nichols, S. C. 191**; Mezger, S. C. 233-234***).

As to the dusting machines (Mezger, S. C. 75-76—see, also, S. C. 92-93):

* This was followed by:

“Q. You don’t think they were patentable? A. Not on the coating machines. I don’t think anything was patentable on the coating machines.”

** “No, I won’t say it (horizontal machine) can do all the work.”

*** The horizontal machine cannot be used for rubber-separator cloth (Textolin) for all of the trade because it affords no coated selvage edge; nor for the two-sides coated paper because of the greater tear factor. Additionally, it can only be operated economically in large volume production and for that reason has not been used by Irvington since September of last year.

Appendix.

“* * * on some of the electric insulation processes, after the material is varnished, in order to get the proper finish and not have the material too greasy, we put on a finish which Irvington developed, a dry finish by applying mica on the surface of the material. * * * In order to do that, we worked over a period of several years in redesigning and rebuilding machines for that dusting application, and when business increased in 1943, or thereabouts, it was necessary for us to build a second machine which was again a special Irvington design and quite some different than the previous machine.”

(A competitor, New Jersey Wood Finishing Co., was once licensed by Irvington to use a patented coating for making insulation cloth, the ingredients being purchased from Irvington, so that they became a customer of Irvington. The process called for the application of the mica dust to produce a dry finish. They purchased a standard machine to do this job. “After spending several months to have the machine rebuilt and having our engineers go down there and work on that, they threw up their hands and the machine was taken out and thereupon they built a machine along the lines that Irvington had built * * *.” Mezger, S. C. 82-83; also Van Norde, S. C. 149.)

The slitting machines used for cutting the sheet insulation into narrow strips or tapes are standard machines of outside manufacture. However, there is an attachment developed in the company's Engineering Department by which they reduce the amount of trim waste, thereby obtaining an additional cut of cloth from each roll (Mezger, S. C. 93).

*Appendix.***Group 2 machines:**

As to the festooning machine by which the paper is coated on one side (S. C. 233) preparatory to bonding the other side to a cardboard material as a backing for the liner: A type of festooning machine is used by the wall paper and linoleum industries and can be bought in the open market (Metzger, S. C. 125). However, as was developed through Mr. Van Norde (S. C. 164), Irvington's was not obtained on the open market. It was "a machine, if I may mention it, built by Mr. Dale" (while the latter was in Irvington's employ). Then (Dale having gone with Electro), *the same type of machine was built at their plant; but Mr. Dale couldn't make it run.* Due to temperature changes and resulting expansion, the chains would come off the sprockets and cause damage to the materials. When Van Norde went over to Electro from Irvington he applied a means of overcoming this difficulty (S. C. 164). (Actually, he had, by prearrangement with the president of Electro, worked on Electro's machine, at Electro's plant, while still employed by Irvington—S. C. 218, 225-228). "It was very simple, installing idlers to take up the slack in the machine." Q. "And that is the job that you did to the festooning machine?" A. "Yes." (Also, Van Norde, S. C. 147). And although Van Norde denied that the difficulties encountered were alike (S. C. 165), Metzger testified (S. C. 234-235) that Electro's difficulty; *i. e.*, as to the conveyor mechanism of the festooning machine, involved a problem similar to that on which Van Norde had worked while in Irvington's employ, several years' effort having been required before the drive was finally redesigned so as to overcome the difficulty.

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As to the bonding machine, after unsuccessful attempts to obtain a satisfactory machine on the open market, Irvington proceeded to build its own machine. "The first machine we built was a combination laminating and slitting machine. We attempted to laminate the material and slit it, all in one operation. And after several months fooling around and getting rejections up to car loads because of the lamination, we learned that we couldn't slit immediately after laminating, and we had to give it a period of time before the material could be distorted such as it would be in a slitting operation. That requires the machinery to be built to have a separate bonding and slitting machine. That was a marked change in the machine, and since then we have made a lot of minor changes." (Metzger, S. C. 77).

(One concern who purchased varnished paper from Irvington attempted to perform the operation of bonding this to the cardboard on a machine produced by some machine company. They finally gave up, the machine being sent to Irvington where it became a white elephant*, the cost of performing the bonding operation on this machine being three times that on Irvington's simpler machine designed especially for the job of bonding the varnished paper to the cardboard. Metzger, 77-78).

Similarly, in the case of the slitting machines (used to cut a wide roll of bonded bottle-cap paper into a series of narrow strips or tapes, also in rolls, of the approximate width corresponding to the desired diameter of the bottle caps to be punched out of the strips), "We found the standard slitting machines are not satisfactory for

* Defendant's witness, Nichols, an ex-employee of Irvington, and a mechanical engineer, agreed with Metzger in characterizing this as a "white elephant" (S. C. 189).

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slitting of laminated material'' consisting of varnished paper and heavy board (Mezger, S. C. 79). For one thing, it was found necessary, especially in warm weather, to overcome the tendency of the newly-set varnish which is the exterior surface of the material, to pick up the fuzz from the feltlike backing when the paper is placed on rolls (as it must be), this being accomplished—after an expenditure of thousands of dollars for machines that would not work satisfactorily—by development of a machine to accommodate the introduction of a sheet of paper as a separatory medium between the varnished surface and the backing (Mezger, S. C. 78-79), samples of identical material run without the interleaving and with it being introduced in evidence as Exs. C-5 and C-6, respectively (S. C. 95-96), the one showing fuzz*, the other being free thereof. So, too, it was found that in the standard (Cameron) slitting machines the slitting knife has a tendency to cut a rough edge due to the peculiar nature of the material (a hard surface on a soft backing material), thereby requiring a wider strip than otherwise for a given size liner, with consequent wastage. Irvington overcame this by substituting a shearing knife for the kind commonly used (Mezger, S. C. 79-80, 127-128). Finally, in using the standard slitting machine, the resulting back-flexing of the material had a tendency to crack the inside cardboard, causing a wrinkle in the outside paper, samples of identical material run on the Cameron machine and on Irvington's specially-designed machine being introduced in evidence as Exs. C-7 and C-8, respectively (S. C. 96-97), the one showing wrinkles, the other being free thereof (Mezger, S. C. 80, 127-128). "The principle of our machines and

* Counsel's note: Much of the fuzz which was noticeable when the exhibit was first introduced has come off in handling.

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the designing of our machines took quite a period of years for us to perfect to the present stage" (Mezger, S. C. 80)* and their patentable features were patented (Mezger, S. C. 128-129).

(Some of Irvington's customers who purchase the material in full-width rolls and cut it themselves on standard slitting machines found there was tremendous wastage and in some cases where the material has stiffened due to age, they return it to Irvington to have them cut it on their special machines—Metzger, S. C. 79).

In their manufacture of bottle-cap material, there is also a machine for waxing, specially built by Irvington, attempts of the company to buy a standard machine for this purpose having been unsuccessful (Metzger, S. C. 97).

* Mr. Van Norde (S. C. 143, 144) differed from Mr. Mezger somewhat as to the exact nature of the changes made in this machine, although not as to the difficulties originally experienced with it. However, he finally conceded:

"Q. When you were with the complainant, there were various things tried until it was improved? A. Yes."

Also, S. C. 161:

"Q. You found at Irvington that the Cameron machine as such was not doing a satisfactory job? A. Yes.

Q. And you made improvements on it? A. Not on the cutting, the cutting is no improvement. * * *

Q. I show you Exhibit C-7 which you will notice has cracks. A. Yes.

Q. That is apt to happen with the use of the Cameron machine, as such? A. Yes."

Also, S. C. 161-162 (after attributing the cracking to first one cause and then to another, including improper handling of the material):

"Q. What was done to overcome the difficulty, that is what I want to know? A. The machine was built so that there was no back-flexing of the board."

At S. C. 164, the witness, after having first indicated that the trouble had been overcome by the use of larger mandrels on the machine, admitted:

"Q. The size of the mandrel is not related to the back-flexing? A. No."

Also saying (S. C. 163) the Irvington specially built machine "was built with the idea in mind. We weren't going to back-flex."

*Appendix.***Group 3 machines:**

There are two types of rounding machines by which flat cotton braid (similar to flat white shoelaces) is given a round contour preparatory to making it into varnished tubing (before and after samples of the material being in evidence as Exs. C3 and C4*). The first of these two types was obtained (after unsuccessful efforts by Irvington to accomplish the desired result) by having a foreign manufacturer producing the material bring three of his machines to Irvington (Metzger, S. C. 93-95). The contract for the acquisition of these machines is in evidence as Ex. C13 (S. C. 253 *et seq.*), being Agreement between Ernst Mueller and Irvington Varnish & Insulator Company, dated April 30, 1938. The machines cost Irvington some \$500.00 each (Par. 12 of Contract—S. C. 260), plus payments of \$300.00 monthly for a term of five years (Par. 3 of Contract—S. C. 254), plus certain royalties (Par. 8 of Contract—S. C. 257), the seller of the machines having collaborated with the company's engineering department in the effort to perfect them (Metzger, S. C. 103-104). These machines were purchased under a representation and warranty that they "have been closely maintained as trade secrets" (Par. 1 of Contract—S. C. 253), the seller undertaking to cooperate with Irvington "in preventing of disclosure thereof to unauthorized persons". However, these machines were found to be uneconomical in operation and had to be redesigned and rebuilt (Metzger, S. C. 93-94). The seller, a man named Mueller, whom Irvington had brought to this country from abroad to do this particular job, worked on them for several years and Van Norde worked

* Counsel's note: This Exhibit, although round and hollow when introduced, has been flattened while in the files.

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with Mueller in the redesigning of the machines so as to get them to work. These machines were not patented (Mezger, S. C. 121)*. The second type of rounding machine was developed entirely by Irvington (Mezger, S. C. 94, 120).

As to the coating tower by which the rounded braiding was converted into varnished tubing, Irvington "spent anywhere from one year to two years in designing and completing that tower" (Mezger, S. C. 95).

* Defendant's witness, Nichols, mistakenly said that these were patented, evidently considering them to be patentable (S. C. 187). Ditto Petersen, saying they were "very unique" and "clever" (S. C. 198).

NOTE: As indicated in signing the brief (p. 85 hereof), Mr. Trelease will request that Mr. Coursen, of the New York bar, be privileged to argue orally for the appellant.

241 OCT T. 1945

New Jersey Court of Errors and Appeals

Between

IRVINGTON VARNISH & INSULATOR
COMPANY, a corporation of the
State of New Jersey,
Complainant-Appellant,

and

PETER VAN NORDE,
Defendant-Respondent.

On Bill, &c.
On Appeal from
the Court of
Chancery.

**COMPLAINANT'S MEMORANDUM AS TO
STATEMENTS AND REFERENCES IN
DEFENDANT'S BRIEF.**

With the permission of the court at the oral argument, the following is submitted as a list of statements in defendant's brief which complainant feels required to challenge (either as to the fact or the necessary inference therefrom) on the basis of the source material as shown herein (italics supplied to direct attention to points of difference):

1.

The statement (defendant's brief, p. 3):

“* * * in January 1942, while Van Norde was the plant superintendent, he *was required* to sign the agreement in suit * * *.”

The reference: According to the uncontradicted evidence, defendant signed voluntarily following explanation by complainant's vice president of the reasons for the agreement (S. C. 97-100),

receiving an increase of salary immediately thereafter (S. C. 46).

2.

The statement (defendant's brief, p. 4):

"Although complainant's witness Mezger testified vaguely about 'developments' by Irvington, he was unable to point to any secret machinery other than a machine which had been patented, and therefore was protected under the Patent Laws."

The reference: See Appendix "Complainant's Machinery," complainant's brief, pp. 86-95 and State of Case references therein.

3.

The statement (defendant's brief, p. 5):

"Mezger" (complainant's vice president) "testified * * * that the *confidential information* consisted of 'The operation and design of some of the machines we used for producing our products' (S. C. 129)."

The reference (from Mezger's cross examination S. C. 129):

"What is meant by *technical trade secrets*; what are *technical trade secrets*, as distinguished from the other? A. The operation and design of some of the machines we use for producing our products."

4.

The statement (defendant's brief, p. 5):

(Speaking of "*complainant's claim*" to secrets) "They consisted of such things as

the use of round bearings in the place of bronze bushings, * * *. There is nothing to show that there was anything unusual about these substitutions.”

The reference (S. C. 179-180) (from *defendant, Van Norde's* testimony—speaking of a difference in bearings as between the tower coating machines of the Irvington Company and those of its competitor, Electro):

“By Mr. Hays:

Q. Irvington used what? A. Round.

Q. What did Electro? A. Used bronze bushings.

Q. Which would be better? A. The round.”

(*Complainant* does not ground its claim to the protection of the negative covenants on this difference in bearings of one of the machines. The court below fell into the same error. Opinion, S. C. 29-30.)

5.

The statement (defendant's brief, p. 5):

“Van Norde testified * * * that experience with any other concern would have given him the same knowledge of the business *and would have enabled him to work on the same machine* (S. C. 145).”

The reference (from Van Norde's testimony, S. C. 145):

“Q. I am asking your opinion, if you had experience with some other concern, say with the General Electric, would you today have substantially the same knowledge of the business and of the manner used? A. *Not of the same machines*, but I would have the same knowledge.

The Court: To design the same machines?

The Witness: I believe I could."

6.

The statement (defendant's brief, p. 6):

"According to him," (defendant's witness, Petersen), "Johns Manville Company had used the same *processes* which were used by Irvington (S. C. 206)."

The reference (from Petersen's cross examination, S. C. 206):

"Q. Do they have a large engineering department in Johns-Manville? A. Yes.

Q. They employ many expensive engineers? A. Yes, they have about twenty of them, six of which are really stars.

Q. They design and develop their own machinery? A. Yes.

Q. They have arrived at a point that they now occupy by a *process* of years of experience and redesigning and development, through building up ideas? A. Similar to the *process* in any company.

Q. The same *process* that goes on in Irvington? A. Yes."

7.

The statement (defendant's brief, p. 6):

"Nichols" (defendant's witness) "added that the dusting machine was neither unique nor secret (S. C. 190)."

The reference (from testimony of Nichols, S. C. 190):

"Q. What was done with the dusting machine? A. *The dusting machine was built in line with Mr. Gloss' specification.*

Q. Did it work well? A. They had considerable difficulty with the machine.

Q. Was there anything unique or secret about it? A. *For that purpose, I would say no.*"

8.

The statement (defendant's brief, p. 7):

"A number of Irvington's employees had come from Irvington's competitors. * * * It is obvious, therefore, that information was freely exchanged in the industry. Employees who came to Irvington brought with them knowledge and experience they had acquired from other employers (including Electro) (S. C. 62, 108, 109, 183), * * *."

The reference: Except for one or two salesmen (S. C. 62), the only person shown to have worked for a competitor of complainant at any time previous to coming to work for complainant was complainant's former employee, Mr. Homan, who presently works for Electro-Technical Company (S. C. 108), another party referred to by defendant, a Mr. Dale, having merely been taken back by complainant, for whom he had originally worked, when he was discarded by the Electro-Technical Company (S. C. 109, 183).

9.

The statement (defendant's brief, p. 7):

"Petersen" (defendant's witness) "had been employed by the Johns Manville Corporation, *also a competitor of the complainant*, before he took a position with Irvington as an engineer in 1942."

The reference (from Petersen's own testimony, S. C. 206):

“Q. *Johns-Manville is a competitor of Irvington?* A. *No.*

Q. *They make an entirely different product although coating?* A. *Yes.*”

10.

The statement (defendant's brief, p. 8):

“As Van Norde testified without contradiction, drawings of the machines were sent to various contracting concerns and *various* outside concerns sent representatives who looked over Irvington's machinery.”

The reference (S. C. 151, 156): Besides Irvington Company's contractors, there were *two* instances of outside concerns' representatives coming into the Irvington Company plant (as more fully explained in complainant's brief, pp. 41 et seq.).

11.

The statement (defendant's brief, p. 11):

“The law relating to the enforcement of restrictive covenants was succinctly stated *by this Court* in *Haut v. Rossbach*, 128 N. J. Eq. 77, at 79, * * *.”

The reference is to an opinion by Vice-Chancellor Bigelow in a case in the Court of Chancery, affirmed by this court on the opinion below.

(*Cameron Machine Co. v. Langston*, at page 12 of defendant's brief, also cited as a case in this court, is likewise a Chancery decision.)

12.

The statement (defendant's brief, p. 13):

“When Petersen came from Johns-Manville to work for Irvington, Irvington had access to whatever Petersen had learned at Johns-Manville. So with the other employees who the record shows went to and from different *competitors* in the trade.”

The reference: According to Petersen's own testimony, Johns-Manville is not a competitor of complainant. Item 9 above.

13.

The statement (defendant's brief, p. 14):

“Complainant says, however, that because it has a dominant place in the industry, the Vice-Chancellor should have reached the conclusion that this dominance was due to the so-called secrets in the structure of the machinery. That does not follow. Complainant's dominance may be due to the fact that it may have been first in the field; it may be due to the fact that it has a greater capital than other concerns, a more aggressive sales force, a more lavish advertising budget.”

The reference (complainant's brief, p. 13, quoting *Opinion below*, S. C. 29):

“‘Much of complainant's machinery has been designed by its own staff and most of it has been altered to meet its special and changing needs. * * * The process of experimentation, of trial and error, and adjustment, is going on continually and has been a large factor in establishing and maintaining the competitive position of complainant.’”

(See, also, complainant's brief pp. 14-15, quoting testimony of defendant's witness, Petersen,

to the same effect at S. C. 206—such testimony being further quoted at Item 6, above).

14.

The statement (defendant's brief, p. 15):

“It seems to be the complainant's contention that the Court in the Ideal Laundry case laid down the rule that an employer may, by restrictive covenant, bind *any* (sic) employee not to work for a competitor. Complainant in effect contends that under the law of this State an employer may prevent an employee from taking employment with a competitor and engage in fair competition through the use of his skill and experience.

The process by which the complainant arrives at this novel theory is extremely interesting.”

The reference:

“Complainant has business methods and secrets concerning the design and construction of its machinery reasonably necessitating a covenant, reasonable in its terms, against competitive activity following termination of employment with complainant on the part of an employee becoming familiar with such methods and secrets by reason of his employment with complainant.” (Point I of complainant's brief.)

“Defendant, as the long-time head of complainant's engineering staff and the designer or co-designer of much of its machinery, was familiar with complainant's business methods and secrets concerning the design and construction thereof.” (Point II of complainant's brief.)

15.

The statement (defendant's brief, p. 15):

"It" (complainant) "seizes upon the single phrase used by this Court that Equity will protect the employer's 'business methods and secrets'. It argues (see brief, pp. 23, 24) that these words were used disjunctively as applying to two different things: (a) business methods which need not be unique or secret; or (b) secrets themselves. Complainant then arrives at the principle that a restrictive covenant is enforceable if the employer is possessed of any business methods in an 'all-embracing scope' (see complainant's brief, p. 23)."

The reference (complainant's brief, p. 23):

"Attention is respectfully directed to the conjunctiveness of the phrase 'business methods *and* (sic) secrets'—signifying an all-embracing scope for the usefulness of restrictive covenants of this type in protecting business achievements, *not limited to patentable inventions or even to trade secrets.*"

16.

The statement (defendant's brief, p. 17):

"Complainant, in attempting to bring itself within the doctrine of the Ideal Laundry case, falls into a number of inconsistencies. On page 45 of their brief, counsel for the complainant stated:

'Mr. Mezger's testimony * * * as to their having been *no disclosure*, stands wholly uncontradicted.'

Yet at page 44 of their brief, counsel are forced to argue that

* * * all disclosures referred to by the Court * * * were limited to specific items

and were strictly for the purpose of business.' ”

The reference (complainant's brief, pp. 44-45):

“Consequently, Mr. Mezger's testimony * * * as to there having been *no such disclosure*, stands wholly uncontradicted”—this being preceded by:

“It is submitted that whether or not a thing is ‘secret’ is a conclusion which must be drawn from the facts with reference to disclosure thereof * * * and there was no proof whatever of any disclosure of the design or construction of complainant's machines (admittedly of special design and construction) *other than as required by the needs of the business, and then only in limited instances* and under circumstances not calculated to make the same a matter of public knowledge (i. e., the instances referred to by the court in its opinion, discussed above).”

(Thus, the qualifying word “such” was omitted from the defendant's direct quotation of complainant's brief).

17.

The statement (defendant's brief, p. 17):

“Again, at page 44 of their brief, counsel are put to the necessity of further limiting their statement that there was ‘*no disclosure*’, by saying:

‘In the case of complainant's disclosure to a customer no pledge of secrecy at all was necessary * * *.’ ”

The reference: Here, too, as above, the qualifying word “such” has been omitted from the direct quotation of “*no such disclosure*”.

18.

The statement (still on the subject of complainant's alleged inconsistency) (defendant's brief, p. 17, continuing the quotation therefrom at Item 17, above):

"Later on page 44, complainant argues that there was an 'implied covenant of secrecy' imposed upon the customer."

The reference (complainant's brief, pp. 43-44):

"In the case of the complainant's disclosure to a customer, no pledge of secrecy was at all necessary—the customer as the user of the duplicate machine has the same self-interest in maintaining secrecy as has complainant. *This aside from* any implied covenant of secrecy that may be afforded under the circumstances."

19.

The statement (defendant's brief, p. 18):

"Of course, complainant does not explain why the edgewise coater should be secret when it was bought from the Waldron Company (S. C. 205) and why the horizontal machine should be considered a secret when the builder had constructed similar machines for two of Irvington's competitors, namely, General Electric and Westinghouse (S. C. 74)."

The reference: The "edgewise coater" and the "horizontal coater" are one and the same machine and was never claimed by complainant to be a part of its specially designed and constructed machinery, having been dealt with in complainant's brief as follows (p. 88):

"The horizontal 'edgewise coater' recently installed by Irvington was purchased from a machinery supplier and, so far as the evi-

dence shows, involves nothing special in design or construction. The advent of the horizontal machine did not make the vertical towers obsolete—(Nichols, S. C. 191; Mezger, S. C. 233-234).”

20.

The statement (defendant's brief, p. 18):

“In the Ideal Laundry case, the Court, in considering the affidavits on a preliminary injunction, found that there was *sufficient evidence* before it to sustain the contention that confidential information received from Ideal was about to be used against it by former employees. In the *present case* (sic), the complainant has failed to prove that essential feature.”

The reference (*Ideal Laundry Co. v. Gugliemone*, 107 N. J. Eq. 108, at 115):

“From what has been said it is reasonable to infer that the purpose of the defendant's employment with the complainant's competitor was to obtain the benefit of his knowledge of complainant's business methods and secrets and that there was imminent danger that through such employment such secrets would be disclosed.”

(See, also, complainant's brief, pp. 53-61.)

21.

The statement (defendant's brief, pp. 19-20):

“Complainant speaks of undisputed facts. There was hardly a single fact in the case which was not the subject of controversy. To quote a portion of the testimony out of its context and out of its relationship to other questions and answers, certainly does not

make that single answer an uncontroverted fact. The Vice-Chancellor had before him complainant's representatives and other witnesses. Mr. Mezger, the complainant's vice-president, gave a long, vague harangue about developments and secrets. His testimony did not stand up on cross examination."

The reference: Since defendant does not point out (a) *what* facts as to which the evidence is in conflict, (b) *any* testimony which was misleadingly quoted, (c) *any* testimony of Mr. Mezger which was impeached on his cross examination—these generalities can only be met by the equally general statement that they are wholly unsupported and unsupportable. (The defendant, in effect, says, first, that Mr. Mezger did not testify to anything and, next, that his testimony did not "stand up.")

Respectfully submitted

CHARLES C. TRELEASE,
Solicitor for and of Counsel
with Complainant-Appellant.

H. PRESTON COURSEN,
Of the New York Bar,
Of Counsel.

of which that single answer is...
development and secrets. His testimony did
not stand up on cross examination.

The reference: Since defendant does not point
out (a) what facts as to which the evidence is in
conflict; (b) whose testimony is in conflict;
which was happened on his cross examination—
these confessions can only be met by the equally
clear statement that they were wholly un-
proved and uncorroborated. (The defendant, in
effect, says that that is all, but that is not really
to anything and next that his testimony did not
stand up.)

The reference: (*Idem Laundry Co. v. ...*)
(111 N. E. 2d 101, 102)

...
H. Pastors Court,
Of the New York Bar,
Of Counsel.

The statement of the defendant's...
There was hardly a single fact in the...
to be admitted that to correct a...
to be admitted that to correct a...
to be admitted that to correct a...

